

26 BUSINESS AND ORGANIZATION COMMENTS

26 BUSINESS AND ORGANIZATION COMMENTS (Part 1)

Submission 1839 (Lauren D. Layne, BAKER MANOCK & JENSEN, PC, June 22, 2020)

Baker Manock & Jensen PC ATTORNEYS AT LAW

June 22, 2020

VIA ELECTRONIC MAIL AND OVERNIGHT MAIL

California High Speed Rail Authority Attn: Draft San Jose to Merced Project Section EIR/EIS 100 Paseo de San Antonio, Suite 300 San Jose, California 95113 E-Mail: san_jose_merced@hsr.ca.gov

Re: San Jose to Merced Project Section Draft EIR/EIS Comment Letter

To Whom it May Concern:

Please accept the following comments on behalf of our clients Eugene J. and Carolyn D. Vierra in response to the California High-Speed Rail Project ("HSR Project"), San Jose to Merced Project Section, Draft Environmental Impact Report/Environmental Impact Statement ("Draft EIR/EIS") made available for public comment on April 24, 2020.

I. INTRODUCTION

Mr. and Mrs. Vierra own Merced County Assessor's Parcel Numbers ("APNs") 070-090-004 and 070-010-014, which are approximately 89 and 63 acres, respectively (the "Vierra Ranch"). The Vierra Ranch is highlighted in yellow and green on the attached Good Earth map and is located in the San Joaquin Valley Subsection (Carlucci Road to I-5) of the HSR Project. APN 070-010-014 was purchased by Mr. Eugene Vierra's grandfather in 1909 and has been in the family ever since. APN 070-090-004 was purchased by Mr. Eugene Vierra's father in 1948 and has also stayed with the family. Mr. Vierra and his four siblings were all born on the Vierra Ranch and grew up working on the ranch and the dairy located thereon.

The Vierra Ranch is home to multiple low-income tenants, include farmland, a dairy barn, a milk house, and a drainage ditch runs along the northern portion of the property. There are three residences on the Vierra Ranch and all are rented to very low-income families. The residences have been rented to the same families for approximately 45 years, 25 years, and 5 years, respectively. Mr. and Mrs. Vierra understand their tenants' economic hardships and are very generous about the minimal rent. Mr. and Mrs. Vierra are also extremely concerned about the HSR Project requiring the removal of these homes and the displacement of their occupants, who may not be able to afford rent anywhere else. There is also a tenant farmer that leases the

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1839-3230

1839-3231

Draft San Jose to Merced Project Section EIR/EIS June 22, 2020 Page 2

Vierra Ranch. He farms the ground on the Vierra Ranch and relies on the drainage ditch on the property for adequate drainage of the farm ground. Furthermore, the Vierra Ranch is entitled to and is delivered Central California Irrigation District ("CCID") surface water, which is extremely valuable. There is also a unique dairy barn and an old concrete milk house on the Vierra Ranch.

Our comments are limited to the San Joaquin Valley Subsection of the San Jose to Merced Project Section in the HSR Project Draft EIR/EIS. The Draft EIR/EIS describes four Alternatives for the San Jose to Merced Project Section, but all four Alternatives are exactly the same for the San Joaquin Valley Subsection.

As identified in the attached map from Appendix 3.1-A of the Draft EIR/EIS, the San Joaquin Valley Subsection of the HSR Project will go directly through the Vierra Ranch and destroy all three residences thereon, displacing three very low-income families, it will make the drainage ditch inoperable, it will cut off access to CCID water, and it will make farming the Vierra Ranch impossible. The HSR Project berms will further prevent cattle and sheep grazing, which has occurred in this area for over 100 years.

After considering public comments, the California High-Speed Rail Authority ("CHSRA") and the Federal Railroad Administration ("FRA") will prepare a Final EIR/EIS that will select the "Preferred Alternative." The Preferred Alternative must be the one that best fulfills the purpose, need, and agency objective for the HSR Project while balancing impacts to the natural and human environment. In choosing the Preferred Alternative, the CHSRA and FRA must weigh and compare the potential adverse environmental impacts, and the physical and operational characteristics of each alternative alignment.

The currently recommended Preferred Alternative for the San Jose to Merced Project Section is Alternative 4. However, as mentioned above, all four alternatives are the same for the San Joaquin Valley Subsection. Our clients find this unacceptable, because alternatives were not adequately considered for the San Joaquin Valley Subsection. Other proposed alternatives should have been considered for the San Joaquin Valley Subsection as part of the Draft EIR/EIS, including a design north of Fahey Road that would not displace very low-income tenants on both the Vierra Ranch and the additional three houses on the adjoining property to the west.

II. ISSUES

A. The San Joaquin Valley Subsection Does Not Have Adequate Alternatives Discussed in the Draft EIR/EIS.

As stated in Appendix 2-J of the Draft EIR/EIS at page 2-I-1:

An EIR/EIS is required to analyze the potential effects of a range of reasonable alternatives (14 California Code of Regulations [Cal. Code Regs.] 15126.6; 40

Submission 1839 (Lauren D. Layne, BAKER MANOCK & JENSEN, PC, June 22, 2020) - Continued

1839-3231

Draft San Jose to Merced Project Section EIR/EIS
June 22, 2020
Page 3

Code of Federal Regulations (C.F.R.) Part 1502.14(a)). Under CEQA, the alternatives are to include a No Project Alternative and a range of potentially feasible alternatives that could (1) meet most of the project’s basic objectives and (2) avoid or substantially lessen one or more of the project’s significant adverse effects (14 Cal Code Regs. § 15126.6(c)). The lead agency must describe its reasons for excluding other potential alternatives when considering alternatives for evaluation in the environmental document. Under the “rule of reason,” an EIR is required to study a sufficient range of alternatives in order to permit a reasoned choice (Cal. Code Regs. 14 § 15126.6(f)). CEQA does not require that all possible alternatives be studied.

The Draft EIR/EIS fails to discuss any other alternative for the San Joaquin Valley Subsection. There are four alternatives described for the HSR Project, in whole, in the San Jose to Merced Project Section, but only the San Joaquin Valley Subsection has the same route for all four.

An inadequate discussion of alternatives constitutes an abuse of discretion. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 4404-406; *Kings County Farm Bureau v. City of Hanford* (1990) Cal.App.3d 692, 731 (1990).) If there is evidence of one or more potentially significant impacts, the report must contain a meaningful analysis of alternatives or mitigation measures which would avoid or lessen such impacts. (*Kings County Farm Bureau* at p. 732 [court rejecting proponent’s argument that no discussion of alternatives is required when EIR identifies no significant impact from the project as proposed].) There are several significant environmental impacts identified in the San Joaquin Valley Subsection.

Similarly, the court in *San Bernardino Valley Audubon Society, Inc. v. County of San Bernardino* (1984) 155 Cal.App.3d 738 found that an EIR did not adequately analyze alternative sites because it did not “produce information sufficient to permit a reasonable choice of alternatives so far as environmental aspects are concerned.” (*Id.* at pp. 750–751.) It did not discuss whether there actually are other sites within the ... area which would be suitable for such a project,” or discuss the location or attributes of a parcel of property for which the forest service had proposed a land trade. (*Id.* at p. 751; see also *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 736 [EIR stated there were numerous alternative sites, but did not identify any of them].) The court held that “the EIR does not contain the required sufficient degree of analysis to provide decisionmakers with information to allow them to intelligently take account of environmental consequences.” (*San Bernardino* at 751.)

The failure of an adequate analysis of alternatives for the San Joaquin Valley Subsection in the Draft EIR/EIS is an abuse of discretion and creates a disadvantage for those landowners within that section. This is especially true in light of the fact that the Draft EIR/EIS describes several significant environmental impacts within the San Joaquin Valley Subsection. There is mention of discussions regarding this section back in 2011 and 2013, but that is all. There is no

2586574v1 / 20561.0001

1839-3231

Draft San Jose to Merced Project Section EIR/EIS
June 22, 2020
Page 4

analysis, for example, of an alternative route north of Fahcy Road, where no low-income housing would be impacted. There is no analysis of a more environmentally friendly route that does not displace so much agricultural land, wetlands, vernal pools, etc. Therefore, the only reasonable alternative is the No Action Alternative for the San Joaquin Valley Subsection.

B. There Are Substantial Environmental Impacts within the San Joaquin Valley Subsection.

As stated in Section 2.5 of the Draft EIR/EIS at page 2-33, the proposed San Joaquin Valley Subsection of the HSR Project will cause significant environmental and other concerns including impacts to farmlands and dairies, wetlands/waters, traffic effects during construction and during operation, noise, residential and commercial displacement. However, there is no other alternative analyzed in the Draft EIR/EIS, which leaves nothing to compare this route to with regard to its environmental impacts. All we know is that there are significant and unreasonable environmental impacts caused by the San Joaquin Valley Subsection. “Wetlands/waters” are grouped together like there is no concern about the number of wetlands and vernal pools that will be destroyed by the San Joaquin Valley Subsection route proposed.

Chapter 3 of the Draft EIR/EIS describes affected environment, environmental consequences, and mitigation measures. Specifically, section 3.7, Biological and Aquatic Resources, describes aquatic resources by subsection and indicates that the San Joaquin Valley Subsection impacts all categories of aquatic resources, except one (that is not present). This is unacceptable. Moreover, there is no mention of the shallow groundwater table in the area of the San Joaquin Valley Subsection and the impacts disturbing that groundwater will have on the rest of the environment. Since the construction of the San Luis Reservoir and Forebay in 1962-63, there have been greatly elevated water tables in this area, including on the Vierra Ranch. Furthermore, there is no mention of the impacts that the HSR Project will have on the honey bee population that is used to pollinate the trees in the agricultural lands throughout the San Joaquin Valley Subsection. There is also no discussion of the impacts to the existing drainage infrastructure and facilities that may not simply be relocated or, if are able to be relocated, will cause significant financial impacts on both the HSR and the landowner.

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1. Local Concerns Are Not Adequately Addressed.

Section 8.2.1 identifies the concerns of the local communities with respect to the Preferred Alternative 4 for the HSR Project, by subsection. As the San Joaquin Valley Subsection is the same for all four alternatives, the impacts and concerns are the same. The community correctly recognizes the negative impacts of the proposed HSR Project and Alternative 4 to subsistence ranching operations; loss of sensitive foothill habitats; disruption of wildlife movement corridors; loss of agricultural land and dairies; impacts on agricultural access and water infrastructure; impacts of noise on residents, schools, and livestock; the viability of temporarily disturbed agricultural land after construction; safety of trains operating in excess of

2586574v1 / 20561.0001

Submission 1839 (Lauren D. Layne, BAKER MANOCK & JENSEN, PC, June 22, 2020) - Continued

Draft San Jose to Merced Project Section EIR/EIS
June 22, 2020
Page 5

Draft San Jose to Merced Project Section EIR/EIS
June 22, 2020
Page 6

1839-3233

200 miles per hour; impacts on recreational hunting; disruption of waterfowl habitats in the Grasslands Ecological Area; and duck clubs. (Draft EIR/EIS at page 8-5.)

1839-3234

An important overlay category is agricultural land subject to Williamson Act contracts, such as the Vierra Ranch. The California Legislature passed the Williamson Act to preserve agricultural and open space lands by discouraging premature and unnecessary conversion to urban uses. The Williamson Act allows Counties to designate agricultural preserves. Those preserves represent large contiguous areas of agricultural land that the County desires to maintain in production agriculture. Within the preserves, private landowners are allowed to contract with the County to voluntarily restrict their land to agricultural and compatible open-space uses in exchange for reduced property taxes. There is no mention of this analysis in the Draft EIR/EIS or the additional impacts to removal of Williamson Act lands.

Instead, there are only incorrectly made statements that the agricultural land would eventually be converted to housing. This is simply not true in the San Joaquin Valley Subsection and not true of the Vierra Ranch. (Draft EIR/EIS Section 2.6.1.2.) Mr. and Mrs. Vierra have three children who have strong ties to the Vierra Ranch and who are committed to keeping it in agriculture.

1839-3235

2. Ancillary Impacts on Agricultural Practices Cause Increased Costs and Inhibit Farming Practices.

The Draft EIR/EIS does not consider a number of ancillary farming impacts caused by the HSR Project. For instance, the Draft EIR/EIS at Section S.5.2.1 (Page S-13) describes the Common Design Features of all four alternatives. Specifically, where the HSR Project passes through rural regions, such as in the San Joaquin Valley Subsection, it would affect existing local frontage roads used by small communities and farm operations. These roads will either be shifted or undercrossings planned at approximately every two miles. (See Draft EIR/EIS on page 2-57.) Between these crossings, some roads may also be closed. This is simply unreasonable for agricultural purposes. Table 2-8 on page 2-56 of the Draft EIR/EIS identifies that there will be eight roadway closures for the San Joaquin Valley Subsection.

1839-3236

CEQA Guidelines Section 15382 defines the term "significant effect on the environment" as "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 and aesthetic significance." The San Joaquin Valley Subsection divides numerous parcel of agricultural property and makes it extremely difficult to farm efficiently, if at all, with road access only every two miles. These effects remain "significant" after proposed mitigation measures. Driving farm equipment two miles just to get to the other side of the tracks creates inefficient and problematic farming practices. Furthermore, it is dangerous to have large harvesting and farming equipment on narrow rural roads and, with the road crossing only every two miles, they will have to travel even longer distances on these roads. All the extra miles travelled by off road farm equipment will contribute to substantial air

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emission in a basin that annually struggles to meet ambient air quality standards. The only way to avoid the adverse effects of the road closures is to analyze and choose a superior alternative.

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The IISR Project will also impair certain existing agricultural practices. Farmers will have to take extra precautionary measures for spraying and harvesting their crops on parcels adjacent to the HSR Project right-of-way. These extra costs are a continuing cost impact on the affected landowners, including the additional travel time because of the road closures discussed above. The HSRA and FRA will have to consider paying farmers for the loss of this land as well.

1839-3238

Ancillary farming impacts will increase the cost of the IISR Project. For example, when the remnant portion of an acquired parcel beyond the right-of-way is too small to sustain current use without other modifications the CHSRA will be forced to acquire these parcels. The cost of acquiring this additional property is not considered as part of the Draft EIR/EIS.

1839-3239

Furthermore, Section S.5.2.1 states that the HSR Project would affect existing drainage and irrigation facilities, such as the drainage ditch and access to surface water on the Vierra Ranch. Depending on the severity of the impact, existing facilities are expected to be modified, improved, or replaced as necessary to maintain existing drainage and irrigation functions, allow operations and maintenance access for facility owners, and support HSR drainage requirements. However, there is no discussion of the additional costs that will be required to do this work. This is a huge concern for the Vierra Ranch and mitigation of the damage caused to drainage by the HSR Project may not be repairable. Table 2-8 on page 2-56 of the Draft EIR/EIS states there will be 69 water crossings for the San Joaquin Valley Subsection.

1839-3240

At Section 2.4.1, page 2-7 of the Draft EIR/EIS, the document states that the HSR design and operations would include appropriate barriers (fences and walls) and state-of-the-art access control to keep people, animals, and obstructions off the tracks. This may provide safety for the HSR Project, but could be detrimental to agriculture and farming in the vicinity of the HSR Project. Between fences and reduced accessibility because of road closures and berms, it will become cost prohibitive to farm properties like the Vierra Ranch, where a tractor would have to drive several miles to even get to the other side of the same property. Not only is this a waste of time and money, but it creates a larger carbon footprint that should be factored into the air quality analysis of the Draft EIR/EIS.

1839-3241

3. Unreasonable Impacts to Low-Income Housing in the San Joaquin Valley Subsection.

The Draft EIR/EIS at page 2-E-31 identifies mitigation of impacts to Socioeconomics and Communities. SOCIO-IAMF#1 is a Construction Management Plan ("CMP") that must be prepared prior to construction to minimize impacts on low-income households and minority populations. Both of these exist on the Vierra Ranch. The CMP "would verify that property access is maintained for local businesses, residences, and emergency services." (Draft EIR/EIS at

2586574v1 / 20561.0001

Submission 1839 (Lauren D. Layne, BAKER MANOCK & JENSEN, PC, June 22, 2020) - Continued

Draft San Jose to Merced Project Section EIR/EIS
June 22, 2020
Page 7

1839-3241

Page 2-E-32.) This is contrary to what is identified in the Draft EIR/EIS with regard to road closures and removal of the homes on the Vierra Ranch.

As discussed above, the Vierra Ranch is home to three different very low-income families that have lived on the property for 45 years, 25 years, and 5 years, respectively. A slight shift in alignment to north of Pahey Road, for example, could eliminate the displacement of these families and several others on neighboring property to the west. However, such an alternative was not considered in the Draft EIR/EIS. In fact, there was only one alternative considered (other than not doing the HSR Project) in the San Joaquin Valley Subsection, and it goes right through these very low-income families' homes, which is not even analyzed in the Draft EIR/EIS. We strongly recommend this be reconsidered.

1839-3242

4. The HSR Project in the San Joaquin Valley Subsection Will Cause Significant Impacts to Jurisdictional Waters, Water Bodies, and Vernal Pools.

Jurisdictional waters are considered sensitive natural communities due to their relative scarcity and importance in sustaining biological resources. These waters are regulated by the U.S. Army Corps of Engineers.

As discussed in Section 3.8.6.2 of the Draft EIR/EIS, all four alternatives will require construction activities in waterbodies. In the San Joaquin Valley Subsection alone, there are 109 waterbodies being disturbed by the HSR Project. (Draft EIR/EIS Table 3.18-16.) That is more than in any other subsection. This is said to be because of the density of water conveyance and drainage infrastructure associated with agricultural operations that either would be crossed by bridges or culverts or would be filled or relocated. (Draft EIR/EIS page 3.8-45.) In the San Joaquin Valley Subsection there will be 79 waterbodies with new rail and roadway crossings and an additional 61 waterbodies modified, realigned, or otherwise affected. (Draft EIR/EIS Table 3.8-18, page 3.8-48.) There will also be construction work conducted in floodplains. (Draft EIR/EIS Table 3.8-33.)

1839-3243

Additionally, every aquatic resource analyzed by the CHSRA in the San Jose to Merced Section can be found in the San Joaquin Valley Subsection, with the exception of one. (Draft EIR/EIS Table 3.7-9, page 3.7-45, 46.) These aquatic resources found within the San Joaquin Valley Subsection include wetlands, freshwater marsh, seasonal wetlands, vernal pools and others.

1839-3244

There are also impacts on habitat for special-status plant species and wildlife species habitat, but we are unable to identify how many of these occur in the San Joaquin Valley Subsection as the environmental impacts are not broken down by subsection. (Draft EIR/EIS Tables 3.7-12 & 3.7-13 at page 3.7-53.) Throughout Section 3.7, the Draft EIR/EIS discusses the permanent conversion or degradation of habitat for and direct mortality or disturbance of numerous animal species. These likely occur in the San Joaquin Valley Subsection, as well as

2586574v1 / 20561.0001

Draft San Jose to Merced Project Section EIR/EIS
June 22, 2020
Page 8

1839-3244

other portions of the HSR Project from San Jose to Merced, and simply cannot be adequately mitigated.

1839-3245

The remaining impacted aquatic resources analyzed in Section 3.7 are broken down by Alternative in the Draft EIR/EIS, which makes it nearly impossible for us to determine which of them occur only within the San Joaquin Valley Subsection. However, we know that there are jurisdictional waters, water bodies and vernal pools all located within the San Joaquin Valley Subsection that will be impacted by the HSR Project, regardless of which alternative is chosen, unless the No Project Alternative is selected. These significant environmental impacts are not only not adequately analyzed in the Draft EIR/EIS, but proposed mitigation is either not sufficiently achievable or not adequately addressed for several of these impacts. The prevalence of relatively undisturbed vernal pools and other seasonal wetlands in the natural and seminatural grassland communities along the San Joaquin Valley Subsection provides potentially suitable habitat for several plant and animal species. Even after proposed mitigation measures are implemented, the impacts of the HSR Project in the San Joaquin Valley Subsection route on critical habitat and species remain "significant" under application of the CEQA Guidelines. This is unacceptable.

1839-3246

**III.
CONCLUSION**

The Draft EIR/EIS does not adequately analyze alternatives for the San Joaquin Valley Subsection of the Merced to San Jose Section of the HSR Project. This is an abuse of discretion. As such, the CHSRA must simply choose the No Action Alternative as the Preferred Alternative. However, this is not what is currently being recommended by your staff. If something other than the No Project Alternative is to be selected, then there needs to be additional alternatives analyzed for the San Joaquin Valley Subsection.

1839-3247

Additionally the one proposed alternative for the San Joaquin Valley Subsection will cause significant environmental impacts that are not all adequately analyzed or mitigated. Furthermore, many additional impacts to farming, drainage, wildlife, aquatic habitat, aquatic species, and low-income housing are not sufficiently addressed in the Draft EIR/EIS. The Draft EIR/EIS should be revised to adequately evaluate these concerns and environmental impacts. Such impacts will cause additional financial burdens on the CHSRA, which are also not addressed in the Draft EIR/EIS.

Therefore, we insist that the CHSRA and FRA select the No Action Alternative for the San Joaquin Valley Subsection or proceed with additional environmental reviews to adequately

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Submission 1839 (Lauren D. Layne, BAKER MANOCK & JENSEN, PC, June 22, 2020) - Continued

Draft San Jose to Merced Project Section EIR/EIS
June 22, 2020
Page 9

analyze alternatives for the San Joaquin Valley Subsection. We remain adamantly opposed to the currently (only) proposed San Joaquin Valley Subsection route.

Thank you for your consideration.

Very truly yours,



Lauren D. Layne
BAKER MANOCK & JENSEN, PC

LDL:sdg
Attachment

cc: Mr. and Mrs. Eugene & Carloyn Vierra
Mr. Lloyd Vierra

2586574v1 / 20561.0001



Response to Submission 1839 (Lauren D. Layne, BAKER MANOCK & JENSEN, PC, June 22, 2020)

1839-3228

The Authority appreciates these comments on the Draft EIR/EIS. With respect to the commenter's concern about displacement of residential tenants, all four project alternatives would require the acquisition and displacement of one of the three residences located on APNs 070-090-004 and 070-010-014 to construct the HSR guideway, which is evaluated in the Draft EIR/EIS. The gap analysis performed for the Draft Relocation Impact Report (Authority 2019b, as cited in Section 3.12, Socioeconomics and Communities, of the Draft EIR/EIS) indicated that there would likely be sufficient available residential and nonresidential properties in the RSA to accommodate displaced residents. Displaced residents would be supported in their efforts to find replacement housing in accordance with the Uniform Relocation Act, which provides benefits to displaced individuals to assist them financially and with advisory services related to relocating their residence. Qualified tenants would be eligible for replacement housing payments in the form of rent differential or a down payment option. The Authority would develop a relocation mitigation plan (SOCIO-IAMF#3) for all displaced properties in consultation with affected cities and counties. Drainage infrastructure and access to water and wastewater facilities would be maintained or relocated per AG-MM#4 in Section 3.14, Agricultural Farmland, of the Draft EIR/EIS. PUE-IAMF#2 in Section 3.6, Public Utilities and Energy, of the Draft EIR/EIS also provides that, where relocating an irrigation facility is necessary, the contractor would verify the new facility is operational prior to disconnecting the original facility, where feasible. Access to Central California Irrigation District water would be maintained.

. Additional information about acquisition, compensation, and relocation assistance is also available at the Authority's website: http://www.hsr.ca.gov/Programs/private_property.html. The remainder of the comment does not indicate any specific concerns regarding conclusions in the Draft EIR/EIS. The "unique dairy barn and an old concrete milk house" on the Vierra Ranch were evaluated under Resource IDs 4256 and 4257 in the Historic Architectural Survey Report (Authority 2019a, as cited in Section 3.17, Cultural Resources, of the Draft EIR/EIS). These buildings were found not eligible due to alterations that have caused a loss of historic integrity of design and materials; and for Resource ID 4256 a loss of setting.

1839-3229

One of the parcels in question is APN 070-100-014, which would be impacted by all four project alternatives. There would not be three displaced residences as asserted by the commenter; there would be one displaced single-family residence, one displaced agricultural storage facility, and two agricultural storage facilities that would be temporarily impacted under a temporary construction easement. SOCIO-IAMF#2 in Section 3.12, Socioeconomics and Communities, of the Draft EIR/EIS provides detail regarding the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act) and how the Authority will comply with it, as well as the California Relocation Assistance Act, to facilitate relocations and compensate property owners for displaced property. Appendix 3.12-A, Relocation Assistance Documents (located in Volume 2, Technical Appendices, of the Draft EIR/EIS) provides relocation assistance documents and describes one's rights under the Uniform Act. Each property owner that would be fully or partially displaced would be coordinated with at a later stage of the project. The second residence on this parcel would not be displaced by any of the alternatives. Chapter 5, Environmental Justice, of the Draft EIR/EIS acknowledges the impacts on low-income and minority populations in Table 5-17 and Figure 5-16. The area where this parcel is located is recognized as an Environmental Justice community. Appendix 3.1-A, Parcels within the HSR Project Footprint (located in Volume 2 of the Draft EIR/EIS), provides a map of parcels that would be impacted by each alternative and in what way they would be impacted. The second parcel in question is APN 070-090-004, on which none of the buildings would be demolished. Both parcels would be severed by the HSR alignment, which would bisect the properties. Remnant parcels are discussed in Section 3.14, Agricultural Farmland, of the Draft EIR/EIS, and AG-MM#3 would require an evaluation of modified access to remnant parcels with landowner input. Impacts on agricultural infrastructure are also discussed in Section 3.14 of the Draft EIR/EIS, and AG-MM#4 requires the Authority to relocate and reconnect agricultural infrastructure on important farmlands before disconnecting the original facilities.

Response to Submission 1839 (Lauren D. Layne, BAKER MANOCK & JENSEN, PC, June 22, 2020) - Continued

1839-3230

Refer to Standard Response SJM-Response-ALT-1: Alternatives Selection and Evaluation Process, SJM-Response-ALT-2: Project-Specific Alternatives Considerations.

Please see response to comment #3231, submission # 1839.

1839-3231

Refer to Standard Response SJM-Response-ALT-1: Alternatives Selection and Evaluation Process, SJM-Response-ALT-2: Project-Specific Alternatives Considerations.

A reasonable range of feasible alternatives was analyzed in the Draft EIR/EIS, including options for the San Joaquin Valley portion of the alignment. Factors taken into consideration included aquatic resources, wildlife, and state park resources. As identified in Table 2-3 in Chapter 2, Alternatives, of the Draft EIR/EIS, options to go around the GEA (i.e., GEA North/Merced and South of GEA) were withdrawn. Going around the GEA to the north (GEA North/Merced) would have additional aquatic resource, North Grasslands Wildlife Area, and Section 4(f) impacts (state park crossing). Going around the GEA to the south (South of the GEA) would have aquatic resource, cost, and logistical issues because of the longer alignment. The GEA North/Merced was withdrawn from further analysis because the potential effects on aquatic resources would be substantially greater than those of the alignment along Henry Miller Rd, and it would be the only option to affect the North GEA. This option would result in high visual intrusiveness by adding an HSR river crossing within a state park. Further, this option would add 4 minutes of travel time between San Francisco and Los Angeles, likely making it inconsistent with the travel time objective of Proposition 1A (2 hours 40 minutes between Los Angeles Union Station and San Francisco). Because it is inconsistent with Proposition 1A, this option does not meet the project's purpose and need. The South of the GEA was withdrawn from further analysis because it would have the greatest effect on aquatic resources of options considered and would have high cost and logistical issues due to its extensive environmental effects and additional miles of alignment.

The comment claims that the alternatives analysis is inadequate. The comment's support for the No Project Alternative is noted.

Response to Submission 1839 (Lauren D. Layne, BAKER MANOCK & JENSEN, PC, June 22, 2020) - Continued

1839-3232

Refer to Standard Response SJM-Response-ALT-2: Project-Specific Alternatives Considerations.

The comment expresses concern of the lack of alternatives available to address significant impacts in the San Joaquin Valley. All reasonable and feasible mitigation measures have been applied to the significant environmental impacts of the project. Significant and unavoidable impacts are disclosed where mitigation is not reasonable or feasible or where measures are insufficient to mitigate the significant impact. The Authority will continue to engage jurisdictions and stakeholders during the design, construction, and operation of the project. The Biological and Aquatic Resources Technical Report (Authority 2020a, as cited in Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS) and Aquatic Resources Delineation Report (Authority 2019a, as cited in Section 3.7 of the Draft EIR/EIS) include additional detail regarding types of resources within the RSA and analysis of impacts on these waters and wetlands.

In Section 3.8, Hydrology and Water Resources, of the Draft EIR/EIS, Impact HYD#8 discusses temporary impacts on groundwater during construction, and Impact HYD#9 discusses permanent impacts on groundwater during construction. Both conclude that the impacts under CEQA would be less than significant for each of the four project alternatives because construction of the project would not substantially degrade groundwater quality, substantially interfere with groundwater supplies or recharge, or impede sustainable groundwater management. Regarding the commenter's assertion that the HSR project would affect the honeybee population, additional information has been added to Impact BIO#33 in the Final EIR/EIS. The information supports a finding that the project would not substantially affect the honeybee population.

1839-3233

Refer to Standard Response SJM-Response-ALT-2: Project-Specific Alternatives Considerations.

Refer also to the response to comment 3230. As the commenter notes, the impacts and concerns are the same in the San Joaquin Valley Subsection for all four alternatives because they share the same alignment. Section 8.2.1, Local Communities, documents the concerns raised by these groups, and the impacts are discussed by resource topic throughout Chapter 3, Affected Environment, Environmental Consequences, and Mitigation Measures.

Response to Submission 1839 (Lauren D. Layne, BAKER MANOCK & JENSEN, PC, June 22, 2020) - Continued

1839-3234

The comment states that the Draft EIR/EIS omits a discussion of agricultural preserves within which land is eligible for enrollment in the Williamson Act through contract. Williamson Act lands are defined in Section 3.14.1.1, Definition of Terminology, in the Draft EIR/EIS. In addition, Section 3.14.1.1 describes establishment of agricultural preserves through the local jurisdiction zoning process. In the Final EIR/EIS, Section 3.14.1.1 was revised to clarify that private landowners within agricultural preserves can enter their lands into Williamson Act contract. Changes in Williamson Act enrollments by county are discussed in Section 3.14.5.2, Resource Study Area, of the Draft EIR/EIS. Impacts on land under Williamson Act contract are discussed under Impact AG#8.

The comment also states that the Draft EIR/EIS stated that land under Williamson Act contract would eventually be converted to housing. Impact LU#4 in Section 3.13.6.2, Alteration of Land Use Patterns, of the Draft EIR/EIS describes the acreage of agricultural land that each alternative would convert to nonagricultural uses due to incompatibility with existing zoning.

Section 3.18.6.3, Project Impacts, of the Draft EIR/EIS describes anticipated regional growth impacts. Only a small amount of unplanned growth is expected to result from project implementation. It is currently unknown where that growth would be located in the region. However, all future development would be consistent with adopted local government general plans and zoning ordinances.

Section 2.6.1.2, Planned Land Use, of the Draft EIR/EIS describes approved and pending planning approvals along the project alignment. While this section states that most planned new development in the San Joaquin Valley Subsection would be residential, this development precedes project implementation.

1839-3235

Refer to Standard Response SJM-Response-AG-1: Temporary and Permanent Disruption of Agricultural Infrastructure Serving Important Farmland as a Result of Project Construction.

The comment states that the Draft EIR/EIS does not consider the impact of closed roads and realignment of rural frontage roads on agriculture costs and practices. Impact AG#4 and Impact AG#5 in Section 3.14, Agricultural Farmland, of the Draft EIR/EIS address temporary and permanent disruptions, respectively, of agricultural infrastructure, including temporary and permanent road closures.

Parcel-specific analysis would take place during the appraisal process before property acquisition, consistent with the Uniform Relocation Act, which establishes minimum standards for the treatment of and compensation to individuals whose real property is acquired for a federally funded project. Additional information about acquisition and compensation is also available at the Authority's website: http://www.hsr.ca.gov/Programs/private_property.html.

Response to Submission 1839 (Lauren D. Layne, BAKER MANOCK & JENSEN, PC, June 22, 2020) - Continued

1839-3236

Refer to Standard Response SJM-Response-AG-1: Temporary and Permanent Disruption of Agricultural Infrastructure Serving Important Farmland as a Result of Project Construction.

The comment stated that creation of remnant parcels in the San Joaquin Valley Subsection would make it difficult to farm efficiently. Refer to Impact AG#4 and Impact AG#5 for a discussion of the temporary and permanent impacts of project construction on agricultural infrastructure.

Further, AG-IAMF#5 provides for temporary livestock and equipment crossings to minimize impacts on livestock movement, as well as routine operations and normal business activities, during project construction. AG-IAMF#6 provides for equipment crossings of permanently affected roads to minimize impediments to routine agricultural operations and normal business activities that may result from long-term project operation.

The comment notes that additional travel distance for farming equipment due to road closures and perimeter fences should be assessed as part of the air quality analysis. Impact AQ#12 in Section 3.3, Air Quality and Greenhouse Gases, of the Draft EIR/EIS assesses the continuous permanent direct impacts on localized air quality as a result of exposure to mobile source air toxics (change in vehicle miles traveled), which is less than significant as the project would reduce vehicle miles traveled.

1839-3237

The comment stated that farmers would have to take extra precautionary measures for spraying and harvesting crops on parcels adjacent to the HSR project right-of-way. AG-MM#1 provides for the purchase of a 25-foot-wide area on Important Farmland adjacent to the fenced HSR right-of-way from willing sellers as an agricultural conservation easement. This band would be wide enough that farmers need not take extra precautionary measures for spraying and harvesting. Further, the Authority has determined that spraying pesticides and herbicides would not be affected by project operation. Please refer to Impact AG#6 in Section 3.14, Agricultural Farmland, of the Draft EIR/EIS.

In addition, the purchase of the conservation easement would constitute compensation. Impacts SOCIO#12 and SOCIO#13 in Section 3.12, Socioeconomics and Communities, of the Draft EIR/EIS identify the temporary and permanent economic consequences of the conversion of agricultural land.

With regard to extra travel time for farm equipment, AG-IAMF#5 provides for temporary livestock and equipment crossings to minimize impacts onto livestock movement, as well as routine operations and normal business activities, during project construction. AG-IAMF#6 provides for equipment crossings of permanently affected roads to minimize impediments to routine agricultural operations and normal business activities that may result from long-term project operation.

The Authority will acquire land from property owners whose land is directly affected by the project in accordance with the Uniform Relocation Act (42 U.S.C. Chapter 61). Parcel-specific analysis will take place during the appraisal process before property acquisition, consistent with the Uniform Relocation Act, which establishes minimum standards for the treatment of and compensation to individuals whose real property is acquired for a federally funded project. Property owners who are not directly affected by property acquisition but who believe they have suffered a loss of property value as a result of the project may file a claim with the State of California's Government Claims Board.

Response to Submission 1839 (Lauren D. Layne, BAKER MANOCK & JENSEN, PC, June 22, 2020) - Continued

1839-3238

Refer to Standard Response SJM-Response-AG-2: Farmland Impacts—Remnant Parcels.

As described in Section 6.2, Capital Costs, of the Draft EIR/EIS, capital costs represent the total cost associated with the design, management, land acquisition, and construction of the HSR system. The SCC 40 estimated costs include right-of-way, property acquisition, and environmental mitigation. Right-of-way costs were estimated based on the preliminary design, and, as the design of the project is refined, the right-of-way limits would be reassessed to reflect refined property acquisition needs. The capital costs in the Draft EIR/EIS did account for land acquisition, including the acquisition of remnant parcels. Such analysis is not, however, assumed to be adequate for the real estate transactions that would occur during the right-of-way acquisition process. More detailed parcel-specific analysis would take place during the appraisal process before property acquisition.

1839-3239

The comment states that disruption of agricultural drainage and irrigation facilities could result in additional costs. Please refer to Section 6.2.1, High-Speed Rail Alternatives, of the Draft EIR/EIS, which discusses the cost of mitigation as a component of the overall cost estimate. Agricultural impacts, though not called out explicitly, are included within environmental mitigation accounted for in Chapter 6, Project Costs and Operations, of the Draft EIR/EIS. Parcel-specific analysis would take place during the appraisal process before property acquisition, consistent with the Uniform Relocation Act, which establishes minimum standards for the treatment of and compensation to individuals whose real property is acquired for a federally funded project. Additional information about acquisition and compensation is also available at the Authority's website: http://www.hsr.ca.gov/Programs/private_property.html.

1839-3240

Refer to Standard Response SJM-Response-AG-1: Temporary and Permanent Disruption of Agricultural Infrastructure Serving Important Farmland as a Result of Project Construction, SJM-Response-AG-2: Farmland Impacts—Remnant Parcels.

As described in Section 3.14, Agricultural Farmland, of the Draft EIR/EIS, the agricultural analysis conducted an assessment of important farmland to identify parcels that were considered nonviable for continued agricultural use due to factors that included access (e.g., road closures, perimeter fencing) and overall hardship in maintaining economic activity. The results of that analysis, conducted by right-of-way specialists for the purpose of satisfying CEQA and NEPA, are provided in Appendix 3.14-C, Remnant Parcel Analysis, of the Draft EIR/EIS. Such analysis is not, however, assumed to be adequate for the real estate transactions that would occur during the right-of-way acquisition process. Parcel-specific analysis will take place during the appraisal process before property acquisition, consistent with the Uniform Relocation Act, which establishes minimum standards for the treatment of and compensation to individuals whose real property is acquired for a federally funded project. Further, AG-IAMF#5 provides for temporary livestock and equipment crossings to minimize impacts onto livestock movement, as well as routine operations and normal business activities, during project construction. AG-IAMF#6 provides for equipment crossings of permanently affected roads to minimize impediments to routine agricultural operations and normal business activities that may result from long-term project operation.

The comment notes that additional travel distance for farming equipment due to road closures and perimeter fences should be assessed as part of the air quality analysis. Impact AQ#12 in Section 3.3, Air Quality and Greenhouse Gases, of the Draft EIR/EIS assesses the continuous permanent direct impacts on localized air quality as a result of exposure to mobile source air toxics (change in vehicle miles traveled), which is less than significant as the project would reduce vehicle miles traveled.

Response to Submission 1839 (Lauren D. Layne, BAKER MANOCK & JENSEN, PC, June 22, 2020) - Continued

1839-3241

Section 3.12, Socioeconomics and Communities, of the Draft EIR/EIS identifies residential, business, and community facility displacements that would occur under the project alternatives, including one residential displacement in unincorporated Merced County that is located on Vierra Ranch. Consistent with the Uniform Relocation Act, the Authority would provide relocation benefits in the form of replacement housing payments for qualifying tenants occupying residential property that would be displaced by the project. Information about acquisition, compensation, and relocation assistance is available at the Authority's website:

http://www.hsr.ca.gov/Programs/private_property.html. Two other residences located on Vierra Ranch would not be acquired for project construction. For these remaining residences, project features such as SOCIO-IAMF#1 would minimize construction-related impacts and would ensure property access is maintained throughout the construction period.

With respect to the commenter's request that the Authority consider shifting the project alignment to the north of Fahey Road to minimize residential displacements, there are a number of constraints and other tradeoffs with respect to community and natural resource impacts that have been considered in the identification of the current project alignment. These include impacts on natural resource areas, parklands, and businesses in north Santa Nella and minimizing business, farm, school, private property, roadway and irrigation/drain infrastructure disruptions on the way to connecting with the HSR alignment constructed as part of the Merced to Fresno Section: Central Valley Wye at Carlucci Road. The preferred alignment of the Central Valley Wye east of Carlucci Road is also on the south side of Henry Miller Road. Further constraints include design speed requirements for operational reliability and safety, passenger comfort, and sustainable maintenance. After years of engineering and analysis of potential impacts, the resulting design is the best alignment possible within these constraints that would minimize impacts on the surrounding area's economy, transportation, industry, and natural resources.

1839-3242

The commenter does not make a specific comment regarding the analysis or findings of the EIR/EIS. The commenter asserts that there are significant impacts on jurisdictional waters in the San Joaquin Valley Subsection. In Section 3.7.7.5, Aquatic Resources, of the Draft EIR/EIS, Impacts BIO#37, BIO#38, and BIO#39 discuss and describe impacts on aquatic resources for each of the alternatives. Please see response to submission SJM-1839, comment 3243, which discusses the breakdown of aquatic resources by subsection. As described in the Draft EIR/EIS in those impacts, the project would result in significant impacts on aquatic resources under all alternatives. However, the Authority has included several mitigation measures that would avoid, minimize, or mitigate these significant impacts. BIO-MM#5 would require the project biologist to establish vehicle speed limits within the project footprint; restrict vehicle traffic to established roads, construction areas, and other permissible areas; and direct that routes be marked to prevent off-road traffic prior to ground-disturbing activity. BIO-MM#9 would involve preparation and implementation of a groundwater AMMP that would require monitoring of groundwater-dependent surface water resources within the tunnel groundwater study area, providing supplemental water where needed, and remediating or compensating for any adverse effects identified during monitoring. Under BIO-MM#71, the RRP would require contractors to begin revegetation of temporarily affected riparian areas within 90 days of construction completion. BIO-MM#72 identifies minimum compensatory mitigation requirements for riparian habitat. BIO-MM#73 would minimize temporary impacts on aquatic resources by requiring contractors to begin restoration of temporarily disturbed features within 90 days of completing construction. BIO-MM#25 would require the Authority to prepare a dewatering plan that incorporates measures to minimize turbidity and siltation of downstream waters. BIO-MM#74 requires preparation and implementation of a CMP for impacts on aquatic resources under CWA Section 404 jurisdiction. These measures are expected to avoid or minimize temporary impacts and compensate for permanent impacts on aquatic resources. Therefore, the impact would be less than significant.

Response to Submission 1839 (Lauren D. Layne, BAKER MANOCK & JENSEN, PC, June 22, 2020) - Continued

1839-3243

Impacts on aquatic resources are described in Section 3.7.7.5, Aquatic Resources, of the Draft EIR/EIS. While the Draft EIR/EIS does not break down aquatic impacts to the subsection level, the Authority did provide a breakdown of impacts by subsection as requested by the commenter in the associated Biological and Aquatic Resources Technical Report. The Biological and Aquatic Resources Technical Report (Authority 2020a, as cited in Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS), referenced in the Draft EIR/EIS as supporting the analysis, and available with the Draft EIR/EIS upon request, provides the breakdown of impacts on biological resources by project subsection. Appendix H in the Biological and Aquatic Resources Technical Report provides a breakdown of impacts on aquatic resources for each subsection, including the San Joaquin Valley Subsection.

1839-3244

The commenter asserts that the project would have impacts on habitat for special-status plant species and wildlife species. Impacts on special-status species are described in the EIR/EIS in Section 3.7.7.2, Special-Status Species, across numerous impact numbers. Overall impacts from each alternative are quantified in Tables 3.7-12 and 3.7-13 of the Draft EIR/EIS. The commenter also notes that a further breakdown of impacts to the subsection level was not provided in the EIR/EIS. While the Authority's evaluation of overall impacts by alternative is consistent with CEQA and NEPA, the Authority also provided a breakdown of impacts by subsection as requested by the commenter. The Biological and Aquatic Resources Technical Report (Authority 2020a, as cited in Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS), referenced in the Draft EIR/EIS as supporting the analysis, and available with the Draft EIR/EIS upon request, provides the breakdown of impacts on biological resources by project subsection. Appendix H in the Biological and Aquatic Resources Technical Report provides a breakdown of impacts on special-status plants and wildlife for each subsection, including the San Joaquin Valley Subsection. Lastly, the commenter asserts that impacts within the San Joaquin Valley Subsection cannot be mitigated. The Authority has prepared a preliminary Compensatory Mitigation Plan, which documents that there are adequate mitigation lands available for the mitigation likely to be required for the project.

1839-3245

The commenter notes that the Draft EIR/EIS does not break down impacts on a subsection basis. Please see response to submission SJM-1839, comment 3244. Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS provides an individual assessment of all impacts and assigns feasible mitigation measures to reduce impacts to a less-than-significant level. The Authority notes that all impacts from the project, regardless of what subsection they occur within, are assessed in the Draft EIR/EIS. The commenter provides a general statement that effects and mitigation are not adequate, but does not provide a specific example or other information to support the claim. Lastly, the commenter asserts that impacts within the San Joaquin Valley Subsection cannot be mitigated. The Authority has prepared a preliminary Compensatory Mitigation Plan, which documents that there are adequate mitigation lands available for the mitigation likely to be required for the project.

1839-3246

Refer to Standard Response SJM-Response-ALT-1: Alternatives Selection and Evaluation Process.

Please see response to comment #3231, submission # 1839.

Response to Submission 1839 (Lauren D. Layne, BAKER MANOCK & JENSEN, PC, June 22, 2020) - Continued

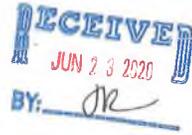
1839-3247

Refer to Standard Response SJM-Response-ALT-1: Alternatives Selection and Evaluation Process.

The comment states that environmental impacts in the San Joaquin Valley Subsection are not adequately analyzed or mitigated. The comment does not specifically identify what additional impacts would occur that were not evaluated in the EIR/EIS other than to list general categories. The Draft EIR/EIS comprehensively evaluated all potentially significant impacts from construction and operation of the proposed project. Impacts on farming and drainage are addressed in Section 3.8, Hydrology and Water Resources, and Section 3.14, Agricultural Farmland, of the Draft EIR/EIS; impacts on wildlife, aquatic habitat, and aquatic species are addressed in Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS; and impacts on low-income communities are addressed in Chapter 5, Environmental Justice, of the Draft EIR/EIS. Operation and maintenance costs are addressed in Chapter 6, Project Costs and Operations, of the Draft EIR/EIS.

Submission 1620 (Diana Berry, Berry Alexander LLC, June 23, 2020)

June 17, 2020



California High-Speed Rail Authority
Attn: San Jose to Merced: Draft EIR/EIS
100 Paseo de San Antonio, Suite 300
San Jose, CA 95113
san.jose_merced@hsr.ca.gov

Ricci Graham

Subject: San Jose Merced Draft EIR/EIS Comments

1620-2364

I am writing as the managing partner of the Berry Alexander LLC that owns the commercial property at 6791 Alexander Street, Gilroy, CA. This property is involved in a multi-year lease with International Paper Company. It houses a long standing business that provides many jobs for residents of this city as well as providing a tax base that the City of Gilroy benefits from.

It seems to us that it is not fiscally responsible to spend tax payer dollars to take this property and take down such a large building to accommodate parking when there is a large parcel of vacant land adjacent to the said property that would easily accommodate parking with easy access for commuters.

Please take this into serious consideration when making you plans. We need to not only look at what is best for commuters but what is best for the overall good.

Thank you for your consideration.


Diana Berry, Managing Partner
Berry Alexander LLC.

Response to Submission 1620 (Diana Berry, Berry Alexander LLC, June 23, 2020)

1620-2364

The concern regarding property acquisition at 6791 Alexander Street in Gilroy is noted. Under the Preferred Alternative (Alternative 4) 6791 Alexander Street in Gilroy is not proposed to be converted to parking. Please refer to Sheet AR-C1201 in Book 4C of Volume 3, Preliminary Engineering for Project Design Record.

The property is proposed for acquisition under Alternatives 1 and 2 to provide station parking. Station drawings for these alternatives are found in Books 1B and 2B in Volume 3. The Authority will coordinate with the City of Gilroy and refine the parking design during Detailed Design Post-ROD and based on land use at that time.

Submission 1419 (D Recht, BKP, June 21, 2020)

San Jose - Merced - RECORD #1419 DETAIL

Status : Unread
Record Date : 6/21/2020
Submission Date : 6/21/2020
Interest As : Business and/or Organization
First Name : D
Last Name : Recht

Stakeholder Comments/Issues :

1419-208

Consideration should be given for underserved communities that do not have a spur access

Response to Submission 1419 (D Recht, BKP, June 21, 2020)

1419-208

Comment noted. Underserved communities as well as other communities adjacent to the alignment would be served by local or regional transit services that would provide users with access to nearby stations serving the high-speed rail system.

Submission 1667 (Christine Breen, Breen Law Firm, June 23, 2020)

BREEN LAW FIRM CHRISTINE O. BREEN

COB@BREENLAW.NET

June 23, 2020

VIA ELECTRONIC MAIL

Northern California Regional Office California High-Speed Rail Authority 100 Paseo De San Antonio, Suite 300 San Jose, CA 95113 san.jose_merced@hsr.ca.gov

RE: Draft Environmental Impact Report/Environment Impact Statement of the California High-Speed Rail Authority – San Jose to Merced Project Section

The following is submitted on behalf of B&P Fruit Company, Inc. to the Draft Environmental Impact Report/Environment Impact Statement of the California High-Speed Rail Authority – San Jose to Merced Project Section (“Project”).

1667-2454

B&P Fruit Company, Inc. (“Owner”) owns 97.5 acres of apple orchards in northwest San Benito County (“the Property”). There are 375 mature apple trees planted per acre. Each mature apple tree has a market value of approximately \$500.

All four of the Project alternatives bisect the Property, rendering it unfarmable, and not viable for any alternative use.

AGRICULTURAL FARMLANDS

Permanent Loss of Farmland.

1667-2455

How will the Project address the permanent loss of Important Farmland and the resulting loss of food supply source?

1667-2456

Has the Authority considered the impact the construction of an embankment rail line will have on the prospective use of the Property after construction?

1667-2457

According to the report, the Project will result in the permanent conversion of Important Farmland to nonagricultural use, and the permanent creation of remnant parcels of Important Farmland. The impacts are noted to be “significant and unavoidable.”

San Benito County’s number one industry is agriculture. The Property (“Farmland”) constitutes Important Farmland as defined in the report. The commencement of construction will have grave ramifications beyond those addressed in the report.

The Owner has a long-term contract to grow apples, and also an option for the property to be purchased by the current contractor. The Project proposes a rail line built upon an embankment, which will prevent any travel across the Property, and result in two remnant parcels that will no longer be suitable for farming. The Mitigation Measure assumes, without foundation, that the remnants will be farmable at the same level of efficiency as before the construction. The fragmentation of the Property by the Project renders it financially unfeasible to continue to farm.

1667-2458

Damage to Agricultural Infrastructure.

- What measures will the Authority implement to prevent and reduce damage to state-of-the-art farming infrastructure?

The Report notes that the Project will result in the temporary and permanent disruption of the agricultural infrastructure on the Property. As Mitigation Measures, the report states that drainage facilities will be relocated and reconnected. However, the report does not appear to contemplate the scenario created on this Property, where the embankment rail line will create two remnant parcels completely separated from one another. The Report does not contain any assurance that the infrastructure would be replaced or operate at the same level as that which is removed. Owners are aware of many farmers who own property on the Bakersfield-Merced line who have not been compensated at all, or compensated inadequately, for damage to and/or loss of infrastructure during construction of that rail line.

Please direct responses to these questions, and any requests for clarification or additional information to this office.

Very truly yours,

Christine O. Breen Christine O. Breen

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Response to Submission 1667 (Christine Breen, Breen Law Firm, June 23, 2020)

1667-2454

The commenter asserts that all four of the Project alternatives bisect his property, which is planted with apple trees, and that the resulting remnant parcels would not be viable for continued productive agricultural use. The Authority appreciates your comments on the Draft EIR/EIS. The Project design is at a preliminary level of design suitable for a conservative approach to environmental analysis, and the impacts of the Preferred Alternative are likely to be less than projected in the Draft EIR/EIS. Impacts SOCIO#12 and SOCIO#13 in Section 3.12, Socioeconomics and Communities, of the Draft EIR/EIS identify the economic consequences of the conversion of agricultural land, including orchards. In case remnant parcels are rendered unviable for continued productive agricultural use, parcel-specific analysis would take place during the appraisal process before property acquisition, consistent with the Uniform Relocation Act, which establishes minimum standards for the treatment of and compensation to individuals whose real property is acquired for a federally funded project. Additional information about acquisition and compensation is also available at the Authority's website: http://www.hsr.ca.gov/Programs/private_property.html. Further, in case remnant parcels are unviable for continued agricultural use, AG-IAMF#3 establishes a Farmland Consolidation Program, which would assist the owners of remnant parcels in selling those remnants to adjacent landowners, upon request. The goal of the program is to provide for continued agricultural use on the maximum feasible amount of remnant parcels that otherwise may not be economic to farm.

In subsequent individual comments, you provided specific suggestions regarding remnant parcel and agricultural infrastructure impacts. Each of these specific comments is addressed below.

1667-2455

The comment asked how the Draft EIR/EIS addressed permanent loss of Important Farmland. Please refer to Impact AG#2 and Impact AG#3 in Section 3.14.6, Environmental Consequences of the Draft EIR/EIS for this information. This permanent conversion is treated as a significant and unavoidable impact. In addition, the comment asks how the project would address loss of food supply source. NEPA and CEQA both require that impacts on Important Farmland by a proposed project be analyzed. NEPA also requires an analysis of socioeconomic effects. While there is no requirement to analyze food supply impacts as such, a socioeconomic analysis serves as a proxy for changes in food supply. Impacts SOCIO#12 and SOCIO#13 in Section 3.12, Socioeconomics and Communities, of the Draft EIR/EIS identify the economic consequences of the conversion of agricultural land. Table 3.12-23 in Section 3.12 of the Draft EIR/EIS quantified expected temporary and permanent socioeconomic effects related to Important Farmland conversion. Because economic impacts are not a CEQA issue, no CEQA conclusions were made regarding economic agricultural effects.

1667-2456

The comment asked whether the Authority has considered the impact that the construction of an embankment rail line would have on prospective use of agricultural farmland after construction. In Section 3.14, Agricultural Farmland, of the Draft EIR/EIS, Impact AG#2 discusses the effects relating to permanent conversion of Important Farmland and Impact AG#3 discusses the effects relating to permanent creation of remnant parcels of Important Farmland. The project footprint includes all necessary slope area for the embankment, and no additional land would be required outside of the right-of-way. In addition, Impact AG#5 discusses the effects related to permanent disruption of agricultural infrastructure serving Important Farmland, Impact AG#6 discusses the effects related to permanent interference with aerial spraying activities for Important Farmland, and Impact AG#7 discusses permanent induced wind interference with agricultural activities on Important Farmland. Impact AG#7 in the Final EIR/EIS was revised to note that the extent of wind disturbance is the same for all vertical alignments.

Response to Submission 1667 (Christine Breen, Breen Law Firm, June 23, 2020) - Continued

1667-2457

Refer to Standard Response SJM-Response-AG-2: Farmland Impacts—Remnant Parcels.

The comment stated that remnant parcels created by the embankment alternative on the owner's property would no longer be suitable for farming because of economic inefficiencies. The economic impact of agricultural conversion was calculated by alternative on a countywide and regionwide basis (see Section 3.12, Socioeconomics and Communities, of the Draft EIR/EIS, Impact SOCIO#13 and Table 3.12-16).

1667-2458

Refer to Standard Response SJM-Response-AG-1: Temporary and Permanent Disruption of Agricultural Infrastructure Serving Important Farmland as a Result of Project Construction.

The commenter is concerned about adequate compensation for disruption of agricultural infrastructure. By law, the Authority is required to pay fair market value during restoration of Important Farmland used for project construction, as has been the practice with all other project sections. Parcel-specific analysis would take place during the appraisal process before property acquisition, consistent with the Uniform Relocation Act, which establishes minimum standards for the treatment of and compensation to individuals whose real property is acquired for a federally funded project. Additional information about acquisition and compensation is also available at the Authority's website: http://www.hsr.ca.gov/Programs/private_property.html.

Please see response to comment #2457, submission #1667, regarding remnant parcels.

Submission 1684 (Christine Breen, Breen Law Firm, June 23, 2020)



CHRISTINE O. BREEN

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June 23, 2020

VIA ELECTRONIC MAIL

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RE: Draft Environmental Impact Report/Environment Impact Statement of the California High-Speed Rail Authority – San Jose to Merced Project Section

The following is submitted on behalf of Soap Lake Ranch, LLC and D&D Brigantino Family Limited Partnership and Mission Ranches Company, LLC in response to the Draft Environmental Impact Report/Environment Impact Statement of the California High-Speed Rail Authority – San Jose to Merced Project Section(“Project”).

Soap Lake Ranch, LLC and D&D Brigantino Family Limited Partnership (“Owners”) own 2,000 acres of farmland and wetlands in northwest San Benito County (“the Property”). (Exhibit A.) Approximately 1,000 acres of the Property is prime farmland, certified organic, and farmed by Mission Ranches Company, LLC. The other 1,000 acres of wetlands is held in a conservation easement through the San Benito Agricultural Land Trust, as seasonal wetlands and habitat for migratory birds, and several threatened species.

All four of the Project alternatives run through the Property, and will have significant, irreparable effects on its use as organic farmland and wetlands. However, alternative 3 will have the most significant effect on the Property, since it bisects the Property from its southeast to northwest corners.

AGRICULTURAL FARMLANDS

Permanent Loss of Farmland.

- *How will the Project address the permanent loss of Important Farmland and the resulting loss of food supply source?*

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1684-2850

According to the report, the Project will result in the permanent conversion of Important Farmland to nonagricultural use, and the permanent creation of remnant parcels of Important Farmland. The impacts are noted to be “significant and unavoidable.”

Keep in mind that San Benito Count’s number one industry is agriculture. The farmable portions of the Property (“Farmland”) constitute Important Farmland as defined in the report. The Farmland comprises the largest single block of agricultural farmland **and** certified organic farmland in San Benito County. The commencement of construction will have grave ramifications beyond those addressed in the report.

1684-2851

The Owners currently receive significant rent from farm leases in its current certified organic condition on a long-term basis. The ranch and improvements were designed in uniform blocks with extensive water and drainage systems making the Farmland very efficiently farmed. This Project will affect the farming efficiency and utility as a whole unit which will decrease the value of the farmland as a whole.

Under alternatives 1, 2, 3 and 4, at least 30-50 percent of the Farmland, and possibly more, would be unfarmable for the 6-year construction period, plus the 2-year reconductoring period.

1684-2852

In addition, the entire ranch is secured with fencing and locked gates. There are several equipment yards within the fenced area that will be isolated on the opposite side of the tracks as the majority of the farm ground or pasture ground. These equipment yards are currently located outside the floodplain. In the event they need to be relocated to accommodate farming or grazing, the floodplain must be considered as flooding will cause damage to the farm equipment. In any case the equipment yards need to be secured with adequate fencing.

Organic Status of Farmland.

1684-2853

- *Did the Authority take into account the three-year certification process for organic farming, and the ramifications the Project to organic farming on the Farmland?*

1684-2854

- *Has the Authority considered what steps can be taken to keep or restore the Farmland to Certified Organic status?*

1684-2855

- *Has the Authority considered what steps will be taken to prevent noxious weeds from being introduced to the Farmland?*

1684-2856

- *Is the Authority prepared to pay for the cost of eradication of noxious weeds introduced to the Farmland after completion in order to maintain its Certified Organic states, keeping in mind that use of herbicides is not allowed?*

1684-2857

- *During and after construction will the Authority use any chemicals or other substances which would nullify the Certified Organic status of the Farmland?*

1684-2858

- *How will the viaduct ground corridor be secured and or fenced?*

1684-2859

- *How will the Authority address the loss of natural sunlight from shadows cast by the viaduct, since it will impact the productivity of the Farmland permanently, which will increase the cost of production, decrease the bottom line and decrease the overall farm value ?*

1684-2860

- *How does the Authority intend to comply with stated a federal food safety regulations during and after construction?*

1684-2850

Submission 1684 (Christine Breen, Breen Law Firm, June 23, 2020) - Continued

1684-2861

- Will access be provided on a permanent basis under and around the viaduct for access and or farming?

1684-2862

- Will the height of the viaduct accommodate commercial farming equipment?

1684-2863

The Report does not appear to address the fact that the construction of the Project will disqualify the Farmland from organic farming for at least three years after the reconductoring ends. (7 CFR Part 205, Subpart A.) Alternatives 1, 2, and 4 would render 30-50 percent of the Farmland portion of the Property unusable for organic farming for at least three years from when reconductoring ceases. Alternative 3 would eliminate ALL organic farming on the Property for the same duration. Post-construction, the Farmland will have the HSR line running through it, as well as service roads, security and maintenance, which will make it highly unlikely that the organic integrity of the Farmland could be restored or maintained.

1684-2864

Remnant Parcels.

- How does the Authority intend to address the increased expenses incurred farming remnant parcels?

Under all alternatives, the project results in the permanent creation of remnant parcels. A viaduct which permanently separates the Farmland will impede preparation, cultivation and irrigation of the farmland. This devalues the Farmland, due to a loss of acreage, in and around the structures, but also the creation of remnants where the increased costs outweigh the benefit of continued farming. The Mitigation Measure assume, without foundation, that the remnants will be farmable at the same level of efficiency as before the construction. There are a lot of benefits in farming large uniform blocks. Fragmentation of these blocks will cause the ranch as a whole to be less valuable, less desirable and less productive.

1684-2865

Damage to Agricultural Infrastructure.

- What measures will the Authority implement to prevent and reduce damage to state-of-the-art farming infrastructure?

The Report notes that the project will result in the temporary and permanent disruption of the agricultural infrastructure on the farmland. As Mitigation Measures, the report states that drainage facilities will be relocated and reconnected. However, the report does not appear to contemplate significant upgrades to irrigation and drainage facilities that the Owners have undertaken on the Property. The Owners have just completed an extensive upgrade to the water system on the Farmland to facilitate irrigation and drainage. The water system includes 9 wells and a grid of pipelines, which would not be easily re-located, since it is comprehensive to the entire site. Moreover, it is an expensive, state-of-the-art system. The Report does not contain any assurance that the infrastructure would be replaced or operate at the same level as that which is removed. Owners are aware of many farmers who own property on the Bakersfield-Merced line who have not been compensated at all, or compensated inadequately, for damage to and/or loss of infrastructure during construction of that rail line.

BIOLOGICAL AND AQUATIC RESOURCES

Loss of Conservation Easement Wetlands.

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1684-2866

- Has the Authority taken into account that the Wetlands are subject to a Conservation Easement held by the San Benito Agricultural Land Trust? If so, how does it intend to mitigate the loss of an existing source of environmental mitigation?

Alternative 3 for the Project runs through the southeast portion of the Property, which consists of seasonal wetlands ("Wetlands") which are ironically held in a conservation easement. Notably, the Wetlands is part of a larger, regional restoration project under the Pajaro River Watershed Flood Prevention Authority.

1684-2867

The report states unequivocally that "the preponderance of direct impacts would be on the Soap Lake Properties, the Pacheco Creek Preserve, and the Romero Ranch Conservation Easement in the Morgan Hill and Gilroy and Pacheco Pass Subsections, respectively. . . . Alternative 3 would affect substantially more of the Soap Lake Properties than the other three alternatives, which are similar." The sheer number of the impacts to biological and aquatic resources (50 separate impacts) speaks to the significant environmental impact the project would have on the Wetlands, and on resources project-wide.

The Wetlands are home to the burrowing owl, the south-central California coast steelhead, and multiple species of waterfowl, which utilize this as a nesting area and migratory corridor. (Exhibit B.) For each of these species or groups, the report confirms that the project would modify or destroy habitat and migratory corridors, degrade habitat and wetlands, and result in a substantial loss of species. However, the Report ultimately concludes the impacts would be "less than significant" because of "compensatory mitigation requirements would be implemented. This finding is faulty, since studies have shown that historically, this method has not resulted in projects sufficiently similar to natural wetlands. An Evaluation of Compensatory Mitigation Projects Permitted Under Clean Water Act Section 401 by the California State Water Quality Control Board, 1991-2002. Final Report (2006) Richard F. Ambrose, John C. Callaway, and Steven F. Lee.)

1684-2868

In this particular situation, the Wetland area was actually established as a conservation area for purposes of ameliorating habitats and wetlands. The grounding of the tracks at the intersection of the Tequisquita Slough in all four Alternatives will interrupt the movement of many species as the slough is used as a corridor to and from Soap Lake. Some species like the Western Ridged Mussel (Photo attached) thrive in the Tequisquita Slough and will no doubt ably be affected by track grounding.

1684-2869

The Soap Lake Ranch is well known for its excellent grazing and water fowl hunting. The tracks in Alternative 3 cross the Tequisquita Slough at which point the tracks are grounded. This will create myriad complications to the wildlife corridor coming and going to Soap Lake.

1684-2870

In Alternative 3 the tracks will also isolate the corral area which is used for working livestock and will destroy one of the only livestock slough crossings available for accessing the majority of the grazing areas at the Soap Lake Ranch.

1684-2871

Hunting will obviously be affected negatively as the areas near the tracks will be off limits and flyways will be compromised. The construction of this project will introduce noxious plants to the area.

1684-2872

This project will cause a permanent devaluation of the rangeland, wildlife habitat and hunting land not addressed in the Mitigation Measures.

Submission 1684 (Christine Breen, Breen Law Firm, June 23, 2020) - Continued

Attached are photos of wildlife and now a pristine scenery.

ALTERNATIVES AND QUESTIONS.

1684-2873

1. **Has the Authority considered using its funds to subsidize small commuter air travel between California metro areas (i.e. Redding, Sacramento, San Francisco, San Jose, Modesto, Fresno, Bakersfield, Los Angeles, Palm Springs, etc.)? These airports already exist and are less likely to be targeted by terrorists.**

1684-2874

2. **Has the Authority considered using the funds to construct small commuter trains that lead to the metro hubs?**

1684-2875

3. **Has the Authority considered tunneling between Casa De Fruta and Bloomfield Road?**

1684-2876

4. **What is currently proposed is antiquated. Have you considered shelving the HSR project and applying the funds for hyperloop travel which is much faster, cheaper, safer, less intrusive and now in development?**

1684-2877

5. **Have you considered constructing the HSR over Altamont Pass instead of Pacheco Pass?**

1684-2878

6. **How will tenants with long term leases, who have significant investments in capital improvements and infrastructure be compensated for their loss of use and investment?**

Please direct responses to these questions, and any requests for clarification or additional information to this office.

Very truly yours,

Christine O. Breen

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EXHIBIT A

Submission 1684 (Christine Breen, Breen Law Firm, June 23, 2020) - Continued



Response to Submission 1684 (Christine Breen, Breen Law Firm, June 23, 2020)

1684-2850

The comment asks how the EIR/EIS addresses the permanent loss of Important Farmland. Please refer to Section 3.14.6, Environmental Consequences, Impact AG#2 of the Draft EIR/EIS. This impact discussion addresses direct permanent conversion of Important Farmland as a result of project construction, and Impact AG#3 on page 3.14-32 of the Draft EIR/EIS addresses indirect permanent conversion of Important Farmland as a result of parcel severance and creation of remnant parcels. As stated, this impact was determined to be significant and unavoidable.

In addition, the comment asked how the EIR/EIS addresses the resulting loss of this food supply source. Please refer to Impact SOCIO#12 and Impact SOCIO#13 in Section 3.12, Socioeconomics and Communities, of the Draft EIR/EIS, which address temporary and permanent impacts on the agricultural economy. These impact discussions address temporary and permanent loss of revenue and loss of agricultural jobs.

1684-2851

The comment states that implementation of the project would affect the efficiency of the farm because of changes to the irrigation and drainage systems. PUE-IAMF#2 would require the contractor to verify that a new irrigation facility is operational prior to disconnecting the original facility, when feasible, where relocation of a facility is necessary. This requirement would result in minimal interruptions with respect to irrigation infrastructure. In addition, please refer to AG-MM#4, which would require the construction contractor to verify that a replacement agricultural drainage facility is operational prior to disconnecting the original facility.

The comment also states that a large portion of the farm would be unfarmable during the construction and reconditioning period. Please refer to Impact SOCIO#12 in Section 3.12, Socioeconomics and Communities, of the Draft EIR/EIS, which addresses temporary construction-period impacts on the agricultural economy. The impact addresses loss of revenue and loss of agricultural jobs.

Parcel-specific analysis would take place during the appraisal process before property acquisition, consistent with the Uniform Relocation Act, which establishes minimum standards for the treatment of and compensation to individuals whose real property is acquired for a federally funded project. Additional information about acquisition and compensation is also available at the Authority's website: http://www.hsr.ca.gov/Programs/private_property.html.

Response to Submission 1684 (Christine Breen, Breen Law Firm, June 23, 2020) - Continued

1684-2852

Refer to Standard Response SJM-Response-AG-1: Temporary and Permanent Disruption of Agricultural Infrastructure Serving Important Farmland as a Result of Project Construction, SJM-Response-AG-2: Farmland Impacts—Remnant Parcels.

The comment notes constraints on relocation and fencing in case equipment yards must be relocated to accommodate construction of the project. Please refer to AG-IAMF#1 in Appendix 2-E, Project Impact Avoidance and Minimization Features Analysis (located in Volume 2, Technical Appendices, of the Draft EIR/EIS). This IAMF requires that Important Farmland be restored to a condition equal to the pre-construction staging condition. Further, this IAMF provides that the contractor's restoration plan be reviewed and approved by the Authority and, if applicable, the landowner. Such review would provide opportunity for landowner input relative to floodplains.

1684-2853

Refer to Standard Response SJM-Response-AG-3: Wind Effects - Dust Deposition and Pesticide and Herbicide Drift on Adjacent Important Farmland.

The comment asks whether the Authority has taken into account the 3-year certification period for Certified Organic status. Under AG-IAMF#1 in Section 3.14, Agricultural Farmland, of the Draft EIR/EIS, the Authority has committed to restore farmland temporarily used for construction to its original condition. If the original condition is Certified Organic, then restoration would conform to these conditions.

1684-2854

Refer to Standard Response SJM-Response-AG-3: Wind Effects - Dust Deposition and Pesticide and Herbicide Drift on Adjacent Important Farmland.

The comment asks whether the Authority has taken into account steps to maintain a parcel's Certified Organic status. Under AG-IAMF#1 in Section 3.14, Agricultural Farmland, of the Draft EIR/EIS, the Authority has committed to restore farmland temporarily used for construction to its original condition. If the original condition is Certified Organic, then restoration would conform to these conditions.

1684-2855

The comment asks whether the Authority would take steps to prevent noxious weeds from being introduced during construction. Please refer to Section 3.7.7.2, Special-Status Species, of the Draft EIR/EIS, which discusses the introduction of nonnative species, as well as potential infestation by noxious weeds. The Authority has included BIO-MM#2 in the Draft EIR/EIS to minimize and avoid the spread of invasive weeds during ground-disturbing activities during construction and operations. The measure includes weed surveys, invasive weed control measures, monitoring, and success criteria to minimize and avoid the spread of weeds. The scheduling of these activities would be specified in the Biological Resources Management Plan (BRMP), which would be developed and approved before any ground-disturbing activities occur.

Response to Submission 1684 (Christine Breen, Breen Law Firm, June 23, 2020) - Continued

1684-2856

The comment asks whether the Authority is prepared to pay for the cost of noxious weed eradication introduced during construction in a way that would not negate a parcel's Certified Organic status. Under AG-IAMF#1, the Authority has committed to restore farmland temporarily used for construction to its original condition. If the original condition is Certified Organic, then restoration would conform to these conditions.

Chapter 6, Project Costs and Operations, of the Draft EIR/EIS discusses the cost of environmental mitigation. Agricultural impacts, though not called out explicitly, are included within environmental mitigation accounted for in Chapter 6.

1684-2857

Refer to Standard Response SJM-Response-AG-3: Wind Effects - Dust Deposition and Pesticide and Herbicide Drift on Adjacent Important Farmland.

The comment asks whether the Authority would use any chemicals or substances that would nullify the Certified Organic status of farmland. After construction, under AG-IAMF#1 in Section 3.14, Agricultural Farmland, of the Draft EIR/EIS, the Authority has committed to restore farmland temporarily used for construction to its original condition. This includes Certified Organic status. With respect to substances used during project operation, as discussed in Appendix D, Induced Wind Impacts: Effects on Pollination; Blossoms and Dust, of the Agricultural Farmland Technical Report (Authority 2019, as cited in Section 3.14 of the Draft EIR/EIS), existing laws prohibit drift from pesticide application. Furthermore, the analysis in this report concludes that induced wind from train operation would not increase likelihood of pesticide to drift.

1684-2858

The comment asks how the viaduct ground corridor will be secured and/or fenced. Viaducts with clearance (distance from the ground to the underside of the viaduct deck) of greater than 10 feet would not require fencing for access control or security of the HSR system. Median barriers would be installed the base of the viaduct where viaducts are in the median of Monterey Road under Alternatives 1 and 3 to comply with Caltrans safety requirements.

1684-2859

The Authority would acquire land from property owners whose land is directly affected by the project in accordance with the Uniform Relocation Act (42 U.S.C. Chapter 61). Parcel-specific analysis will take place during the appraisal process before property acquisition, consistent with the Uniform Relocation Act, which establishes minimum standards for the treatment of and compensation to individuals whose real property is acquired for a federally funded project. Property owners who are not directly affected by property acquisition but who believe they have suffered a loss of property value as a result of the project may file a claim with the State of California's Government Claims Board. More information may be obtained online at: <https://www.dgs.ca.gov/ORIM/Services/Page-Content/Office-of-Risk-and-InsuranceManagement-Services-List-Folder/File-a-Government-Claim>.

1684-2860

The commenter asked how the Authority would comply with federal food safety regulations during and after construction. The Authority has no responsibilities with regard to state and federal food safety regulations because they are not involved in the food supply chain, nor do they have responsibility for implementing or enacting food safety standards. The Authority would acquire agricultural land, some temporarily and some permanently. Under AG-IAMF#1, the Authority has committed to restore farmland temporarily used for construction to its original condition.

Response to Submission 1684 (Christine Breen, Breen Law Firm, June 23, 2020) - Continued

1684-2861

The comment asks whether permanent access would be provided under and around the viaduct for access or farming. Figure 2-39 in Chapter 2, Alternatives, of the Draft EIR/EIS shows a typical section of the HSR alignment. As shown in Section 2.4.4.6, Elevated Profile, of the Draft EIR/EIS, viaducts would be available for use for roadways, animal movement, and/or water crossings. In addition, the at-grade blended facility would be continuously fenced for safety.

1684-2862

The comment asks whether the height of the HSR viaduct would accommodate commercial farming equipment. The height of the viaduct is 16 feet, and the maximum height of agricultural equipment on roads in California is 14 feet if the equipment would travel farther than 25 feet on a roadway; therefore, agricultural equipment would be accommodated.

1684-2863

Refer to Standard Response SJM-Response-AG-3: Wind Effects - Dust Deposition and Pesticide and Herbicide Drift on Adjacent Important Farmland.

The comment states that project construction could disqualify farmland currently certified organic for at least 3 years after the completion of construction activities. Under AG-IAMF#1, the Authority has committed to restore farmland temporarily used for construction to its original condition. This includes Certified Organic status. In addition, the comment noted that adjacency of the HSR could make organic status difficult or impossible to maintain. With respect to substances used during project operation, as discussed in Appendix D, Induced Wind Impacts: Effects on Pollination; Blossoms and Dust, of the Agricultural Farmland Technical Report (Authority 2019, as cited in Section 3.14, Agricultural Farmland, of the Draft EIR/EIS), existing laws prohibit drift from pesticide application. Furthermore, the analysis concludes induced wind from train operation would not increase the likelihood of pesticide to drift.

Response to Submission 1684 (Christine Breen, Breen Law Firm, June 23, 2020) - Continued

1684-2864

As described in Section 3.14, Agricultural Farmland, of the Draft EIR/EIS, the agricultural analysis conducted an assessment of important farmland to identify parcels that were considered nonviable for continued agricultural use due to factors that included access (e.g., road closures, perimeter fencing) and overall hardship in maintaining economic activity. The results of that analysis, conducted by right-of-way specialists for the purpose of satisfying CEQA and NEPA, are provided in Appendix 3.14-C, Remnant Parcel Analysis, of the Draft EIR/EIS. Such analysis is not, however, assumed to be adequate for the real estate transactions that would occur during the right-of-way acquisition process. Parcel-specific analysis will take place during the appraisal process before property acquisition, consistent with the Uniform Relocation Assistance and Real Property Acquisition Policies Act, which establishes minimum standards for the treatment of and compensation to individuals whose real property is acquired for a federally funded project.

When a partial acquisition of a property is required, every reasonable effort is made to ensure that property owners do not suffer financial damages related to the remainder of their property. The total payment by the Authority will include the fair market value of the property that the Authority purchases plus any loss in market value to the remaining property. The determination of any loss in market value due to a partial acquisition would occur during the appraisal process.

1684-2865

Refer to Standard Response SJM-Response-AG-1: Temporary and Permanent Disruption of Agricultural Infrastructure Serving Important Farmland as a Result of Project Construction.

The comment asks what measures the Authority would take to prevent and reduce damage to agricultural infrastructure as a result of temporary and permanent disruption. The Authority would ensure that any infrastructure affected by the project would be replaced in kind before the old infrastructure is deactivated. By law, the Authority is required to pay fair market value during restoration of Important Farmland used for project construction, as has been the practice with all other project sections. Parcel-specific analysis would take place during the appraisal process before property acquisition, consistent with the Uniform Relocation Act, which establishes minimum standards for the treatment of and compensation to individuals whose real property is acquired for a federally funded project. Additional information about acquisition and compensation is also available at the Authority's website: http://www.hsr.ca.gov/Programs/private_property.html.

1684-2866

The Authority has revised Tables 3.7-11 and 3.7-22 in the Final EIR/EIS to include the Soap Lake Ranch Easement. This parcel was considered in the Draft EIR/EIS under a different name (i.e., Soap Lake Properties) based on information available to the Authority at the time the Draft EIR/EIS was prepared, but has been corrected to the correct name and easement holder in the Final EIR/EIS. The Draft EIR/EIS includes BIO-MM#84, which addresses mitigation for impacts on conservation easements and which provides compensatory mitigation at a ratio of 2:1 (protected:affected).

Response to Submission 1684 (Christine Breen, Breen Law Firm, June 23, 2020) - Continued

1684-2867

The EIR/EIS specified numerous mitigation measures with defined, substantial and binding measures that must be undertaken by the Authority under CEQA and NEPA. While the commenter points to previous reviews, specific to wetland mitigation, noting that not all mitigation is successful, the Authority believes that, through the measures in the Final EIR/EIS, the MMEP, as well as permits and approvals from numerous other agencies, monitoring and implementation of the mitigation will be successful. The MMEP requires monitoring, reporting, and adaptation as needed, to ensure that compensatory mitigation provides an appropriate replacement of ecological functions and values.

1684-2868

The Tequisquita Slough crossing must be sited on embankment for engineering and safety reasons, since this location is the crossing of the Calaveras Fault. However, much of the alignment in the area is on viaduct. The embankment for the Tequisquita Slough crossing would include cross-culverts. The analysis of wildlife passage (Impact BIO#43) did not find evidence of substantial impacts on wildlife movement in this area, and commenter provides no evidence otherwise. It is not clear either in the effects analysis or in the evidence provided by commenter that embankment construction at Tequisquita Slough would have a significant impact on the western ridged mussel. Furthermore, the western ridged mussel is not considered a special-status species in California, and the Authority notes the range of this species is quite large, covering the western United States and Canada. The commenter provides no evidence that significant impacts on this species could occur. Lastly, the Authority acknowledges that the Xerces Society has petitioned the USFWS to list the western ridged mussel under the FESA; however, USFWS has not issued a determination and listing is speculative at this time and therefore is not addressed further in the Final EIR/EIS.

1684-2869

Refer to Standard Response SJM-Response-ALT-3: Rejection of Alternative 3.

Please see Standard Response SJM-Response-ALT-3: Rejection of Alternative 3, which notes that Alternative 4 is the Authority's preferred alternative. The Tequisquita Slough crossing must be sited on embankment for engineering and safety reasons, since this location is the crossing of the San Andreas Fault; however, the slough will be spanned across earthen embankments, which will facilitate some wildlife movement. However, much of the alignment in the area is on viaduct. The analysis of wildlife passage (Impact BIO#43) did not find evidence of substantial impacts on wildlife movement in this area.

1684-2870

The Authority acknowledges the commenter's concerns about impacts of Alternative 3 on access to livestock facilities and severance of livestock crossings available for accessing grazing areas at Soap Lake Ranch. The Authority balanced various considerations related to natural environment, agriculture, and community resources in the identification of Alternative 4 as the preferred alternative, as described in more detail in Chapter 8, Preferred Alternative, of the Draft EIR/EIS.

1684-2871

Impacts to hunting are addressed in Section 3.14, Socioeconomics and Communities. The Authority has incorporated BIO-IAMF#10 into the proposed project, which would require the Authority to clean equipment before entering the project site to minimize the chance of introducing new noxious weeds. Additionally, BIO-MM#2 in the Draft EIR/EIS requires the Authority to implement a weed control plan to further avoid and minimize the spread of invasive weeds during ground-disturbing activities and during O&M.

Response to Submission 1684 (Christine Breen, Breen Law Firm, June 23, 2020) - Continued

1684-2872

The Draft EIR/EIS discusses in numerous places where the project may result in the removal or degradation of numerous biological resources. Where necessary, restoration of affected lands is required. Where significant impacts would occur, compensatory mitigation is required. In terms of rangeland effects, the project would result in the removal of lands that are considered rangelands for livestock grazing. However, the Draft EIR/EIS includes numerous measures that require the Authority to mitigate for species and habitat impacts. These measures would preserve lands similar to those that are lost in perpetuity, which would also have benefits for the long-term conservation of rangelands. Impacts to hunting are addressed in Section 3.14, Socioeconomics and Communities.

1684-2873

Refer to Standard Response SJM-Response-ALT-1: Alternatives Selection and Evaluation Process, SJM-Response-ALT-2: Project-Specific Alternatives Considerations.

The Authority has not considered using its funds to subsidize small commuter air travel between California metro areas. This would not meet the Purpose and Need of the project (Chapter 1, Project Purpose, Need, and Objectives), or the requirements of Prop 1A. Furthermore, air travel subsidies were not considered for implementation as mitigation because there is no nexus with any impacts of Alternatives 1 through 4.

1684-2874

Refer to Standard Response SJM-Response-ALT-1: Alternatives Selection and Evaluation Process, SJM-Response-ALT-2: Project-Specific Alternatives Considerations.

The comment asks whether the Authority has considered using the funds to construct small commuter trains that lead to the metro hubs. Funding construction of small commuter trains as part of the project would not meet the requirements of Prop 1A. The HSR system is designed to connect to commuter trains.

1684-2875

Refer to Standard Response SJM-Response-ALT-1: Alternatives Selection and Evaluation Process, SJM-Response-ALT-2: Project-Specific Alternatives Considerations.

The comment asks whether the Authority has considered tunneling between Casa De Fruta and Bloomfield Road. All alternatives include Tunnel 1 between SR 152/Pacheco Pass Road and Casa de Fruta.

1684-2876

Refer to Standard Response SJM-Response-ALT-1: Alternatives Selection and Evaluation Process, SJM-Response-ALT-2: Project-Specific Alternatives Considerations.

The comment states that what is currently proposed is antiquated. The comment is noted and does not indicate any specific concern regarding any of the conclusions in the Draft EIR/EIS.

1684-2877

The comment asks if the Authority considered constructing HSR over Altamont Pass. Connections between the Bay Area and the Central Valley through the Altamont Pass and Pacheco Pass were evaluated by Authority and FRA in the 2008 San Francisco Bay Area to Central Valley High-Speed Train Program Final EIR/EIS (Authority and FRA 2008, as cited in Chapter 1, Project Purpose, Need, and Objectives, of the Draft EIR/EIS) and by the Authority in the 2012 Bay Area to Central Valley High-Speed Train Partially Revised Final Program EIR (Authority 2012b, as cited in Chapter 2, Alternatives, of the Draft EIR/EIS). The Tier 1 environmental review process resulted in the Authority's decision to select the Pacheco Pass routing for further study.

Response to Submission 1684 (Christine Breen, Breen Law Firm, June 23, 2020) - Continued

1684-2878

Refer to Standard Response SJM-Response-AG-1: Temporary and Permanent Disruption of Agricultural Infrastructure Serving Important Farmland as a Result of Project Construction.

The Authority would acquire land from property owners whose land is directly affected by the project in accordance with the Uniform Relocation Act (42 U.S.C. Chapter 61). The Authority would acquire any land directly affected by the project from the owner and would ensure that any infrastructure affected by the project would be replaced in kind before the old infrastructure is deactivated. The tenant and owner are responsible for any agreements outside the scope of Authority responsibility. Parcel-specific analysis will take place during the appraisal process before property acquisition, consistent with the Uniform Relocation Act, which establishes minimum standards for the treatment of and compensation to individuals whose real property is acquired for a federally funded project. Displaced businesses, farm or non-profit organizations that are legally occupied by the owner or lessee/tenant when the Authority initiates negotiations for the acquisition of the property or at the time the Authority acquires title or takes possession of the property are entitled to reimbursement of moving costs and certain related expenses incurred in moving.

Please refer to Section 3.12, Socioeconomics and Communities, and Section 3.14, Agricultural Farmland, of the Draft EIR/EIS, which discuss IAMFs and mitigation measures relevant to displacements and relocations. These include SOCIO-IAMF#2, SOCIO-IAMF#3, AG-IAMF#1, AG-IAMF#2, AG-IAMF#4, AG-MM#1, AG-MM#2, and AG-MM#3.

Submission 1343 (Richard Schussel, California Waterfowl Association, June 1, 2020)

San Jose - Merced - RECORD #1343 DETAIL 1343-132

Status : Action Pending
Record Date : 6/1/2020
Submission Date : 6/1/2020
Interest As : Business and/or Organization
First Name : Richard
Last Name : Schussel
Stakeholder Comments/Issues :

3. Permanent Impact on Private Recreational Waterfowl Hunting Project operation "WOULD CHANGE conditions along Henry Miller Road but NOT affect duck and geese hunting conditions.

These statements are NOT true.

I represent over 20,000 members from the California Waterfowl Association (CWA). I am a life member of this organization as well as representative of it's Public Lands Hunter Committee, a member of Ducks Unlimited and Delta Waterfowl as well as a Conservationist.

1343-133

There will be Negative impacts to Endangered and/or Threatened species such as the Kit Fox, the Pond Turtle, snakes, waterfowl, birds and more. This includes Disruption from construction, noise from 176 trains per day (88 per direction), and 50 + Foot high electrified AND WALLED structures altering movements north and south - and altering how, when and where waterfowl fly. There will be Noise and Shock Waves from a Disruptive Rail Path that Runs Trains Right in Front of the Entrance/Parking Lot, and Hunter Sleeping Area of the Los Banos Wildlife Refuge. While speaking to a representative from the agency on the webinar meeting May 18th, it was clear that the authority had not considered bird strikes into the WALLED section of track through the GEA. The discussion centered around enclosing the raised track, electrical pole and wires so no birds could get onto the track, yet when asked about birds flying onto the walls, the response was "Yes it Could" Happen.especially when the Grasslands area is Known for thick Tule Fog. Waterfowl may not see the walls before it is too late as they do fly at those 50 foot levels (and lower) throughout the GEA, especially in bad weather and perhaps confusion from the echoing noise of trains.

1343-132

I want to speak to The Draft EIR Executive Summary and specifically to 3 statements made in the document that are totally incorrect.

Those statements read:

1. Impact AVQ#15: Permanent Direct Impacts on Visual Quality-Henry Miller Landscape Unit Construction of the HSR viaduct WOULD introduce modern infrastructure into a natural setting, but "it would NOT lower the visual quality in the landscape unit."

2. Temporary Impact on Private Recreational Waterfowl Hunting Project construction "would change conditions along Henry Miller Road but NOT affect duck and geese hunting conditions".

1343-134

In addition, these Grasslands are heavily maintained by Private clubs that provide waterfowl with shelter, food and water on their migrations south in the fall, and back north in the spring. These private properties, as well as Conservation organizations such as CWA and DU Spend MILLIONS and MILLIONS yearly on these lands.and depend on Hunters to funds those actions. ANY Negative impact will impact the value of these lands to these organizations and their members, and the loss of their funding will be certain..Leaving Migrating birds without maintained ponds, feed and loss of shelter. State and Federal Public lands can not sustain the Grasslands wildlife alone.

Submission 1343 (Richard Schussel, California Waterfowl Association, June 1, 2020) - Continued

<p>1343-135</p>	<p>So, lets look at the words contained in your own biological/technical documents that prove the Executive Summary statements are incorrect.</p> <p>References: Biological and Aquatic Resources Technical Report Chapter 6:</p> <p>Wetland and open-water habitat for waterfowl and shorebirds would be lost or disturbed as a result of HSR track and systems construction in all subsections.</p> <p>Disturbance of waterfowl and shorebirds would result from the noise, vibration, and visual disturbance associated with construction activities. The potential for effect would be greatest in the GEA and UPRIBAs.</p> <p>While no specific model was developed for waterfowl and shorebirds, their potential habitat (e.g., agriculture, grassland, wetland) was estimated within the IBA boundaries (except urban) to have potential to function as roosting or forage habitat. This is especially true in wet years when the wetted footprint within the IBA boundary is extensive. The areal extent of direct permanent and temporary effects (conversion and disturbance of habitat, disturbance of individuals) on habitat for waterfowl and shorebirds in IBAs is shown in Table 6-5.</p> <p>While pre-construction and construction actions to protect waterfowl and shorebirds and their habitat are part of the project, these actions would not prevent the conversion and temporary disturbance of such habitat in the project footprint, nor would they eliminate the risk of disturbance of these species.</p> <p>Construction activities would convert suitable foraging and breeding habitat to HSR track and systems and could lead to the introduction and spread of invasive nonnative species. Disturbance associated with human activities and</p>	<p>1343-135</p> <p>noise could drive birds from productive foraging and resting areas, resulting in an impaired energy budget and potentially in reduced reproductive success.</p> <p>1343-136</p> <p>Section 6.2.2 Operations Effects:</p> <p>Some non-special-status wildlife species may be able to access the right-of-way during operations, where they would be subject to train strike. Individual birds could be injured or killed through collision with HSR infrastructure such as traction power transmission facilities.</p> <p>Moreover, disturbance impacts (e.g., noise, visual stimuli) can alter movement patterns and degrade conditions that support non-special-status wildlife species. Because operations would potentially affect a wide array of wildlife taxa and because such effects are primarily associated with wildlife moving across or through the project footprint, these effects are collectively addressed in Section 6.6</p> <p>The last sentence above ends with: these effects are collectively addressed in Section 6.6</p> <p>1343-137</p> <p>So, lets look at key points made in section 6.6:</p> <p>Effects on Wildlife Movement</p> <p>Construction and operations of the project would result in permanent and temporary effects on wildlife movement and corridors.</p>
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Submission 1343 (Richard Schussel, California Waterfowl Association, June 1, 2020) - Continued

1343-137

Effects on wildlife corridors and wildlife movement were analyzed in detail and are presented in the WCA (Appendix C). The effects analysis in the WCA uses the same structure and approach as this technical report. Effects to wildlife movement from construction (both permanent and temporary) are described first, followed by effects from operations. The project components with potential to affect wildlife corridors and movement identified and discussed in the WCA are listed below:

.Project components that have the potential to temporarily affect wildlife movement during construction:

-Fences and other physical barriers

-Noise and vibration

-Visual disturbance from construction equipment or personnel

-Nighttime lighting

-Dewatering (aquatic species only)

.Project components that have the potential to permanently affect wildlife movement as a result of construction include at-grade portions of the rail (because they are fenced) as well as rail facilities adjacent to the rail (that are also permanently fenced)

Operations and infrequent facilities maintenance have the potential to result in permanent, intermittent disturbance of wildlife movement through the following mechanisms:

-Noise disturbance

-Visual disturbance

-Train lights and nighttime lighting on permanent facilities

-Train strike

1343-137

-Electric line strike and electrocution, Entrapment

EFFECTS: Moving trains could increase stress and provoke flight in birds using nearby habitat, resulting in altered behavior and physiological consequences, as well as possible nest abandonment. The GEA and the Soap River 10-year flood plain are the two areas most susceptible to these effects.

Noise Disturbance of Wildlife Using Corridors during Operations

Noise from project operations could disturb and startle birds, particularly in the UPR and GEAIABAs, as well as cause varying degrees of hearing damage, leading to effects on bioenergetic and reproductive success, as well as increasing the risk of train strike.

Mortality Resulting from Train Strike during Operations Train strike is likeliest to cause mortality of terrestrial wildlife species along at-grade portions of the alignment. Alternative 1 would pose the lowest risk of train strike to terrestrial movement guilds because of the amount that would be on aerial structure. All profiles present risk of train strike to the aerial movement guild, although some focal groups are more susceptible to at-grade profiles, while others are more susceptible to elevated portions of the alignment

These are all quotes from your document and show the contradictions to the Executive Summary's comments about 'NOT affecting visual quality, and NOT affecting duck and goose hunting conditions, and especially explain the direct impact to waterfowl and all other wildlife.

Submission 1343 (Richard Schussel, California Waterfowl Association, June 1, 2020) - Continued

1343-138

Therefore, we request the Executive Summary statements about affect to the visual landscape and to the temporary and permanent hunting conditions be amended to read there WILL be negative impact. In all 3 statements provided in that summary, the wording should include that there IS negative affects/impact - in all cases.

I look forward to your response to correct the Executive summary, and to our request that Local CWA, DU biologists are consulted and included in this process, so I can update our members.

1343-139

And, Lastly, in several instances throughout your documents, you include this statement:

"the Authority would submit to the appropriate wildlife agencies the names and qualifications of project biologists, designated biologists, species-specific biological monitors, and general biological monitors retained to conduct biological resource monitoring activities and implement avoidance and minimization measures"

While submitting the names and qualifications of those biologists you designate is a great first start, the Authority SHOULD also include Local Biologists from CWA and Ducks Unlimited.in addition to biologists from the CA Departments of Fish and Wildlife, USFWS. The local biologists from CWA and DU are hands on experts in the Grasslands region. For decades, they have worked the dirt, managed for wildlife, managed the habitat.and have specific knowledge about the migration patterns of wildlife. These experts are able to assist HSR in clearly understanding the affects to California's last remaining Grasslands.

These LOCAL CWA and DU, CADFW and USFWS professionals should be included in any project affecting the Grasslands Ecological Area (GEA), and we would like your assurance these biologists will play an important role in "conducting biological resource monitoring activities and implementing avoidance and minimization measures"

Richard Schussel

CWA Public Lands Hunter Committee

CWA Life Member

DU Member

Delta Waterfowl Member

Conservationist

Response to Submission 1343 (Richard Schussel, California Waterfowl Association, June 1, 2020)

1343-132

The comment is referring to summary language in Table S-3 in the Summary of the Draft EIR/EIS. For detailed information regarding this impact, please refer to Impact SOCIO#19 within Section 3.12.6.5, Economic Impacts, of the Draft EIR/EIS. The Draft EIR/EIS Summary text quoted in the comment is correct, as noted in Impact SOCIO#19, which states that “Because the waterfowl hunting clubs are not adjacent to Henry Miller Road, it is not anticipated that there would be effects on waterfowl hunting from HSR operations.”

1343-133

Commenter’s concerns are addressed in the detailed impact analysis included in Section 3.7, Biological and Aquatic Resources, and within Section 3.4, Noise and Vibration and Section 3.15, Parks, Recreation, and Open Space of the Draft EIR/EIS. Comment noted.

1343-134

The comment is noted and does not indicate any specific concern regarding any of the conclusions in the Draft EIR/EIS.

1343-135

Refer to Standard Response SJM-Response-BIO-6: Noise Impacts on Wildlife. These potential impacts are addressed in the Draft EIR/EIS under Impact BIO#44, and the specific issue of impaired avian energetics as a result of noise exposure is addressed in the WCA (Appendix C of Authority 2020a, as cited in Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS), as cited in Impact BIO#44.

1343-136

Commenter describes a variety of operational impacts on birds. Risks associated with train strike, electrocution, and related concerns (such as birds striking powerlines) are addressed in Impacts BIO#48(train strike) and BIO#49 (power line strike). The CEQA impacts are significant, and mitigation measures are required. The matter of how these impacts relate to wildlife movement is discussed in the WCA (Appendix C of Authority2020a, as cited in Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS).

1343-137

Commenter’s summary of impacts on birds is substantially accurate, but the reference to visual quality and hunting conditions is unclear. Please see Draft EIR/EIS Sections 3.15, Parks, Recreation, and OpenSpace, and 3.16, Aesthetics and Visual Quality, respectively, for detailed evaluation of impacts on recreation and visual quality.

1343-138

The comment is referring to summary language in Table S-3 in the Summary of the Draft EIR/EIS. For detailed information regarding temporary and permanent impacts on hunting, please refer to Impact SOCIO#19 within Section 3.12.6.5, Economic Impacts, of the Draft EIR/EIS. For detailed information regarding impacts on the visual landscape, please refer to Section 3.16, Aesthetics and Visual Quality, of the Draft EIR/EIS. The Draft determinations for these resources is based on the methodology and effects analysis. No changes to the conclusions presented in the Summary are warranted.

1343-139

The Authority notes that it is common for wildlife regulatory agencies to review and approve the use of biologists on a particular project. This is common and standard practice because the wildlife agencies have the best knowledge of the specific factors in a particular region, have the most on-the-ground knowledge for most areas, and perhaps most importantly because they administer the permits the biologists hold to conduct the surveys. The Authority would consider contracting with local biologists in the region at the time of construction, provided they are approved by the wildlife regulatory agencies as qualified, and mutually acceptable contract terms can be negotiated.

Submission 1374 (Richard Schussel, California Waterfowl Association, May 27, 2020)

San Jose - Merced - RECORD #1374 DETAIL

Status : Action Pending
Record Date : 6/15/2020
Submission Date : 5/27/2020
Interest As : Individual
First Name : Richard
Last Name : Schussel

Stakeholder Comments/Issues :

MR. SCHUSSEL: Thank you very much. My name is Rick Schussel. Last name is S, like Sam, -C-H-U-S-S-E-L, and I do represent the California Waterfowl Association Public Lands Hunter (indiscernible).

We do have several concerns in regards to the EIR and some of the technical documents, biological documents, and we are going to be submitting that to you in writing. But there's one item that I thought I would bring out today if I could since this is being recorded.

1374-142

In several instances throughout the documents, (indiscernible) documents, they include this statement, quote, "The Authority will submit to the appropriate wildlife agencies that may (indiscernible) qualifications of project biologists, designated biologists, species specific biological monitors and general biological monitors retained to conduct biological resource monitoring activities and implemented (indiscernible) and minimization measures," end quote.

And while I am happy that submitting names and qualifications of the biologists that you designate is a good first start, we believe the Authority should also include the local biologists from California Waterfowl Association and Ducks Unlimited in addition to biologists from California Department of Fish and Wildlife and the U.S. Fish and Wildlife Service.

1374-143

The local biologists from CWA and Ducks Unlimited, for example, are hands-on experts in the grasslands region. In that case, they've worked the dirt, they've managed the wildlife, they've managed the wildlife, they've managed the habitat, and they have specific knowledge about the migration patterns of wildlife. These experts are able to assess HSR in clearly understanding the effects California's last remaining grasslands. These local CWA Ducks Unlimited, California Department of Fish and Wildlife and U.S. Fish and Wildlife professionals should be included in any project affecting the grassland -- grassland psychological area. If you would like your assurance that these biologists will play an important role in, quote, "conducting biological resource monitoring activities and implementing avoidance and minimization measures."

Thank you.

Hello. Richard, R-I-C-H-A-R-D. Last name Schussel, S, like Sam, C-H-U-S-S, like Sam, Sam, -E-L.

Thank you.

Response to Submission 1374 (Richard Schussel, California Waterfowl Association, May 27, 2020)

1374-142

The Authority notes that it is common for wildlife regulatory agencies to review and approve the use of biologists on a particular project. This is common and standard practice because the wildlife agencies have the best knowledge of the specific factors in a particular region, have the most on-the-ground knowledge for most areas, and perhaps most importantly because they administer the permits the biologists hold to conduct the surveys. The Authority would consider contracting with local biologists in the region at the time of construction, provided they are approved by the wildlife regulatory agencies as qualified, and mutually acceptable contract terms can be negotiated.

1374-143

Please see response to submission SJM-1374, comment 142.

Submission 1365 (Jeffrey Volberg, California Waterfowl Association, May 27, 2020)

San Jose - Merced - RECORD #1365 DETAIL

Status : Action Pending
Record Date : 6/12/2020
Submission Date : 5/27/2020
Interest As : Business and/or Organization
First Name : Jeffrey
Last Name : Volberg

Stakeholder Comments/Issues :

MR. VOLBERG: Yes. My name is Jeffrey Volberg. That's J-E-F-F-R-E-Y, last name, capital V-O-L-B-E-R-G. And I represent the California Water Fowl Association.

MR. GOLDMAN: And you're welcome to continue with your comment.

1365-184 | MR. VOLBERG: Yes. My first comment is to reinforce and adopt the letter from Grassland Water District that Emma Hansen presented. We believe that understand the circumstances of the shutdown that we've lived under for the last several weeks, that we need additional time to fully understand the underlying documents that were used to reach conclusions about impacts on water fowl.

1365-185 | Secondly, I intend to submit written comments by the deadline. But I also adopt and agree with and will reinforce the four suggestions made by Ric Ortega regarding the designation under the Audubon Important Bird Area, a lack of recognition of the 10,000 acre mitigation agreement, the need for definitive and mandatory mitigation requirements, and the impacts on state and federal refuges and wildlife areas.

And, also, we represent a number of the private duck clubs that own properties in the area. And we will be analyzing this document in terms of the impacts on those private interests.

So that concludes my remarks and thank you for providing me the opportunity.

Response to Submission 1365 (Jeffrey Volberg, California Waterfowl Association, May 27, 2020)

1365-184

Refer to Standard Response SJM-Response-OUT-1: Public Outreach.

1365-185

Refer to Standard Response SJM-Response-BIO-4: Grasslands Ecological Area Boundary.

Refer to Standard Response SJM-Response-BIO-4: Grasslands Ecological Area Boundary. With respect to the 10,000-acre program level commitment, please see response to comment #168, Submission 1364.

Submission 1707 (Angela Moskow, California Wildlife Foundation, June 23, 2020)



June 23, 2020

Attn: Draft San Jose to Merced Project Section EIR/EIS
100 Paseo de San Antonio, Suite 300
San Jose, CA 95113

Via e-mail: san_jose_merced@hsr.ca.gov

RE: Draft EIR/EIS Comment

Dear ladies and gentlemen:

1707-2770

The California Oaks program of California Wildlife Foundation (CWF/CO) works to conserve oak ecosystems because of their critical role in sequestering carbon, maintaining healthy watersheds, providing wildlife habitat, and sustaining cultural values. CWF/CO reviewed the Draft EIR/EIS (DEIR) for the San Jose to Merced Project Section of the High Speed Rail (HSR) Project, including the Biological and Aquatic Resources Technical Report and appendices. The environmental documentation needs to incorporate discussion of how the project is in compliance with California State Concurrent Resolution (17). The unit of analysis of oak woodland impacts should incorporate all oak woodlands. The DEIR lacks review of the oak protections of San Benito County's woodlands ordinance, all protections articulated in Santa Clara County's General Plan, all provisions of Santa Clara County's tree preservation and removal ordinance, and the oak mitigation provisions of Public Resources Code Section 21083.4. The environmental review must include calculations of the greenhouse gas impacts of the proposed tree removals, and analyze how the project complies with the Sustainable Groundwater Management Act. The project needs measures that are more protective of the oaks that may be impacted by groundwater disruptions associated with construction of the San Jose to Merced HSR. Lastly, improvements are needed in mitigating for project impacts on oaks.

1707-2771

RESOLUTION 17

The High Speed Rail Authority has responsibility for four species of oaks, as articulated by State Senate's Concurrent Resolution Number 17—Oak Woodlands (September 1, 1989), which directs state agencies with responsibility for land use planning and management with respect to oak woodlands. Pertinent sections are quoted below and the resolution is also attached for reference:

... now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring. That all state agencies, including, but not limited to, those specified in this measure, having land use planning duties and responsibilities shall, in the performance of those duties and responsibilities and in a manner consistent with their respective duties and responsibilities, undertake to assess and determine the effects of their land use decisions or actions within any oak woodlands containing



1707-2771

Blue, Engelmann, Valley, or Coast Live Oak that may be affected by the decisions or actions, and be it further

Resolved, That ...state agencies undertake, in the performance of their duties and responsibilities, to preserve and protect native oak woodlands to the maximum extent feasible and consistent with the performance of their duties and responsibilities, or provide for replacement plantings where Blue, Engelmann, Valley, or Coast Live Oak are removed from oak woodlands.

DEFINITION OF OAK WOODLAND

A definition of oak woodlands was added to California Fish and Game Code subsequent to the adoption of Resolution 17: "*Oak woodlands* means an oak stand with a greater than 10 percent canopy cover or that may have historically supported greater than 10 percent canopy cover."

This definition is not used in the DEIR's analysis of impacts to oaks. Instead, the DEIR relies on discussion of land cover types. Thus it is unclear how many oak woodlands in the project area are not included in the DEIR's analysis. For example, the screenshot below, from page 5-53 of the Biological and Aquatic Resources Technical Report, shows the landscape types that were screened for protected trees:

5.2.6 Protected Trees

Based on reconnaissance field surveys and GIS analysis of the project extent, several land cover types which contain trees are located within the special-status plant study area. Although some of these trees may not be protected, a number of them are protected under local ordinances, regulations, and policies. Table 5-8 provides results of GIS analysis of the protected tree habitat locations within each subsection.

Table 5-8 Protected Trees by Subsection

Resource	San Jose Diridon Station Approach	Monterey Corridor	Morgan Hill and Gilroy	Pacheco Pass	San Joaquin Valley
Blue oak-foothill pine woodland	None	None	None	Yes	None
California sycamore woodland	None	None	None	Yes	None
Coast oak woodland	None	None	Yes	Yes	None
Mixed chaparral	None	None	Yes	Yes	None
Mixed riparian	Yes	None	Yes	Yes	Yes
Ornamental woodland	Yes	Yes	Yes	Yes	Yes
Palustrine forested wetland	Yes	None	Yes	Yes	Yes
Urban landscaping	Yes	Yes	Yes	None	None

Further, our review the Biological and Aquatic Resources Technical Report's Appendix G, Land Cover Maps confirmed that the DEIR's analysis of oak impacts does not include oak woodlands located on land categorized as "California Annual Grassland."

Submission 1707 (Angela Moskow, California Wildlife Foundation, June 23, 2020) - Continued

1707-2771

Discussion: The environmental documentation for the proposed project needs to recognize the High Speed Rail Authority’s direct responsibility for oak woodlands and it should utilize the definition in California Fish and Game Code as the unit of analysis for determining impacts to oak woodlands. This is important because oak woodlands provide food and vital habitat for California’s native species, including 2,000 plants, 5,000 insects and arachnids, 80 amphibians and reptiles, 160 birds, and 80 mammals.¹ Davis et al. describe oaks as a “foundation species,” using Ellison et al.’s definition of such a species as “...one that ‘controls population and community dynamics and modulates ecosystem processes,’ whose loss ‘acutely and chronically impacts fluxes of energy and nutrients, hydrology, food webs, and biodiversity.’”²

Many of the endangered, threatened, and species of concern analyzed in the DEIR depend on oak woodland habitat. The disruptions in habitat integrity and connectivity brought about by removal of oak trees will diminish survival of these and other oak-dependent species. While significant environmental impacts are inevitable with the construction and operation of the HSR, a more thorough analysis of impacts and a greater emphasis on oak protections are needed.

SENSITIVE SPECIES IN THE HSR CORRIDOR DEPENDENT UPON OAKS

The **Basic Model Parameters: CWHR Habitat Types** table on page 1 of Biological and Technical Resources Appendix E, reproduced in part, below, does not show Loggerhead shrike as associated with Montane Hardwood, Northern harrier as associated with Montane Hardwood, Blue Oak Woodland, Coastal Oak Woodland, or Valley Oak Woodland; Short-eared owl as associated with Blue Oak Woodland, Coastal Oak Woodland, or Valley Oak Woodland; Western spadefoot as associated with Blue Oak Woodland, Coastal Oak Woodland, or Valley Oak Woodland; or Yellow warbler as associated with Montane Hardwood, Blue Oak Woodland, Coastal Oak Woodland, or Valley Oak Woodland. Lastly, the California legless lizard is associated with Blue Oak Woodland, Coastal Oak Woodland, and Valley Oak Woodland. These omissions appear to be a mistake since the associations are listed in the California Wildlife Habitat Relationships (CWHR) System.

¹ Meadows, R. 2007. Oaks: Research and outreach to prevent oak woodland loss. *California Agriculture*

² Davis, F.W., D.D. Baldochi, and C.M. Taylor. 2016. “Oak Woodlands,” chap. 25 in *Ecosystems of California*. Editors: H. Mooney and E. Zavaleta. University of California Press.

Basic Model Parameters: CWHR Habitat Types

CWHR Habitat Type	American badger	Bald eagle	Coast (=Baird's) horned lizard	Golden eagle	Grasshopper sparrow	Least bittern	Loggerhead shrike	Mountain plover	Northern California legless lizard	Northern harrier	Olive-sided flycatcher	Purple martin	Ringtail	San Francisco dusky-footed woodrat	San Joaquin coachwhip	Short-eared owl	Western snowy plover (interior)	Western spadefoot	White-tailed kite	Yellow warbler
Douglas Fir	N	x	N																	
Ponderosa Pine	N	x	N								N	N	x	x						
Redwood	N	x	N								N	N	x	x						
Juniper	N	x	N								N	N	x	x						
Closed-Cone Pine-Cypress	N	x	N								N	N	x	x						
Montane Hardwood-Conifer	N	x	N								N	N	x	x						
Blue Oak-Foothill Pine	N	x	N			N					N	N	x	x						
Montane Hardwood	N	x	N								N	N	x	x						
Blue Oak Woodland	N	x	N			N					N	N	x	x						N
Coastal Oak Woodland	N	x	N			N					N	N	x	x						N
Valley Oak Woodland	N	x	N			N					N	N	x	x						N

1707-2772

1707-2773

INCOMPLETE ENVIRONMENTAL ANALYSIS

Environmental analysis needs to evaluate oak protections for San Benito County:

The DEIR needs to incorporate San Benito County oak woodland protections. Appendix 2-J: *Regional and Local Plans and Policies*, does not include the provisions of San Benito County’s woodlands ordinance outlined below:

Management and Conservation of Woodlands Ordinance (San Benito County Code, Title 19 (Land Use and Environmental Regulations), Chapter 19.33: Section 19.33.008 applies the regulations set forth in Chapter 19.33 to parcels covered by at least 10% woodland vegetation as determined by the baseline retention canopy survey, which is on file with the County’s Planning Division, and to parcels that currently support native trees or other woody vegetation but were farmed to agricultural crops at the time of the aforementioned baseline aerial photography. Section 19.33.006 prohibits clear cutting, grading in a manner that removes woodlands, vegetation removal, and similar disturbance, and Section 19.33.005 requires the issuance of a permit when the removal of individual or masses of trees within woodlands of between 90% and 100% as per the canopy retention standard within a period of ten years, and any time removal is located on slopes greater than or equal to 30%. Permits may be issued along with conditions of approval, as set forth in Section 19.33.010.

See: [http://library.amlegal.com/nxt/gateway.dll/California/sanbenitocounty_ca/title25zon ing?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanbenitocounty_ca](http://library.amlegal.com/nxt/gateway.dll/California/sanbenitocounty_ca/title25zon ing?f=templates$fn=default.htm$3.0$vid=amlegal:sanbenitocounty_ca)

Additionally, the trees native to San Benito County, which are listed in the county’s woodland ordinance, include the four species of oaks identified in Resolution 17, which is discussed above.

Submission 1707 (Angela Moskow, California Wildlife Foundation, June 23, 2020) - Continued

1707-2774

The environmental analysis omits many Santa Clara County General Plan and many county tree preservation and removal protections: The environmental documentation needs to incorporate all environmental protections articulated in the General Plan and all Santa Clara County tree preservation and removal protections. Omissions are presented below (underline is used for emphasis):

Appendix 2-J: *Regional and Local Plans and Policies* Table 6, *Regional and Local Plans and Policies Relevant to Biological and Aquatic Resources*, does not include the following provisions of *Santa Clara General Plan Book B*

Resource Conservation Chapter

R-RC 43 on page O-28

Large scale grading and clearing of land should not be allowed if it will significantly degrade valuable habitat or impair surface water quality.

R-RC 47 on page O-29

Impacts from new development on woodland habitats should be minimized by encouraging:

- clustering of development to avoid critical habitat areas, where clustering is permitted;
- inclusion of important habitat within open space areas for project requiring open space dedication;
- siting and design of roads, utility corridors and other infrastructure to avoid fragmentation of habitat; and
- acquisition or avoidance of critical habitat areas.

R-RC 51 on page O-30

Preservation of habitat linkages and migration corridors should be encouraged where needed to allow for species migration, prevent species isolation, and otherwise compensate for the effects of habitat fragmentation.

R-RC 52 on page O-30

For rural area development proposals subject to open space dedication requirements and adjacent to other open space lands, the County shall encourage project design which maximizes the contiguity of undeveloped, open space areas, reducing fragmentation of habitat.

Page O-30 on page O-30

R-RC(i) 17

Utilize updated mapping and information on natural areas and habitats to identify and assess the potential need for maintaining migration corridors and habitat linkages.

Land Use Policies

Development Policies – Non-Residential Open Space Preservation

R-LU 28 on page Q-7

1707-2774

For all uses allowed in Hillside areas other than agricultural and single-family residential land uses, open space preservation by means of easement dedication may be required in order to:

- protect the public health, safety and general welfare;
- prevent or mitigate potentially significant adverse environmental impacts...

R-LU 79 on page Q-15

New public transportation facilities shall be compatible with the land uses in the areas in which they are located and consistent with the County's General Plan.

1707-2775

Appendix 2-J: *Regional and Local Plans and Policies* also does not include the following provisions of Santa Clara County's Tree Preservation and Removal ordinance (See: https://library.municode.com/ca/santa_clara_county/codes/code_of_ordinances?nid=TITCCODELAUS_DIVC16TRPRRE):

Sec. C16-7. - Permit applications.

In addition to standard information required as part of all applications for administrative permits, special permits, use permits or encroachment permits, the following information shall be included in such applications for tree removal:

- (a) A brief statement of the reasons for removal of the tree.
- (b) A photograph of the tree(s) proposed for removal.
- (c) A description of the method to be used in the removal of the tree(s). Applicant should demonstrate that good harvesting practices will be used.
- (d) A tree survey (map) with the accurate location, number, species, size (diameter measured 4.5 feet above ground, approximate height, and approximate canopy diameter), general health, and approximate age, if known, of the tree or trees in question.
- (e) A replanting and/or re-vegetation plan for all trees to be removed. Replacement trees shall be of a like kind and species of tree removed, if native and feasible, or of a kind and species to be determined by the Planning Department. The location of the replacement tree(s) need not be in the same location of the tree removed. Replacement tree planting shall utilize at least five-gallon size stock. The ratio of trees removed to trees planted shall be determined by the Planning Department. An erosion control plan may also be required where deemed appropriate by County staff.

Sec. C16-11. - Criteria for permit approval.

The Planning Office or any other person or body charged with determining whether to grant, conditionally grant or deny an administrative permit, special permit, use permit, or encroachment

Submission 1707 (Angela Moskow, California Wildlife Foundation, June 23, 2020) - Continued

1707-2775

permit for tree removal shall take into account the following factors in determining what action to take upon the permit application:

(b) The potential impact the removed tree or trees may have upon adjacent trees (i.e. increased windthrow). Where appropriate, removal may necessitate an assessment of potential impacts upon adjacent trees by a certified arborist or forester, along with the development of mitigations to lessen such impacts.

...

(d) The topography of the land and the effect of the proposed tree removal upon erosion, soil retention, and the diversion or increased flow of sediment.

(e) The number, species, size, and location of existing trees in the area, and the effect the proposed removal would have upon shade, privacy impact, scenic beauty, and property values of the area.

Santa Clara County’s Planning Office Guide to Evaluating Oak Woodlands Impacts utilizes the metric of 10 percent or greater to define an oak woodland: *Oak woodlands include a woodland (grouping of trees) on a unit of land or project site where Oak trees encompass 10 percent or greater of the canopy cover. The 10 percent canopy cover applies to the individual woodland and not the entire project site (which may contain one or more woodlands).*

Lastly, trees native to Santa Clara include three—blue, coast live, and valley—which are named in Resolution 17.

Discussion: The underlined text above provides important protections that need to be incorporated in the environmental analysis, design, construction, mitigation, and monitoring of the HSR. Many local, state, and federal agencies and organizations have invested in protecting and restoring the corridor upon which the proposed HSR will travel.

1707-2776

Public Resources Code Section 21083.4: The DEIR also does not discuss Public Resources Code Section 21083.4, which applies to mitigation for the removal of oaks that are not commercial species that are five inches or more in diameter as measured at a point 4.5 feet (breast height) above natural grade level. Additional details on the provisions of this measure are in the mitigation section, below.

GREENHOUSE GAS IMPACTS OF TREE REMOVALS

California law requires the greenhouse gas (GHG) impacts of proposed oak removals to be assessed. Section 3.3 of the DEIR lacks this analysis. CEQA’s sole GHG focus is “the mitigation of greenhouse gas emissions or the effects of greenhouse gas emissions.” Net present value of GHG emissions forms the foundation of the state’s greenhouse reduction objectives, as well as the California Forest Protocol preservation standards. Every ton of carbon dioxide (CO₂) released into the atmosphere by oak woodland or forest conversion represents a measurable potential adverse environmental effect, which is covered by CEQA. Thus California requires the analysis and mitigation of greenhouse gas emissions associated with proposed oak woodland or forest conversions.

1707-2776

Further, project mitigation that is based on the preservation (“avoided conversion”) of existing natural lands does not adequately mitigate GHG emissions of natural lands conversion. Existing trees, understory, and soil conserved by the mitigation, do not, suddenly, upon the protections afforded by their conservation sequester more carbon to mitigate impacted biomass GHG emission effects of the conversion. Newly planted trees take many years to sequester carbon in the soil, understory, and woody mass of the trees.

Discussion: The Authority’s website states: “California high-speed rail will connect the mega-regions of the state, contribute to economic development and a cleaner environment, create jobs and preserve agricultural and protected lands.” A cleaner environment relies on full compliance with the requirements of CEQA for the GHG impacts of tree removals.

GROUNDWATER IMPACTS ON OAKS

Page 3.7-139 of Section 3.7, Biological and Aquatic Resources, addresses the proposed Groundwater Resource Study Area (RSA) that will be utilized to assess potential impacts of tunnel construction on groundwater-dependent species:

Baseline inventory—As allowed by private property owners, the Authority would establish baseline hydrologic conditions within the groundwater resource study area (approximately 1 mile north and south of the tunnel alignment) through baseline data collection. Baseline surveys would characterize potential aquatic resources, including but not limited to mapping of wetland and riparian vegetation; hydroperiod (the duration of inundation); flow rates; area of feature; pond depth; the potential for special-status plant and animal species (e.g., California tiger salamander, California red-legged frog, foothill yellow-legged frog, western pond turtle, least Bell’s vireo, tricolored blackbird, and yellow-headed blackbird) and steelhead to occur; and potential groundwater dependent protected trees (e.g. oaks).⁶

Footnote 6 states: The baseline inventory will be used to estimate groundwater levels below ground surface. Once the groundwater levels are identified, the area of potential effect to oaks can be identified (defined as areas with groundwater levels within 70 feet of the surface), and oaks within the area of potential groundwater effect can then be identified.

Further detail is found on page 4-8 Biological and Aquatic Resources Technical Report:

The one-mile wide RSA is based on the area evaluated for groundwater effects from construction of the SFPUC’s New Irvington Tunnel (SFPUC 2009), which was constructed through the Diablo Range approximately 50 miles north-northwest of Pacheco Pass and the construction of the Arrowhead Tunnels in the San Bernardino Mountains in southern California in which monitoring indicated impacts occurred out to 1.1-mile of the tunnel alignments (Berg 2012). Surface water features of biological value include wetlands, streams, and ponds fed by groundwater as well as any riparian vegetation growing adjacent to such features. Upland wildlife species not dependent on surface water features would not be affected by potential groundwater depletion. Non-riparian upland plants would only

Submission 1707 (Angela Moskow, California Wildlife Foundation, June 23, 2020) - Continued

1707-2777

be affected by potential groundwater depletion if they had sufficiently deep roots to reach relatively shallow areas of groundwater, which is usually limited to oak trees.

Discussion: It is unclear why the Authority has chosen a metric of one mile for the groundwater RSA when the studies utilized to inform the RSA showed impacts 1.1 miles of the tunnel alignments. The RSA should be 1.1 mile *in each direction* from the tunnel alignments.

Referencing footnote 6 in the quoted text above, the analysis of potential effects on oaks should utilize a metric of 100 feet rather than 70 feet below ground surface. A University of California Natural Reserve System online article (<https://ucnrs.org/drought-dealt-death-california-oaks/#:~:text=%E2%80%9CThe%20bathtub%20drained%E2%80%9D,when%20surface%20soils%20go%20dry>) notes California oaks grow roots that can extend 50 to 100 feet down, allowing them to tap groundwater when surface soils go dry.

1707-2778

Supplemental Water: The contingency plan for supplemental water, quoted below, from page 3.7-140 of Section 3.7, Biological and Aquatic Resources, needs to be rewritten to properly protect impacted oaks:

Contingency plan for supplemental water in areas outside of predicted area of effect— The Authority would establish contingency procedures to provide supplemental water to wetlands, creeks, ponds, and springs to support riparian/aquatic vegetation, wildlife breeding cycles, and aquatic wildlife as well as supplemental water to protected trees outside the area of predicted effects, if warranted by monitoring.

Discussion: If supplemental water is used specific protocols must be followed to protect oak trees. Oaks should be irrigated only outside of the Root Protection Zone (RPZ). (RPZ is the area that extends beyond the dripline to a distance that is half the distance between the trunk and the dripline.) Under no circumstances should the ground near the base of a native oak be allowed to become moist during warm weather periods. Moist, warm soil near the base of a mature oak promotes crown and root rot.

Irrigation, if done, should be by the “deep watering method,” which consists of a slow, all-day soaking only once or twice during the summer dry period. Frequent, shallow watering not only encourages crown and root rot, it also results in the growth of ineffective shallow roots near the surface, a needless waste of the tree’s energy.

If oaks need supplemental watering, it is best to apply the water at times that lengthen the normal rainy season, so the normal dry period in the middle to the end of summer is preserved. For example, additional irrigation would be appropriate in May and September, while leaving the area under the tree dry in July and August.

1707-2779

Lastly, the environmental documentation must incorporate discussion about alignment with groundwater sustainability plans and associated documentation. For example, page 38 of San Benito County Water District’s 2018 Annual Groundwater report (the most current) includes Sustainability Criteria that will inform the Groundwater Sustainability Plan (GSP) for the North San Benito Basin. These criteria, quoted below, are not addressed in the DEIR.

1707-2779

The fifth step of the GSP process will address the five undesirable results/sustainability indicators relevant to North San Benito Basin.... These include: chronic lowering of groundwater levels, groundwater storage depletion, water quality degradation, land subsidence, and depletion of interconnected surface water. Each of these will be defined in terms of minimum thresholds where occurrence of an undesirable result becomes significant and unreasonable and in terms of measurable management objectives.

1707-2780

MITIGATION

As discussed above, the DEIR analysis in identifying trees that are protected is incomplete, as is the DEIR analysis of relevant general plans language, ordinances, and other plans and regulations. The project’s environmental documentation must include these provisions in analyzing and mitigating impacts.

BIO-MM#75: Implement Transplantation and Compensatory Mitigation for Protected Trees, which is presented on page 3.7-167, states:

Prior to ground-disturbing activities, the Project Biologist would conduct surveys in the work area to identify protected trees.

The Project Biologist would establish ESAs around protected trees with the potential to be affected by construction activities, but do not require removal. The contractor, under the direction of the Project Biologist, would install ESA fencing 5 feet outward from the drip lines of such protected trees.

The Authority would provide compensatory mitigation for impacts on protected trees, including impacts associated with removing or trimming a protected tree. Compensation would be based on requirements set out in applicable local government ordinances, policies, and regulations. Compensatory mitigation may include, but is not limited to, the following:

- Replacement of protected trees at an off-site location, based on the number of protected trees affected, at a ratio not to exceed 3:1 for native trees or 1:1 for ornamental trees, unless higher ratios are required by local government ordinances or regulations.
- Transplantation of protected trees to areas outside of the work area.
- Contribution to a tree-planting fund.

Discussion: ESA protections are not sufficiently protective of large oaks, which should have no disturbance within the root protection zone (RPZ). RPZ is the area that extends beyond the dripline to a distance that is half the distance between the trunk and the dripline—an area that will require a much larger ESA protection area in many cases. Many problems for oaks are initiated by disturbing the roots within this zone. *Care of California’s Native Oaks*, which is downloadable from <http://californiaoaks.org/oak-tree-care/> provides additional guidance.

Transport of oak trees, is a very difficult procedure, in part because of the extensive taproots of oak trees. Many trees will not survive transport. It also appears that the mitigation is built on the assumption that no additional mitigation is necessary if oak trees

Submission 1707 (Angela Moskow, California Wildlife Foundation, June 23, 2020) - Continued

1707-2780

are transported elsewhere.

1707-2781

Lastly, the establishment period for transplanted trees must be seven years. Public Resources Code Section 21083.4 applies to mitigation for the removal of oaks that are not commercial species, which are five inches or more in diameter as measured at a point 4.5 feet (breast height) above natural grade level. Senate Bill 1334 (Kuehl), which brought the conversion of oak woodlands under California Environmental Quality Act (CEQA) states: *The requirement to maintain trees in compliance with this paragraph shall terminate seven years after the trees are planted.* This requirement should be clearly stated in the DEIR’s discussion of mitigation.

1707-2782

Local input in the choice of the tree planting fund will be important. Many tree-planting efforts are unsuccessful due to the necessity of high standards for maintenance and monitoring of the plantings. Additionally, there are many restoration efforts underway in the HSR corridor, which the Authority would be wise to leverage in planning, carrying out, and monitoring tree mitigation efforts.

1707-2783

BIO-MM#85: Provide Compensatory Mitigation for Impacts on California Sycamore Woodland at the Pacheco Creek Reserve, is presented on pages 3.7-172-173

To offset permanent impacts at the Pacheco Creek Reserve and alleviate conflict with the SCVHP, the Authority would provide compensatory mitigation at a 1:1 ratio. The replacement reserve would be of the same acreage as the existing reserve (8.2 acres) or greater, and it would be primarily composed of a contiguous patch of the California sycamore alluvial woodland, the conservation target on which the reserve was formed. Mitigation lands can be co-located with the mitigation under BIO-MM#72 to meet the 10-acre minimum patch size requirement stipulated in Objective 9.2 of the SCVHP. This mitigation may be accomplished through preservation, enhancement, or restoration, or a combination thereof, with a preference given to mitigation opportunities in the Pajaro River HUC-8 watershed.

BIO-MM#72: Provide Compensatory Mitigation for Permanent Impacts on Riparian Habitat on page 3.7-165 shows a much higher mitigation rate for California sycamore woodland:

The Authority would compensate for permanent impacts on riparian habitats at a ratio of 2:1 (mixed riparian and palustrine forested wetland) or 4:1 (California sycamore woodland), unless a higher ratio is required by agencies with regulatory jurisdiction over the resource. Compensatory mitigation may occur through habitat restoration, the acquisition of credits from an approved mitigation bank, participation in an in-lieu fee program or habitat preservation or enhancement at a permittee responsible mitigation site.

Discussion: The DEIR speaks about the ecological importance of this ecosystem type. The 1:1 mitigation ratio is problematic as is the prospect of destruction of this landscape. Lastly, the article titled Asynchronous carbon sink saturation in African and Amazonian tropical forests, published in *Nature* (volume 597) on March 5, 2020 underscores the importance of carbon sequestration in the northern hemisphere. The authors found a long-term decline in the Amazonian carbon sink and a mortality-dominated decline of the

1707-2783

African carbon sink, which appears to have begun very recently (see: <https://doi.org/10.1038/s41586-020-2035-0>).

The carbon sequestration benefits of California’s oak and other woodland and forest ecosystems must not be diminished by the High Speed Rail project. Mitigation for damage to these ecosystems needs to be robust.

Thank you for your consideration of our comments. The Draft Environmental Impact Report/Environmental Impact Statement should be reissued. We welcome your inquiry should additional input be helpful.

Sincerely,



Janet Cobb
Executive Officer
California Wildlife Foundation



Angela Moskow
Manager, California Oaks Coalition

Encls: State Senate’s Concurrent Resolution Number 17—Oak Woodlands (September 1, 1989)

Submission 1707 (Angela Moskow, California Wildlife Foundation, June 23, 2020) - Continued

6960 STATUTES OF 1989 [Res. Ch. 100

WHEREAS, Equal access to child care services reflects basic civil rights law; and

WHEREAS, State law specifically directs that all contractors under the School-Age Community Child Care Services program, set forth in Article 22 (commencing with Section 8460) of Chapter 2 of Part 6 of the Education Code, shall include, at a minimum, a base percentage of children who are individuals with exceptional needs in their programs; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Superintendent of Public Instruction is requested to promote and assure compliance with the requirements of the School-Age Community Child Care Services program by informing all special education units in elementary and secondary school districts and county offices of education regarding the enrollment of children who are individuals with exceptional needs in these programs, and by directing that the Child Development Division of the State Department of Education enforce these requirements by monitoring the compliance of all contractors operating these programs; and be it further

Resolved, That the Superintendent of Public Instruction shall include a report on the implementation of the requirements of this measure in the legislative report required by Section 8280 of the Education Code; and be it further

Resolved, That the Secretary of the Senate transmit a copy of this resolution to the Superintendent of Public Instruction.

RESOLUTION CHAPTER 100

Senate Concurrent Resolution No. 17—Relative to oak woodlands.

[Filed with Secretary of State September 1, 1989.]

WHEREAS, California's oak trees are part of the definition of the state's landscape: golden hills dotted with deep green trees; and

WHEREAS, California's oak woodlands provide forage for livestock, habitat for hundreds of species of wildlife, and visual enjoyment to residents and visitors to the state; and

WHEREAS, More than a million acres of oak woodlands have been lost since 1945, and losses continue due to intensive conversion to agriculture and urban encroachment; and

WHEREAS, Several species of oaks do not seem to be regenerating; and

WHEREAS, The continued health of oak woodlands is an indication of Californians' balance with their rural environment, and loss of this resource indicates a deteriorating relationship with our environment; and

WHEREAS, The range industry, which relies on the hardwood

517 04990

Res. Ch. 100] STATUTES OF 1989 6961

rangelands as an integral part of their operations, is being adversely affected by continued urbanization and fragmentation and is misunderstood by the public; and

WHEREAS, A number of local governments are regulating hardwood harvesting on private lands; and

WHEREAS, The State Board of Forestry, with the support of the range industry and in cooperation with the Department of Fish and Game, the Department of Forestry, and the University of California, has undertaken a program of development, extension, and research with regard to information concerning California's oak woodlands; and

WHEREAS, There are a number of state departments, agencies, boards, and commissions exercising land use planning duties and management with respect to public and privately owned oak woodlands, including, but not limited to, the Department of Fish and Game, Department of Parks and Recreation, State Lands Commission, California Coastal Commission, Department of Forestry, and Office of Planning and Research; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That all state agencies, including, but not limited to, those specified in this measure, having land use planning duties and responsibilities shall, in the performance of those duties and responsibilities and in a manner consistent with their respective duties and responsibilities, undertake to assess and determine the effects of their land use decisions or actions within any oak woodlands containing Blue, Engelman, Valley, or Coast Live Oak, that may be affected by the decisions or actions. For purposes of this measure, "oak woodlands" means a five-acre circular area containing five or more oak trees per acre; and be it further

Resolved, That those state agencies undertake, in the performance of their duties and responsibilities, to preserve and protect native oak woodlands to the maximum extent feasible and consistent with the performance of their duties and responsibilities, or provide for replacement plantings where Blue, Engelman, Valley, or Coast Live Oak are removed from oak woodlands; and be it further

Resolved, That each of those state agencies, on or before July 1, 1991, in cooperation with the range industry and other private landowners, shall prepare a report, which shall be coordinated by the Range Management Advisory Committee, and shall submit the report to the Resources Agency and to the appropriate policy and fiscal committees of the Assembly and the Senate of the California Legislature, on the actions taken to further the policy objective of this measure; and be it further

Resolved, That the Secretary of the Senate transmit a copy of this resolution to the Governor and the Secretary of the Resources Agency.

517 05020

Response to Submission 1707 (Angela Moskow, California Wildlife Foundation, June 23, 2020)

1707-2770

The types and sizes of trees that meet the local tree ordinances in the Counties of Santa Clara, San Benito, and Merced as well as in the Cities of Santa Clara, San Jose, Morgan Hill, and Gilroy are addressed in Draft EIR/EIS Volume 2, Appendix 2-J, Regional and Local Plans and Policies. Per the commenter's request for oak tree mitigation, BIO-MM#75 has been updated in the Final EIR/EIS to include an oak tree mitigation plan, including a 6:1 ratio for native oak trees and a 10-year monitoring and management period. With respect to required emissions analysis of oak removal, neither CEQA nor any associated California law mandates lead agencies quantify GHG emissions resulting from habitat loss. Rather, CEQA Guidelines Section 15064.4 requires lead agencies "make a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project." Estimating potential changes in GHG emissions from land use change involves a considerable amount of uncertainty. In particular, key variables, including carbon cycling, methane production, and nitrogen cycling vary by land use type, season, and site-specific chemical and biological characteristics. Depending on these conditions, land use change associated with the project alternatives may result in a net increase or decrease in GHG emissions. To fully characterize project impacts, additional information is required that is currently unknown. For example, acreage by land use type, site-specific land characteristics (e.g., salinity, pH, age of trees, type of grass, carbon content of soils), and fuel consumption data would be required to estimate the net difference in emissions between the removal and addition of GHGs into the atmosphere (i.e., GHG flux). Without local sampling and monitoring data, these values are unknown. Consequently, the Authority did not perform a quantified analysis of potential GHG emissions from land use change, as it would be speculative. Nonetheless, in response to this comment, the Authority has prepared a high-level, order-of-magnitude estimate of potential GHG emissions resulting from oak woodland conversion. As discussed in Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS, while pre-construction and construction actions to protect habitat for special-status plants are part of the project, these actions would not prevent the permanent conversion of oak woodlands. CalEEMod was used to estimate the one-time change in carbon sequestration capacity potentially resulting from this conversion under Alternative 3 (which is the alternative with the greatest expected loss). The model indicates that removal of oak woodland habitat during construction could generate 46,000 metric tons CO₂. While these emissions would be generated, project operations

1707-2770

would result in net statewide reductions of GHG emissions as travel modes shift away from on-road vehicles and aircraft trips to the HSR. Specifically, as shown in Table 3.3-29 in Section 3.3, Air Quality and Greenhouse Gases, of the Draft EIR/EIS, annual reductions would range from 1.1 million metric tons CO₂e to 1.6 million metric tons CO₂e, depending on the ridership scenario. These emissions benefits would more than offset any sequestration losses associated with the permanent conversion of oak woodlands.

1707-2771

Land cover mapping in the Draft EIR/EIS is described under Section 3.7.5.3, Methods for Impact Analysis. The Draft EIR/EIS states that terrestrial land cover types were classified according to the unpublished 2011 Administrative Draft San Jose to Merced Section Biological Resources and Wetlands Technical Report (2011 San Jose to Merced Section Technical Report), or identified using the Manual of California Vegetation (Sawyer et al. 2009; CNPS 2017, as cited in Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS) or the California Wildlife Habitat Relationships Habitat Classification Scheme (CWHR System) (CDFG 1988, as cited in Section 3.7 of the Draft EIR/EIS). All of these resources use the 10 percent criterion for oak woodlands mentioned by the commenter. The CWHR system classifies tree-dominated habitat as those with 10 percent cover (CDFG 1988) and the Manual of California Vegetation (Sawyer et al. 2009) classifies forest and woodlands as areas where tree canopy may be as low as 10 percent over dense layers of shrubs and herbaceous species, and where trees may cover less than 10 percent (as low as about 8 percent) but are evenly distributed across the stand. As such, the land cover mapping in the Draft EIR/EIS is consistent with the California Fish and Game Code's 10 percent unit of analysis for oak woodlands.

Response to Submission 1707 (Angela Moskow, California Wildlife Foundation, June 23, 2020) - Continued

1707-2772

The Authority went through an extensive review process with the wildlife agencies (USFWS, NMFS, and CDFW) to prepare species habitat models as documented in the Biological and Aquatic Resources Technical Report (Authority 2020a, as cited in Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS). Numerous rounds of reviews were completed to develop models specific to the project region. Consequently, the Authority believes the species models accurately represent the best available information regarding species habitat and distribution.

1707-2773

As noted in Section 3.7.5.3, Methods for Impact Analysis, of the Draft EIR/EIS, local regulations and policies related to protected trees were considered and listed in Volume 2, Appendix 2-J, Regional and Local Plans and Policies, of the Draft EIR/EIS. San Benito County policies and ordinances were listed in this appendix and were considered in the Draft EIR/EIS.

1707-2774

Refer to Standard Response SJM-Response-OUT-2: Consultation with Local Agencies and Consistency with Local Regulations.

Thank you for your comment. Appendices 2-J and 2-K (located in Volume 2, Technical Appendices) have been updated in the Final EIR/EIS to include these omissions and describe the inconsistencies. As indicated in Appendix 2-K and throughout the EIR/EIS, the Authority is a state agency and therefore is not required to comply with local land use and zoning regulations; however, the Authority would coordinate with local jurisdictions to reconcile inconsistencies to the extent practicable.

1707-2775

Refer to Standard Response SJM-Response-OUT-2: Consultation with Local Agencies and Consistency with Local Regulations.

Thank you for your comment. Appendices 2-J and 2-K (located in Volume 2, Technical Appendices) have been updated in the Final EIR/EIS to include these omissions. As indicated in Appendix 2-K and throughout the EIR/EIS, the Authority is a state agency and therefore is not required to comply with local land use and zoning regulations; however, the Authority would coordinate with local jurisdictions to reconcile inconsistencies to the extent practicable.

Response to Submission 1707 (Angela Moskow, California Wildlife Foundation, June 23, 2020) - Continued

1707-2776

Public Resources Code Section 21083.4 only applies to proposed actions under the jurisdiction of a County. It is therefore not applicable to the Authority; however, the Authority notes that the Draft EIR/EIS does address impacts to protected trees, including oaks in Section 3.7.7.6, Protected Trees of the Biological and Aquatic Resources Section 3.7.

With respect to required emissions analysis of oak removal; neither CEQA nor any associated California law mandates lead agencies quantify GHG emissions resulting from habitat loss. Rather, CEQA Guidelines §15064.4 requires lead agencies "make a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project." Estimating potential changes in GHG emissions from land use change involves a considerable amount of uncertainty. In particular, key variables, including carbon cycling, methane production, and nitrogen cycling vary by land use type, season, and site-specific chemical and biological characteristics. Depending on these conditions, land use change associated with the project alternatives may result in a net increase or decrease in GHG emissions. To fully characterize project impacts, additional information is required that is currently unknown. For example, acreage by land use type, site-specific land characteristics (e.g., salinity, pH, age of trees, type of grass, carbon content of soils), and fuel consumption data would be required to estimate the net difference in emissions between the removal and addition of GHGs into the atmosphere (i.e., GHG flux). Without local sampling and monitoring data, these values are unknown. Consequently, a quantified analysis of potential GHG emissions from land use change was not performed, consistent with CEQA Guidelines §15145, as it would be speculative.

Nonetheless, in response to this comment, the Authority prepared a high-level, order-of-magnitude estimate of potential GHG emissions resulting from oak woodland conversion. As discussed in Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS, while pre-construction and construction actions to protect habitat for special-status plants are part of the project, these actions would not prevent the permanent conversion of oak woodlands. CalEEMod was used to estimate the one-time change in carbon sequestration capacity potentially resulting from this conversion under Alternative 3 (which is the alternative with the greatest expected loss). The model indicates that removal of oak woodland habitat during construction could generate

1707-2776

46,000 metric tons CO₂. While these emissions would be generated, project operations would result in net statewide reductions of GHG emissions as travel modes shift away from on-road vehicles and aircraft trips to the HSR. Specifically, as shown in Table 3.3-29 in Section 3.3, Air Quality and Greenhouse Gases, of the Draft EIR/EIS, annual reductions would range from 1.1 million metric tons CO₂e to 1.6 million metric tons CO₂e, depending on the ridership scenario. These emissions benefits would more than offset any sequestration losses associated with the permanent conversion of oak woodlands.

1707-2777

Commenter should note that provisions regarding tunnel effects on groundwater hydrology have been revised in the Final EIR/EIS. Please refer to Final EIR/EIS Impact BIO#1 for a detailed characterization and analysis of this issue. BIO-MM#9 specifically discusses measures to minimize and mitigate impacts on protected trees, including oaks, both during construction and in the event that impacts persist post-construction, either by replacing lost water (e.g., from wells) or by performing off-site compensatory mitigation. Additionally, the Final EIR/EIS has been clarified to note that oak roots may reach depths of up to 100 feet (see changes to BIO-MM#9) and thus changes to groundwater to that depth will be considered. Lastly, with regard to the 1-mile study area for the groundwater RSA, the Authority notes that in order to take a conservative approach regarding the area of potential effects, the Authority has modified BIO-MM#9 to require inventory and monitoring out to 1.1 miles from the centerline of the rail.

1707-2778

As suggested by the commenter, the Authority has modified BIO-MM#9 in the Final EIR/EIS to note best management practices for irrigation near oaks.

Response to Submission 1707 (Angela Moskow, California Wildlife Foundation, June 23, 2020) - Continued

1707-2779

Impact HYD#8 in the Draft EIR/EIS discusses temporary impacts on groundwater during construction. The CEQA conclusion is less than significant and states that "construction of the project alternatives would not substantially ... conflict with implementation of a Basin Plan or Groundwater Sustainability Plan." As indicated in Table 3.8-3 of the Draft EIR/EIS, the San Benito County Water District's Groundwater Sustainability Plan Draft (2018 and 2019, as cited in Section 3.8, Hydrology and Water Resources, of the Final EIR/EIS) were used as data sources in the analysis.

1707-2780

In response to this comment, the Authority has updated BIO-MM#75 in the Final EIR/EIS to require protection of the root protection zone as defined in the comment, beyond the dripline. The Authority may transplant and/or replace affected oak trees. It is understood that if the Authority transplants oak trees, some may not survive, as is typical of any mitigation project. As such, BIO-MM#75 has been updated to include a native oak tree mitigation plan, which will include success criteria that must be met. Under these success criteria, if a certain number of transplanted oak trees did not survive, the Authority would be required take remedial actions (e.g., plant more acorns).

1707-2781

In response to this comment, BIO-MM#75 has been updated in the Final EIR/EIS to include an oak tree mitigation plan, which includes a 10-year monitoring and maintenance period for transplanted or replaced oak trees.

1707-2782

Comment noted. Thank you.

1707-2783

Impact BIO#35 identifies a significant impact on special-status plant communities and requires mitigation for that impact. Commenter accurately notes the provisions of mitigation for loss of California sycamore woodland. It is hoped that the mitigation lands will achieve tree sizes and biomass comparable to those of the impacted lands, although this result is not expected for a period of decades. The Authority notes that mitigation for impacts on the Pacheco Creek Reserve are 1:1 as described under BIO-MM#85. However, this mitigation is for impacts on the reserve itself, and there is additional mitigation required for the impact on sycamore alluvial woodland required under BIO-MM#72, which would require an additional 4:1 ratio. Consequently, impacts at the Pacheco Creek Reserve on California sycamore alluvial woodland habitat would be effectively mitigated at a 5:1 ratio. Refer also to response to comment 2776 from submission SJM-1707 for more information about carbon sequestration. The Authority prepared a high-level, order-of-magnitude estimate of potential GHG emissions resulting from oak woodland conversion, and project operations would result in net statewide reductions of GHG emissions.

Submission 1668 (Gene Zanger, Casa de Fruta and the Zanger Family Landowners, June 23, 2020)

San Jose - Merced - RECORD #1668 DETAIL		1668-2460	noise and vibration in this area?
Status :	Unread		
Record Date :	6/24/2020	1668-2461	In addition, what are the noise impacts of the train entering and exiting the tunnel through the mountain just east of Pacheco Creek? How will these "sudden whistling " sounds be mitigated? Have additional sound dampening measures been contemplated? Will sound mitigation measures such as wing walls or baffling be implemented to eliminate these sounds which will impact the current relatively quiet of Casa de Fruta?
Submission Date :	6/23/2020		
Interest As :	Business and/or Organization		
First Name :	Gene		
Last Name :	Zanger		
Stakeholder Comments/Issues :			
June 23, 2020			
*Gene Zanger - on Behalf of Casa de Fruta and the Zanger Family Landowners *		1668-2462	What are the project noise levels at the Casa de Fruta RV Park? Inn? Other retail locations on the property.? How will they be measured and how will they be mitigated once the train is in service?
10021 Pacheco Pass Highway			
*Hollister, CA 95023 *		1668-2463	What is the protocol for HSR trains sounding their horns through the Pacheco Pass Subsection? Is the HSR trains required to sound their horns entering or exiting the Pacheco Pass tunnel(s)? Can limits be placed on horns sounding through this area to limit the impact of negative sounds?
Casa de Fruta/Zanger Family			
*408 842 7282 *		1668-2464	Since the section of rail is projected to be elevated on a viaduct stretch, much of the natural vegetation will not provide a natural block of the sounds from train travel. Will noise abatement through wings be put on this section.
San Jose to Merced DEIR Comments:			
Below please find questions and comments related to the HSR in the Vicinity of Casa de Fruta on the Pacheco Pass Subsection:		1668-2465	Since its inception Casa de Fruta has been situated in a pastoral environment allowing for a relatively quiet environment from adjacent pasture land. The HSR on an elevated viaduct will permanently change the sound of the exiting natural environment. What mitigations will be used to limit the noise through this area?
* * *		1668-2466	How will the HSR address the loss of quiet enjoyment (?) by the guests of Casa de Fruta who expect a relatively quiet environment allowing overnight guests to sleep without HSR noise at the RV Park/Campground and INN.
1668-2459	*NOISE:*	1668-2467	I have been told that the while the trains will operate from 5 am to midnight that there will be some train activity and noise almost every hour since trains will need to be re-positioned and sent in for maintenance regularly if not daily. What is the reality of train movement in the Pacheco Pass subsection? How will the noise be mitigated during overnight hours? Train activity and noise will have a significant impact on Casa de Fruta rural environment and therefore its business income what recourse/compensation do we have to recoup loss
	The Pacheco Pass Subsection in the vicinity of Casa de Fruta will have noise impact. How will it be mitigated?		
1668-2460	Since the Pacheco Pass Subsection adjacent to Casa de Fruta is projected to be elevated on a viaduct and the track is straight, the trains could be at max or close to max speed. Will this increase the impacts of		

Submission 1668 (Gene Zanger, Casa de Fruta and the Zanger Family Landowners, June 23, 2020) - Continued

1668-2467

from the impacts of this project?

1668-2468

VISUAL:

The HSR train in the vicinity of Casa de Fruta will be on a viaduct on farmland to the east of Casa de Fruta. Renderings show that the Train will be in some cases above the treetops and visible through the natural vegetation on the perimeter of Casa de Fruta. How will this visual impacts be mitigated? Once trains are operating, this visual impact may disrupt the natural environment that has been a part of what Casa de Fruta guests expect. How will these impacts be addressed? If there is subsequent loss of business because the train diminishes the naturally pastoral environs how will this be addressed?

What options are available to include in the construction project to eliminate or minimize the impacts?

1668-2469

UTILITIES:

Casa de Fruta has number of utilities including primary domestic and fire suppression water from our hillside water tank to the south of the train track alignment, sewer and electric lines that traverse through its properties and the adjacent farmland on Santa Clara County APNs 898 -22-020/019 as well as 898- 21- 010 and 17 . Any embankment in this area would earthen over these existing underground utilities not allowing access to, repair of or replacement of and not allow timely access to critical infrastructure for maintenance repair or replacement to the extent future access were to becomes a roundabout process. This would threaten the entire Casa de Fruta businesses ability to operate. We need to know that this area is will be crossed with a viaduct structure. Plans appear to show an embankment where the tunnel exits the mountain before it joins the viaduct through the agricultural land which would earthen over our existing underground utilities. How can we be assured that this area will continue to be passable, and accessible for repair maintenance and replacement?

1668-2470

FARMLAND:

Casa de Fruta and the Zanger family has storage and farmland property that is actively farmed which the track alignment will pass through. An embankment will impact farming operations by bisecting what was always

1668-2470

an open passable area and land-lock property between the track alignment and the bridge-less in this area Pacheco Creek. It will also decrease the farm-able acreage and impact utility lines critical for the farming and retail operations. Access to the main water treatment plant as well as the water storage facility will be changed if there is not easy accessible passage.

The open farmland is also in the floodplain. The eastern bank of the Pacheco Creek is lower in this area than the western bank which allows for over-bank flooding of farmland during wet years. This over-banking is a natural outlet given the Pacheco Creek constricts just downstream. Any embankment would block the natural free flow of the floodwaters and potentially increasing flooding on to the opposite bank which is developed. A viaduct structure would diminish impacts in this area. Has a viaduct been reviewed for this area? Will a viaduct be constructed? How can we make sure that the construction plans specify that a viaduct is required in this area for protection of farmland, utility access, floodplain and wildlife passage?

1668-2471

ECONOMIC IMPACTS:

The addition of an elevated high speed rail track and tunnel exit and entrance will forever change the pastoral setting that Casa de Fruta has enjoyed since its inception. The impacts of noise/vibration, visual will create impacts on the guests who frequent our businesses during daylight hours. For our overnight guests who expect a quiet uninterrupted place to sleep they will never have the same experience again. There will be loss of business and loss of current activities including the possible loss of the 20 year old Renaissance Faire whose eastern view is projected to be a 21st century high speed track with a train passing as often as every 6 to 10 minutes. What mitigations can the HSR put in place now to eliminate the possibility of the Faire leaving the site due to its impacts.?

This noise and visual impact may make the Renaissance Faire setting unusable as site. If the HSR leads to the end of the Renaissance Faire activity how will they HSR compensate the loss of business?

Thank you for your responses.

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Submission 1668 (Gene Zanger, Casa de Fruta and the Zanger Family Landowners, June 23, 2020) - Continued

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Gene H. Zanger
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Response to Submission 1668 (Gene Zanger, Casa de Fruta and the Zanger Family Landowners, June 23, 2020)

1668-2459

Mitigation measures NV-MM#3, NV-MM#5, and NV-MM#7 would apply to Casa de Fruta. At Casa de Fruta, measures including building sound insulation and noise easements are mitigation options.

1668-2460

Please refer to Tables 4-7 and 5-10 through 5-13 of Appendix 3.4-A, Noise and Vibration Technical Report (located in Volume 2, Technical Appendices, of the Draft EIR/EIS), for more information regarding HSR train speeds. Sections of the project on viaduct would include a 3-foot-high parapet wall that functions as a short noise barrier that would help to reduce sound levels. Viaduct structures would reduce the vibration considerably compared to track at grade; therefore, vibration impact is not predicted at Casa de Fruta.

1668-2461

While there is some additional noise associated with tunnel portals, impacts relative to tunnel portal noise would be less than significant. Please refer to Impact NV#5 in Section 3.4, Noise and Vibration, of the Draft EIR/EIS for more information regarding tunnel portals. Tunnel and tunnel portal design features would be used to attenuate noise associated with HSR trains entering and exiting tunnels.

1668-2462

Future noise levels with the project at the Casa de Fruta Inn and RV Park would be approximately 65 dBA Ldn and would be a severe impact. Noise mitigation options include sound insulation or noise easements. Retail locations are not considered noise sensitive by FRA.

1668-2463

There are no at-grade crossings or passenger stations in the Pacheco Pass Subsection, so trains would not sound horns during regular operations. Horns would be sounded only on an emergency basis.

1668-2464

Sections of the project on viaduct would include a 3-foot-high parapet wall that functions as a short noise barrier that would help to reduce sound levels. Please refer to Impact NV#2 in Section 3.4, Noise and Vibration, of the Draft EIR/EIS for more information.

1668-2465

Please refer to the response to submission SJM-1668, comment 2460.

1668-2466

Future noise levels with the project at the Casa de Fruta Inn and RV Park would be approximately 65 dBA Ldn and would be a severe impact. Noise mitigation options include sound insulation or noise easements.

1668-2467

Table 3.4-7 in Section 3.4, Noise and Vibration, of the Draft EIR/EIS summarizes HSR project operations including the number of daytime and nighttime trains. The noise impact assessment includes all trains during the daytime/nighttime and accounts for the train speed, topography, and track structure at all noise-sensitive locations. Noise mitigation measures that apply to Casa de Fruta include NV-MM#3, NV-MM#5, and NV-MM#7. Measures including building sound insulation and noise easements are mitigation options.

Response to Submission 1668 (Gene Zanger, Casa de Fruta and the Zanger Family Landowners, June 23, 2020) - Continued

1668-2468

KVP 29 includes a photosimulation that shows the HSR on an aerial structure as it passes to the south of Casa de Fruta. The height of the viaduct running south of Casa de Fruta is approximately 70 feet above grade. The assessment of KVP 29 notes that likely mitigation at this location would be additional landscaping to enhance the existing landscape and obscure views of the HSR infrastructure. At this height, with the proposed height of the viaduct, landscape mitigation would likely consist of additional landscaping around the public areas of Casa de Fruta to create a canopy of trees that limit views of the viaduct and reinforces the agricultural theme of the natural environment of the complex. Mitigation measures AVQ-MM#4 and AVQ-MM#5 detail landscaping mitigation along the HSR corridor. The assessment of KVP 29, showing the HSR on aerial structure as it passes to the south of Casa de Fruta, notes the likely mitigation at this location would be additional landscaping to enhance the existing landscape and obscure views of the HSR infrastructure. The Authority does not anticipate a loss of business as a result of the visual impacts of the train. Displaced impacts to businesses are described in Section 3.12, Socioeconomics and Communities, of the Draft EIS/EIR.

1668-2469

Refer to Standard Response SJM-Response-PUE-2: Coordination with Local Government Entities and Utility Owners.

Major utilities are shown in Volume 3, Preliminary Engineering for Project Design Record, of the Draft EIR/EIS. Please refer to Section 3.6.1, Introduction, for a description of the major utilities that were analyzed. Utilities were incorporated into Volume 3 according to TM 0.1, Preliminary Engineering for Project Definition Guidelines (Authority 2015).

Some of the utility conflicts noted in the comment may be avoided with the incorporation of AG-MM#5, which converts a segment of embankment to viaduct. The Authority will show minor utilities as well as the profile change described in AG-MM#5 on the design drawings as part of detailed design post-ROD.

Impact PUE#3, Reduced Access to Existing Utilities in the HSR Right-of-Way, in the Draft EIR/EIS includes an evaluation of impacts on underground utilities. Underground utilities that conflict with the HSR right-of-way either would be relocated or would be reinforced underneath the HSR right-of-way inside a casing pipe that is strong enough to carry the HSR facilities and that would allow for utility maintenance access from outside the HSR right-of-way.

Response to Submission 1668 (Gene Zanger, Casa de Fruta and the Zanger Family Landowners, June 23, 2020) - Continued

1668-2470

The comment asked whether a viaduct would be constructed near Casa de Fruta rather than an embankment. Please refer to AG-MM#5 in Section 3.14, Agricultural Farmland, of the Draft EIR/EIS, which provides that a viaduct would be constructed rather than an embankment near Casa de Fruta to address the concerns expressed.

In addition, the comment expresses concern that Pacheco Creek overtopping the bank would cause flooding. Because this portion of the alignment would be constructed on viaduct, the alignment would not block free flow of floodwaters on the lower bank or increase flooding on the opposite bank. In Section 3.8, Hydrology and Water Resources, Impacts HYD#14, 15, and 16 discuss impacts on floodplain hydraulics during construction, operations, and maintenance.

The comment also expresses concern about wildlife passage. Because this portion of the alignment would be constructed on viaduct, the alignment would not block wildlife movement in this area. Refer to Section 3.7.7.7 in Biological Resources for more discussion of impacts to wildlife movement, including project features to avoid and minimize impacts and mitigation measures, where appropriate.

1668-2471

The commenter has raised concerns about economic impacts on Casa de Fruta, Casa de Inn, and the Northern California Renaissance Faire due to increases in noise/vibration and changes to the visual quality. Section 3.4, Noise and Vibration, of the Draft EIR/EIS identified severe noise impacts on four sensitive receptors in the Casa de Fruta area. These receptors do not meet the Authority's criteria for noise barriers, and none are proposed at this location. As noted in Section 3.16, Aesthetics and Visual Quality, of the Draft EIR/EIS, Casa de Fruta is a roadside attraction, catering to travelers on SR 152. The view of the HSR infrastructure would be familiar as part of the Pacheco Pass transportation corridor. Visual quality would remain moderate with construction and operation of the proposed project. Retail viewers visiting Casa de Fruta with a moderate viewer sensitivity would not perceive a change in visual quality under any alternative. The Authority will implement the project features and mitigation measures outlined in Section 3.4, Noise and Vibration, and Section 3.16, Aesthetics and Visual Quality, to minimize the noise and visual impacts on Casa de Fruta, Casa de Inn, and the Northern California Renaissance Faire. While no specific noise barriers are identified for the Casa de Fruta area, NV-MM#3 includes additional measures, such as building sound insulation and noise easements. Where noise barriers are not feasible, the Authority would consider providing sound insulation or acquiring a noise easement on properties with a severe impact on a case-by-case basis.

As indicated in Impact AVQ#12 in Section 3.16 of the Draft EIR/EIS, project features, including restoration and revegetation, would reduce the potential impacts on aesthetics and visual quality at Casa de Fruta. By minimizing noise and visual impacts on Casa de Fruta, these measures would also reduce the likelihood for economic impacts on Casa de Fruta. While the Authority cannot make any guarantees about the future siting of the Northern California Renaissance Faire, there is a mechanism available for property owners who believe they have suffered a loss of property value as a result of the project to file a claim with the State of California's Government Claims Board. More information may be obtained online at:

<https://www.dgs.ca.gov/ORIM/Services/Page-Content/Office-of-Risk-and-InsuranceManagement-Services-List-Folder/File-a-Government-Claim>.

Submission 1241 (Peter Broderick, Center for Biological Diversity, May 5, 2020)

San Jose - Merced - RECORD #1241 DETAIL	
Status :	Action Pending
Record Date :	5/5/2020
Affiliation Type :	Business and/or Organization
Submission Date :	5/5/2020
Interest As :	Business and/or Organization
Submission Method :	Project Email
First Name :	Peter
Last Name :	Broderick
Business/Organization :	Center for Biological Diversity
EIR/EIS Comment :	Yes
Attachments :	San Jose to Merced Project Section Draft EIR EIS.pdf (154 kb)

Stakeholder Comments/Issues :

To whom it may concern:

Please find attached comments by the Center for Biological Diversity Re Request for Extension of Comment Period & Request to Post Technical Report Documents.

Please do not hesitate to contact me with any questions.

Peter J. Broderick

Staff Attorney
Urban Wildlands Program
Center for Biological Diversity
(503) 283-5474 x421



CENTER for BIOLOGICAL DIVERSITY

Because life is good.

May 4, 2020

Sent via email

Attn: San Jose to Merced Project Section: Draft EIR/EIS
100 Paseo de San Antonio, Suite 300
San Jose, CA 95113
san_jose_merced@hsr.ca.gov

Re: San Jose to Merced Project Section Draft EIR/EIS – Request for Extension of Comment Period & Request to Post Technical Report Documents

Dear Sir or Madam:

These comments are submitted on behalf of the Center for Biological Diversity (the “Center”) regarding the San Jose to Merced Project Section Project (“Project”). The Center has reviewed the Notice of Availability and Notice of Public Hearing (“NOA”) associated with the Project published by the California High-Speed Rail Authority (“Authority”). The Center intends to review and provide comments on the Draft EIR/EIS, but its ability to do so is compromised by (1) the short comment period, and (2) the Authority’s failure to provide adequate public access to the critical technical appendices to the Draft EIR/EIS. Accordingly, the Center urges the Authority to extend the public comment period by an additional 45 days and post electronic copies of the Technical Reports associated with the Draft EIR/EIS on its website along with the Draft EIR/EIS.

The Center is a non-profit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has over 1.7 million members and online activists throughout California and the United States. The Center has worked for many years to protect imperiled plants and wildlife, open space, air and water quality, and overall quality of life for people in the region in which the Project is located.

I. REQUEST FOR EXTENSION OF COMMENT PERIOD

The NOP states that the period for public comment on the Draft EIR/EIS is a mere 45 days—the bare minimum required under CEQA Guidelines¹ § 15105(a). This is not enough time for a thorough review of the Draft EIR/EIS and related documents. The Draft EIR/EIS alone is several hundred pages (and the Appendices are an additional several thousand pages).

¹ 14 Ca. Code Regs. § 15000 et seq.

1241-31

1241-32

Submission 1241 (Peter Broderick, Center for Biological Diversity, May 5, 2020) - Continued

1241-33

Additionally, the Draft EIR/EIS must be considered in conjunction with the previous Program EIR/EIS Documents for the Statewide High-Speed Rail System (Tier 1). A mere 45 days simply does not provide enough time for the public to review and provide cogent, useful, and thorough comments on the Project and associated environmental review to the Authority. Further slowing public review is the fact that the Authority has failed to provide the public with adequate access to copies of the numerous Technical Documents that accompany the Draft EIR/EIS (see Section II, *infra*). Members of the public cannot complete their review of the Draft EIR/EIS without access to these critical documents.

Given the above, the Center respectfully requests that the Authority extend the comment period for an additional 45 days to ensure an adequate opportunity for public review.

II. REQUEST TO POST TECHNICAL REPORT DOCUMENTS

1241-34

In addition to the Draft EIR/EIS and Appendices, the Authority’s website for the project lists—but does not provide hyperlinks to—numerous documents categorized as “Technical Documents.” These documents provide critical data and are essential for adequate public review and understanding of the Draft EIR/EIS. For example, the Biological and Aquatic Resources section (section 3.7) of the Draft EIR/EIS alone references the Biological and Aquatic Resources Technical Report over thirty times, and states that the report provides “details on biological and aquatic resources and serve[s] as [a] source[] for this analysis.” (Draft EIR/EIS at p. 3.7-1.)

Yet the Authority has inexplicably failed to provide hyperlinks to electronic copies of the Technical Documents in the same manner it has for the Draft EIR/EIS and Appendices. Although the documents are allegedly available for in-person viewing at a handful of sites in the vicinity of the Project, this does not provide an adequate opportunity for public access, even in normal times. And, as the Authority is aware, these are not normal times. Due to the worldwide COVID-19 virus pandemic, on March 19, 2020, the Governor’s office issued an Executive Order N-33-20 “order[ing] all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors.” Additionally, California Counties, including some where the Project is located, have issued their own mandatory public health advisories that are in numerous respects stricter than the statewide order.

1241-35

Even if it were legally permissible for members of the public to make in-person visits to the locations where the Authority advertises the availability of electronic copies of the Technical Documents, public access is still not assured. As the Authority’s own website acknowledges, “offices may have reduced open days/hours, as required by coronavirus public health and safety directives.”² Furthermore, members of the public with an interest in accessing these documents may be elderly, suffer from underlying health conditions, or experience other factors that place them at higher risk of contracting COVID-19. Leaving their homes to access public documents in-person may pose unacceptable health risks to these people. The Authority’s decision to withhold the Technical Documents from the Project website means, in effect, that the most vulnerable members of the public may be unfairly precluded from accessing or reviewing them.

² https://hsr.ca.gov/programs/environmental/eis_eir/draft_san_jose_merced.aspx

May 4, 2020
Page 2

1241-36

The Authority has offered no explanation—and indeed we can imagine no reasonable explanation—for why hyperlinked copies of these documents have not been made available alongside the Draft EIR/EIS on the Authority’s website for the Project. The Authority’s website acknowledges that electronic copies of these documents already exist. Without access to these critical documents which provide the underlying studies, data, and information upon which the Draft EIR/EIS’s conclusions are based, members of the public are prejudicially inhibited from conducting the full review of the Authority’s CEQA analysis to which they are entitled. The Center requests that the Authority post all of the Technical Report documents on the Authority’s website for the Project.

III. CONCLUSION

Thank you for your consideration of these requests. The Center looks forward to submitting comments on the Draft EIR/EIS after the Authority provides the public with the necessary documents and adequate time for such review.

Please add the Center to your notice list for all future updates to the Project and do not hesitate to contact the Center with any questions at the number or email listed below.

Sincerely,



Peter J. Broderick,
Staff Attorney

Tiffany Yap, DEnv/PhD
Senior Scientist

Center for Biological Diversity
1212 Broadway, Suite #800
Oakland, CA 94612
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May 4, 2020
Page 3

Response to Submission 1241 (Peter Broderick, Center for Biological Diversity, May 5, 2020)

1241-31

Refer to Standard Response SJM-Response-OUT-1: Public Outreach.

1241-32

Refer to Standard Response SJM-Response-OUT-1: Public Outreach.

1241-33

Refer to Standard Response SJM-Response-OUT-1: Public Outreach.

1241-34

Refer to Standard Response SJM-Response-OUT-1: Public Outreach.

1241-35

Refer to Standard Response SJM-Response-OUT-1: Public Outreach.

1241-36

Refer to Standard Response SJM-Response-OUT-1: Public Outreach.

Submission 1724 (Tiffany Yap, Center for Biological Diversity - Oakland, June 23, 2020)



CENTER for BIOLOGICAL DIVERSITY

Because life is good.

June 23, 2020

Sent via email

Attn: Draft San Jose to Merced Project Section EIR/EIS
100 Paseo de San Antonio
Suite 300
San Jose, CA 95113
san.jose_merced@hst.ca.gov

Re: Comments on Draft Environmental Impact Report/Environmental Impact Statement for the San Jose to Merced Project Section of the California High-Speed Rail Project.

To whom it may concern:

These comments are submitted on behalf of the Center for Biological Diversity's (the "Center") members, staff and supporters, regarding the Draft Environmental Impact Report/Environmental Impact Statement (DEIR/S) for the Bakersfield to Palmdale Project Section of the California High-Speed Rail Project (Project) proposed by the High Speed Rail Authority (the "HSRA"). The Center has reviewed the DEIR/S and provides comments on numerous issues. In particular, the DEIR/S fails to adequately describe, assess, and mitigate impacts to wildlife movement and habitat connectivity, thereby imposing significant impacts to wildlife connectivity, many special-status species that occur or have the potential to occur in the area, designated critical habitat, and the innumerable unprotected plant and animal species that make the region's ecosystems rich with biodiversity. While the Center sees many benefits to high-speed rail transportation, high-speed rail must be planned to adequately avoid and minimize impacts to sensitive species, habitats, and connectivity between and among heterogeneous habitats. If impacts remain from the Project, robust mitigation must be required in order to offset impacts as much as possible and preserve California's incredible biodiversity. We urge the HSRA to address these issues in a revised and recirculated DEIR/S.

The Center is a non-profit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has over 1.7 million members and online activists throughout California and the United States. The Center and its members have worked for many years to protect imperiled plants and wildlife, open space, air and water quality, and overall quality of life for people in the region and throughout California.

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BiologicalDiversity.org

1724-2946

I. The DEIR/S fails to adequately describe, assess, and mitigate impacts to wildlife movement and connectivity.

Transportation infrastructure, like roads and rail, create barriers that lead to habitat loss and fragmentation, which harms native wildlife, plants, and people. As barriers to wildlife movement, poorly-planned development and transportation infrastructure can affect an animal's behavior, movement patterns, reproductive success, and physiological state, which can lead to significant impacts on individual wildlife, populations, communities, landscapes, and ecosystem function (Mitsch and Wilson 1996; Trombulak and Frissell 2000; van der Ree et al. 2011; Haddad et al. 2015; Marsh and Jaeger 2015; Gray 2017; Ceia-Hasse et al. 2018; Dornas et al. 2019; Shilling 2020). For example, habitat fragmentation from transportation infrastructure and development has been shown to cause mortalities and harmful genetic isolation in mountain lions (Ernest et al. 2014; Riley et al. 2014; Vickers et al. 2015), increase local extinction risk in amphibians and reptiles (Cushman 2006; Brehme et al. 2018; Dornas et al. 2019), cause high levels of avoidance behavior and mortality in birds and insects (Benítez-López et al. 2010; Loss et al. 2014; Kantola et al. 2019), and alter pollinator behavior and degrade habitats (Trombulak and Frissell 2000; Goverde et al. 2002; Aguilar et al. 2008). Habitat fragmentation also severely impacts plant communities. An 18-year study found that reconnected landscapes had nearly 14% more plant species compared to fragmented habitats, and that number is likely to continue to rise as time passes (Damschen et al. 2019). The authors conclude that efforts to preserve and enhance connectivity will pay off over the long-term (Damschen et al. 2019). In addition, connectivity between high quality habitat areas in heterogeneous landscapes is important to allow for range shifts and species migrations as climate changes (Heller and Zavaleta 2009; Cushman et al. 2013; Kroby et al. 2018). Loss of wildlife connectivity decreases biodiversity and degrades ecosystems. Therefore, the DEIR/S should provide more in-depth analyses regarding potential impacts to wildlife movement and habitat connectivity.

1724-2947

The Monterey Corridor segment slices through Coyote Valley, an area that has been identified by numerous wildlife connectivity researchers as a critical wildlife linkage between the Santa Cruz Mountains and the Diablo Range (CDFW 2010; Penrod et al. 2013; Diamond and Snyder 2016; Santa Clara Valley Open Space Authority and Conservation Biology Institute 2017). Local NGO's, including Peninsula Open Space Trust (POST) and Santa Clara Valley Open Space, have identified Coyote Valley as a "last chance landscape," as it is the last remaining intact valley floor connection between the Santa Cruz Mountains and the Diablo Range (Thurlow 2019), and in November 2019 these organizations entered into agreements with the San Jose City Council to acquire 937 acres at the northern end of Coyote Valley to protect and enhance the linkage (Moore 2019). Placing the rail through Coyote Valley without adequate mitigation measures would undermine these conservation efforts and further restrict wildlife movement and healthy gene flow. Similarly, the Morgan Hill and Gilroy segment also cuts through a critical, albeit tenuous, linkage between the Santa Cruz Mountains and the Diablo Range (Penrod et al. 2013). And the Pacheco Pass and San Joaquin Valley segments also cut through important linkages as well as designated critical habitat for California red-legged frogs, California tiger salamanders, and steelhead. While it is assumed that underground tunnels may have less direct impacts on movement for numerous terrestrial, aerial, and aquatic species, there is insufficient scientific evidence to rely on this assumption, as impacts to groundwater could have significant impacts to the terrestrial and aquatic habitats that numerous species rely on, and

1724-2945

Submission 1724 (Tiffany Yap, Center for Biological Diversity - Oakland, June 23, 2020) - Continued

1724-2947

the degraded habitats could, in effect, fragment these landscapes for numerous species, particular those that are less mobile or require specific water needs. In addition, segments of the alignment go through areas that have been identified by Audubon as Important Bird Areas (IBAs): the Upper Pajaro River and the Grasslands Ecological Area (GEA). The GEA is the largest remaining intact freshwater wetland complex in California renowned for the hundreds of thousands of wintering waterbirds (with peaks of one million) there every year. The GEA has been designated as a Western Hemisphere Shorebird Reserve Site and has also been identified as a Wetland of International Importance under the Ramsar Convention (Ramsar Convention 2005). Despite the high value landscape for biodiversity and wildlife connectivity throughout the Project area, the DEIR/S fails to adequately describe, assess, and mitigate impacts to existing conditions for wildlife movement and habitat connectivity.

1724-2948

A. The DEIR/S fails to adequately describe and assess existing conditions and potential impacts to wildlife connectivity in the Project area and ignores the best available science.

Although the DEIR/S acknowledges that the region has a high level of wildlife connectivity throughout the entire proposed Project, stating that CDFW and multiple local stakeholders have identified wildlife corridors and linkages “particularly important to wildlife movement and habitat connectivity at the regional and state scale” (DEIR/S at 3.7-48), the DEIR/S fails to adequately describe the Project area’s importance to wildlife connectivity. The region’s heterogeneous habitats that include wetlands, streams, grasslands, chaparral, scrublands, and woodlands are important for wildlife connectivity and migration at the local, regional, and continental scale. Local connectivity that links aquatic and terrestrial habitats allows various sensitive species to persist, including the California red-legged frog (*Rana draytonii*), California tiger salamander (*Ambystoma californiense*) and western pond turtles (*Actinemys marmorata*). At a regional scale, medium- and large-sized mammals, such as mountain lions (*Puma concolor*), bobcats (*Lynx rufus*), American badgers (*Taxidea taxus*), San Joaquin kit foxes (*Vulpes macrotis mutica*), ring-tailed cats (*Bassariscus astutus*), and mule deer (*Odocoileus hemionus*), require large patches of heterogeneous habitat to forage, seek shelter/refuge, and find mates. These species are all known to occur in the Project area. And at a global scale, portions of the proposed Project are within areas that have been identified by Audubon as IBAs for resident and migratory birds within the Pacific Flyway, a north-south migratory corridor that extends from Alaska to Patagonia. The region is a hub for local and global biodiversity; wildlife movement and habitat connectivity must be maintained to preserve the area’s rich diversity. Such information should be provided in the main text of the DEIR/S, not buried in a supplemental technical report and appendices that are not readily available on the website.

1724-2949

The analyses regarding wildlife movement and habitat connectivity impacts due to the proposed Project is grossly insufficient. The Preferred Alternative (Alternative 4) would impose over 58 miles of rail that is at-grade, trenched, or on an embankment; such infrastructure would sever identified east-west linkages between the Santa Cruz Mountains and Diablo range that connect over 1.13 million acres of habitat as well as identified north-south connectivity in the San Joaquin Valley. In addition, the DEIR/S fails to adequately depict the GEA and therefore fails to adequately assess impacts to the area and its importance to wildlife connectivity, special-

1724-2949

status species, and overall biodiversity. An important distinction to be made is that, while the DEIR/S refers to the GEA as an IBA (a designation by Audubon), the GEA has been designated as a Wetland of International Importance under the Ramsar Convention, and it has been described by the Western Hemisphere Shorebird Reserve Network (WHSRN) as “one of the most important shorebird habitats in the western United States” as “[n]early 50% of all the shorebirds in California’s Central Valley are found in the Grasslands during mid-April, the peak of spring migration” (WHSRN 2019). As the US Fish and Wildlife Service (USFWS), Central Valley Joint Venture Management Board, and Grassland Water District have pointed out, the DEIR/S uses the incorrect boundary for the GEA in their analyses by using Audubon’s IBA boundary instead of the boundary identified by the Ramsar Convention (Exhibit A; Ramsar Convention 2005). By using the IBA boundary, the DEIR/S excludes some of the southern portions of the GEA in its analyses. The omission of the proper boundary seems deliberate, as the HSRA had previously used the correct boundary during prior assessments of potential environmental impacts to the area due to the proposed Project. By omitting the appropriate boundary for the GEA, the DEIR/S fails to adequately assess impacts to the habitat and the numerous migratory and resident birds that rely on this habitat, including tri-colored blackbirds and sandhill cranes. The impacts to the GEA, the species that its habitat supports, and the global connectivity it provides for numerous migratory birds would be much greater. Thus, the DEIR/S fails to adequately describe and assess impacts to wildlife movement and habitat connectivity throughout multiple portions of the Project area (see *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 729 [EIR fails as informational document where it did not accurately identify and describe wetland and wildlife refuge areas]).

1724-2950

The DEIR/S fails to consider functional connectivity in the Project design and ignores the best available science. Effective, functional corridors are continuous (not fragmented by roads or other anthropogenic features), wide enough to overcome edge effects, dominated by native vegetation, and have equal or higher habitat quality than core habitat patches (Brooker et al 1991, Hilty et al 2006, Tilman et al 1997, Bennett 1991, 1994, Forman 1995). The HSRA seems to rationalize choosing Alternative 4 by stating that it is an improvement from Alternative 2, the worst alternative for wildlife movement and habitat connectivity, simply because it has fencing breaks to allow roads and car traffic to cross. The DEIR/S states that “Alternative 4 would also be at grade through Coyote Valley; however, breaks in the fencing to allow traffic to cross the alignment would also maintain wildlife permeability of existing railroad grade crossings” (DEIR/S at 3.7-112), suggesting that roads built for car traffic that cross the rail between fenced areas would not be a significant barrier to movement. Breaks in fencing built for roads to allow cars to pass through hardly constitute as providing functional connectivity or sufficient wildlife permeability. Most species would avoid the road, deterred by speeding cars, lights, noise, degraded habitat, etc. In fact, negative edge effects from human activity, including traffic, lighting, noise, domestic pets, pollutants, invasive weeds, and increased fire frequency, have been found to be biologically significant up to 300 meters (~1000 feet) away from development in terrestrial systems (Environmental Law Institute 2003). And the species that don’t avoid the roads would have to find ways to avoid being struck by a vehicle, which is particularly difficult for lower mobility species that occur in the Project area and require connectivity for long-term survival, like California red-legged frogs, California tiger salamanders, and western pond turtles, among other species. And although some existing linkages in the Project area may already be constrained, like the Coyote Valley Landscape Linkage, linear infrastructure that consists of 58 miles of 10-foot high and 1-foot deep fencing, even with breaks in the fencing for cars to pass

Submission 1724 (Tiffany Yap, Center for Biological Diversity - Oakland, June 23, 2020) - Continued

1724-2950

through, will further degrade the linkage and have significant impacts on wildlife connectivity, special-status species that occur or potentially occur the area, and regional biodiversity. The barrier impact between Alternatives 2 and 4 are essentially identical. The DEIR/S ignores the best available science and fails to adequately assess the Project’s impacts to wildlife movement and habitat connectivity. Alternative 1, in which the high speed rail would be built on viaducts over identified important linkages, like the Coyote Valley Landscape Linkage, is the best alternative to minimize impacts to wildlife connectivity.

1724-2951

The Wildlife Corridor Assessment report goes on to say “portions on viaduct allow wildlife passage” and “Portions of the project in tunnels would not affect movement” (Wildlife Corridor Assessment Report at 6-8) without providing any substantive explanation regarding such conclusions. Although viaducts and tunnels may impact terrestrial movement less than rails built at-grade, trenched, or on an embankment by not being a physical impenetrable barrier, these statements fail to consider impacts of noise, light, and vibrations of rail operation that may deter animals from moving underneath (or over) viaducts or over tunnels. In addition, the impacts of tunnels to the hydrology of the region is not well understood, specifically how tunnels impact groundwater, though both temporary and permanent significant impacts to the hydrology are expected. Such changes in hydrology can have serious consequences on aquatic resources and associated upland habitats that many species depend on and/or move between for various life stages; therefore, converting or degrading aquatic and associated upland habitat by installing tunnels could significantly impact the movement of water-dependent species like the California red-legged frog, California tiger salamander, and steelhead (and many other species), particularly with most of the tunneling occurring through designated critical habitat for these species between San Felipe and the I-5. Stating that the viaducts “allow wildlife passage” and that the tunnels “would not affect movement” lacks adequate detail and is a conjectured, conclusory statement not founded in any science. The DEIR/S fails to adequately assess impacts to wildlife movement and habitat connectivity. In addition, the DEIR/S fails to provide and assess an alternative that would have more aerial sections through Pacheco Pass and the San Joaquin Valley; all four alternatives are basically identical for the alignment east of San Felipe Road, with the majority being tunneled or on an embankment.

1724-2952

B. The DEIR/S fails to use the best available science and adequately mitigate impacts to wildlife connectivity to less than significant.

The DEIR/S erroneously concludes that impacts to wildlife movement and habitat connectivity would be mitigated to less than significant. Mitigation measures BIO-MM#76 through BIO-MM#83 are insufficient to mitigate impacts to the diverse suite of species and their movement needs being impacted by the proposed Project. The Preferred Alternative would create over 58 miles of movement barriers at-grade, trenched, or on an embankment through important natural linkage areas that are already constrained. Constructing the rail at-grade or in an embankment will fortify existing barriers without adequate, well-thought out mitigation. For example, BIO-MM#77 states that “To the extent feasible, the HSRA would design all wildlife crossings created specifically for terrestrial species consistent with the guidelines and recommendations in the WCA (HSRA 2020a: Appendix C)” (DEIR/S at 3.7-168). Designing wildlife crossings is not enough; the HSRA needs to ensure that they will actually construct/implement the wildlife crossings and associated crossing infrastructure (e.g.,

1724-2952

exclusionary fencing appropriate for target species, berms to buffer crossings from sound and light generated by rail operations and maintenance), and such crossings and crossing infrastructure should be designed and built in consultation with local and regional experts, such as biologists at POST, Pathways for Wildlife, and Santa Clara Valley Habitat Agency. And to improve the effectiveness of any wildlife crossings, they should be planned in areas identified as crossing hotspots with protected habitat on both sides of the rail infrastructure. Thus, the DEIR/S should include acquiring unprotected lands on both sides of the rail where a wildlife crossing would be implemented, in consultation with local conservation organizations and stakeholders, and preserving and managing those lands in perpetuity to ensure that the wildlife crossings and associated infrastructure remain functional over time. Given that impacts of noise, light, and vibration can affect the use of wildlife crossings, even if crossings are designed with adequate parameters and fencing, the crossings should be built with wildlife responsive design; crossings should have sound and light berms to minimize light and sound at the entrance/exit as well as on/in/under the crossings structures, and they should be well-maintained on both sides of the crossing for animals to use them (Shilling 2020; Vickers 2020). And for some areas, where wildlife movement is already constrained, wildlife responsive crossing infrastructure should be implemented at existing barriers to facilitate functional connectivity. For example, for the culvert that would go under the rail and Monterey Road in Coyote Valley, wildlife exclusion fencing should be placed in a way that guides animals to the culvert entrance on both sides, which would mean that fencing should be placed along the west side of Monterey Road and the east side of the rail. The HSRA should also fund and implement long-term monitoring and adaptive management of the crossings and associated habitat. The high speed rail would be a novel feature on the landscape, and little is known of how it will affect California’s rich plant and animal diversity. Such attempts to mitigate impacts to connectivity should be monitored, progress reports should be made publicly available annually, and adaptive management strategies informed by the monitoring data and expert analyses should be implemented.

1724-2953

The DEIR/S provides insufficient details regarding where wildlife crossings would be constructed and which species the crossings would be targeting. More in-depth analyses that include on-the-ground movement studies of which species are moving in the area and their home range area, habitat use, and patterns of movement are needed to determine how to best implement such crossings. For example, smaller species with poor dispersal abilities, like the blunt-nosed leopard lizard or California tiger salamander, would require more frequent intervals of crossings compared to larger wide-ranging species, like mountain lions or tule elk, to increase their chances of finding a crossing. Gunson et al. (2016) recommend that crossing structures generally be spaced about 300m (~0.19mi) apart for small animals when transportation infrastructure bisects large expanses of continuous habitat, though they recognize that some amphibians may need more frequent crossings no more than 50m (~0.03mi) apart. And for many amphibian and reptile species, such as California red-legged frogs and western pond turtles, undercrossings should have grated tops so that the light and moisture inside the crossings are similar to that of the ambient environment. There are several published reports that, based on wildlife movement studies, identify prioritized movement barriers and provide recommendations to improve permeability and facilitate animal movement in Coyote Valley (e.g., Phillips et al. 2012; Diamond and Snyder 2016; Santa Clara County Wildlife Corridor Technical Working Group Coyote Valley Subcommittee 2019). Given that much of the proposed Project goes through wetland habitats, the HSRA should implement crossings that are spaced 50-300m apart

Submission 1724 (Tiffany Yap, Center for Biological Diversity - Oakland, June 23, 2020) - Continued

1724-2953

and that are designed specifically to accommodate target species. Yet BIO-MM#77 does not provide any information regarding where wildlife crossings would be implemented, how many crossings there will be, how they will be spaced out, which species will be targeted, or how the HSRA will determine whether the crossings are effective. Similarly, although the HSRA actually commits to creating dedicated wildlife crossings at the embankment in the west slope of Pacheco Pass with BIO-MM#78, crossings would be placed only every 0.3 mile, “as feasible” (DEIR/S at 3.7-169). And while the measure provides dimensions for four crossings at that segment of the rail, it is unclear what the length of the segment is (*i.e.*, is it more than 1.5 miles—and if so, why aren’t there more wildlife crossings planned?), if wildlife movement is known to occur where the crossings will be placed, or what the targeted species are for the crossings and if the design would be conducive to those species actually using the crossings.

1724-2954

The DEIR/S’s lack of sufficient wildlife crossings and protection of habitat on both sides of the crossings dismisses the need for corridor redundancy (*i.e.* the availability of alternative pathways for movement). Corridor redundancy is important in regional connectivity plans because it allows for improved functional connectivity and resilience. Compared to a single pathway, multiple connections between habitat patches increase the probability of movement across landscapes by a wider variety of species, and they provide more habitat for low-mobility species while still allowing for their dispersal (Merae et al., 2012; Olson & Burnett, 2008; Pinto & Keitt, 2008). In addition, corridor redundancy provides resilience to uncertainty, impacts of climate change, and extreme events, like flooding or wildfires, by providing alternate escape routes or refugia for animals seeking safety (Cushman et al., 2013; Merae et al., 2008; Merae et al., 2012; Olson & Burnett, 2008; Pinto & Keitt, 2008).

Corridor redundancy is critical when considering the impacts of climate change on wildlife movement and habitat connectivity. Climate change is increasing stress on species and ecosystems, causing changes in distribution, phenology, physiology, vital rates, genetics, ecosystem structure and processes, and increasing species extinction risk (Warren et al. 2011). A 2016 analysis found that climate-related local extinctions are already widespread and have occurred in hundreds of species, including almost half of the 976 species surveyed (Wiens 2016). A separate study estimated that nearly half of terrestrial non-flying threatened mammals and nearly one-quarter of threatened birds may have already been negatively impacted by climate change in at least part of their distribution (Pacifi et al. 2017). A 2016 meta-analysis reported that climate change is already impacting 82 percent of key ecological processes that form the foundation of healthy ecosystems and on which humans depend for basic needs (Scheffers et al. 2016). Genes are changing, species’ physiology and physical features such as body size are changing, species are moving to try to keep pace with suitable climate space, species are shifting their timing of breeding and migration, and entire ecosystems are under stress (Parmesan and Yohe 2003; Root et al. 2003; Parmesan 2006; Chen et al. 2011; Maclean and Wilson 2011; Warren et al. 2011; Cahill et al. 2012). Thus, the DEIR/S’s lack of adequate implementation of effective wildlife crossings that consider functional connectivity and corridor redundancy points to a failure to use the best available science and adequately assess and mitigate impacts to wildlife movement to less than significant.

1724-2955

Although wildlife crossing infrastructure (with suitable, protected habitat on both sides of the crossings) has been shown to reduce wildlife vehicle collisions and gradually increase the

1724-2955

level of wildlife permeability (Dodd et al. 2012; Sawyer et al. 2012; Kintsch et al. 2018), the most ecologically- and cost-effective way to minimize impacts to wildlife movement and habitat connectivity is through the preservation of existing natural linkages. Therefore, the HSRA should aim to avoid impacts to existing natural linkages known to be used by local and regional wildlife. The USFWS and other agencies, non-governmental conservation organizations, landowners, and Indigenous Tribes have advocated for many years to construct the alignment at Altamont Pass to avoid important and fragile habitats and culturally sensitive lands (*e.g.*, Exhibit A), and it is clear that the HSRA has dismissed and ignored their concerns. At a minimum, the segments of rail that slice through areas that have been identified as critical connectivity linkages, such as the segments that go through Coyote Valley, the Upper Pajaro River IBA, the GEA, and along the Pacheco Pass, should have more portions built on viaducts, particularly where wildlife movement is concentrated and known to occur. In addition, the DEIR/S should include implementing recommendations of more research to understand wildlife movement needs throughout the Project area and building/modifying wildlife crossing infrastructure at existing barriers (*e.g.*, along Monterey Road in Coyote Valley or along State Route 152) as additional mitigation measures to improve connectivity in and around the Project area. There are several published reports that analyze wildlife movement data and identify prioritized movement barriers and provide recommendations to improve permeability and facilitate animal movement in Coyote Valley (*e.g.*, Phillips et al. 2012; Diamond and Snyder 2016; Santa Clara County Wildlife Corridor Technical Working Group Coyote Valley Subcommittee 2019; Rottenborn et al. 2020); the HSRA should utilize these reports (and others) to inform their analyses and adequately mitigate impacts to wildlife movement and habitat connectivity in and adjacent to the entire Project area. The proposed Project consists of over 90 miles of linear infrastructure; improving connectivity at nearby existing barriers would help mitigate the Project’s impacts to wildlife movement and habitat connectivity.

1724-2956

BIO-MM#79 is grossly insufficient to mitigate impacts to wildlife connectivity due to the proposed Project and has little chance of providing functional connectivity between the Santa Cruz Mountains and Diablo Range. Stating that “the Authority would conserve or improve wildlife movement between the Santa Cruz Mountain and the Diablo Range wildlife linkage (Penrod et al. 2013) by conserving natural or agricultural lands that provide for wildlife movement, enhancing wildlife movement between the Santa Cruz Mountains and the Diablo Range, or both” to “address effects of permeability reduction caused by the construction of the MOWF [Maintenance of Way Facility]” (FEIR at 3.7-169) disregards the fact that they will be fortifying the movement barrier between the Santa Cruz and Diablo Range from San Jose to Gilroy, not just in the area where the MOWF is being proposed. In addition, the language is vague and unclear, stating that “Enhancement efforts may include enhancement of movement on lands protected by the Authority, or it may entail funding projects that would enhance movement on other protected lands, reduce or eliminate existing barriers to movement, or construct structures to improve wildlife movement” (FEIR/S at 3.7-169) without specifying or providing enough detail regarding how they would actually enhance movement or which movement barriers they would eliminate. Even if the HSRA were able to acquire lands within the tenuous linkage area the MOWF is in, the rail in that area would be on an embankment, imposing miles of barriers to wildlife movement with 10-foot tall fencing that goes one foot deep into the ground. More importantly, the alignment would be at grade or on an embankment from San Jose to Gilroy, severely degrading known and highlighted connectivity in Coyote Valley’s “last

Submission 1724 (Tiffany Yap, Center for Biological Diversity - Oakland, June 23, 2020) - Continued

1724-2956

chance landscape,” the last remaining intact valley floor connection between the Santa Cruz Mountains and the Diablo Range where connectivity should be prioritized. However, if portions of the rail in Coyote Valley and in the area of the MOWF were aerial, then prioritizing the acquisition and enhancement of lands in perpetuity in both of those linkages could be more effective, particularly in Coyote Valley. The 1:1 mitigation ratio (conserved:impacted) is sorely insufficient; conservation easements to mitigate impacts to connectivity (between the Santa Cruz Mountains and Diablo Range as well as elsewhere throughout the entire Project area) should be a minimum of 3:1 and should include impacted areas along the alignment, not just the area of the MOWF. Such acquisition should require funding for enhancement efforts, monitoring, and adaptive management strategies with specified success criteria. And any land acquisitions for the purposes of mitigating wildlife connectivity should be conducted in consultation with local and regional connectivity experts. Again, the DEIR/S fails to adequately assess and mitigate impacts to wildlife movement and habitat connectivity to less than significant.

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1724-2958

The HSRA fails to adequately describe, assess, and mitigate impacts to wildlife movement due to noise, light, and vibration from Project construction and operation to less than significant. The Project’s placement will subject the surrounding open space to development edge effects and will likely impact key, wide-ranging predators, such as mountain lions and bobcats (Crooks 2002; Riley et al. 2006; Delaney et al. 2010; Lee et al. 2012; Smith et al. 2015; Vickers et al. 2015; Smith et al. 2017; Wang et al. 2017), as well as smaller species with poor dispersal abilities, such as song birds, small mammals, and herpetofauna (Cushman 2006; Slabbekoom and Ripseester 2008; Benítez-López et al. 2010; Kociolek et al. 2011). Negative edge effects from human activity, traffic, lighting, noise, domestic pets, pollutants, invasive weeds, and increased fire frequency have been found to be biologically significant up to 300 meters (~1000 feet) away from anthropogenic features in terrestrial systems (Environmental Law Institute 2003). For instance, field observations and controlled laboratory experiments have shown that traffic noise can significantly degrade habitat value for migrating songbirds (Ware et al. 2015). Subjects exposed to 55 and 61 dBA (simulated traffic noise) exhibited decreased feeding behavior and duration, as well as increased vigilance behavior (Ware et al. 2015). Such behavioral shifts increase the risk of starvation, thus decreasing survival rates. A recent study also highlighted the detrimental impacts of siting development near areas protected for wildlife. The study noted that “Anthropogenic noise 3 and 10 dB above natural sound levels . . . has documented effects on wildlife species richness, abundance, reproductive success, behavior, and physiology” (Buxton et al. 2017). The study further noted that “there is evidence of impacts across a wide range of species [] regardless of hearing sensitivity, including direct effects on invertebrates that lack ears and indirect effects on plants and entire ecological communities (e.g., reduced seedling recruitment due to altered behavior of seed distributors)” (Buxton et al. 2017). Moreover, human transportation networks and development resulted in high noise exceedances in protected areas (Buxton et al. 2017). In addition, preliminary results from studies underway by researchers at UC Davis and University of Southern California, as well as those by other researchers, suggest that the light, noise, and other aspects of highways can have negative impacts on wildlife numbers and diversity near the highways (Shilling 2020; Vickers 2020). The researchers found a significant difference between species richness and species type (mammals), with lower richness and fewer species at crossing structures compared to background areas 1 km away from the roads (Shilling 2020). They also found that as traffic noises surpassed 60 dBC, the number of visits by small to large mammals decreased and most of the species in their study

1724-2958

avoid traffic noise (Shilling 2020). It is clear that different species have variable sensitivities to noise and light associated with development and transportation infrastructure like roads and rail; this can lead to changes in species distributions along noisy linear infrastructure like the proposed Project, which can have ecosystem-level impacts (e.g., Suraci et al. 2019). Sound/light barriers, including berms and/or enclosures, should be implemented at all wildlife crossings to encourage wildlife to utilize the crossings. Sound and lighting should also be minimized throughout the entire proposed Project (i.e., not just near IBAs when feasible), including at other surface, elevated, and underground portions, particularly where the Project goes through natural habitats. In addition, the DEIR/S erroneously concludes that no mitigation is required for impacts to wildlife and wildlife movement due to vibrations (DEIR/S at 3.7-117), which is a conjectured conclusory statement not based on any science. The DEIR/S fails to adequately describe, assess, and mitigate impacts of edge effects (including noise, lighting, and vibration) to wildlife movement and habitat connectivity. Project impacts on habitat connectivity and wildlife movement would not be mitigated to less than significant.

1724-2959

The DEIR/S’s mitigation measures to minimize noise and visual disturbance are grossly insufficient. The DEIR/S estimates noise from rail operation would range from 88 to 100 dBA (DEIR/S Biological and Aquatic Resources Technical Report Appendix C Wildlife Corridor Assessment Report at 6-33, Table 6.2) and noise from construction would range from 82 to 94 Total 8-Hour L_{eq} (dBA) at 50 feet (DEIR/S Noise and Vibration Technical Report at 5-18 Table 5-4). According to the Wildlife Corridor Assessment Report, “The effects of operations and maintenance activities on terrestrial species were primarily evaluated qualitatively” (DEIR/S Biological and Aquatic Resources Technical Report Appendix C Wildlife Corridor Assessment Report at 4-22), which is vague and insufficient. And although there is some quantitative analysis for noise impacts on birds, it is inadequate. With BIO-MM#80, the HSRA would only implement noise and visual barriers “if feasible” in limited locations, in particular, at the Upper Pajaro River IBA and the GEA. If a noise level of 77 dBA or less is demonstrated through a quantitative model, the HSRA will do nothing more to mitigate impacts. This is grossly insufficient and not founded on the best available science. The threshold of 77 dBA far exceeds observed impacts of noise on numerous terrestrial and aerial species (see discussion above) and does not take cumulative noise impacts into consideration. Noise impacts could be greater in areas where there is noise from the rail and other human activities, such as highway traffic noise. In addition, mitigation success criteria should be measured in the field to determine what animals are actually being exposed to, not through a model. Noise, light, and vibration impacts should be minimized to well below 77 dBA with berms, sound walls, vegetated berms, vegetated walls, and/or enclosures throughout the Project area, especially where it goes through natural areas, and not just near the Upper Pajaro River IBA and the GEA. In addition, this insufficient mitigation measure would not apply to areas of the GEA that were omitted from the analyses due to the DEIR/S’s use of the Audubon boundary instead of the Ramsar Convention boundary. The DEIR/S fails to adequately assess and mitigate impacts to wildlife connectivity.

1724-2960

The DEIR/S goes on to further tout BIO-MM#58 to mitigate noise and visual impacts, but this insufficient measure only applies to birds in the Upper Pajaro River IBA and the GEA and has dismally low mitigation ratios based on noise level exceedances that do not incorporate the best available science. Providing compensatory mitigation for impacts to waterfowl, shorebird, and sandhill crane habitat at a 1:1 ratio for habitat where residual noise is 93 dBA or

Submission 1724 (Tiffany Yap, Center for Biological Diversity - Oakland, June 23, 2020) - Continued

1724-2960

greater and a dismal 0.5:1 for habitat with residual noise of 77 dBA or greater will not mitigate noise or visual impacts due to the proposed Project to less than significant. These insufficient mitigation measures only target birds in the Upper Pajaro River IBA and the GEA; the DEIR/S essentially provides no mitigation measures to minimize impacts of noise, light, and vibration on terrestrial species, movement, or habitat connectivity throughout most of the Project area even though essentially all wildlife in the area will be impacted either directly or indirectly, as these noise and light impacts in combination with the physical barriers of the proposed Project will impact wildlife movement, species distributions, and overall ecosystem function.

1724-2961

BIO-MM#58 is also vague and improperly defers mitigation. The FEIR/S vaguely states that “Enhancement activities could include improved water management (to increase food supplies); improvement or replacement of water management infrastructure; vegetation control and management; contouring to increase topographic heterogeneity (to increase habitat diversity); or levee repair, maintenance, and replacement” (FEIR/S at 3.7-161) without explaining what those enhancement activities would be, how or where they would be implemented, who would implement them, or how implementation would be funded. Such measures are unenforceable and amount to improperly deferred mitigation (see *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 670 [EIR inadequate where the success or failure of mitigation efforts “may largely depend upon management plans that have not yet been formulated, and have not been subject to analysis and review within the EIR”]). In the limited circumstances in which deferred mitigation is appropriate, the agency must meet all of the following elements: (1) practical considerations prevented the formulation of mitigation measures during the planning process; (2) the agency committed itself to developing mitigation measures in the future; (3) the agency adopted specific performance criteria prior to project approval; and (4) the EIR lists the mitigation measures to be considered, analyzed, and possibly incorporated into the mitigation plan. (See *POET, LLC v. State Air Resources Bd.* (2013) 218 Cal.App.4th 681, 736-37 [review denied].) Here, the DEIR/S fails to meet these criteria in the discussion to mitigate impacts of the Project’s noise, light, and vibration on wildlife connectivity. The lack of adequate details regarding mitigation measures being readily provided for wildlife connectivity, special-status species, migratory birds, habitat, and vegetation communities does not allow the public and decisionmakers to evaluate the mitigation measures being taken; therefore, the DEIR/S violates CEQA. To reiterate the comments of USFWS Refuge Manager Kim Forrest:

“Your analysis is vague, non-specific, high-level, and impractical; with no clear, realistic, and guaranteed plan for mitigating damages, such as acquisition of land and water and restoring habitat. There is no accountability. There is no description of how your plans dovetail with agency requirements. There is no funding for advance mitigation nor a commitment of future funding. “Deferred mitigation” is no real commitment, and [the DEIR/S] doesn’t concretely capture fixing the damages that will be done by this project. The mitigation needed to truly compensate for the damage done by this project may very well be so massive that it is undoable. You have kicked the mitigation issue down the road for 15 years.” (Exhibit A).

1724-2962

The HSRA should implement mitigation measures to reduce noise to at least less than 55 dBA by implementing adequate sound and light berms or walls (vegetated or unvegetated) and enclosures throughout the entire proposed Project, and especially at wildlife crossings and at sections that slice through natural habitat and important movement linkages (e.g., Coyote Valley). Compensatory mitigation ratios should be 3:1 for habitat important for foraging, shelter, or movement/migration (for birds as well as other special-status species, such as, but not limited to, mountain lions, California tiger salamanders, California red-legged frogs, and Bay checkerspot butterflies) with residual noise of 55 dBA or greater, and such mitigation should be implemented in consultation with local and regional conservation and connectivity experts, such as biologists at POST, Santa Clara Valley Habitat Agency, Pathways for Wildlife, and Midpeninsula Open Space District. The HSRA should also consult with local Indigenous tribes, like the Amah Mutsun Tribal Band, to identify lands with historical and cultural value as well as ecological value. For example, Sargent Ranch is adjacent to the Upper Pajaro River IBA and lies on the Amah Mutsun ancestral lands of Juristac, which has been identified as an important linkage area (CDFW 2010; Penrod et al. 2013) with numerous special-status species, including steelhead, California red-legged frogs, western pond turtles, California tiger salamanders, and mountain lions. Such lands are an ideal candidate for compensatory mitigation for the numerous impacts to wildlife connectivity and special-status species due to the proposed Project. In addition, funding should be appropriately allocated to 1) maintain crossing infrastructure, including the crossings themselves as well as exclusion fencing and light and sound barriers, 2) acquire and maintain in perpetuity habitat adjacent to the rail at crossing locations, 3) monitor the use of crossings and allow for adaptive management to improve the wildlife responsive design of the crossings, 4) monitor impacts to species populations along the rail. Ultimately, the DEIR/S fails to adequately assess potential impacts to special-status wildlife, wildlife movement, habitat connectivity, and overall biodiversity and ecosystem function due to the Project’s physical barriers as well as edge effects like noise, light, and vibration, and the DEIR/S fails to adequately mitigate these impacts to less than significant.

1724-2963

In summary, to better mitigate impacts to wildlife movement and wildlife connectivity, the HSRA should implement the following:

1. Elevate more rail segments, particularly in Coyote Valley, the GEA, the Upper Pajaro River IBA, and the Pacheco Pass to minimize impacts to special-status species, wildlife movement, habitat, and habitat connectivity.
2. Design and implement more wildlife responsive crossings and crossing infrastructure throughout the Project area spaced out as appropriate for target species. Infrastructure should include appropriate fencing and sound and light barriers. Such design and implementation should be done in consultation with local and regional wildlife connectivity experts.
3. Acquire, protect, and manage in perpetuity lands adjacent to rail on both sides at crossings, done in consultation with local and regional wildlife connectivity experts.
4. Build and/or modify wildlife crossing infrastructure at existing barriers to improve connectivity in and around the Project area. There are several published reports that analyze wildlife movement data and identify prioritized movement barriers and provide recommendations to improve permeability and facilitate animal movement in Coyote

1724-2964

1724-2965

1724-2966

Submission 1724 (Tiffany Yap, Center for Biological Diversity - Oakland, June 23, 2020) - Continued

1724-2966 Valley (e.g., Phillips et al. 2012; Diamond and Snyder 2016; Santa Clara County Wildlife Corridor Technical Working Group Coyote Valley Subcommittee 2019). Other reports identify remaining linkages that should be prioritized for preservation or connectivity enhancement (Penrod et al. 2013). The HSRA should utilize these reports (and others) to enhance wildlife movement and habitat connectivity in and adjacent to the Project area.

1724-2967 5. Fund and implement long-term monitoring and surveillance of crossings, specify success criteria, and apply adaptive management strategies informed by the monitoring data and expert analyses.

1724-2968 6. Compensatory mitigation ratios should be 3:1 for habitat important for foraging, shelter, or movement/migration (for birds as well as other special status species, such as, but not limited to, Sandhill cranes, mountain lions, California tiger salamanders, California red-legged frogs, Bay checkerspot butterflies, and steelhead) with residual noise of 55 dBA or greater, and such mitigation should be implemented in consultation with local and regional conservation and connectivity experts and local Indigenous tribes. For example, acquiring, managing, and protecting in perpetuity Sargent Ranch would be appropriate mitigation; it is adjacent to the Upper Pajaro River IBA, lies on the Amah Mutsun ancestral lands of Juristac, it has been identified as an important linkage area between the Santa Cruz Mountains, Gabilan Range, and potentially the Diablo Range (CDFW 2010; Penrod et al. 2013), and numerous special-status species have been observed there, including steelhead, California red-legged frogs, western pond turtles, California tiger salamanders, and mountain lions. Fund and implement long-term monitoring and surveillance of mitigation lands, specify success criteria, and apply adaptive management strategies informed by the monitoring data and expert analyses.

1724-2969 7. Compensatory mitigation ratios should be 5:1 in designated critical habitat, such as for California tiger salamander, California red-legged frog, and steelhead in the Pacheco Pass area. Fund and implement long-term monitoring and surveillance of mitigation lands, specify success criteria, and apply adaptive management strategies informed by the monitoring data and expert analyses.

1724-2970 8. Fund research to understand wildlife movement needs and improve connectivity throughout the Project area and the impacts of noise, light, vibrations, and changes to hydrology/groundwater due to the rail on species distributions and dynamics along the entirety of the Project.

1724-2971 **II. The DEIR/S fails to adequately describe, assess, and mitigate impacts to special-status species**

The DEIR/S fails to adequately describe, assess, and mitigate impacts to numerous special-status species. The DEIR/S does not even provide any information regarding which special-status species occur or have the potential to occur in the Project area and instead sends the reader to an appendix. There are more “non-special-status wildlife” than special-status wildlife named within the text of the DEIR/S, which is absurd. And while there is a table with

1724-2971 limited information provided in Appendix 3.7-A that is available on the website, the insufficient analyses of “listed species” are buried in appendices of the Biological and Aquatic Resources Technical Report (DEIR/S at 3.7-39); neither the technical report nor its appendices are readily available via a hyperlink on the website. Members of the public must request the technical report, after which they are emailed a hyperlink. Such documents provide “details on biological and aquatic resources and serve as sources” for the conclusions the DEIR/S presents (DEIR/S at 3.7-1) and therefore should be made readily available via a hyperlink on the website (See Exhibit B). In addition, the appendices were not all initially provided; after receiving the link to the technical report the Center requested missing appendices (Exhibit C), after which 21 missing documents were provided. This shows a lack of transparency and seems to discourage public engagement. It is unacceptable. Special-status species that occur or have the potential to occur in the Project area should be prioritized and provided in the main body of the DEIR/S, and any technical reports and appendices that inform analyses for the Project should be provided on the Project website.

1724-2972 The DEIR/S erroneously concludes that impacts to numerous special-status species of plants and animals will be mitigated to less than significant. The proposed Project consists of 90 miles of linear infrastructure that would remove, degrade, and fragment heterogeneous habitats that support much of California’s rich biodiversity; the limited mitigation measures provided in the DEIR/S would not adequately avoid or minimize impacts to less than significant. Below is a discussion of only a few examples of special-status species that require more analyses and greater mitigation measures. This is by no means an all-encompassing discussion and impacts to other special-status species likely require more thorough assessments and mitigation measures.

1724-2973 **A. The DEIR/S fails to adequately describe, assess, and mitigate impacts to mountain lions (*Puma concolor*)**

The DEIR/S fails to adequately describe, assess, and mitigate impacts to the Central Coastal and Southern California Evolutionarily Significant Unit (ESU) of mountain lions (*Puma concolor*), a candidate species under the California Endangered Species Act (CESA). Mountain lions are not mentioned as a special-status species in the DEIR/S. In fact, the DEIR/S incorrectly lists mountain lions as a non-special-status mammal (DEIR/S at 3.7-43), even though it was classified as a “specially protected mammal” in 1990 after voters passed Prop 117 and mountain lions in the Central Coast/Southern California ESU were granted candidacy status under CESA by the California Fish and Game Commission (CFGC) on April 16, 2020 (CFGC 2020), prior to the release of this DEIR/S. The Center, along with the Mountain Lion Foundation, submitted the petition to list Southern California and Central Coast mountain lions as threatened under CESA in June 2019, well before the release of this DEIR/S. And on February 12, 2020, the California Fish and Game Commission (CFGC) published the recommendation of the California Department of Fish and Wildlife (CDFW), stating that “the Department has determined there is sufficient scientific information available at this time to indicate the petitioned action may be warranted” (CDFW 2020). Such a recommendation clearly indicates that the best available science supports the advancement of mountain lions in the Project area to candidacy status under CESA. In addition, the CFGC has received thousands of letters from the public that support CESA protections for Central Coast/Southern California mountain lions. The HSRA has had multiple opportunities to include adequate analyses on imperiled mountain lions in the Project

Submission 1724 (Tiffany Yap, Center for Biological Diversity - Oakland, June 23, 2020) - Continued

1724-2973

area that are protected under CESA, and they should have addressed mountain lions accordingly in the DEIR/S. The DEIR/S should be revised and recirculated to adequately describe, assess, and mitigate impacts to these imperiled mountain lions.

1724-2974

There is ample scientific evidence that indicates mountain lion populations in the Project area are struggling to survive and that human activities and land use planning that does not integrate adequate habitat connectivity can have adverse impacts on mountain lions. Continued habitat loss and fragmentation has led to 10 genetically isolated populations within California. There are six identified mountain lion populations in the ESU, and several are facing an extinction vortex due to high levels of inbreeding, low genetic diversity, and high human-caused mortality rates from car strikes on roads, depredation kills, rodenticide poisoning, poaching, disease, and increased human-caused wildfires (Ernest et al. 2003; Ernest et al. 2014; Riley et al. 2014; Vickers et al. 2015; Benson et al. 2016; Gustafson et al. 2018; Benson et al. 2019).

The effective population sizes of the six populations within the ESU range from 4 to 56.6 (Gustafson et al. 2018; Benson et al. 2019). An effective population size of 50 is assumed to be sufficient to prevent inbreeding depression over five generations, while an effective population size of 500 is considered sufficient to retain evolutionary potential in perpetuity (Traill et al. 2010; Frankham et al. 2014). Five of the six populations are well below that minimum threshold of 50 and none have an effective population size anywhere near 500, which indicates that these populations are at serious risk of becoming extirpated. The population most relevant to the Project is the Central Coast North (CC-N) population, which includes lions in the Santa Cruz Mountains and Diablo Range. The CC-N population has an effective population size of 16.6 (Gustafson et al. 2018). Low genetic diversity and high human-caused mortalities are driving this population towards an extinction vortex similar to what the mountain lions in the Santa Monica and Santa Ana mountains are experiencing (Gustafson et al. 2018; Saremi et al. 2019). Scientists predict that the Santa Monica and Santa Ana populations are likely to become extinct within 50 years if gene flow with other mountain lion populations is not improved (Benson et al. 2016; Gustafson et al. 2018; Benson et al. 2019). This is detailed in the Center's petition to the California Fish and Game Commission to protect Southern California and Central Coast mountain lions under the California Endangered Species Act (Yap et al. 2019). Continued land use that further fragments mountain lion habitat in the CC-N region without adequately minimizing impacts to functional connectivity, like the proposed Project, will drive pumas in the area to extinction. Wildlife connectivity in this region is paramount for the survival of the CC-N mountain lions, yet the DEIR/S fails to disclose this information. Thus, the DEIR/S fails to adequately describe, assess, and mitigate impacts to these mountain lions.

1724-2975

The DEIR/S fails to adequately describe and assess existing conditions for mountain lions and wildlife connectivity in the Project area. The primary threat to the long-term survival of mountain lions in the Southern California/Central Coast ESU is genetic isolation due to lack of connectivity caused by continuous development in mountain lion habitat with little regard of their movement needs. Thus, the persistence of the six populations with the ESU relies heavily on being connected with mountain lions throughout the ESU. As currently proposed, Alternative 4 (the HSRA's Preferred Alternative) would completely bisect the CC-N mountain lion population with rail either at-grade, trenched, or on an embankment. The Monterey Corridor segment slices through Coyote Valley, an area that has been identified by numerous mountain

1724-2975

lion and wildlife connectivity researchers as a critical wildlife linkage between the Santa Cruz Mountains and the Diablo Range (CDFW 2010; Penrod et al. 2013; Diamond and Snyder 2016; Santa Clara Valley Open Space Authority and Conservation Biology Institute 2017). Local NGO's, including POST and Santa Clara Valley Open Space HSRA, have identified Coyote Valley as a "last chance landscape," as it is the last remaining intact valley floor connection between the Santa Cruz Mountains and the Diablo Range (Thurlowe 2019), and in November 2019 these organizations entered into agreements with the San Jose City Council to acquire 937 acres at the northern end of Coyote Valley to protect and enhance the linkage (Moore 2019). Placing the rail through Coyote Valley without adequate mitigation measures would undermine these conservation efforts and further isolate mountain lions in the Santa Cruz Mountains by restricting mountain lion movement and gene flow. Similarly, the Morgan Hill and Gilroy segment bisects another important linkage for mountain lions near the Upper Pajaro River IBA that would allow for east-west movement. Much like in Coyote Valley, constructing the rail at grade or on an embankment throughout most of this segment would further fragment an already tenuous linkage that is vital to the long-term survival of mountain lions in the CC-N population. The DEIR/S ignores the best available science and fails to adequately assess and mitigate impacts to mountain lions.

1724-2976

As discussed in Section I of this comment letter, the Project poses a significant barrier to wildlife movement and does not provide adequate mitigation to minimize impacts to wildlife connectivity to less than significant. Given that mountain lions are being driven towards extirpation in various parts of the state due to lack of connectivity, further fragmentation from the proposed Project without adequate mitigation will bring mountain lions in the Santa Cruz Mountains closer to extinction. The most ecologically- and cost-effective way to minimize impacts to wildlife movement and habitat connectivity is through the preservation of existing natural linkages; therefore, more of the rail should be elevated to avoid the most critical and tenuous linkages between the Santa Cruz Mountains and the Diablo Range, particularly in Coyote Valley and throughout the Upper Pajaro River IBA. In addition, more wildlife crossings (with appropriate fencing and suitable, protected habitat on both sides of the crossings) throughout the entire Project area and in the general region should be constructed. For example, the HSRA should build or upgrade crossings at existing barriers that local and regional connectivity experts have identified in Coyote Valley to facilitate animal movement (e.g., Phillips et al. 2012; Diamond and Snyder 2016; Santa Clara County Wildlife Corridor Technical Working Group Coyote Valley Subcommittee 2019). The HSRA should also construct a wildlife overpass over Highway 101 in the Aromas corridor just south of the proposed Project's Gilroy Station. According to Dr. Chris Wilmers, a wildlife biologist at UC Santa Cruz, the Aromas corridor is important for mountain lion movement between the Santa Cruz Mountains and the Gabilan Mountains because it has natural woody vegetation adjacent and leading to Highway 101 on both sides (Wilmers 2019). Given the significant impacts to movement for the Santa Cruz Mountains puma population and the documented mountain lion (and other wildlife) movement in the area, constructing a wildlife overcrossing at this location could serve as mitigation by improving functional connectivity between the Santa Cruz and Gabilan mountains. The crossing should include appropriate fencing, sound and light minimization, and protection and management in perpetuity of the vegetated areas on both sides of the crossing. As currently written, the DEIR/S fails to adequately mitigate impacts to mountain lions and connectivity to less than significant.

Submission 1724 (Tiffany Yap, Center for Biological Diversity - Oakland, June 23, 2020) - Continued

1724-2977

As mentioned in Section I, the DEIR also fails to adequately assess and minimize impacts from noise and lighting to connectivity, and therefore to mountain lions. There is evidence documenting the effects of human activity specifically on mountain lions. One study found that mountain lions are so fearful of humans and noise generated by humans that they will abandon the carcass of a deer and forgo the feeding opportunity just to avoid humans (Smith et al. 2017).¹ The study concluded that even “non-consumptive forms of human disturbance may alter the ecological role of large carnivores by affecting the link between these top predators and their prey” (Smith et al. 2017). In addition, mountain lions have been found to respond fearfully upon hearing human vocalizations, avoiding the area and moving more cautiously when hearing humans (Smith et al. 2017; Suraci et al. 2019). Other studies have demonstrated that mountain lion behavior is impacted when exposed to other evidence of human presence, such as lighting or vehicles/traffic (Wilmers et al. 2013; Smith et al. 2015; Wang et al. 2017). In addition, preliminary results from study by researchers at UC Davis and University of Southern California, as well as those by other researchers, suggest that the light, noise, and other aspects of highways can have negative impacts on wildlife numbers and diversity near the highways (Shilling 2020; Vickers 2020). The researchers found a significant difference between species richness and species type (mammals, including mountain lions), with lower richness and fewer species at crossing structures compared to background areas 1 km away from the roads (Shilling 2020). They also found that as traffic noises surpassed 60 dBC, the number of visits by small to large mammals decreased and most of the species in their study avoid traffic noise (Shilling 2020). It is clear that different species have variable sensitivities to noise and light associated with development and transportation infrastructure like roads and rail; this can lead to changes in species distributions along noisy linear infrastructure like the proposed Project, which can have ecosystem-level impacts (e.g., Suraci et al. 2019). Sound/light barriers, including berms and/or enclosures, should be implemented at all wildlife crossings to encourage wildlife to utilize the crossings. Sound and lighting should also be minimized throughout the entire proposed Project, including at other surface, elevated, and underground portions, particularly where the Project goes through natural habitats and/or identified linkages.

1724-2978

Mountain lions are a key indicator species of wildlife connectivity and healthy ecosystems. As the last remaining wide-ranging top predator in the region, the ability to move through large swaths of interconnected habitat is vital for genetic connectivity and their long-term survival. In addition, impacts to mountain lions in the region could have severe ecological consequences; loss of the ecosystem engineer could have ripple effects on other plant and animal species, potentially leading to a decrease in biodiversity and diminished overall ecosystem function. Many scavengers, including California condors, kit foxes, raptors, and numerous insects, would lose a reliable food source (Ruth and Elbroch 2014; Barry et al. 2019). Fish, birds, amphibians, reptiles, rare native plants, and butterflies would potentially diminish if this apex predator were lost (Ripple and Beschta 2006; Ripple and Beschta 2008; Ripple et al. 2014). Any transportation project that does not adequately address wildlife connectivity issues and integrate effective wildlife crossings and corridors based on the best available science could lead to the extirpation of mountain lion populations in the ESU and severe loss of biodiversity and

¹ See also Sean Greene, “How a fear of humans affects the lives of California’s mountain lions,” *Los Angeles Times* (June 27, 2017), available at <http://beta.latimes.com/science/sciencenow/la-sci-sn-pumas-human-noise-20170627-story.html>.

1724-2978

ecosystem function in the region. See further discussion in Section I of this comment letter regarding the DEIR/S’s failure to adequately describe, assess, and mitigate impacts to wildlife movement and connectivity to less than significant.

1724-2979

B. The DEIR/S fails to adequately describe, assess, and mitigate impacts to aquatic and semi-aquatic special-status species

The Project would include tunneling over 15 miles of areas rich in biological resource, many of which require adequate groundwater. Most, if not all, of the tunneled areas would be in designated critical habitat for California tiger salamander, California red-legged frog, and steelhead, which consists of sensitive natural habitats like vernal pools, perennial freshwater wetlands, ponds, and riparian streams where numerous other special-status species, like foothill yellow-legged frogs, western spadefoot toads, western pond turtles, vernal pool crustaceans, and many more, likely occur or have the potential to occur. Although the DEIR/S acknowledges that “the information needed to fully and comprehensively identify the specific effects on groundwater and surface water hydrology and dependent biological resources is incomplete or unavailable” (DEIR/S at 3.7-65), it is clear that tunneling portions of the rail will have significant impacts to groundwater hydrology, surface water features, and the biological and aquatic resources in and adjacent to the tunneled areas (e.g., Loew et al. 2007; Butscher et al. 2011). And according to the Biological and Aquatic Resources Technical Report, groundwater effects due to tunnel projects in the Diablo Range and in San Bernardino Mountains were documented over one mile from the tunnel alignments (Biological and Aquatic Resources Technical Report at 4-8). Of the 15 miles of tunnel, the DEIR/S estimates that 12.6 miles would have moderate (up to 100 gallons per minute for several days) to high (>200 gallons per minute for several days) relative risk of groundwater depletion and 2.5 miles would have low (15 gallons per minute for several days) relative risk of groundwater depletion. Even the “low relative risk” areas could have significant impacts to the surrounding hydrogeology, particularly for some of the more fragile ecosystems in the area. And the long-term impacts to groundwater due to the permanent presence of a tunnel and the huge volume displacement and potential loss or changes to groundwater hydrology is unknown. Yet the DEIR/S ultimately concludes that impacts would be less than significant, with no scientific evidence to support such a conclusion.

1724-2980

The DEIR/S’s proposed mitigation to minimize impacts to changes in groundwater/hydrology and the numerous species that rely on the special hydrology of various aquatic and semi-aquatic habitats is grossly insufficient. While BIO MM#10 would require the preparation and implementation of a Compensatory Mitigation Plan for Species and Species Habitat for special-status species, it does not include mitigation plans for sensitive natural habitats, like oak woodlands or riparian corridors. The requirements are vague and do not provide enough detail regarding how preparation and implementation would be funded, who would be consulted when developing the plans (agency biologists as well as local and regional wildlife experts should be consulted), or who would be implementing the plans (qualified biologists approved by USFWS and CDFW should be required). In addition, BIO MM#10 should require that mitigation lands be protected and managed in perpetuity, and the mitigation on these lands should include funded long-term monitoring, specified success criteria, and adaptive management strategies.

Submission 1724 (Tiffany Yap, Center for Biological Diversity - Oakland, June 23, 2020) - Continued

1724-2981

The mitigation ratios for the numerous species is too low, particularly for where there is tunneling in designated critical habitat, and the measures are vague and do not specify whether mitigation would be in-kind, enhanced/restored, or created habitat. BIO-MM#31 provides for a mitigation ratio of 3:1 for California tiger salamanders and BIO-MM#33 provides for mitigation ratios of 3:1 (breeding habitat) and 2:1 (refugia/foraging habitat) for California red-legged frogs. First, connectivity between heterogeneous habitats is needed for species that utilize different habitats for different seasons or life stages; therefore, refugia/foraging habitat of endangered species like the California red-legged frog should be preserved to same level as breeding habitat, and functional connectivity between these two habitats should be considered and preserved as well. Therefore, the EIR should address breeding and refugia/foraging habitats where California red-legged frogs and California tiger salamanders occur, potentially occur, or historically occurred, and the Project should avoid these areas as much as possible. Similarly, BIO-MM#28 insufficiently provides for mitigation ratios of 3:1 (spawning aquatic and riparian habitat within critical habitat), 2:1 rearing and migratory aquatic and riparian habitat within critical habitat, and 1:1 (rearing and migratory aquatic and riparian habitat outside of critical habitat) for steelhead. Again, breeding, rearing, and migratory habitats, and connectivity between them are all important for the various life stages of steelhead and should therefore be treated equally with higher mitigation ratios. If the focus is solely on breeding habitat but there is inadequate refugia/foraging/upland habitat in the case of California tiger salamanders and California red-legged frogs or rearing or migratory habitat in the case of steelhead, and none of the habitats are connected, then the habitats are not functional for the species and they will not survive. Breeding, upland, rearing, and migratory habitats where these special-status species occur, potentially occur, or historically occurred should be avoided as much as possible. If avoidance is not feasible, then impacts should be minimized, and impacted habitats in non-designated critical habitat should be mitigated at a 3:1 ratio for in-kind preservation mitigation, 5:1 for restored/enhanced mitigation, and 10:1 for created habitat mitigation. In areas identified as critical habitat by the USFWS or the National Oceanic and Atmospheric Administration, in-kind preservation mitigation should be implemented at a 5:1 ratio. Preservation of existing habitat where the species is known to occur through avoidance should be the primary focus, as restoration and creation of habitats can have limited success due to the challenges of establishing the appropriate hydrology (Sudol and Ambrose 2002; Windmiller and Calhoun 2007; Matthews and Endress 2008; Stein et al. 2018). If compensatory mitigation includes enhanced or restored habitats, higher mitigation ratios coupled with extended years of effective monitoring and adaptive management strategies are needed to improve chances of establishing equivalent ecological function as the lost habitat (Sudol and Ambrose 2002; Windmiller and Calhoun 2007; Matthews and Endress 2008; Stein et al. 2018).

1724-2982

While BIO-MM#9 provides for the preparation and implementation of a Groundwater Adaptive Management and Monitoring Plan (GAMMP) that states that “The Authority would restore any lost riparian or wetland vegetation that is not recovering on its own within 1 year of construction and is determined to be the result of tunnel construction through comparison to baseline conditions” (DEIR/S at 3.7-140), the mitigation measures do not specify measurable success criteria to ensure restoration is effective. All mitigation lands should be protected and managed in perpetuity, and the mitigation on these lands should include funded long-term monitoring, specified measurable success criteria, and adaptive management strategies. In addition, BIO-MM#9 would only provide post-construction compensatory mitigation if more

1724-2982

than 0.5 acre of habitat supporting special-status species occurred during or after construction and restoration efforts failed after five years or were considered infeasible, and no mitigation ratios are provided. And only if after five years protected trees demonstrate substantial impairment to health or mortality, then a dismal 1:1 compensatory mitigation ratio would be applied. There is no mention of in-kind preservation, restoration/enhancement, or habitat creation. The measure is vague, inadequate, and improperly defers mitigation. The DEIR/S fails to adequately mitigate impacts to these special-status species and their critical habitat in the areas where the rail would be tunneled.

1724-2983

III. The DEIR/S fails to adequately describe, assess, and mitigate impacts to native rare plants and sensitive natural communities

The DEIR/S fails to adequately assess and mitigate impacts to rare plants and sensitive natural communities. As mentioned previously, the Project area extends over 90 miles across California through species-rich landscapes, some of which consist of large, contiguous blocks of habitat and some habitats that are highly fragmented with constrained connectivity. The Project area is within the California Floristic Province, a plant biodiversity hotspot recognized as having more thousands of plant species, many of which are endemic. The health of these landscapes relies on the health of native plants and sensitive natural communities, yet avoidance, minimization, and mitigation measures are insufficient to minimize impacts to healthy habitats in and near the Project area. For example, BIO-MM#12 only provides an ineffective 1:1 mitigation ratio to offset the direct removal of federally- and state-listed plant species habitat. This does not include habitats undoubtedly indirectly impacted by edge effects and habitat degradation due to the proposed Project, nor does it provide for funded long-term monitoring, specified measurable success criteria, and adaptive management strategies. The DEIR/S fails to adequately mitigate impacts to special-status plant species in and adjacent to the Project area.

1724-2984

Another example includes the DEIR/S’s failure to adequately describe, assess, and mitigate impacts to oak woodlands. First, it is unclear how the DEIR/S defined oak woodlands in its assessment. According to the California Fish and Game Code, oak woodlands are defined as “an oak stand with a greater than 10 percent canopy cover or that may have historically supported greater than 10 percent canopy cover” (Cal Fish & Game Code § 1361). While blue-oak-foothill pine woodland and Coast oak woodland are an identified land cover type in the analyses, without knowing how the HSRA defined oak woodlands makes it difficult to determine if the analyses are sufficient. Coast oak woodland is by far the most documented tree-dominated land cover type in the Project footprint and habitat study areas (DEIR/S at 3.7-36), but it is possible that a much larger area of oak woodlands, could be in the Project area and temporarily or permanently impacted by the proposed Project. To know this, the correct definition of oak woodlands needs to be applied to the analyses. Thus, the DEIR/S does not adequately describe the extant oak woodlands in the Project area, and therefore does not adequately explain nor appropriately mitigate potential impacts to oak woodlands due to the proposed Project.

1724-2985

Oaks are deep-rooted trees. They can have roots that extend 50 to 100 feet deep, which allow them to tap groundwater when surface soils are dry, like during drought. Therefore, the impacts to groundwater hydrology due to the tunnels could have significant impacts to oak woodlands and the numerous species these habitats support, and such changes could be fatal in

Submission 1724 (Tiffany Yap, Center for Biological Diversity - Oakland, June 23, 2020) - Continued

1724-2985

severe drought years. According to researchers at UC Berkeley, groundwater is critical for oak woodlands to persist, particularly as drought frequency may increase with climate change (Wong 2016). Depleting groundwater stores and altering the hydrology in and around the tunneled Project area could have severe impacts to oaks and oak woodlands. Yet the DEIR/S fails to adequately assess and mitigate impacts to oaks. Although BIO-MM#9 provides for a Groundwater Adaptive Management and Monitoring Plan, there is no scientific evidence that suggests that supplemental watering would ensure that groundwater hydrology would be functionally re-established. Post-construction monitoring of water levels and aquatic resource conditions would only occur twice a year for five years, which is insufficient to determine if groundwater levels have recovered. The measure essentially allows for the abandonment of dead zones, stating: "In the event that supplementary water is not successful at restoring aquatic resources and/or protected trees to baseline conditions in the post-construction period and off-site compensation is triggered, then monitoring may be waived for certain features if it is determined that there is no further utility for monitoring the specific feature" (DEIR/S at 3.7-140). Furthermore, as mentioned previously, BIO-MM#9 would only provide post-construction compensatory mitigation if more than 0.5 acre of habitat supporting special-status species occurred during or after construction and restoration fail after five years or were considered infeasible, and no mitigation ratio is provided. And only if after five years protected trees demonstrate substantial impairment to health or mortality, then a dismal 1:1 compensatory mitigation ratio would be applied. There is no mention of in-kind preservation, restoration/enhancement, or habitat creation. The measure is vague, inadequate, and improperly defers mitigation. The DEIR/S fails to adequately mitigate impacts to these special-status species and their critical habitat in the areas where the rail would be tunneled.

1724-2986

BIO-MM#75 provides for the transplantation and compensatory mitigation for protected trees, with a mitigation ratio of 3:1 for native trees. This does not take into account the often heterogeneous landscapes trees occur in, as oak woodlands often include grasslands and are defined as "an oak stand with a greater than 10 percent canopy cover or that may have historically supported greater than 10 percent canopy cover" (Fish & Game Code § 1361). The 3:1 mitigation ratio pales in comparison to Santa Barbara County's Deciduous Oak Tree Protection and Regeneration Ordinance, which requires a 15:1 mitigation ratio (via replacement planting or protection of naturally occurring oaks between six inches and six feet tall) for removed oak trees (County of Santa Barbara 2003). Translocating oak trees is a difficult procedure, mostly due to their deep taproots, and many trees may not survive transplantation. In addition, any off-site compensatory mitigation that involves restoration, enhancement, or creation of habitat does not guarantee oak establishment. Any mitigation measures involving tree transplantation or off-site mitigation (restoration, enhancement, creation, or otherwise), should involve funded monitoring for at least seven years (SB 1334, Public Resources Code § 21083.4), and there should be specific success criteria and adaptive management strategies to ensure success criteria are met. Impacts to oak woodlands should be avoided as much as possible. If avoidance is not feasible, then impacts should be minimized, and impacted oak woodlands should be mitigated at a 5:1 ratio for in-kind preservation mitigation and 10:1 for restored/enhanced/created mitigation.

1724-2987

Oak woodlands provide valuable habitat and connectivity for a wide variety of California's native species, including 2,000 plants, 5,000 insects and arachnids, 80 amphibians and reptiles, 160 birds, and 80 mammals (Bernhardt and Swiecki 2001; Meadows 2007; Lawrence et al. 2011; Jedlicka et al. 2014; Tietje et al. 2015). They are also important for many ecosystem services that communities rely on for safety and economic stability, including water quality protection, carbon sequestration, erosion control, and soil retention (Brown and Krygier 1970; Elliot 2010; Lawrence et al. 2011; Moyle et al. 2011; Pan et al. 2011; Jedlicka et al. 2014). Reduced woodland cover has been shown to result in increased runoff (*i.e.*, pollutants such as pesticides and fertilizers flowing into groundwater and surface waterways), erosion, sedimentation, and water temperatures; changes in channel morphology; decreased soil retention and fertility; and decreased terrestrial and aquatic biodiversity (Brown and Krygier 1970; Pess et al. 2002; Dahlgren et al. 2003; Houlihan and Findlay 2004; Opperman et al. 2005; Lohse et al. 2008; Elliot 2010; Lawrence et al. 2011; Moyle et al. 2011; Zhang and Hiscock 2011; Jedlicka et al. 2014). In addition, woodlands are an important carbon sink that can help moderate the impacts of climate change (Padilla et al. 2010; Pan et al. 2011), and some researchers argue that at a global scale, trees are linked to increased precipitation and water availability (Ellison et al., 2012). Preserving existing oak and valley oak woodlands would help protect the region's rich biodiversity and sequester carbon to combat impacts of climate change. Yet the DEIR/S is unclear, fails to adequately describe the oak woodlands in the Project area, ignores the best available science, improperly defers mitigation, and does not mitigate any impacts to oak woodlands to less than significant.

IV. Conclusion

Thank you for the opportunity to submit comments on the DEIR/S for the for the San Jose to Merced Project Section of the California High-Speed Rail Project. While these comments are not comprehensive, the Center presents some key environmental issues that the DEIR/S fails to adequately describe, assess, and mitigate. Because of all of the inaccuracies, short-comings and confusion in the DEIR/S, we request that the HSRA revise and recirculate the DEIR/S. Please add the Center to your notice list for all future updates to the Project and do not hesitate to contact the Center with any questions at the number or email listed below.

Sincerely,



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1724-2988

Submission 1724 (Tiffany Yap, Center for Biological Diversity - Oakland, June 23, 2020) - Continued

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Submission 1724 (Tiffany Yap, Center for Biological Diversity - Oakland, June 23, 2020) - Continued

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Exhibit A

Submission 1724 (Tiffany Yap, Center for Biological Diversity - Oakland, June 23, 2020) - Continued



United States Department of the Interior

FISH AND WILDLIFE SERVICE

San Luis National Wildlife Refuge Complex
Post Office Box 2176
7376 South Wolfsen Road
Los Banos, California 93635



18 June 2020

High-Speed Rail Authority (HSRA)
San Jose to Merced Project Section: Draft EIR/EIS
100 Paseo de San Antonio, Suite 300
San Jose, CA 95113

RE: Comments on Draft EIR/EIS for San Jose to Merced Project Section

Dear High-Speed Rail Authority:

As pointed out by the Central Valley Joint Venture Management Board and the Grassland Water District, the Draft EIR/EIS uses an incorrect boundary for the Grasslands Ecological Area (GEA). Therefore, miles of the proposed Project facility would not be part of the impacts analysis. The omitted GEA areas contain very important and sensitive habitat, so the GEA boundary is the more appropriate boundary for analysis. The HSRA previously used the correct GEA boundary when conducting preliminary evaluations of significant environmental issues; in fact, in a letter to me dated 27 September 2019, the HSRA stated: *“The California High-Speed Rail Authority (Authority) is aware of the ecological significance of the GEA, including its habitat value for the Pacific flyway and its status as a wetland complex of international significance as recognized in the United Nations Ramsar Convention. The Authority is committed to mitigating impacts in the GEA...”*

In recognition of the rich and critically important natural resources of the GEA, conservation agencies and NGOs have focused attention and funding on this area for 100 years. The GEA is a critical area for Pacific Flyway waterfowl, providing wintering habitat for 20% of the population; averaging 1/2-million birds, with peaks of one million. It is the largest remaining block of wetlands in what was once a vast Central Valley ecosystem – only 5% remains. Several federally listed threatened and endangered species occur in the GEA. The importance of the ecosystems represented and protected by the GEA cannot be overstated. Our prior comments have emphasized the fragility and importance of these areas and the likely harm that would result from this project. None of the issues raised previously have been satisfactorily addressed over the past 15 years.

Agency land managers, Grassland Water District, GEA landowners, and non-governmental conservation organizations have long advocated for the Project to follow a route that does not bisect the GEA and uses existing rail and freeway routes, such as

Altamont Pass. There remains substantial debate about the nature and extent of disturbance that the Project would cause from noise, lighting, vibration, glare, and connectivity of wildlife corridors. Your analysis is vague, non-specific, high-level, and impractical; with no clear, realistic, and guaranteed plan for mitigating damages, such as acquisition of land and water and restoring habitat. There is no accountability. There is no description of how your plans dovetail with agency requirements. There is no funding for advance mitigation nor a commitment of future funding. “Deferred mitigation” is no real commitment, and doesn’t concretely capture fixing the damages that will be done by this project. The mitigation needed to truly compensate for the damage done by this project may very well be so massive that it is undoable. You have kicked the mitigation issue down the road for 15 years.

As a biologist/manager working in the GEA for 25 years, I cannot imagine how the impacts could possibly be mitigated. When considered with the cumulative negative impacts to this fragile ecosystem that have occurred over the past century, I believe that this last insult to the ecological integrity of the GEA risks its ecological collapse.

Sincerely,

Kim Forrest
Refuge Manager

Cc: Polly Wheeler, Assistant Regional Director/NWRS; USFWS
Mike Fris, Assistant Regional Director/Ecological Services; USFWS
Stacy Armitage, Refuge Supervisor; USFWS
Mark Pelz, Chief - Natural Resources Division; USFWS
Dale Garrison, CVPIA Refuge Water Supply Coordinator/CVJV Board; USFWS
Trisha Cole, San Joaquin Valley Division Chief, Ecological Services; USFWS
Nina Bicknese, Wildlife Biologist; Ecological Services; USFWS
Claudia Funari, Senior Biologist; Endangered Species Program; USFWS
Ric Ortega, General Manager; Grassland Water District
Ellen Wehr, General Counsel; Grassland Water District
Sean Allen, Sr. Fish & Wildlife Habitat Supervisor; Los Banos WA, CDFW
Steve Miamoto, Wildlife Habitat Supervisor II; Salt Slough WA, CDFW
Krista Tomlinson, Supervisory Senior Environmental Scientist, CDFW
Andy Gordus, Toxicologist; CDFW
Jake Messerli, Chair; Central Valley Joint Venture Board
Mark Biddlecomb, Director of Operations, Western RO; Ducks Unlimited
Meghan Hertel, Director – Land and Water Conservation; Audubon California
Michael Lynes, Director of Public Policy; Audubon California
Matt Kaminski, Regional Biologist; Ducks Unlimited
Kim Delfino, California Program Director; Defenders of Wildlife
Rachel Zwillinger; Defenders of Wildlife
Rod Webster; Merced Sierra Club

Submission 1724 (Tiffany Yap, Center for Biological Diversity - Oakland, June 23, 2020) -
Continued



CENTER for BIOLOGICAL DIVERSITY

Because life is good.

May 4, 2020

Sent via email

Attn: San Jose to Merced Project Section: Draft EIR/EIS
100 Paseo de San Antonio, Suite 300
San Jose, CA 95113
san.jose_merced@hsr.ca.gov

**Re: San Jose to Merced Project Section Draft EIR/EIS – Request for Extension of
Comment Period & Request to Post Technical Report Documents**

Dear Sir or Madam:

These comments are submitted on behalf of the Center for Biological Diversity (the “Center”) regarding the San Jose to Merced Project Section Project (“Project”). The Center has reviewed the Notice of Availability and Notice of Public Hearing (“NOA”) associated with the Project published by the California High-Speed Rail Authority (“Authority”). The Center intends to review and provide comments on the Draft EIR/EIS, but its ability to do so is compromised by (1) the short comment period, and (2) the Authority’s failure to provide adequate public access to the critical technical appendices to the Draft EIR/EIS. Accordingly, the Center urges the Authority to extend the public comment period by an additional 45 days and post electronic copies of the Technical Reports associated with the Draft EIR/EIS on its website along with the Draft EIR/EIS.

The Center is a non-profit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has over 1.7 million members and online activists throughout California and the United States. The Center has worked for many years to protect imperiled plants and wildlife, open space, air and water quality, and overall quality of life for people in the region in which the Project is located.

I. REQUEST FOR EXTENSION OF COMMENT PERIOD

The NOP states that the period for public comment on the Draft EIR/EIS is a mere 45 days—the bare minimum required under CEQA Guidelines¹ § 15105(a). This is not enough time for a thorough review of the Draft EIR/EIS and related documents. The Draft EIR/EIS alone is several hundred pages (and the Appendices are an additional several thousand pages).

¹ 14 Ca. Code Regs. § 15000 et seq.

EXHIBIT B

Submission 1724 (Tiffany Yap, Center for Biological Diversity - Oakland, June 23, 2020) - Continued

Additionally, the Draft EIR/EIS must be considered in conjunction with the previous Program EIR/EIS Documents for the Statewide High-Speed Rail System (Tier 1). A mere 45 days simply does not provide enough time for the public to review and provide cogent, useful, and thorough comments on the Project and associated environmental review to the Authority. Further slowing public review is the fact that the Authority has failed to provide the public with adequate access to copies of the numerous Technical Documents that accompany the Draft EIR/EIS (see Section II, *infra*). Members of the public cannot complete their review of the Draft EIR/EIS without access to these critical documents.

Given the above, the Center respectfully requests that the Authority extend the comment period for an additional 45 days to ensure an adequate opportunity for public review.

II. REQUEST TO POST TECHNICAL REPORT DOCUMENTS

In addition to the Draft EIR/EIS and Appendices, the Authority's website for the project lists—but does not provide hyperlinks to—numerous documents categorized as "Technical Documents." These documents provide critical data and are essential for adequate public review and understanding of the Draft EIR/EIS. For example, the Biological and Aquatic Resources section (section 3.7) of the Draft EIR/EIS alone references the Biological and Aquatic Resources Technical Report over thirty times, and states that the report provides "details on biological and aquatic resources and serve[s] as [a] source[] for this analysis." (Draft EIR/EIS at p. 3.7-1.)

Yet the Authority has inexplicably failed to provide hyperlinks to electronic copies of the Technical Documents in the same manner it has for the Draft EIR/EIS and Appendices. Although the documents are allegedly available for in-person viewing at a handful of sites in the vicinity of the Project, this does not provide an adequate opportunity for public access, even in normal times. And, as the Authority is aware, these are not normal times. Due to the worldwide COVID-19 virus pandemic, on March 19, 2020, the Governor's office issued an Executive Order N-33-20 "order[ing] all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors." Additionally, California Counties, including some where the Project is located, have issued their own mandatory public health advisories that are in numerous respects stricter than the statewide order.

Even if it were legally permissible for members of the public to make in-person visits to the locations where the Authority advertises the availability of electronic copies of the Technical Documents, public access is still not assured. As the Authority's own website acknowledges, "offices may have reduced open days/hours, as required by coronavirus public health and safety directives."² Furthermore, members of the public with an interest in accessing these documents may be elderly, suffer from underlying health conditions, or experience other factors that place them at higher risk of contracting COVID-19. Leaving their homes to access public documents in-person may pose unacceptable health risks to these people. The Authority's decision to withhold the Technical Documents from the Project website means, in effect, that the most vulnerable members of the public may be unfairly precluded from accessing or reviewing them.

² https://hsr.ca.gov/programs/environmental/eis_eir/draft_san_jose_merced.aspx

May 4, 2020
Page 2

The Authority has offered no explanation—and indeed we can imagine no reasonable explanation—for why hyperlinked copies of these documents have not been made available alongside the Draft EIR/EIS on the Authority's website for the Project. The Authority's website acknowledges that electronic copies of these documents already exist. Without access to these critical documents which provide the underlying studies, data, and information upon which the Draft EIR/EIS's conclusions are based, members of the public are prejudicially inhibited from conducting the full review of the Authority's CEQA analysis to which they are entitled. The Center requests that the Authority post all of the Technical Report documents on the Authority's website for the Project.

III. CONCLUSION

Thank you for your consideration of these requests. The Center looks forward to submitting comments on the Draft EIR/EIS after the Authority provides the public with the necessary documents and adequate time for such review.

Please add the Center to your notice list for all future updates to the Project and do not hesitate to contact the Center with any questions at the number or email listed below.

Sincerely,



Peter J. Broderick,
Staff Attorney

Tiffany Yap, DEnv/PhD
Senior Scientist

Center for Biological Diversity
1212 Broadway, Suite #800
Oakland, CA 94612
Tel: (510) 844-7100
pbroderick@biologicaldiversity.org
tyap@biologicaldiversity.org

May 4, 2020
Page 3

Submission 1724 (Tiffany Yap, Center for Biological Diversity - Oakland, June 23, 2020) - Continued

EXHIBIT C

From: Kai Walcott <kwalcott@kearnswest.com>
Sent: Thursday, May 14, 2020 5:46 PM
To: Peter Broderick <pbroderick@biologicaldiversity.org>
Subject: RE: Follow-Up to Our Phone Conversation

Peter,

Thanks again for alerting me. Please see the link to the Biological and Aquatic Resources Technical Report [here](#). You should have access to 28 documents in this folder.

Please reach out again if you run into any other difficulties!

Best,
Kai

From: Peter Broderick <pbroderick@biologicaldiversity.org>
Sent: Thursday, May 14, 2020 4:59 PM
To: Kai Walcott <kwalcott@kearnswest.com>
Subject: RE: Follow-Up to Our Phone Conversation

Hi Kai,

We've reviewed the documents you produced and found that the following appendices from the Biological and Aquatic Resources Technical Report are missing:

APPENDIX D: SPECIES HABITAT MODELING METHODS MEMORANDUM APPENDIX
APPENDIX E: SPECIES HABITAT MODEL DESCRIPTIONS APPENDIX
APPENDIX F: AGENCY WORKING GROUP COMMENTS AND RESPONSES APPENDIX
APPENDIX G: LAND COVER MAPS APPENDIX
APPENDIX H: AREA OF EFFECT BY SUBSECTION APPENDIX
APPENDIX I: HABITAT CONSERVATION PLAN ANALYSIS

Can you provide them to us at your earliest convenience, please?

Thank you,

Peter J. Broderick

Staff Attorney
Urban Wildlands Program
Center for Biological Diversity
(503) 283-5474 x421

Submission 1724 (Tiffany Yap, Center for Biological Diversity - Oakland, June 23, 2020) - Continued

From: Kai Walcott <kwalcott@kearnswest.com>
Sent: Friday, May 1, 2020 6:02 PM
To: Peter Broderick <pbroderick@biologicaldiversity.org>
Subject: RE: Follow-Up to Our Phone Conversation

Hi again Peter,

Please see the link to the Technical Reports for the Draft EIR/EIS for the San Jose to Merced Project Section [here](#). Feel free to reach out again if you have any trouble accessing the documents!

I will also have my supervisor contact you in the coming days to address your question.

Thanks again for your request and your patience.

Have a great weekend!

Kai

From: Peter Broderick <pbroderick@biologicaldiversity.org>
Sent: Friday, May 1, 2020 5:47 PM
To: Kai Walcott <kwalcott@kearnswest.com>
Subject: RE: Follow-Up to Our Phone Conversation

Thanks, Kai. Standing by.

Peter J. Broderick

Staff Attorney
Urban Wildlands Program
Center for Biological Diversity
(503) 283-5474 x421

From: Kai Walcott <kwalcott@kearnswest.com>
Sent: Friday, May 1, 2020 5:45 PM
To: Peter Broderick <pbroderick@biologicaldiversity.org>
Subject: RE: Follow-Up to Our Phone Conversation

Hello Peter,

Sorry to keep you waiting, but I'm having trouble accessing the Dropbox website—it seems to be down. I'll have the link to you as soon as I am able to enter the site.

Best,

California High-Speed Rail Outreach Team

From: Peter Broderick <pbroderick@biologicaldiversity.org>
Sent: Friday, May 1, 2020 5:33 PM
To: Kai Walcott <kwalcott@kearnswest.com>
Subject: Follow-Up to Our Phone Conversation

Hello,

This is a follow-up to our phone conversation just now. I appreciate your offer to send me a link to a file-transfer site containing all of the Technical Documents for the San Jose to Merced Project Section Draft Environmental Impact Report/Environmental Impact Statement.

Please don't hesitate to contact me if you have any further questions.

Best,

Peter J. Broderick

Staff Attorney
Urban Wildlands Program
Center for Biological Diversity
(503) 283-5474 x421

Response to Submission 1724 (Tiffany Yap, Center for Biological Diversity - Oakland, June 23, 2020)

1724-2945

The Authority appreciates your comments on the Draft EIR/EIS. In subsequent individual comments, the Center for Biological Diversity provided specific detailed comments regarding impacts on wildlife and plant species. Each of these specific comments is addressed below. While this introductory comment refers to the Draft EIR/EIS for the Bakersfield to Palmdale Project Section, the Authority recognizes that the rest of the submission letter pertains to the San Jose to Merced Project Section Draft EIR/EIS.

1724-2946

Refer to Standard Response SJM-Response-BIO-1: Wildlife Connectivity in Coyote Valley and Pacheco Pass.

Impacts on wildlife movement and connectivity are comprehensively analyzed in the WCA (Appendix C of Authority 2020a, as cited in Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS) and addressed in the Draft EIR/EIS under Impact BIO#43. That analysis finds that impacts on wildlife movement are significant, and mitigation is required in the form of BIO-MM#77 and BIO-MM#78. Residual impacts are less than significant. These analyses consider project effects upon many different plants and animals, including all special-status species in the study area. Effects of habitat fragmentation are considered on a species-specific basis and are found to be significant for many of the special-status species; mitigation is required in the form of compensatory mitigation (mitigation measure BIO-MM#10, or many other species-specific compensatory measures applicable to individual special-status species). These impacts and mitigation requirements are detailed in Final EIR/EIS Section 3.7. Commenter provides some specific publications that were not assessed in the NEPA/CEQA analysis but does not identify new impacts. Nonetheless, both the analyses and the mitigation measures cited here have been modified in the Final EIR/EIS.

1724-2947

Refer to Standard Response SJM-Response-BIO-3: Coyote Valley Wildlife Crossings.

Section 3.7, Biological and Aquatic Resources, in the EIR/EIS identifies significant impacts requiring mitigation with regard to several impacts of relevance to this comment: (1) Impact BIO#43 regarding wildlife passage in Coyote Valley and western Pacheco Pass and (2) Impact BIO#44 regarding noise, light, and related disturbances of birds in the Upper Pajaro River IBA and the Grasslands Ecological Area IBA. Note that much of the detailed assessment of these impacts appeared in the WCA (Appendix C of Authority 2020a, as cited in Section 3.7 of the Draft EIR/EIS) and was summarized in the Draft EIR/EIS. Mitigation is required in order to minimize or compensate for the impacts on wildlife passage and habitat connectivity. Presence of sensitive species and designated critical habitat referred to by commenter was recognized and assessed in the Draft EIR/EIS. With regard to the speculation that tunneled portions of the alignment may impact movement by animals on the overlying landscape, the Draft EIR/EIS Section 3.7.7.2, Special-Status Species, discloses all available information about biological resources over the proposed tunnel alignments (including through references to Section 3.8, Hydrology and Water Resources, of the Draft EIR/EIS). The Draft EIR/EIS Section 3.7.7.2 discusses the potential for tunnel construction groundwater reduction depletion and refers to HYD-IAMF#5 to avoid or minimize groundwater inflows into and around tunnels during and after construction. Nonetheless, the potential impact is significant and would require mitigation as indicated in Table 3.7-27 of the Draft EIR/EIS.

1724-2948

Please refer to response to submission SJM-1724, comment 2947 and submission SJM-3259, comment 1713, which discuss the assessment and mitigation of potential impacts on wildlife connectivity and the best available science. With respect to the commenter's notes regarding the importance and biodiversity of the area, the Authority agrees that there are extensive effects on various resources resulting from the long linear nature of the project within an area of important biodiversity; however, the Draft EIR/EIS includes extensive avoidance, minimization, and mitigation measures for biological and aquatic resources—greater than 80 individual measures in the Final EIR/EIS—representing a substantial effort to reduce biological resources effects to a less-than-significant level within this important region.

Response to Submission 1724 (Tiffany Yap, Center for Biological Diversity - Oakland, June 23, 2020) - Continued

1724-2949

Refer to Standard Response SJM-Response-BIO-1: Wildlife Connectivity in Coyote Valley and Pacheco Pass, SJM-Response-BIO-4: Grasslands Ecological Area Boundary.

Regarding the assessment of wildlife movement and habitat connectivity, please refer to the response to submission SJM-1724, comment 2947. As shown in Standard Response SJM-Response-BIO-4, the analysis in the Draft EIR/EIS uses a boundary more extensive than that requested by commenter.

1724-2950

Refer to Standard Response SJM-Response-BIO-1: Wildlife Connectivity in Coyote Valley and Pacheco Pass.

Impact BIO#43 identifies significant impacts on wildlife passage. Note that much of the detailed assessment of these impacts appeared in the WCA (Appendix C to Authority 2020a, as cited in Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS) and was summarized in the Draft EIR/EIS. Mitigation is required in order to minimize or compensate for the impacts on wildlife passage and habitat connectivity. Contrary to commenter's assertions, none of the project alternatives propose to minimize impacts on wildlife passage by putting breaks in the fencing along the alignment. Rather, all project alternatives feature a system of numerous wildlife underpasses that have been designed and sited in consideration of known, available information on the species that require connectivity across the rail alignment. Moreover, at certain critical wildlife crossings in Coyote Valley, western Pacheco Pass, eastern Pacheco Pass, and the Upper Pajaro River and Grasslands Ecological Area IBAs, barriers to wildlife habitat connectivity would be further minimized by installing noise barriers that conceal the sight and light of the train from the view of wildlife and that substantially reduce the noise impacts from trains. The net result of these mitigation measures is to achieve less-than-significant impacts on wildlife passage and habitat connectivity.

1724-2951

Impact BIO#43 identifies impacts associated with physical HSR facilities on wildlife passage. Note that much of the detailed assessment of these impacts appeared in the WCA (Appendix C to Authority 2020a, as cited in Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS) and was summarized in the Draft EIR/EIS. The Draft EIR/EIS also contains a detailed analysis of the potential for train noise to affect wildlife passage (Impact BIO#44), an analysis of the potential for train vibration to affect wildlife passage (Impact BIO#45), an analysis of the potential for visual disturbance to affect wildlife passage (Impact BIO#46), and a detailed analysis that was revised in this Final EIR/EIS of the potential for lighting to disturb wildlife using corridors (Impact BIO#47). Further, the Final EIR/EIS provides a comparably detailed analysis of potential effects on mammals and, through the mechanism of vibration, on amphibians and reptiles. Mitigation is required in order to minimize or compensate for the impacts on wildlife passage and habitat connectivity. With regard to the potential speculation that tunneled portions of the alignment may impact movement by animals on the overlying landscape, the analysis presented in the Draft EIR/EIS Section 3.7.7.2, Special-Status Species, discusses the potential for tunnel construction groundwater reduction/depletion and refers to HYD-IAMF#5 to avoid or minimize groundwater inflows into and around tunnels during and after construction. Nonetheless, the potential impact is significant prior to mitigation. No other potential surface effects from tunnel construction have been identified. Regarding the commenter's concern about alternatives, see Draft EIR/EIS Section 2.5, Alternatives Considered during Alternatives Screening Process, regarding alternatives considered during the alternatives screening process, in particular the discussion of the Pacheco Pass and San Joaquin Valley Subsections of the alignment.

Response to Submission 1724 (Tiffany Yap, Center for Biological Diversity - Oakland, June 23, 2020) - Continued

1724-2952

Regarding the assessment of wildlife movement and habitat connectivity, please refer to the response to submission SJM-1724, comment2947. Commenter provides no substantive evidence bearing on that analysis. However, commenter is referred to Draft EIR/EIS Section 2.4.5, Grade Separations, regarding the fact that wildlife crossings would not only be designed but are in fact an integral element of the proposed project. Moreover, note that Mitigation Measure BIO-MM#77a has been revised in the Final EIR/EIS to explicitly require that "HSR would work with agency and stakeholder partners—CDFW, USFWS, NMFS, the Santa Clara Open Space Authority, Santa Clara Valley Habitat Agency, Peninsula Open Space Trust, and The Nature Conservancy—to validate and optimize wildlife crossing locations at the 75% to 90% design phase." Similar collaborative measures have been added to the compensatory mitigation requirements, and it is at least possible that the collaborative partners would prioritize compensatory mitigation at locations where it would serve to enhance the function of wildlife crossings. Regarding the commenter's suggestions for fencing that would "guide" wildlife to the crossing, the Authority has modified BIO-MM#77a in the Final EIR/EIS to require the installation of "funnel" fencing, which would guide wildlife to the crossing. Regarding the long-term management, monitoring, and adaptive management at crossings, please note that the Authority has included a new measure, BIO-MM#77b, which requires the Authority to monitor the crossings for effectiveness and to implement adaptive management. Lastly, commenter suggests the acquisition of lands on both sides of a crossing to ensure the continued functionality of the crossing. The Authority notes that this would be considered to the extent feasible under BIO-MM#79, which has been modified in the Final EIR/EIS to prioritize the protection of open space corridors between wildlife crossings and the nearest open space to preserve the functionality of wildlife crossings.

1724-2953

Wildlife crossings are a component of the proposed project, and their locations are described in Chapter 2, Alternatives, of the Final EIR/EIS; those locations vary somewhat between alternatives. However, specific crossings have only been designed to a preliminary standard, and, as prescribed by Mitigation Measure BIO-MM#77a in the Final EIR/EIS, "HSR would work with agency and stakeholder partners—CDFW, USFWS, NMFS, the Santa Clara Open Space Authority, Santa Clara Valley Habitat Agency, Peninsula Open Space Trust, and The Nature Conservancy—to validate and optimize wildlife crossing locations at the 75% to 90% design phase." At that time, and in accordance with best available science at that time, detailed design elements of the crossings such as those recommended by commenter would be selected and incorporated into final crossing designs. Please note also that crossings have been sited and designed primarily to accommodate the needs of those special-status species that have been identified as being subject to receiving significant adverse impacts in association with Impact BIO#43, which concerns wildlife passage; see Final EIR/EIS Section 3.7, Biological and Aquatic Resources, for those determinations. Species not identified as significantly impacted may still benefit from the crossings, however. In addition, new Mitigation Measure BIO-MM#77b in the Final EIR/EIS requires adaptive management and monitoring of the wildlife crossings. Regarding the other studies and considerations noted by the commenter, such as local permeability and wildlife movement studies, the Authority notes that these resources were used extensively in the WCA (Appendix C of Authority 2020a, as cited in Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS).

Response to Submission 1724 (Tiffany Yap, Center for Biological Diversity - Oakland, June 23, 2020) - Continued

1724-2954

Commenter is correct that climate change is an ongoing process and that some organisms are experiencing genetic changes. The relevance of this point to the number and location of wildlife crossings is unclear. However, commenter will find that Section 4.3.7 of the WCA (Appendix C of Authority 2020a, as cited in Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS) presents a rationale for the location of the proposed wildlife crossings. Commenter is also concerned about corridor redundancy, but that is a general concept that must be viewed in terms of particular applicability in field situations. For example, in the Pacheco Pass area, many miles of the alignment are in a tunnel, and wildlife can pass above the tunnel wherever they choose. In upper Pacheco Creek and in the Diablo Range east of the Pacheco Pass tunnel, a large portion of the alignment is on viaduct, and wildlife can pass readily except during those times of the day, amounting to only a few minutes, when a train is passing and the noise and vibration of passage may represent a deterrent (see Impacts BIO#44 and BIO#45, and mitigation measure BIO-MM#80 regarding minimization of those effects). Many more miles of the alignment are also on viaduct. In areas where the project is at grade and wildlife crossings occur, there is some corridor redundancy; for example, an animal crossing in the sensitive Fisher Creek area of Coyote Valley would have four undercrossings to choose from. Commenter's assertions about the inadequacy of the proposed crossings are thus not supported by substantial evidence.

1724-2955

Refer to Standard Response SJM-Response-ALT-1: Alternatives Selection and Evaluation Process, SJM-Response-ALT-2: Project-Specific Alternatives Considerations.

Refer to Standard Response SJM-Response-ALT-1: Alternatives Selection and Evaluation Process, SJM-Response-ALT-2: Project-Specific Alternatives Considerations. Please refer to Draft EIR/EIS Section 2.5, Alternatives Considered during Alternatives Screening Process, regarding alternatives considered during the alternatives screening process. Section 4.3.7 of the WCA (Appendix C of Authority 2020a, as cited in Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS) presents a rationale for the location of the proposed wildlife crossings. All areas cited by commenter have extensive sections of alignment built on viaduct, and in several critical areas the viaduct furthermore has a noise barrier to minimize visual, light, and noise disturbance of wildlife; see BIO-MM#80 for detailed statements of the locations of these barriers. The existing analysis cites numerous published studies of the importance of wildlife movement corridors in the study area; for a comprehensive bibliography see the WCA and more recently, Section 3.7 and its appendices in the Revised Draft EIR/Supplemental Draft EIS.

Response to Submission 1724 (Tiffany Yap, Center for Biological Diversity - Oakland, June 23, 2020) - Continued

1724-2956

The analysis in Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS acknowledges that, assuming selection of Alternatives 2 or 4, the alignment from San Jose to Gilroy would be collocated with the existing rail line, and the HSR alignment would exacerbate the barriers to wildlife passage already existing in the form of the existing rail line, Monterey Road, and U.S. Highway 101. However, all project alternatives entail the construction of numerous wildlife undercrossings in that portion of the alignment, to be constructed in accordance with Mitigation Measure BIO-MM#77a, which was revised for the Final EIR/S and now provides for final design of the undercrossings to be performed collaboratively by the Authority with input from a variety of wildlife agencies and stakeholder groups. These undercrossings represent improved wildlife passage relative to current conditions, and their likely effectiveness is demonstrated by camera trap data documenting frequent passages by many species of wildlife beneath U.S. Highway 101 in this area. This gives high confidence that the undercrossings would, in fact, receive use by wildlife. South of Gilroy, however, the rail alignment (and the MOWF) constitutes a potential new passage barrier in an area where existing wildlife passage is relatively unimpaired. However, much of the alignment in this area is on viaduct, and through a substantial portion of the Upper Pajaro River IBA the viaduct furthermore has a noise barrier to minimize visual, light, and noise disturbance of wildlife; see BIO-MM#80 for detailed statements of the locations of these barriers. The Final EIR/EIS acknowledges significant impacts on wildlife passage in several areas but finds that those impacts are less than significant after mitigation.

1724-2957

Commenter disapproves of proposed mitigation ratios for compensatory mitigation on fragmented or connectivity-impaired wildlife habitat but does not propose any rationale for using different mitigation ratios. Note that compensatory mitigation for loss of wildlife habitat would occur under Mitigation Measure BIO-MM#10 as well as under several other species-specific mitigation measures. These measures call for collaboration and coordination with local conservation agencies and organizations in the selection of mitigation lands and design of restoration treatments; presumably these groups represent "local and regional connectivity experts". Note also that such mitigation lands must remain functional in perpetuity and thus are subject to monitoring and maintenance requirements, which are typically designated by the applicable permitting agency (typically, CDFW and/or USFWS). However, Mitigation Measure BIO-MM#77b, which did not appear in the Draft EIR/EIS, now provides for monitoring and adaptive management at wildlife crossings, as a "monitoring and adaptive management plan would be developed in coordination with wildlife agency staff and local wildlife movement stakeholders such as the SCVHA, the SCVOSA, The Nature Conservancy, and the Peninsula Open Space Authority."

Response to Submission 1724 (Tiffany Yap, Center for Biological Diversity - Oakland, June 23, 2020) - Continued

1724-2958

Refer to Standard Response SJM-Response-BIO-5: Lighting Impacts to Wildlife, SJM-Response-BIO-6: Noise Impacts on Wildlife.

Impacts on wildlife movement from construction noise are expected to be temporary and are described in Impact BIO#42 in the Draft EIR/EIS. Impacts from construction noise are expected to be mitigated to less than significant with implementation of BIO-MM#76, which requires The Authority to consider careful construction timing, including avoiding construction within known wildlife movement routes during nighttime hours. Operational impacts of noise, light, activity, and vibration are addressed in Impacts BIO#44 through BIO#47, each of which references a more detailed evaluation in supporting documents. Those analyses identify all of the potential impacts noted by commenter, further identifying impacts relevant to high-speed trains (whereas commenter references studies of roads, at best marginally relevant). Impacts of noise and activity are found to be significant, and mitigation is required. Those mitigation requirements are focused on important bird areas and important wildlife migration corridors because those areas receive heavy use by a large number of vulnerable species, whereas most of the proposed rail alignment traverses urbanized areas or parallels major rail and road corridors where background levels of noise, light, and activity are already elevated. Impacts of vibration are found to be less than significant, and the analysis cites a variety of studies in evidence. Commenter cites no evidence to the contrary.

1724-2959

Refer to Standard Response SJM-Response-BIO-4: Grasslands Ecological Area Boundary, SJM-Response-BIO-6: Noise Impacts on Wildlife.

Commenter accurately notes that noise impacts on birds in IBAs would be mitigated. Commenter (in their reference to citations from submission SJM-1724, comment 2958) presents no new information to inform the analysis of noise effects on birds and particularly does not draw on the substantial literature on rail noise effects on birds, which can be found summarized in the WCA (Appendix C of Authority 2020a, as cited in Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS), cited in the Draft EIR/EIS analysis, Impact BIO#44. Commenter's assertion that noise impacts would be greater in areas with existing high noise levels, such as highway traffic noise, is not borne out by our analysis indicated in Section 3.4, Noise and Vibration, of the Draft EIR/EIS.

1724-2960

Refer to Standard Response SJM-Response-BIO-5: Lighting Impacts to Wildlife, SJM-Response-BIO-6: Noise Impacts on Wildlife.

The commenter raises several concerns regarding the adequacy of the mitigation for birds from noise and visual impacts. Commenter disapproves of the terms of Mitigation Measure BIO-MM#58 but provides no arguments or evidence in support of the insufficiency of the measure. Commenter also disregards Mitigation Measure BIO-MM#80, which provides extensive mitigation for noise and light impacts in the form of noise barriers to be erected at several locations throughout the project (see text of the mitigation measure for specifications). No mitigation is provided for vibration impacts because, as discussed in Impact BIO#45, impacts would be less than significant; commenter provides no evidence to the contrary. The Authority notes that the Draft EIR/EIS includes extensive avoidance, minimization, and mitigation measures for biological and aquatic resources—greater than 80 individual measures in the Final EIR/EIS—representing a substantial effort to reduce biological resources effects to a less-than-significant level. The totality of these measures, in concert with compensatory mitigation support the findings in the EIR/EIS. The Authority notes that compensatory mitigation ratios have been considered and designed according to common practice or agency guidelines (where they exist), and in the context of the individual conservation and biological needs for the species. Lastly, please refer to Section 3.7.10, CEQA Significance Conclusions, of the Final EIR/EIR regarding how each of the impacts would be mitigated to a less-than-significant level.

1724-2961

Commenter asserts that Mitigation Measure BIO-MM#58 constitutes deferred mitigation. The Authority disagrees because the measure requires very specific performance standards based on specific noise levels (i.e., 93 dBA or 77 dBA depending on the type of effect), which are directly tied to specific mitigation ratios (i.e., 1:1 or 0.5:1 again depending on the type of effect). The measure itself is not ambiguous and cannot be considered deferred because it provides such specific performance standards.

Response to Submission 1724 (Tiffany Yap, Center for Biological Diversity - Oakland, June 23, 2020) - Continued

1724-2962

Refer to Standard Response SJM-Response-BIO-6: Noise Impacts on Wildlife. Potential noise impacts on wildlife are addressed in Impact BIO#44, which finds significant impacts in some areas, primarily the Pajaro River and GEA IBAs. The proposal to reduce noise levels to levels that are below existing background noise levels (i.e., greater than 60 dBA for a significant portion of the day throughout the study area) is impracticable. Regarding compensatory mitigation ratios, the Authority believes that the analysis and various mitigation as outlined in the Draft EIR/EIS support the findings made under CEQA and NEPA. The Authority agrees that there are extensive effects on various resources resulting from the long linear nature of the project; however, the Draft EIR/EIS includes extensive avoidance, minimization, and mitigation measures for biological and aquatic resources—greater than 80 individual measures in the Final EIR/EIS—representing a substantial effort to reduce biological resources effects to a less-than-significant level. The level of compensatory mitigation for various species and resources considers the full suite of avoidance, minimization, and mitigation measures, and, in the Authority’s judgement, the level of compensatory mitigation is appropriate. Regarding the commenter’s other comments, please refer to revised BIO-MM#77a regarding wildlife crossing design and new measure BIO-MM#77b, which addresses adaptive management and monitoring of crossings, in the Final EIR/EIS.

1724-2963

Please refer to responses to submission SJM-1724, comments 2950, 2951, and 2955.

1724-2964

Please refer to responses to submission SJM-1724, comments 2947, 2952, 2953, 2954, and 2955.

1724-2965

Please refer to response to submission SJM-1724, comment 2957.

1724-2966

Please refer to response to submission SJM-1724, comment 2955.

1724-2967

Please refer to response to submission SJM-1724, comment 2957.

1724-2968

The Authority believes that the analysis and various mitigation as outlined in the Draft EIR/EIS support the findings made under CEQA and NEPA. The Authority agrees that there are extensive effects on various resources resulting from the long linear nature of the project; however, the Draft EIR/EIS includes extensive avoidance, minimization, and mitigation measures—greater than 80 individual measures in the Final EIR/EIS—representing a substantial effort to reduce biological resources effects to a less-than-significant level. The level of compensatory mitigation for various species and resources considers the full suite of avoidance, minimization, and mitigation measures, and, in the Authority’s judgement, the level of compensatory mitigation is appropriate.

1724-2969

Please refer to response to submission SJM-1724, comment 2968.

1724-2970

Such activities would be funded to the extent they were needed in accordance with required mitigation and monitoring plans, such as the plan required under Mitigation Measure BIO-MM#77b.

Response to Submission 1724 (Tiffany Yap, Center for Biological Diversity - Oakland, June 23, 2020) - Continued

1724-2971

The Authority disagrees with the commenter. The Draft EIR/EIS describes and assesses impacts on numerous special-status plant and wildlife species in Section 3.7, Biological and Aquatic Resources, and Appendix 3.7-A, Special-Status Species Subject to Project Impacts (located in Volume 2, Technical Appendices), of the Draft EIR/EIS and clearly identifies species potentially affected by the project. The Authority acknowledges the amount of information that must be assessed and provided to the public is very large. Providing some information in appendices and in technical reports is inevitable to allow the EIR/EIS to be clearly read by the public. The fact that all of the technical information is not within the EIR/EIS does not mean that the analysis is flawed or render the conclusions of the EIR/EIS invalid. We have provided summaries and distilled very technical information directly from the technical studies into Section 3.7 of the Draft EIR/EIS to allow for all readers to understand the impacts on and the mitigation for all special-status species. Lastly, the Authority notes that significant coordination with local stakeholders, which was summarized in Tables 1-1 and 1-2 in the Wildlife Corridor Assessment, (Appendix C of Authority 2020a, as cited in Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS), which demonstrates the Authority's commitment to public engagement and transparency. .

1724-2972

The commenter does not make a specific comment; please refer to responses to other comments made by the commenter.

1724-2973

The Authority revised the Draft EIR/EIS to include an analysis of the proposed project impacts on the mountain lion, now a candidate for listing under CESA and recirculated it for public review. The Draft EIR/EIS was recirculated for public comment and the Authority will consider and respond to all comments received on the recirculation when preparing the Final EIR/EIS.

1724-2974

The Authority revised the Draft EIR/EIS to include an analysis of the proposed project impacts on the mountain lion, now a candidate for listing under CESA. The Draft EIR/EIS was recirculated (on a limited basis) for public comment and the Authority will consider and respond to all comments received on the recirculation when preparing the Final EIR/EIS. Specific mitigation measures addressing potential impacts to mountain lion are included in the Final EIR/EIS.

1724-2975

The Authority revised the Draft EIR/EIS to include an analysis of the proposed project impacts on the mountain lion, now a candidate for listing under CESA and recirculated it for public review. The Draft EIR/EIS was recirculated for public comment and the Authority will consider and respond to all comments received on the recirculation when preparing the Final EIR/EIS.

1724-2976

Potential project impacts on mountain lion passage are evaluated in the Revised Draft EIR/Supplemental Draft EIS, Impact BIO#43 and Impact BIO#44. Both impacts are identified as significant, and mitigation is required in the form of Mitigation Measures BIO-MM#77 through BIO-MM#81. Several of these measures are substantially altered from the form in which they appeared in the Draft EIR/EIS. With this mitigation, impacts on mountain lion would be less than significant. The measures, however, do not propose construction of any wildlife overpasses. Mountain lions have been observed at U.S. Highway101 underpasses (please refer to the discussion in Revised Draft EIR/Supplemental Draft EIS, Appendix 3.7-E, Supplemental Noise Analysis on Terrestrial Wildlife Species) and are expected to use project wildlife undercrossings.

Response to Submission 1724 (Tiffany Yap, Center for Biological Diversity - Oakland, June 23, 2020) - Continued

1724-2977

Refer to Standard Response SJM-Response-BIO-6: Noise Impacts on Wildlife.

The commenter notes that the Draft EIR/EIS fails to assess impacts from noise and lighting. The Authority notes that additional and new analysis was included in the Revised/Supplemental Draft EIR/EIS. The revised noise and light analysis identifies significant impacts on mountain lions and their habitat. This information and analysis has been incorporated into the Final EIR/EIS. Mitigation required by BIO-MM#80 would include construction of noise barriers at wildlife crossings likely to be used by mountain lions in Coyote Valley and the western Pacheco Pass area. These barriers would also provide a visual shield for the light and activity of passing trains and maintenance vehicles traveling on track, helping to minimize the activity-related impacts described by commenter. Mitigation measure BIO-MM#89 would also provide additional mitigation to minimize the operational effects of lighting on wildlife and wildlife movement, including mountain lions.

1724-2978

The Final EIR/EIS concludes that impacts on mountain lion passage would be less than significant. Please refer to the prior responses to submission SJM-1724 for further discussion.

1724-2979

The commenter claims that the Draft EIR/EIS fails to assess impacts on aquatic and semi-aquatic special-status species. The Authority disagrees with the commenter. Section 3.8, Hydrology and Water Resources, Impact HYD#10 discusses potential impacts to groundwater and surface water hydrology during tunnel construction. With respect to groundwater impacts on biological resources, including special-status species and habitats, impacts BIO#1, BIO#6, BIO#7, BIO#8, BIO#9, BIO#10, BIO#11, BIO#23, and BIO#24 all discuss potential groundwater effects on special-status species that are aquatic or semi-aquatic. Overall, the analysis finds potentially significant impacts to special-status species and their habitats from groundwater impacts. The Draft EIR/EIS describes and assesses impacts on numerous special-status plant and wildlife species, and Appendix 3.7-A, Special-Status Species Subject to Project Impacts (located in Volume 2, Technical Appendices, of the Draft EIR/EIS), clearly identifies species potentially affected by the project. The Authority acknowledges the amount of information that must be assessed and provided to the public is very large. Providing some information in appendices and in technical reports is inevitable to allow the EIR/EIS to be clearly read by the public. Regarding the conclusions of the EIR/EIS with respect to groundwater impacts, the Authority notes that impacts have been found to be significant. The Authority has incorporated mitigation measure BIO-MM#9 (modified from the Draft EIR/EIS in the Final EIR/EIS), which requires monitoring of actual impacts and adaptive management if necessary, to supplement aquatic systems and to ensure impacts are mitigated if they occur.

1724-2980

BIO-MM#10 prescribes general approaches to all forms of compensatory mitigation. Many other mitigation measures rely on BIO-MM#10 for that foundation but prescribe additional details of the compensatory mitigation for special-status species or special habitats. In this instance, commenter is particularly referred to BIO-MM#72, BIO-MM#73, BIO-MM#74, BIO-MM#84b, and BIO-MM#85. Please also note that BIO-MM#10 provides for development of compensatory mitigation plans in collaboration with local conservation agencies and organizations.

1724-2981

Please refer to response to submission SJM-1724, comment 2968.

Response to Submission 1724 (Tiffany Yap, Center for Biological Diversity - Oakland, June 23, 2020) - Continued

1724-2982

The description of tunnel effects on hydrology have been revised. Please refer to Final EIR/EIS Impact BIO#1 for a detailed characterization and analysis of this issue. Section 3.7, Biological and Aquatic Resources, of the Final EIR/EIS notes that all compensatory mitigation must be managed in perpetuity; provisions regarding monitoring and adaptive management are identified in the various mitigation measures addressing compensatory mitigation and vary depending on the species or habitat involved. BIO-MM#9 states that the preference for mitigation is to perform it on site, for example to supply supplemental water (e.g., from wells), and that if compensatory mitigation is needed, it must be performed as defined in the appropriate mitigation measure (which, depending upon the impact, may involve BIO-MM#10, BIO-MM#12, BIO-MM#28, BIO-MM#31, BIO-MM#33, BIO-MM#35, BIO-MM#57, BIO-MM#72, BIO-MM#74, or BIO-MM#75). The Authority also notes that restoration of disturbed habitat is required to approximate baseline conditions as they are established by pre-construction monitoring.

1724-2983

Impacts BIO#1, BIO#31, BIO#35, BIO#36, and BIO#51 assess impacts on native rare plants and sensitive natural communities. Mitigation measures BIO-MM#1, BIO-MM#2, BIO-MM#7, BIO-MM#8, BIO-MM#10, and BIO-MM#12 specifically address these impacts, and native plants and natural communities also receive incidental benefits through many other mitigation measures addressing wildlife for whom these plants provide habitat or addressing conservation areas that contain these plants.

1724-2984

Please review the Biological and Aquatic Resources Technical Report (Authority 2020a, as cited in Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS), where the Authority provided many different definitions of oak woodland, all of which are represented in the analysis. The City of Santa Clara, for instance, protects oak trees depending upon their size. Merced County and San Benito County each have different regulations protecting oak woodlands. Table 5-2 (Authority 2020a) provides a crosswalk of various different agencies' definitions of oak woodlands, and Table 5-3 (Authority 2020a) identifies the acreage of oak woodland to be impacted by each alternative, for each type of oak woodland. Each of these oak woodland types is defined in detail in Section 5.2.1.1 (Authority 2020a). Vegetation types having incidental cover of oak are also noted, see Section 5.2.1.2 (Authority 2020a).

1724-2985

Please refer to response to submission SJM-1724, comment 2982 regarding revisions to the tunnel hydrology analysis in the Final EIR/EIS and submission SJM-1707, comment 2771 regarding oak woodland protection and mitigation. BIO-MM#9 specifically discusses measures to minimize and mitigate impacts on protected trees, both during construction and in the event that impacts persist post-construction, either by replacing lost water (e.g., from wells) or by performing off-site compensatory mitigation. Commenter provides a brief summary of the many EIS/EIR mitigation measures to preserve, restore, or compensate for the loss of these trees, so the assertion that "There is no mention of in-kind preservation, restoration/enhancement, or habitat creation" is unclear.

1724-2986

In response to this comment, BIO-MM#75 has been updated in the Final EIR/EIS to include a ratio of 6:1 for off-site replacement of native oak trees, which is consistent with the requirements in the Caltrain PCEP.

1724-2987

The Draft EIR/EIS identifies the amount of oak woodland land cover types in the project footprint and habitat study area in Table 3.7-5. Upland valley oak woodland is included under the mixed riparian category, as shown in Table 3.7-4. Impacts on aquatic resources, which include riparian habitat, are described under Section 3.7.7.5, Aquatic Resources, and BIO-MM#71 and BIO-MM#72 mitigate for these impact. Impacts on oak trees in upland areas are included in Table 3.7-20. To address this comment, BIO-MM#75 has been updated in the Final EIR/EIS to include an native oak woodland mitigation plan, which includes reference sites, management, success criteria, monitoring, remedial actions, and financial assurances.

Response to Submission 1724 (Tiffany Yap, Center for Biological Diversity - Oakland, June 23, 2020) - Continued

1724-2988

The Authority appreciates your comments on the Draft EIR/EIS. In prior individual comments, the Center for Biological Diversity provided specific detailed comments regarding impacts on wildlife and plant species. Each of these specific comments is addressed above. The Authority has revised the Final EIR/EIS, as appropriate, to address these comments. The California Fish and Game Commission listed the coastal population of mountain lion as a candidate species under CESA on April 21, 2020. U.S. Fish and Wildlife Service listed monarch butterfly as threatened under FESA. As a result of these listings, the Authority issued a limited recirculation of the Draft EIR/EIS to reflect substantive revisions to the document for the inclusion of the mountain lion and the monarch butterfly. The Center for Biological Diversity will remain on the distribution and notification list for this project.

Submission 1811 (Jake Messerli, Central Valley Joint Venture, June 23, 2020)



CENTRAL VALLEY JOINT VENTURE

Conserving Bird Habitat in California's Central Valley

2800 Cottage Way, W1916
Sacramento, CA 9825
(916) 414-6459
www.cvjv.org

June 23, 2020

San Jose to Merced Project Section: Draft EIR/EIS
100 Paseo de San Antonio, Suite 300
San Jose, CA 95113

RE: Comments on Draft EIR/EIS for San Jose to Merced Project Section

Dear High-Speed Rail Authority,

On behalf of the Central Valley Joint Venture (CVJV) Management Board, we submit these comments in response to our review of the Draft EIR/EIS for the San Jose to Merced Section of the High-Speed Rail Project.

The CVJV is a partnership of 19 public and private entities comprised of government agencies, science and conservation organizations, and one corporation. Our mission is to work collaboratively to protect, restore, and enhance habitats for birds, in accordance with conservation actions identified in the CVJV Implementation Plan (Plan). The Plan provides a cohesive vision for bird conservation in the Central Valley within the context of the entire Pacific Flyway in association with four international bird conservation initiatives. The Plan sets quantitative habitat objectives based on best available science to ensure sustainable populations of migrant and resident birds in California's Central Valley, a critical area which has lost over 95 percent of its wetlands.

The CVJV is concerned that the Draft EIR/EIS incorrectly identified and classified the Grasslands Ecological Area (GEA). This resulted in an inappropriately narrow analysis and an underestimation of environmental impacts. The GEA is designated as a wetland of worldwide importance under the Ramsar Convention, an international treaty to which the United States is a signatory. The GEA boundary generally aligns with the federally designated Grasslands Wildlife Management Area (GWMA).

The GWMA, established in 1979 and expanded in 2005, authorizes the U.S. Fish and Wildlife Service (USFWS) to acquire and manage habitat, including conservation easements, on farmland and open space deemed necessary for the conservation of migratory birds. Currently, approximately 131,000 acres within the GWMA are

1811-2989

protected in federal or state ownership or conservation easements, and tens of thousands of acres remain eligible under federal law for future protection.

The Draft EIR/EIS uses an incorrect boundary for the GEA. Instead of using the established GEA boundary, it uses the boundary of the National Audubon Society's "Important Bird Area" (IBA), which occupies a smaller boundary within the larger GEA. The proposed train alignment passes through two portions of the GEA but only one portion of the IBA. Therefore, miles of the proposed Project facility would be located within the GEA but not within the IBA. The entire GEA needs to be part of the Draft EIR/EIS impacts analysis.

1811-2990

We are informed that the High-Speed Rail Authority previously used the correct GEA boundary when conducting preliminary evaluations of significant environmental issues. The CVJV maintains that the GEA boundary is the more appropriate boundary for this more detailed environmental analysis. Important Bird Areas, while helpful for guiding bird conservation efforts, confer no regulatory authority.

Most importantly, the omitted GEA areas contain very important and sensitive habitat. Not only is the land that falls outside of the IBA boundary but within the GEA boundary recognized by the CVJV as essential wetland and upland habitat for migratory birds, it is also set aside for future protection by the U.S. Fish and Wildlife Service. This area contains significant habitat that supports waterfowl, shorebirds, Tri-Colored Blackbirds and other species of concern.

We greatly appreciate the opportunity to comment on the Draft EIR/EIS for San Jose to Merced Project Section. We hope you will take our comments into consideration and amend the Draft EIR/EIS appropriately.

Sincerely,

Jake Messerli
CVJV Board Chair

cc: Central Valley Joint Venture Board

1811-2989

Response to Submission 1811 (Jake Messerli, Central Valley Joint Venture, June 23, 2020)

1811-2989

Refer to Standard Response SJM-Response-BIO-4: Grasslands Ecological Area Boundary.

1811-2990

Refer to Standard Response SJM-Response-BIO-4: Grasslands Ecological Area Boundary.

Submission 2067 (Connie Rogers, Gilroy Growing Smarter, June 23, 2020)

June 22, 2020

San Jose to Merced Project Section
California High-Speed Rail Authority
100 Paseo de San Antonio, Suite 300
San Jose, CA 95113

Re:San Jose to Merced Draft EIR/EIS

Dear Sirs,

Thank you for soliciting our comments on your plans for developing High Speed Rail in the Gilroy area. We do feel fortunate that a station is planned for Gilroy and that we have an excellent location for it. We are also very pleased to see that you have included our 2016 Urban Growth Boundary in your planning documents. Our comments will pertain to the City of Gilroy alignments. We note that CHSR has chosen Alternative 4 the Blended Option, as the preferred alternative. We too to our have preferences and concerns as follows:



2067-3203

1) We strongly prefer Alternative #1 staying as close as possible to the existing Union Pacific right of way and using the Viaduct in downtown Gilroy. Preserving our excellent agricultural land is of primary importance to our members and the community. This option uses the least amount of additional public and private land. Executive Summary, Section S.5.2.1 page S14.

2067-3204

2) Preservation of east-west traffic corridors is of critical importance in our linear city of Gilroy. There are now ten railroad crossings within our city limits. Of these, Buena Vista, Leavesley, IOOF, Sixth, Tenth and Luchessa are arterial streets, Lewis and Seventh are collectors. Luchessa and Tenth are both part of State Hwy 152 coming from Pacheco Pass and continuing to Watsonville. Luchessa is also the primary way to access to St. Louise Hospital and Hwy 101 north and south. Because of this the aerial alignment (viaduct) seems imperative to us. Executive Summary, Section S.5.2.1 page S14.

2067-3205

3) A related issue is the alignment of HSR tracks with Caltrain and Union Pacific tracks. For safety they should be on the same alignment, both horizontally and vertically. The cumulative effects of HSR trains plus Caltrain (4 round trips/day) and Amtrak (2/day) and UP freight trains must be addressed and mitigated. How many HSR trips per day will go through Gilroy? What will be the frequency of quad gates closing off Leavesley and Tenth Streets when trains are passing? This has the potential of causing severe congestion and impacting emergency response. The blended option may work in the beginning when there are fewer HSR trains, but it seems totally unworkable when there are many trains. Leavesley and Tenth Streets are heavily used, primary entrances to Gilroy, both part of Hwy. 152, two lanes in each direction. Blockage for more than a few minutes each hour will be unacceptable. Use of the viaduct is necessary here. Table 3.2-14, pp 3.2-56 & 57 & 60

2067-3206

4) We are very concerned about both noise and vibration. The alignment places the train very close to businesses, schools and residences which will be adversely affected. Mitigation measures need to be adopted, especially if the at grade or embankment alignments are used. It is not sufficient to just say that because Gilroy already has Caltrain and UPRR additional noise will not need mitigation. Cumulative impacts must be addressed. The viaduct would be acceptable but underground tracks would be the best mitigation for all the issues described in #2, #3 and #4 here and should be considered. Section 3.4, Table 3.4-16, Figure 3.4-21 and page 3.4-59

2067-3207

5) Our downtown consists almost entirely of historic buildings dating back to 1900 or earlier. It is a designated Historic District between 4th and 8th St., which includes Old City Hall and the Southern Pacific Railroad Depot, both landmarks on the National Register of Historic Places which are on Monterey Street, close to the tracks. Mitigation measures protecting our historic assets from vibration and noise need to be adopted. Section 3.4

2067-3208

6) We also strongly prefer the MOWF for Alternatives #1 and #2 which is much closer to the City Limits and existing right of way for Union Pacific. The majority of the acreage it needs is within the Urban Growth Boundary and somewhat near other industrial uses. Executive Summary, Section S5.4, page S15

2067-3209

We conclude by saying that a flexible approach for phases beyond the Blended Option will be needed. It will no doubt be several years before electrification to Gilroy is put in place and the Blended Option at grade will need further study for the future. At that time local traffic studies and the frequency of HSR trains should require that options other than "at grade" be considered.

Thank you for considering our opinions for alignments within the City of Gilroy.

Connie Rogers, Chair
Gilroy Growing Smarter

Via email to san.jose_merced@hsr.gov
And US Mail

Submission 2067 (Connie Rogers, Gilroy Growing Smarter, June 23, 2020) - Continued



RECEIVED
JUN 23 2020
BY: *jr*

*San Joaquin Merced Project Section,
California High Speed Rail Authority,
100 Base de San Antonio #,
San Jose, CA 95113*

SAN JOSE CA 950
23 JUN 2020 PM 3 L



Response to Submission 2067 (Connie Rogers, Gilroy Growing Smarter, June 23, 2020)

2067-3203

Refer to Standard Response SJM-Response-GEN-1: Opposition and Comments on the Merits of the Project.

The comment's support of Alternative 1 is noted.

2067-3204

The comment is noted and does not indicate any specific concern regarding any of the conclusions in the Draft EIR/EIS. As noted by the comment, the Draft EIR/EIS evaluates alternatives that grade separate crossings within the City of Gilroy and alternatives that retain at-grade crossings, with improvements. Please refer to Draft EIR/EIS Impact TR#3, Impact TR#4, Impact TR#6, and Impact TR#7 in Section 3.2, Transportation, of the Draft EIR/EIS for a discussion of the project's effects on the referenced roadways in the City of Gilroy.

2067-3205

Refer to Standard Response SJM-Response-TR-3: Gate-Down Time Calculation Details.

The comment noted that the Draft EIR/EIS should disclose the number of HSR trains passing through the City of Gilroy and evaluate the impacts of those trains on roadway congestion and emergency vehicle response. Please refer to Impact TR#7 in Section 3.2, Transportation, of the Draft EIR/EIS for a discussion of the analysis of the project alternatives and effects of gate-down time on City of Gilroy transportation facilities. Please refer to Impact S&S#4 in Section 3.11, Safety and Security, of the Draft EIR/EIS for a discussion of the analysis of the impacts of gate-down time on emergency vehicle response.

2067-3206

Refer to Standard Response SJM-Response-ALT-1: Alternatives Selection and Evaluation Process.

The Authority is responsible to implement identified feasible mitigation related to significant impacts identified in the EIR/EIS per the requirements of CEQA and any other mitigation the Authority deems as required relative to the NEPA analysis.

Noise barriers without quiet zones are analyzed as the primary noise mitigation measures in Section 3.4.7, Mitigation Measures, of the Draft EIR/EIS. Noise barriers proposed in Gilroy are listed in Table 3.4-24 of the Draft EIR/EIS for Alternative 2 and Table 3.4-26 for Alternative 4.

The analyses and impact assessments include the combined operations during daytime and nighttime of all train traffic in the corridor, including all HSR, Caltrain, Amtrak and other passenger trains, and freight trains.

Response to Submission 2067 (Connie Rogers, Gilroy Growing Smarter, June 23, 2020) - Continued

2067-3207

With respect to the project alternatives' impacts on historical resources in downtown Gilroy--specifically Gilroy City Hall and the Southern Pacific Train Station--as a result of noise and vibration, the Final EIR/EIS finds that the impact would be less than significant, which is the correct determination based on the effects analysis and evidence presented. Alternatives 1, 3, and 4 would occur sufficiently far from Gilroy City Hall not to have the potential to cause construction-related damage. Alternative 2 would be constructed in the immediate vicinity of Gilroy City Hall, but project features would involve the establishment and implementation of protection and/or stabilization measures to prevent vibration-caused damage. None of the alternatives would have the potential to cause vibration-related damage to the Southern Pacific Train Station. Furthermore, Chapter 4, Section 4(f)/6(f) Evaluation, specifies that mitigation measures will apply to Gilroy City Hall and the Southern Pacific Depot as related to noise/vibration impacts, including NV-MM#3, NV-MM#4, NV-MM#5, NV-MM#6, and NV-MM#7. These measures require implementing HSR noise guidelines, assisting local jurisdictions to establish Quiet Zones, meeting federal regulations for locomotives, special track work at crossovers and turnouts, and additional noise analysis during final design. As outlined in Section 3.4, Noise and Vibration, these measures will minimize the noise and impacts on Gilroy City Hall and Southern Pacific Train Station.

2067-3208

Refer to Standard Response SJM-Response-GEN-1: Opposition and Comments on the Merits of the Project.

The comment's support of Alternatives 1 and 2 is noted.

2067-3209

Refer to Standard Response SJM-Response-ALT-1: Alternatives Selection and Evaluation Process, SJM-Response-ALT-2: Project-Specific Alternatives Considerations.

The comment requests that a flexible approach for phases beyond the blended option and additional traffic studies after construction. The Authority will continue to engage jurisdictions and stakeholders during the design, construction, and operation of the project.

The comment requests consideration of options other than "at grade."

Submission 2068 (Connie Rogers, Gilroy Historical Society, June 23, 2020)

June 23, 2020

San Jose to Merced Project Section
California High-Speed Rail Authority
100 Paseo de San Antonio, Suite 300
San Jose, CA 95113

Re: San Jose to Merced Draft EIR/EIS

Dear Sirs,

Thank you for soliciting our comments on your plans for developing High Speed Rail in the Gilroy area. We do feel fortunate that a station is planned for Gilroy and that we have an excellent location for it. Our comments will pertain to the City of Gilroy alignments. We note that CHSR has chosen Alternative 4, the Blended Option, as the preferred alternative. We too to our have preferences and concerns as follows:



2068-3216

5) We are also very concerned about the cumulative impacts of HSR trains in addition to Caltrain, Amtrak and Union Pacific freight trains. How many HSR trips per day will go through Gilroy? What will be the frequency of quad gates closing off Leavesley and Tenth Streets when trains are passing? This has the potential of causing severe congestion and impacting emergency response. The blended option may work in the beginning when there are fewer HSR trains, but it seems totally unworkable when there are many trains. Leavesley and Tenth Streets are heavily used, primary entrances to Gilroy, both part of Hwy. 152, two lanes in each direction. Blockage for more than a few minutes each hour will be unacceptable. Use of the viaduct is imperative here. Table 3.2-14, pp 3.2-56 & 57 & 60

2068-3212

1) We strongly prefer Alternative #1 staying as close as possible to the existing Union Pacific right of way and using the Viaduct in downtown Gilroy. We believe that the viaduct will provide visibility between the east and west sides of Gilroy, be less damaging and less intrusive on our historic downtown. This option uses the least amount of additional public and private land. Executive Summary, Section S.5.2.1page S14. And Table 3.13-6

2068-3217

6) Another reason the viaduct will be critical for High Speed Rail trains is because we have ten railroad crossings within our linear city. These east-west streets are vital to our civic well-being, economically, physically and psychologically. . Executive Summary, Section S.5.2.1page S14. And S.8.3.4

2068-3213

2) Our downtown consists almost entirely of historic buildings dating back to 1900. It is a designated Historic District between 4th and 8th St. which includes Old City Hall and the Southern Pacific Railroad Depot, both landmarks on the National Register of Historic Places which are on Monterey Street, close to the tracks. Mitigation measures protecting our historic assets from vibration and noise need to be adopted. Section 3.4

2068-3218

We conclude by saying that a flexible approach for phases beyond the Blended Option will be needed. It will no doubt be several years before electrification to Gilroy is put in place and the Blended Option at grade will need many modifications when high speed trains are frequent. At that time local traffic studies and the frequency of HSR trains should require that options other than "at grade" be considered.

Thank you for considering our opinions for alignments within the City of Gilroy.

Connie Rogers, President
Gilroy Historical Society

2068-3214

3) We regard our historic downtown, especially the Historic District, as a unique asset of the City. We were glad to note the CUL-IAMF#6: Pre-Construction Conditions Assessment, Plan for Protection of Historic Built Resources, and Repair of Inadvertent Damage calls for both protection and restoration of our many historic buildings. See page 2-E-11

Via email to san_jose_merced@hsr.gov
And US Mail

2068-3215

4) We are very concerned about both noise and vibration. The alignment places the train very close to businesses, schools and residences which will be adversely affected. Mitigation measures need to be adopted, especially if the at grade or embankment alignments are used. It is not sufficient to just say that because Gilroy already has Caltrain and UPRR additional noise will not need mitigation. Cumulative impacts must be addressed. The viaduct would be acceptable but underground tracks would be the best mitigation for all the issues described in #2, #3 and #4 here and should be considered. Section 3.4, Table 3.4-16, Figure 3.4-21and page 3.4-59

Response to Submission 2068 (Connie Rogers, Gilroy Historical Society, June 23, 2020)

2068-3212

Refer to Standard Response SJM-Response-GEN-1: Opposition and Comments on the Merits of the Project.

The comment's support of Alternative 1 is noted.

2068-3213

With respect to the project alternatives' impacts on historical resources in downtown Gilroy--specifically Gilroy City Hall and the Southern Pacific Train Station--as a result of noise and vibration, the Final EIR/EIS finds that the impact would be less than significant, which is the correct determination based on the effects analysis and evidence presented. Alternatives 1, 3, and 4 would occur sufficiently far from Gilroy City Hall not to have the potential to cause construction-related damage. Alternative 2 would be constructed in the immediate vicinity of Gilroy City Hall, but project features would involve the establishment and implementation of protection and/or stabilization measures to prevent vibration-caused damage. None of the alternatives would have the potential to cause vibration-related damage to the Southern Pacific Train Station. Furthermore, Chapter 4, Section 4(f)/6(f) Evaluation, specifies that mitigation measures will apply to Gilroy City Hall and the Southern Pacific Depot as related to noise/vibration impacts, including NV-MM#3, NV-MM#4, NV-MM#5, NV-MM#6, and NV-MM#7. These measures require implementing HSR noise guidelines, assisting local jurisdictions to establish Quiet Zones, meeting federal regulations for locomotives, special track work at crossovers and turnouts, and additional noise analysis during final design. As outlined in Section 3.4, Noise and Vibration, these measures will minimize the noise and impacts on Gilroy City Hall and Southern Pacific Train Station.

2068-3214

The comment is noted and does not indicate any specific concern regarding any of the conclusions in the Draft EIR/EIS. The Authority notes that BEMPs would be prepared for properties qualifying as NRHP-listed or -eligible, or as CEQA historical resources due to local designation.

2068-3215

Refer to Standard Response SJM-Response-ALT-1: Alternatives Selection and Evaluation Process.

The Authority is responsible for implementing identified feasible mitigation related to significant impacts identified in the EIR/EIS per the requirements of CEQA and any other mitigation the Authority deems as required relative to the NEPA analysis.

Noise barriers without quiet zones are analyzed as the primary noise mitigation measures in Section 3.4.7, Mitigation Measures, of the Draft EIR/EIS. Noise barriers proposed in Gilroy are listed in Table 3.4-24 of the Draft EIR/EIS for Alternative 2 and Table 3.4-26 for Alternative 4.

The analyses and impact assessments include the combined operations during daytime and nighttime of all train traffic in the corridor, including all HSR, Caltrain, Amtrak and other passenger trains, and freight trains.

2068-3216

Refer to Standard Response SJM-Response-TR-3: Gate-Down Time Calculation Details.

The comment noted that the Draft EIR/EIS should disclose the number of trains passing through the City of Gilroy and evaluate the impacts of those trains on roadway congestion and emergency vehicle response. Please refer to Impact TR#7 in Section 3.2, Transportation, of the Draft EIR/EIS for a discussion of the analysis of the project alternatives and effects of gate-down time on City of Gilroy transportation facilities. Please refer to Impact S&S#4 in Section 3.11, Safety and Security, of the Draft EIR/EIS for a discussion of the analysis of the impacts of gate-down time on emergency vehicle response.

2068-3217

Refer to Standard Response SJM-Response-GEN-1: Opposition and Comments on the Merits of the Project.

The comment's support of Alternative 1 is noted.

Response to Submission 2068 (Connie Rogers, Gilroy Historical Society, June 23, 2020) - Continued

2068-3218

Refer to Standard Response SJM-Response-ALT-1: Alternatives Selection and Evaluation Process, SJM-Response-ALT-2: Project-Specific Alternatives Considerations.

The comment requests that a flexible approach for phases beyond the blended option and additional traffic studies after construction. The Authority will continue to engage jurisdictions and stakeholders during the design, construction, and operation of the project.

The comment requests consideration of options other than “at grade.”

Submission 1709 (Erik Schoennauer, Graniterock, June 23, 2020)

San Jose - Merced - RECORD #1709 DETAIL

Status : Unread
Record Date : 6/24/2020
Submission Date : 6/23/2020
Interest As : Business and/or Organization
First Name : Erik
Last Name : Schoennauer

Stakeholder Comments/Issues :

Hello, Barry and Pat.

1709-2784

I think the letter looks good. Maybe I missed it, but were we going to mention how difficult it would be to find an alternative site, especially a rail-served location. There are very limited available large heavy industrial parcels. And, often uses that are noisy and dusty face strong opposition in the permitting process.

1709-2785

And, can we say - and is there any benefit to saying that UP's strategy is to concentrate service along the main line and reduce or eliminate service on spur lines. This will further reduce rail-served alternatives. So, the Capital Yard's location and operation is consistent with UP's planned operations.

My thoughts,
 ERIK

On Tue, Jun 23, 2020 at 1:52 PM <barry@shottslaw.com> wrote:

> Hello - Please find attached comments on the Draft EIR/EIS for the San
 > Jose to Merced Project Section submitted by Graniterock.

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> Thank you for your consideration.

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> - Barry Shotts

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Response to Submission 1709 (Erik Schoennauer, Graniterock, June 23, 2020)

1709-2784

The comment appears to be commenting on the comment letter itself regarding a discussion of an alternative heavy industrial site. The comment appears to be concerned with relocating an industrial business. The Authority will implement project features, including SOCIO-IAMF#2 and SOCIO-IAMF#3 to avoid and minimize economic impacts, described in Volume 2, Appendix 2-E, Project Impact Avoidance and Minimization Features.

1709-2785

The comment appears to be commenting on the comment letter itself regarding a discussion of an alternative heavy industrial site. The comment appears to be concerned with consistency with UPRR's planned operations. Please refer to Section 3.2, Transportation, which analyzes impacts of the project alternatives on freight rail operations. Cumulative impacts on freight rail are also analyzed in Section 3.19.6.1, Transportation.

Submission 1720 (Barry Shotts, Graniterock, June 23, 2020)

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Mr. Brian Kelly
Page 2
June 23, 2020

June 23, 2020

Mr. Brian Kelly
Chief Executive Officer
California High-Speed Rail Authority
100 Paseo de San Antonio, Suite 300
San Jose, CA 95113
Attn: Draft San Jose to Merced Project Section EIR/EIS

VIA EMAIL [san.jose_merced@hsr.ca.gov]

Re: Graniterock – Draft EIR/EIS Comments

Dear Mr. Kelly:

On behalf of Graniterock, we would like to thank you for the opportunity to review the Draft Environmental Report/Environmental Impact Statement (the “Draft EIR/EIS”) for the San Jose to Merced Section of the High-Speed Rail System (the “Project”). As discussed below, Graniterock is generally supportive of Alternative 4 of the proposed Project – the preferred alternative in the Draft EIR/EIS - and the Project’s goal of improving air quality, reducing congestion, and improving inter-city transportation safety and travel time.

At the same time, Graniterock is concerned about the impact the Project could have on Graniterock’s property and operations adjacent to the Project area, particularly if Alternative 1, 2 or 3 is implemented, and therefore wishes to provide the following comments on the Draft EIR/EIS for your consideration.

Graniterock’s San Jose/Capitol Yard

Incorporated in Watsonville, California on February 14, 1900, Graniterock operates today with its original California Contractor License #22 as a regional construction materials producer and heavy civil contractor employing over 1,000 people. Graniterock provides a wide range of products and services to clients in the San Francisco Bay Area and beyond. The cornerstone of Graniterock’s business is the A.R. Wilson Quarry, a granite quarry located in Aromas, California. Opened in 1895, the A.R. Wilson Quarry’s original purpose was to provide ballast rock for the Southern Pacific Railroad. The quarry is therefore located adjacent to mainline railroad track with long rail spurs serving the facility. Today, the A.R. Wilson Quarry produces aggregate predominantly used for construction materials (concrete & asphalt) throughout the San Francisco Bay Area.

An equally critical Graniterock facility is the “Capitol Yard,” a 23-acre property located at 120 Granite Rock Way in San Jose, California near Communications Hill and immediately adjacent to the Union Pacific Railroad (“UP”) mainline track.¹ The Capitol Yard receives aggregate/rock from the A.R. Wilson Quarry for distribution and for the production of concrete and other construction materials for its customers.

The Capitol Yard is strategically located in the South San Francisco Bay area, not only because of its close proximity to Graniterock’s customers, but it is also the only rail served, construction materials facility in the South Bay. Originally acquired by Graniterock in 1971, the facility has been in continuous operation since with a growing need to serve the Bay Area market as the local economy expands. Bridges, roadways, airports, water, sewer and storm drain facilities and other critical infrastructure have all been constructed in the Bay Area for generations utilizing Graniterock’s premier products expertise.

Without the Capitol Yard or the rail spur serving the Capitol Yard, all aggregate would have to be sent by individual trucks from the A.R. Wilson Quarry to Bay Area customers, primarily via U.S. Highway 101. The Capitol Yard, by being able to receive rail shipments, can effectively serve as a local hub and consolidate the transportation and delivery of construction materials to projects throughout the Bay Area, reducing long haul truck traffic on already congested regional highways.

In fact, Graniterock is in the planning stages of a modernization plan for the Capital Yard to expand the volume of material the facility can receive by rail, in addition to other improvements, and has submitted conceptual plans for the project to both the City of San Jose (“City”) and UP (the “Modernization Plan”). Since most of Graniterock’s customers in the San Francisco Bay Area are not rail served, nearly all customers could benefit from being able to receive aggregate via rail shipment into and local delivery from the Capitol Yard. The Capitol Yard at present, however, is not configured to accommodate all of this demand; the size of the existing rail spur is a particular constraint. Many of Graniterock’s customers must therefore continue to receive products via truck from the A.R. Wilson Quarry via U.S. Highway 101.

A key element of the Modernization Plan would therefore be to lengthen the existing rail spur serving the facility and to add other improvements to enable Graniterock to handle larger, more consolidated rail shipments of aggregate. This in turn would expand the Capitol Yard’s ability to serve as a hub for the shipment of aggregate via rail, and, therefore, to significantly reduce long haul truck shipments to customers in the range of an estimated 2.5 million vehicle miles traveled (“VMT”) per year. Graniterock therefore enthusiastically supports the Project’s goal of reducing regional highway congestion.

¹ Before a lot line adjustment recorded on May 24, 2018 (the “LLA”), the Capitol Yard included the following Assessor’s Parcel Numbers (“APNs”): 462-170-16, -18, -19, -20, and -21. APNs 462-17-018, -019 and -020 were then combined by the LLA, which does not appear to be reflected in the maps depicting the Capitol Yard in the Draft EIR/EIS.

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1720-2887

Submission 1720 (Barry Shotts, Graniterock, June 23, 2020) - Continued

Mr. Brian Kelly
Page 3
June 23, 2020

Mr. Brian Kelly
Page 4
June 23, 2020

1720-2888

Alternatives 1, 2 and 3 Would Effectively Ruin the Capitol Yard Business

Against this background, Graniterock was naturally alarmed to see the footprint of Alternatives 1, 2 and 3 of the proposed Project. Alternatives 1 and 3 would take the entire Capitol Yard for a “Temporary Construction Easement” for a “precasting yard” for precast concrete segments, workshops and materials staging. Judging from the proposed construction schedule for the Project, this “temporary” take would last for several years and would presumably require the demolition of some or all of the existing improvements. A portion of the Capitol Yard would also be taken permanently for “HSR Right of Way,” which would potentially impact the rail spur serving the facility even once the “temporary” construction easement ended. The bottom line is that Graniterock would be unable maintain a viable business at the Capitol Yard, as configured now or as proposed for expansion under the Modernization Plan discussed above, if either Alternative 1 or 3 is implemented.

1720-2889

Alternative 2 would take most of the Capitol Yard for permanent “HSR Right of Way” to accommodate the wider footprint of this alternative. The residual parcel left under Alternative 2 would be without rail service and too small to enable Graniterock to continue operations, much less to implement the Modernization Plan. As with Alternatives 1 and 3, Alternative 2 would essentially be a take of the entire Capitol Yard and Graniterock’s business at this location.

1720-2890

Perhaps one of the reasons the Capitol Yard is proposed for acquisition in three of the four Project alternatives discussed in the Draft EIR/EIS, is that the Capitol Yard is referred to as “Granite Rock Recycling Services.” Draft EIR/EIR at page 3.13.-37. Graniterock does provide some limited “recycling” of concrete and asphalt at the Capitol Yard for use in construction, but that is not its primary business, as noted above. Projects all over the Bay Area depend upon the Capitol Yard for construction materials for critical infrastructure projects. The Capitol Yard is not a recycling center – it is a construction materials production and distribution facility.

1720-2891

If a precasting yard is needed for Alternatives 1 and 3, there are less impactful alternatives to shutting down a business that has operated at the Capitol Yard for nearly 50 years. Immediately to the south of the Capitol Yard and adjacent to the Project is a “West Wind Capitol Drive-In” which also serves as a “Flea Market” parking lot. This drive-in/flea market site is 33.45 acres (APN: 462-18-007), consists mostly of a parking lot – there is only an approximately 5000 square foot building covering the 33.45 acres - is larger than the 23-acre Capitol Yard and could easily serve as a precasting yard.

Just to the north of the Capitol Yard is an approximately 90-acre industrial site consisting of a “Concrete Ready Mix” operation with almost no improvements covering 95% of the site (APNs: 455-09-068 and 455-09-054). This site, which is not rail served, is clearly large enough to accommodate the Project’s need for a precasting yard for the Monterrey Corridor, potentially without impacting the existing business there.

In pointing out these alternatives, Graniterock does not wish to disparage these businesses in any way. But strong consideration must be given to the fact the Capitol Yard is the only rail served construction materials facility in the South Bay. We are simply unaware of another site to which Graniterock could relocate this unique facility, at any price.

1720-2892

Therefore, if Alternative 1, 2 or 3 is selected and implemented, the Capitol Yard and Graniterock’s business there would be permanently taken by the Project, and the Capitol Yard would no longer play its regional role of consolidating and aggregating the production and shipment of construction materials. Graniterock estimates that, because it is rail served, the current Capitol Yard facility reduces truck traffic on U.S. Highway 101 by approximately 120,000 VMT per year; if the Modernization Plan is implemented (which Alternatives 1, 2 and 3 would entirely preclude), VMT on U.S. Highway 101 would be reduced by approximately 2.5 million VMT per year. Hence, if the Capitol Yard is taken by the Project, there would be a corresponding, dramatic increase in long haul truck traffic to construction sites in the Bay Area. And the Modernization Plan’s promise of further reducing truck VMT would be lost as well. This is an impact that was not studied by the Draft EIR/EIS.

1720-2893

Graniterock would also be remiss if it did not point out that it would vigorously contest any proposed take of the Capitol Yard property and business. Indeed, the fact that the site has been depicted on Project maps for acquisition by the Project could impact its existing business operations and proposed Modernization Plan,² entitling Graniterock to precondemnation damages and/or damages for inverse condemnation. At a minimum, a take of the Capitol Yard, or any portion thereof, particularly if rail service and the existing business footprint cannot be maintained, would entitle Graniterock to an award of damages for the value of the entire property at its highest and best use, as well as damages for business losses, severance damages, relocation costs and other consequential damages. Graniterock reserves all of its rights in this regard.

1720-2894

Graniterock Supports Alternative 4 if Rail Service is Maintained at the Capitol Yard

On December 13, 2019, Graniterock met with Brian Stanke, the City of San Jose’s Rail Planning Manager, to discuss Graniterock’s proposed Modernization Plan. At this meeting, Mr. Stanke quickly advised Graniterock of the potential impacts of the HSR Project upon the Capitol Yard and recommended that Graniterock meet with HSR staff. Until this meeting, Graniterock was generally unaware that the HSR Project could impact its existing and proposed future operations. Since this meeting, Graniterock’s attempts to advance its Modernization Plan with the City have gone no further.

It was at this point that Graniterock was provided with Project drawings by HSR staff, at the request of Mr. Stanke. Graniterock then learned that, whereas Alternatives 1, 2 and 3 would essentially take the entire Capitol Yard property and business, Alternative 4 would take only a small portion of the Capitol Yard, adjacent to the current UP main line, for permanent “HSR Right-of-Way” and a “Temporary Construction Easement.”

Graniterock is therefore generally supportive of Alternative 4, despite the fact that even this alternative has caused Graniterock to reconfigure plans for its existing and future operations, including site configurations, internal traffic patterns, rail track layout and logistics. The critical element, from Graniterock’s perspective, is that its rail spur service to the UP main line be

² As noted below, Graniterock has been unable to advance its proposed expansion plans with the City since meeting with staff on December 13. Graniterock’s existing and proposed business operations are therefore already being impacted and delayed by the Project.

Submission 1720 (Barry Shotts, Graniterock, June 23, 2020) - Continued

Mr. Brian Kelly
Page 5
June 23, 2020

Mr. Brian Kelly
Page 6
June 23, 2020

1720-2894

preserved during the construction and operation of the Project, as currently configured and as proposed for expansion under the Modernization Plan.

1720-2896

in response to freight customer needs and activity.” Draft EIR/EIR at page 2-45. In Graniterock’s experience, a flexible schedule for freight rail service is critical in order to match incoming shipments of aggregate with facility production and customer demand for construction materials as project progress. To that end, the trackage rights agreement (“TRA”) originally negotiated in 1991 between the Peninsula Corridor Joint Powers Board (“PCJPB”) and the Southern Pacific Transportation Company, UP’s predecessor-in-interest to this corridor, “does not limit freight service hours on the UPRR-owned MT-1 track between CP Coast and CP Lick” and requires PCJPB “to allow for one daytime 30-minute freight window between 10 a.m. and 3 p.m.” and “one track for exclusive freight use between midnight and 5 a.m.” Draft EIR/EIS at page 3.2-41.

1720-2895

It was in this spirit that Graniterock met with HSR Project staff³ on January 30, 2020, and again on March 4, 2020, to discuss the Project and its impacts upon the Capitol Yard, including the Modernization Plan. HSR staff advised Graniterock that Alternative 4 was the preferred Project alternative and that it would be possible to maintain Graniterock’s rail spur service to the UP main line during construction and Project operations.

Given the importance of freight rail to the Project area and region, the EIR/EIS acknowledges that:

Although these two meetings with HSR staff were productive and promising, the Draft EIR/EIS itself contains no details or commitments regarding how potential impacts to the Capitol Yard under Alternative 4 would be mitigated, particularly impacts to the facility’s rail spur. This is not just a potential, unmitigated impact to Graniterock and the Capitol Yard; Graniterock contributes an estimated 70% of the freight transported by rail along the peninsula via the Monterey Corridor with a fleet of over 200 bulk rail cars over an average of 5 days per week. Any impact to Graniterock’s rail service would therefore dramatically impact regional freight rail service.

The project would have a significant impact if it would substantially disrupt or interfere with freight operations or require greater temporal separation that would change freight rail service such that resultant diversions to truck or other freight modes would result in significant secondary impacts related to air quality, noise, GHG emissions, or traffic operations (as defined by the other applicable significance criteria in this Draft EIR/EIS). Draft EIR/EIS at page 3.2-18.

Graniterock therefore requests that the Final EIR address this impact in detail and identify appropriate mitigation measures to reduce this impact to a level of insignificance under Alternative 4. Graniterock appreciates the time and effort of HSR staff in this regard and believes that a Memorandum of Understanding – providing clarity and certainty on how Graniterock’s rail spur and other operations would be accommodated – would also be an appropriate vehicle to that end.

At the same time, the Draft EIR/EIS notes the many impacts the Project would have upon freight rail service. During Project construction, impacts would be “significant for all four project alternatives because project construction would substantially disrupt or interfere with freight operations” within the Project area, “resulting in delays and rescheduling of freight service,” which would in turn result in the “temporary diversion of freight to trucks, causing additional noise, air quality, GHG emissions and roadway traffic compared to transport by rail.” Draft EIR/EIS at page 3.2-92. Alternative 4, in particular, would be the second most impactful alternative because of the conversion of the existing rail corridor to accommodate a single track dedicated for freight and two electrified tracks for passenger service. Draft EIR/EIS at page 3.2-91. Graniterock was encouraged to read that “Alternative 4, the preferred alternative, would retain the existing spur or siding connections” within the Project area, which we hope means that the existing rail spur service to the Capitol Yard would be retained. Id.⁴

1720-2896

The EIR/EIS Fails to Adequately Study or Mitigate the Impact of the Project on Freight Rail

In addition to impacts to the Capital Yard footprint, Graniterock is also concerned about the potential impacts of the Project upon freight rail service to the Monterey Corridor and beyond. The Draft EIR/EIS expressly notes the importance of freight movement within the Bay Area, likening the San Jose to Gilroy corridor and the Port of Oakland to Sacramento route through the Altamont Pass as a “mega-region” which “serves 19 counties and 147 cities, employs more than 1.7 million workers, and contributes more than \$10 billion to the mega-region’s economic output.” Draft EIR/EIS at pages 2-45, 46. The Draft EIR/EIS also notes that “[f]reight rail traffic in the project extent is expected to increase at a compound annual growth rate of 3.5 percent to 2040 because of increased intermodal rail shipments (e.g., shipping containers that can be single or double stacked on railcars, stacked in a container ship, or placed on a truck trailer chassis) coming from the Port of Oakland (Caltrans 2014).” Draft EIR/EIS at pages 1-23, 24.

1720-2897

During Project operations, the Draft EIR/EIS notes that potential impacts could arise from the “sharing of tracks north of CP Coast with Alternatives 1 and 4,” specifically, “the impact of HSR, Caltrain, and freight sharing MT-1 and MT-2 north of CP Coast” “with potential freight timing and capacity conflicts.”⁵ Draft EIR/EIS at page 3.2-92. Freight trains would not be able to access mainline tracks north of CP Coast during peak hours in the morning and evening and

As the EIR/EIS also notes, within Santa Clara County and the Monterey Corridor, UP operates the freight rail system on a track (MT-1) that also provides for Caltrain, Amtrak and ACE passenger service and that “UPRR freight train operations do not follow a set schedule, varying

⁴ From Graniterock’s perspective, on balance, this counsels heavily in favor of Alternative 4, despite the disruption this alternative would cause to rail operations during construction.

⁵ The Draft EIR/EIS concludes that there would be no impact to freight service within the Project area under Alternatives 2 and 3 because freight rail would have a dedicated track throughout the Project area under these alternatives, although serious and substantial impacts from these alternatives would result from the additional right-of-way needed for these alternatives.

³ Graniterock met with Dave Shpak, Julian Bratina and John Litzinger at these meetings.

Submission 1720 (Barry Shotts, Graniterock, June 23, 2020) - Continued

Mr. Brian Kelly
Page 7
June 23, 2020

1720-2897

would be confined to other times of the day, including from midnight to 5 a.m. The Draft EIR/EIS concludes that freight service through the Project area “should be able to complete normal round-trip service most of the time,” but that the Project “would require changes in freight operations practices north of CP Coast,” including one-way trains, longer trains, “the compression of freight service hours” and the “staggering” of train trips “over several nights.” Despite these multiple impacts, the Draft EIR/EIS somehow concludes that such impacts would “not cause a change in freight service such that resultant diversions to truck or other freight modes would occur” and that such impacts would be “less than significant.” Draft EIR/EIS at page 3.2-93.

That is not reality, and it does not appear that the UP, the BNSF or actual rail freight customers were ever consulted in reaching this conclusion. As the Draft EIR/EIS itself notes, “UPRR freight train operations do not follow a set schedule, varying in response to freight customer needs and activity.” Draft EIR/EIR at page 2-45. This is because the transportation needs of shippers and receivers of goods do not follow the same predictable patterns of transit service. It is this flexibility which is crucial in order for freight rail to meet ever-changing supply and demand.

1720-2898

Graniterock was encouraged to see that within the Monterey Corridor and adjacent to the Capital Yard, freight rail would operate on MT-1, which would be dedicated to freight. But the rail network upon which shippers depend is highly integrated. The compression of freight rail hours, “staggered” trains, precluding round trip trains and the resultant uncertainty of these disruptions in service anywhere within the Project area would cause delays and have a ripple effect throughout the system.

Simply put, if shippers and customers cannot send and receive goods when they are needed, because of all the disruptions in service caused by the Project, they will in fact turn to truck deliveries to provide the greater certainty upon which their businesses depend. It has been estimated that one UP double-stack train can take up to 300 trucks off of already congested highways, that rail is almost four times as fuel efficient than trucks, and that rail generates a carbon footprint an average of 75 percent less than moving freight by truck (Union Pacific 2020). The likely conversion of rail to truck shipments would therefore have a significant impact upon VMT, air quality, GHG emissions and traffic operations. The Draft EIR/EIS’s conclusion that Project operations would have an insignificant impact upon freight rail is conclusory and without substantial evidence.⁶

1720-2899

Unfortunately, the one mitigation measure proposed to deal with these significant impacts lacks both detail and substance. After entirely dismissing the impact of Project operations upon freight rail, the Draft EIR/EIS says that, to deal with potentially significant impacts from Project construction, “[p]rior to construction the contractor would prepare a railway disruption control plan for Authority approval.” Draft EIR/EIS at page 3.2-95. The “goal of the railway disruption

⁶ The Draft EIR/EIS casually concludes these many impacts are “insignificant” with only a footnoted reference to the “common practice on other light density freight lines shared with transit such as the River Line in New Jersey and some of the San Diego Trolley System.” Draft EIR/EIS at page 3.2-93, footnote 20. There is no evidence offered anywhere in the document that these other rail lines bear any resemblance to the Project area in terms of service volume, layout and potential conflicts.

Mr. Brian Kelly
Page 8
June 23, 2020

1720-2899

control plan” - identified as TR-MM#3 – Railway Disruption Control Plan - would be to “minimize the overall duration of disruption of passenger and freight operations” and to “coordinate” with UP and passenger rail providers and to “maintain passenger rail and UPRR’s emergency access through construction.” Id.

These are encouraging goals, but no further information is given. There would be no apparent oversight of this “railway disruption control plan” other than by the HSR Authority itself. UP has apparently not been consulted, which is critical since UP controls much of the right-of-way sought within Project area, nor the BNSF nor freight rail customers.⁷

While this plan would have the right intentions, the problem is that there are no details provided in the Draft EIR/EIS on exactly *how* freight operations would be maintained, and there would be no apparent oversight or enforcement of any such mitigation measures by an impartial authority. As the court noted under similar circumstances in Gray v. County of Madera, 167 Ca. App. 4th 1099, 1119 (Cal. Ct. App. 2008), the HSR Authority “has not committed itself to a specific performance standard” but rather has “committed itself to a specific mitigation goal.” It has also left itself, and not another agency with enforceable oversight, as the only agency to carry out the railway disruption plan. TR-MM#3 is therefore inadequate as a measure to mitigate impacts to freight rail operations under CEQA, because it impermissibly defers any detailed mitigation standards to some future date, to be decided upon by the Project applicant itself.

Summary

In spite of its concerns expressed above, on balance, Graniterock is supportive of the Project if Alternative 4 is selected. It is of paramount concern, however, that rail service to the Capitol Yard be maintained during Project construction and operations and that specific, detailed and enforceable steps be put in place to mitigate impacts to freight rail within the Project area. Graniterock appreciates the time and effort of HSR staff in meeting with us earlier in the year, and we look forward to continuing to work together to achieve these common goals.

Very truly yours,



Barry J. Shotts

cc: Pat Mapelli
Erik Schoennauer

⁷ The Draft EIR/EIS candidly notes that “the Authority should expect UPRR to defend any ROW rights they possess vigorously.” Appendix 2-L: Constructability Assessment Report – Record PEPP at page 12-3.

Response to Submission 1720 (Barry Shotts, Graniterock, June 23, 2020)

1720-2887

The comment's support for Alternative 4 is noted. This comment is primarily an introduction to the remainder of the comment letter. The comment is noted and does not indicate any specific concern regarding any of the conclusions in the Draft EIR/EIS.

1720-2888

Refer to Standard Response SJM-Response-GEN-1: Opposition and Comments on the Merits of the Project.

The comment opposes Alternatives 1, 2, and 3, which would take the entire Capitol Yard for temporary use as a precasting yard as well as a portion taken permanently for HSR right-of-way. The comment asserts that the landowner would be unable to maintain a viable business under Alternatives 1 and 3. Section 3.12, Socioeconomics and Communities, discusses project features for relocation assistance and compliance with the relocation act. The Authority would implement project features, including SOCIO-IAMF#2 and SOCIO-IAMF#3 to avoid and minimize economic impacts, described in Volume 2, Appendix 2-E, Project Impact Avoidance and Minimization Features.

1720-2889

The comment expresses concern for the impacts of Alternative 2 on the landowner. Please refer to the response to submission SJM-1720, comment 2888.

1720-2890

The clarification regarding the company name and services is noted. Granite Rock Recycling Services has been revised to Graniterock in the Final EIR/EIS.

1720-2891

The comment suggests alternate locations for precasting and construction staging. The West Wind Capitol Drive-In is included in Alternatives 1 and 3 as part of the precast site. The suggestion for use of parcels 455-09-068 and 455-09-054 is noted.

Please refer to the response to submission SJM-1720, comment 2888 regarding relocation support.

1720-2892

The comment noted that the Draft EIR/EIS should evaluate the secondary impacts on Graniterock's Capitol Yard, particularly those related to Vehicle Miles of Travel. Please refer to Impact TR#5 in Section 3.2, Transportation, of the Draft EIR/EIS for a summary of the project's anticipated effects related to VMT. In the year 2040, all project alternatives would reduce VMT within Santa Clara County by 230 million vehicle miles on an annual basis. The project footprint evaluated within the Draft EIR/EIS includes the temporary take of the referenced property as necessary during project construction. However, even with potential increases in freight traffic, the overall effect on VMT resulting from the project is expected to be a significant decrease within the County. With the overall decrease in VMT, air emissions would likewise decrease.

1720-2893

The comment states that the landowner would contest proposed take of the Capitol Yard property. Please refer to the response to submission SJM-1720, comment 2888.

1720-2894

Refer to Standard Response SJM-Response-GEN-1: Opposition and Comments on the Merits of the Project.

The comment expresses support for Alternative 4 if rail service is maintained at the Capitol Yard. Alternative 4 includes realignment of the existing rail spur to maintain access to Graniterock as shown on Sheet TT-D4007 in Book 4A of Volume 3, Preliminary Engineering for Project Design Record. The comment is noted and does not indicate any specific concern regarding any of the conclusions in the Draft EIR/EIS.

Response to Submission 1720 (Barry Shotts, Graniterock, June 23, 2020) - Continued

1720-2895

The Authority appreciates the willingness of Graniterock to meet and discuss the HSR project and Graniterock concerns regarding its facilities and operations. The comment is correct that the Authority stated that it would be possible to maintain Graniterock's rail spur service to UPRR during construction and operations. As stated in Chapter 2, Alternatives, of the Draft EIR/EIS on page 2-60 regarding Alternative 4: "UPRR spur and industrial tracks would be maintained from De La Cruz Boulevard to the MOWF, and a dedicated freight connection to the South Gilroy." The specific track connections proposed are shown in Volume 3, Preliminary Engineering for Project Design Record, of the EIR/EIS, which shows the engineering drawings. Refer to Drawing No. TT-D4007, which is in Book 4A, Sheet 7 of 148, which shows the separate line for freight/other passenger rail (MT3) and a spur access at the Capitol Yard.

1720-2896

The Draft EIR/EIS analyzes the potential impact of the HSR project on freight rail service and capacity during both construction and operations. The comment describes the EIR/EIS analysis and other information concerning the importance of freight rail service to the economy. As described in the EIR/EIS, the HSR project would maintain the existing track capacity for freight south of CP Coast such that capacity constraints would not be reduced by the project for freight. North of CP Coast, the EIR/EIS notes that because of the amount and speed of both HSR and Caltrain operations and the need to maintain established service as scheduled, slow-moving and long freight trains would not be able to access the Caltrain corridor mainline tracks north of CP Coast during peak hours in the morning and the evening. Freight operations would be able to operate outside peak hours including the midnight to 5 a.m. period. Constraining freight to periods outside of peak passenger service hours would require a change in current practices and would require changes in freight operations practices north of CP Coast. However, through use of longer consists or staggering over several nights, the compression of freight service hours would not result in a diversion of freight hauling from freight trains to trucks or other modes and, thus, would not result in any potential secondary impacts related to air quality, GHG emissions, noise, or traffic congestion. Regarding spur access from the UPRR mainline to the Capitol Yard, as discussed in other responses, this would be maintained with Alternative 4.

1720-2897

The EIR/EIS analysis of freight operations in Section 3.2, Transportation, takes into account the amount of freight north of CP Coast, the track capacity, the likely change in available track times for freight, taking into account the increase in speed and number of Caltrain and HSR operations. Constraining freight to periods outside of peak passenger service hours would require a change in current practices and would require changes in freight operations practices north of CP Coast. However, through use of longer consists or staggering over several nights, the compression of freight service hours would not result in a diversion of freight hauling from freight trains to trucks or other modes and, thus, would not result in any potential secondary impacts related to air quality, GHG emissions, noise, or traffic congestion.

This comment does not introduce any additional evidence to question this conclusion other than to state that this is "not reality" without providing any substantiation as to why a different conclusion should be reached.

Response to Submission 1720 (Barry Shotts, Graniterock, June 23, 2020) - Continued

1720-2898

As explained in Section 3.2.6.6, Freight Rail Service, of the Final EIR/EIS, south of CP Coast, the project would not affect freight track capacity, and thus there would be no effect on freight operations between Santa Clara and Gilroy. It is only north of CP Coast in Santa Clara where there would be some compression of freight service hours to avoid peak passenger rail operations. Pursuant to comments submitted by Graniterock and others, the Authority conducted additional analysis examining in detail concerns about shortening of nighttime freight operational windows north of CP Coast by analyzing freight dispatch and operational data in detail, and this analysis has been added to the Final EIR/EIS. That analysis revealed that a partial compression of freight evening service hours would not prevent the current and forecasted amount of freight service from completing round trip moves in the Caltrain Corridor north of CP Coast because there is adequate time to accommodate the average duration of freight moves (as well as some of the infrequent longer duration moves) within remaining operational hours. The review of this new data confirmed the conclusion in the Draft EIR/EIS for the San Jose to Merced Project Section regarding freight operations. Regarding “staggering” of trains, because adequate track access will remain north of CP Coast to complete round trip moves within a single night under most conditions, the “staggering” of freights is only expected to be required infrequently. There will also remain capacity to use longer trains on occasion, if needed, as the average train lengths for current service are far smaller than the maximum train lengths used at present (see PCJPB 2019, as cited in Section 3.2, Transportation, of the Final EIR/EIS), as well as additional trains on occasion given the capacity on the tracks. The use of these strategies (staggering, additional trains, longer trains) is not expected to be routine, and would occur only infrequently, likely for specialty cargoes or during temporary periods of higher freight demand. Overall, the review of the new data confirmed the conclusions in the Draft EIR/EIS that the project would not result in a diversion of freight hauling from freight trains to trucks or other modes and, thus, would not result in any potential secondary impacts related to air quality, GHG emissions, noise, or traffic congestion.

Revisions have been made to Section 3.2 of the Final EIR/EIS to clarify potential effects on freight rail, particularly related to effects north of CP Coast as well as potential for “ripple” effects south of CP Coast.

This comment does not introduce any additional evidence to question this conclusion.

1720-2899

This comment concerns potential disruption to freight operations during construction. As described in other responses to Graniterock, access to and from the UPRR mainline via the spur at the Capitol Yard would be maintained during construction, which would allow continued operations during construction. Given UPRR control of freight operations within the UPRR corridor and Caltrain control within the Caltrain corridor, Mitigation Measure TR-MM#3 specifically requires coordination with passenger rail providers, Caltrain, and UPRR to implement the railway disruption control plan. There is no requirement in CEQA or NEPA to designate a third party to oversee mitigation measure implementation. As the lead agency, the Authority can oversee implementation of the mitigation adopted through the environmental review process. The PCJPB, for example, has a mitigation measure adopted through its 2015 EIR (PCJPB 2015, as cited in Section 3.2, Transportation, of the Draft EIR/EIS) for the PCEP to address potential disruption to freight and other passenger rail services during electrification construction, and the PCJPB is overseeing its own implementation of the mitigation measures. In this instance, since the PCJPB and UPRR own the railroads in which the HSR project would be constructed (in part), the Authority must coordinate with and obtain the approval of both parties for proposed construction activities, which allows for their review and input on the railway construction disruption plan. Regarding a specific performance standard, Mitigation Measure TR-MM#3 identifies that its goal is to “minimize the overall duration of disruption of passenger and freight operations” and “maintain reasonable LOS”, while “allowing for an expeditious completion of construction.” These articulated goals function as the performance standards for this measure. As discussed in Impact TR#20 in Section 3.2 of the Draft EIR/EIS, the disruptions to freight operations are expected to be on the order of hours or at most a few days at any one location. With implementation of Mitigation Measure TR-MM#3, short-term disruptions, while they may affect temporary freight operations, are not expected to result in overall change in freight service and operations such that there would be a substantial diversion to trucks. The comment does not identify what alternative performance standards should be utilized. Given the variable freight operations and the limited extent of expected disruptions, a further articulation of an exact performance standard is neither feasible nor necessary to control potential effects.

However, pursuant to this comment and other comments concerning freight disruption during construction, Mitigation Measure TR-MM#3 has been revised in Section 3.2 of the Final EIR/EIS to provide greater clarity.

Response to Submission 1720 (Barry Shotts, Graniterock, June 23, 2020) - Continued

1720-2900

Refer to Standard Response SJM-Response-GEN-1: Opposition and Comments on the Merits of the Project.

The comment reiterates the landowner's support of Alternative 4 with maintenance of rail service to Capitol Yard. Alternative 4 includes realignment of the existing rail spur to maintain access to Graniterock as shown on Sheet TT-D4007 in Book 4A of Volume 3, Preliminary Engineering for Project Design Record.

Submission 1338 (Steven Basarich, Great West Equipment, June 1, 2020)

San Jose - Merced - RECORD #1338 DETAIL

Status : Action Pending
Record Date : 6/1/2020
Submission Date : 6/1/2020
Interest As : Business and/or Organization
First Name : Steven
Last Name : Basarich

Stakeholder Comments/Issues :

1338-57

Please stop this railway waste. This project will go through my property causing me to relocate or probably cause me to shut my doors forever. This is the biggest money sive to date in this state.
Steve

Response to Submission 1338 (Steven Basarich, Great West Equipment, June 1, 2020)

1338-57

Refer to Standard Response SJM-Response-GEN-1: Opposition and Comments on the Merits of the Project.

Submission 1812 (Harvey Darnell, Greater Gardner Coalition, June 23, 2020)

ATTN: San Jose to Merced Project Section: Draft EIR/EIS

To whom it may concern:

We are the City of San Jose Strong Neighborhoods Initiative Greater Gardner Coalition Neighborhood Action Coalition comprised of the Gardner, North Willow Glen and Gregory Plaza Neighborhoods. We submitted over 50 pages of Scoping questions for the current San Jose to Merced Project Section draft EIR/EIS to the CHSRA on April 9 2009.

Two of our Greater Gardner Coalition Chairpeople, Kevin Christman and Harvey Darnell, have participated for many years on the San Jose HSR Community working groups.

We are aware that the CHSRA Board in 2019 at a Board meeting in San Jose, chose the preferred alignment to be what is described as Alternative 4 in the Draft EIR/EIS. This Alternative at grade would use quad gates at Virginia St and Auzerais Av rail crossings and run on the existing berm and bridges which would be rebuilt and widened to accommodate a second electrified set of tracks through Greater Gardner. With several Public Speakers from Greater Gardner expressing our concerns over such a choice, several members of the CHSRA Board including Senator Jim Beall, expressed to the Community that although their chosen route was through the heart of our Neighborhoods great care and sensitivity would be used in the process to minimize the impact of such a huge infrastructure project on our Neighborhoods. We strongly believe this document fails the Greater Gardner Neighborhoods in this regard.

We will address inadequacies in four sections of the Draft EIR/EIS as pertains issues which we have brought to your attention over the last 11 years. The sections which we feel have not adequately addressed our concerns are: Chapter 3, section 3-15 Parks, Recreation and Open Space, section 3-4 Noise and Vibration, section 3.17 Cultural Resources and Chapter 5 Environmental Justice.

Concerning Fuller Park

In 2005 Fuller Park was created using 75 year-long city surplus remnant lands (left over from the demolition of dozens of home on Fuller Av in 1930 to build the SP Co RR) with the addition of an equal amount of leased railway right of during the City of San Jose Strong Neighborhoods Initiative process with major community involvement of the Greater Gardner Coalition. This SNI project was the City's attempt to right a wrong that had been thrust on the neighborhood in 1930 dividing the neighborhood in two.

In Chapter 3, section 3-15 very little attention is paid to Fuller Park but does indicate taking .02 acres to create a new driveway to a utility/signal box to be built on the new berm and moving the access drive several feet west.

In Chapter 5, the report also dismisses the effects on Fuller Park. On page 5-77 it states "Fuller Park would not be affected by changes in access but would experience temporary construction easements and permanent property acquisition and construction-related noise from Alternative 4. However, Fuller Park is located within an urban/residential setting and is not considered a noise- or vibration-sensitive park because a certain amount of

1812-2992

ambient noise and vibration is already present because of its proximity to the existing UPRR right-of-way. Therefore, users of the park are unlikely to be affected by construction noise and vibration."

This statement is patently false as Fuller Park currently consists of approximately 1 acre of city dedicated land and a lease agreement with the Joint Powers Board for approximately 1 acre of Right of Way south of the Berm and north of and contiguous with the city owned land on Fuller Av, creating a 2 acre park. Not only does the report not indicate if any and how much land will revert to use as an addition/annex to the City Owned land for Fuller Park but in addition is taking .02 acres of city owned land to create a new access drive to a signal house on the widened berm. To cut the Park acreage in half with no mention of mitigation is totally unacceptable.

1812-2993

The report does not indicate how you will protect the 90 year old Australian Pine trees (at the border of the City owned land separating it from the leased ROW) which were planted by the Southern Pacific Railroad as mitigation for its encroachment into the neighborhood in 1930. It appears that moving the access drive to the west will result in the loss of a least one of these Heritage Trees. In addition, the construction activity with heavy equipment needed to widen the berm may irreparably harm the trees due to soil compaction over their roots. How will you protect these Heritage Trees? In the event of tree loss due to your construction how will you guarantee their replacement with mature trees.

1812-2994

We also disagree with the report's conclusions about changes in access and "the users not being affected by construction noise and vibration" and its omission of the additional noise and vibrations generated by the increase in train traffic and the need to sound the train horns sooner for the widened rail crossing at Virginia Av. Overall the changes proposed adjacent to Fuller Park will make the park far less usable to the surrounding community. The report needs a plan for sufficient mitigation to this harm.

1812-2995

In Chapter 3, section 3.4, Noise and Vibration, at a public Zoom meeting your staff pointed out to us the charts and maps indicating the areas west of the Bird Av railroad bridge would be so severely impacted by noise and vibration as to require high sound walls on both sides of the tracks extending north past Auzerais Av. Such a set of walls would be a severe blight on the neighborhood and further separate and isolate the different areas of the neighborhood. Also, the stated plans for such walls would do nothing to mitigate noise and vibrations east of Bird Av along Fuller Av and Jerome St. A more equitable solution would be to create grade separated crossings at Virginia St and Auzerais Av. The city of San Jose has requested such mitigation and we feel it is the minimum mitigation required for this neighborhood's quality of life. In addition such grade separated crossings would have the additional benefit of allowing emergency vehicles to have unrestricted access to both neighborhoods.

1812-2996

In the same Zoom public meeting on this Draft EIR/EIS your staff could not indicate which bridges in our neighborhood (Bird Av, Delmas Av, Prevost Av) would require widening or reconstruction. The question was generated by our concern with the noise and vibrations of pile driving which would be required for such modifications given the liquefaction zone soils along this route. From our experience such pile driving on the SR 87 reconstruction in the early 2000's damaged adjacent homes This damage required

1812-2991

1812-2992

Submission 1812 (Harvey Darnell, Greater Gardner Coalition, June 23, 2020) - Continued

1812-2996		compensation to the homeowners and repairs to those homes, authorized and reimbursed by Caltrans. There is no mention of how this will be mitigated.	1812-3001		As mentioned above, this new right of way would be contiguous in part with the City of San Jose North Willow Glen Historic Conservation District. There is no mention in Chapter 3, section 3.17, on how this project would impact the historic Conservation District and its resources. The Neighborhood also has the Word of Faith Church on Delmas Av as a vital cultural resource in the neighborhood. If the Berm and Delmas Av Bridge are widened it will have significant impact on the usability of the Church. What mitigations will be provided for the church?
1812-2997		The Delmas Av Bridge is a historic bridge and is original design from 1930 and a gateway into the City of San Jose Historic Conservation Area (created March 2020) starting at the Railroad tracks south to Willow from Delmas Av west to Bird Av. What mitigations will be put in place to preserve this historic structure? The North Face of the Prevost Av bridge is also historic and what efforts will be in place to preserve it?	1812-3002		In conclusion, the Greater Gardner Coalition calls on your staff to revise the report to specifically call out the impacts of and mitigations proposed for Alternative 4 to the Greater Gardner Neighborhoods. Along the entire Route from Scott Blvd south to Merced there is no other incursion into an existing single family neighborhood with rail running along the backyards and so close to individual houses. We request that, in the name of Environmental Justice, your staff call out such impacts to, and remedies for, these neighborhoods in each section of chapter 3 and specifically call out the adverse issues which will affect the minority residents lining the tracks from SR 87 to I-280.
1812-2998		If the Bird Av bridge requires widening, it will require lowering the roadbed further south to the West section of Fuller Av exacerbating an already dangerous intersection. At present, the cars exiting the underpass often are traveling 35-50 mph going up an incline and can't see cars attempting to exit Fuller Av to the southbound lanes of Bird Av. If the bridge requires widening, what mitigations are being proposed to alleviate this dangerous intersection being worsened by the proposed alterations?	1812-3003		Your electronic attempts at vetting this Draft EIR/EIS during the local Shelter in Place Order failed to reach the minority residents of Greater Gardner, as so many of the low income minority community members have less than adequate internet capabilities and presence. This failure to include the minority community makes your final product suspect and opens the possibility for future action to rectify this injustice.
1812-2999		From Chapter 5 Environmental Justice: In table 5-15, under Alternative 4, you state: " There would be little change to the visual environment. Existing landscaping and barriers would limit most residents' exposure to the at-grade railway". We strongly disagree with this conclusion. For the residents east of the railway who use the Virginia Street crossing to access the shortest route for children attending Gardner Academy, this wider at-grade crossing puts a low income minority population at severe risk for harm when trying to access their school. This is hardly environmental justice.			Respectfully,
1812-3000		In table 5-17, you list four residential displacements in the San Jose Diridon Station Approach, all of which will be in the Greater Gardner Neighborhoods. In the early 1930's more than 30 homes were removed from the JPB (then Southern Pacific) ROW along Fuller Av. This action lead to a marked degradation in the quality of the neighborhood. What had once been a middle-class neighborhood declined to a redlined neighborhood as a result of the railroad incursion. Next, in the late 1960's and early 1970's, hundreds of homes were removed from the Northern and Eastern Borders of the Neighborhood to create Highways I 280 and SR 87 and along Bird Av to widen it to six lanes divided with a median, further adding to the decline of the value in homes of the neighborhood. The creation of these transportation infrastructure projects, besides removing up to a third of the homes in the neighborhood, created insurmountable barriers between the remaining pieces of the neighborhood. This is a neighborhood which over time became predominantly Hispanic American with lower incomes. Now you wish to remove more homes and create further barriers to flow through the neighborhood with the widening of the tracks, crossings and bridges and to introduce high sound walls on both sides of the tracks west of Bird Av to mitigate severe noise. This is hardly Environmental Justice for such a minority neighborhood to historically incur severe transportation related impacts, repeatedly, over the course of 80 years. The Greater Gardner minority communities have repeatedly asked for greater equity and environmental justice all the way back to the 1960's. The verbiage in this report is totally dismissive of their concerns, especially the concern about once again being subjected to a major years-long transportation project in the neighborhood for Fifth time since 1930. Such repeated transportation incursions in a minority area are the antithesis of Environmental Justice.			Harvey Darnell Chairperson Greater Gardner Coalition Kevin L. Christman Former Chairman, Greater Gardner Coalition, 2002-2006 Bill Rankin President North Willow Glen Neighborhood Association Mary Pizzo Gregory Plaza Neighborhood Advocate

Response to Submission 1812 (Harvey Darnell, Greater Gardner Coalition, June 23, 2020)

1812-2991

Refer to Standard Response SJM-Response-ALT-1: Alternatives Selection and Evaluation Process, SJM-Response-ALT-2: Project-Specific Alternatives Considerations, SJM-Response-GEN-1: Opposition and Comments on the Merits of the Project, SJM-Response-GS-1: Requests for Grade Separations.

The comment states concern over the HSR through the Greater Gardner Neighborhoods. As described in Chapter 9, the Authority has conducted extensive outreach to established community groups (e.g., Gilroy Community & Neighborhood Revitalization Committee, and the Seven Trees, Gardner, Goodyear-Mastic, and Alma neighborhood associations). Project effects associated with construction noise and vibration, temporary construction-related aesthetics and visual quality, public utilities and energy, hazardous materials and waste, operational safety (including at the at-grade crossings), operational noise and vibration, operational effects on Fuller Park, and other concerns are analyzed and addressed in the Final EIR/EIS including the implementation of numerous Impact Avoidance and Minimization Features (IAMFs) and mitigation measures. Alternative 4 will include safety improvements relative to the existing rail corridor including quad gates at all at-grade crossings, median channelization, and fencing (where not already present) including at Virginia St. and Auzerais Avenue. In addition, as discussed in Chapter 5 in the Final EIR/EIS, the Authority is proposing several additional community improvements as offsetting mitigation in the Gardner/North Willow Glen area to help offset residual effects after the consideration of direct mitigation and the value of project benefits: GWG-OMM#1 –Gardner Elementary School Noise Treatments; GWG-OMM#2 –Noise Treatments for Certain Residential buildings Adjacent to SR87 and I-280; and GWG-OMM#3 –Fuller Park/Fuller Avenue Recreational Improvements.

The Authority will continue to engage jurisdictions and stakeholders throughout the design, construction, and operation of the project.

1812-2992

As discussed under Impact PK#6 in Section 3.15, Parks, Recreation, and Open Space, of the Draft EIR/EIS, the impact on Fuller Park would be less than significant under Alternative 4 because the permanent acquisition of 0.03 acres would not change the use of this park nor diminish its capacity. This calculation is based on the City-owned park land; it does not include the part of the park that is currently Caltrain right-of-way. This area directly along the railroad, while technically within the park, is not useable for park purposes due to the incompatibility of safe recreational use directly adjacent to an active railroad, and this area is presently fenced off for the purposes of safety. The area north of the line of trees and the existing fence is not developed. The location of the proposed additional track (MT-3) and an associated retaining wall relative to Fuller Park are shown in Volume 3, Book 4A, Sheet 4 A (Drawing TT-D4004). As shown in that preliminary engineering drawing, the existing two tracks will be realigned northward (away from Fuller Park) and the new track and retaining wall would occupy the area approximately 15 to 25 feet south of where the southernmost existing track is located. The new track will be north of the existing fence location, except at the eastern edge of Fuller Park (which is one of the areas of minor acquisition described in the EIR/EIS). The retaining wall will likely be at approximately the location of the existing fence. Consequently, the HSR project, apart from the acquisition of 0.03 acre within the city-owned portion of the park, would not have additional effect on reducing areas useable for safe recreational use compared to existing conditions.

The continued use of the Caltrain ROW for train tracks (including the addition of one track with the HSR project) and train operations is consistent with current ROW uses north of the existing safety fence at Fuller Park. Furthermore, Fuller Park is an urbanized park next to a highly active railroad line today; the addition of HSR trains does not change the context of this urban park. Therefore, the conclusion that the impact is less than significant is valid, and no mitigation is required.

As described in Chapter 5, Environmental Justice, in the Final EIR/EIS, Alternative 4 would not result in a disproportionately high and adverse effects related to parks or Fuller Park in the Gardner/North Willow Glen area because the useable area of Fuller Park would only be affected minimally by project acquisition.

The Authority has conducted a community improvements planning process to identify

Response to Submission 1812 (Harvey Darnell, Greater Gardner Coalition, June 23, 2020) - Continued

1812-2992

potential improvements as offsetting mitigation that can help to offset residual disproportionately high and adverse effects to minority and/or low-income populations. The Gardner/North Willow Glen area has a higher percentage of low-income persons than the reference community, but does not have a higher percentage of minority persons. After consideration of direct mitigation and project benefits, Alternative 4 would have residual disproportionate high and adverse effects in the Gardner/North Willow Glen community related to operational noise (there would be approximately 6 locations near Virginia St. and I-280 with residual severe noise effects after noise barrier mitigation). To help offset those effect, the Authority proposed residential noise treatments for residences along I-280 and SR 87 in certain locations and noise improvements at the Gardner Elementary School. In addition, the Authority is also proposing Fuller Park/Fuller Avenue Recreational Amenities to help offset residual project effects (even though the project would not result in significant impacts related to parks or Fuller Park specifically).

1812-2993

Heritage trees are protected trees, as described in Volume 2, Appendix 2-J, Regional and Local Plans and Policies. Heritages trees are protected by regional and local plans and policies, and they would be transplanted or mitigated as described under BIO-MM#75. Compensatory mitigation for heritage trees is based on the requirements in the local ordinance.

1812-2994

Increased train operations are included in the noise and vibration analyses. The noise and vibration impact assessments accounted for all train operations during daytime and nighttime including HSR, Caltrain, other passenger trains, and freight trains in the project corridors. Under Alternative 4, trains would sound horns as they approach the West Virginia Avenue at-grade crossing. Based on train speed, only some trains would be sounding horns as they are passing Fuller Park. There would not be a noise impact at Fuller Park; therefore, no mitigation measures are proposed. Parks are not considered vibration sensitive, so there would be no vibration impact at Fuller Park.

Fuller Park is located within the screening distances to potential construction noise impact listed in Table 3.4-15 in Section 3.4, Noise and Vibration, of the Draft EIR/EIS. Construction noise impact would be mitigated through NV-MM#1.

1812-2995

Refer to Standard Response SJM-Response-GS-1: Requests for Grade Separations.

The proposed noise barriers included in Section 3.4, Noise and Vibration, of the Draft EIR/EIS are those that would mitigate significant noise impacts while following the Authority's noise mitigation guidelines in NV-MM#3.

AVQ-MM#7 provides measures to mitigate the visual impacts of noise barriers, including surface design enhancements and vegetation/landscaping. Please refer to Section 3.16, Aesthetics and Visual Quality, of the Draft EIR/EIS for more information.

Response to Submission 1812 (Harvey Darnell, Greater Gardner Coalition, June 23, 2020) - Continued

1812-2996

Construction vibration mitigation measures are discussed in NV-MM#2 in Section 3.4, Noise and Vibration, of the Draft EIR/EIS. The contractor would provide the Authority with a construction vibration technical memorandum stating how the project construction vibration criteria would be met. The contractor would then need to comply with required vibration reduction methods described in that memorandum. When a construction scenario has been established, the contractor would conduct pre-construction surveys at locations within 50 feet of pile driving to document the existing condition of buildings in case damage is reported during or after construction. If damage were to occur, the contractor would arrange for the repair of damaged buildings or would pay compensation to the property owner.

1812-2997

An Historic Conservation Area is not a type of historical resource, but may be considered a CEQA historical resource if it is adopted in a qualified local register of historical resources or it has been evaluated as a CEQA historical resource in a qualified survey. See HASR Section 2.5, California Register of Historical Resources (Cal. Public Res. Code, §5024.1 and Cal. Code Regs., tit. 14, §4850), for the CEQA historical resources regulations and Section 6.1.4, CEQA Historical Resources, for CEQA historical resources identification methods. See HASR Section 8.2, Properties Eligible for Listing in the NRHP/CRHR, regarding methods for reviewing historic districts. All buildings and structures in the APE that were more than 45 years old were included in the HASR survey and evaluations, as concurred by SHPO. See HASR Sections 8.1, Properties Listed in the NRHP/CRHR, and 8.2 for properties listed or eligible for listing in the CRHR or NRHP, as concurred by SHPO. The Willow Glen Historic Conservation District was founded after the completion of the HASR, and may be analyzed in future project studies per the Section 106 PA and the BETP.

1812-2998

The comment noted that the Draft EIR/EIS should evaluate the rail bridge over Bird Avenue and potential safety-related impacts if it requires widening as part of the project. Please refer to Drawing #TT-D4004 of Draft EIR/EIS Volume 3, Preliminary Engineering for Project Design Record, for an illustration of the project's proposed modifications at this location under Alternative 4. Alternatives 1, 2, and 3 would not alter the existing bridge. The proposed alterations to the bridge and Bird Avenue in Alternative 4 would be made in accordance with design standards for stopping sight distance for vehicles traveling on the roadway.

1812-2999

The analysis of visual effects contained in Section 3.16, Aesthetics and Visual Quality, of the Draft EIR/EIS acknowledges that HSR infrastructure for Alternatives 1, 2, and 3 would introduce permanent changes to the visual character that would contrast with the residential setting of the Gardner neighborhood, as seen from West Virginia Street, bordering the playfields at the Gardner School. The scale and position of the elevated structure would introduce a view of transportation infrastructure above the existing neighborhood. It would block the scenic vista to downtown, creating a visual barrier between the Gardner neighborhood and the center of San Jose. Residential viewers with a moderately high viewer sensitivity would experience a decline in visual quality from moderate to moderately low. The text from Table 5-15 in Chapter 5, Environmental Justice, in the Draft EIR/EIS referenced by the commenter pertains to Alternative 4, which would not pass through the viewshed visible by Gardner residents. Because there would be no effect on visual quality in this area under Alternative 4, there would be no disproportionate adverse effect for minority populations or low-income populations for Alternative 4.

Response to Submission 1812 (Harvey Darnell, Greater Gardner Coalition, June 23, 2020) - Continued

1812-3000

With Alternative 4, there are only 2 residential displacements in the Gardner/North Willow Glen neighborhoods, both of which are at the end of Fuller Avenue, near SR 87. The other 2 displacements in the San Jose Diridon Approach subsection with Alternative 4 are north of I-280 in other neighborhoods.

Regarding demographics of the Gardner/North Willow Glen area, as shown in Figures 5-3 and 5-9 in Chapter 5 in the Final EIR/EIS, this area has a higher percentage of low-income persons than the reference community, but does not have a higher percentage of minority persons than the reference community.

The Authority is cognizant of the neighborhood history that has affected the community in the past. Section 5.5.5.1 of the Final EIR/EIS recognizes the unique concerns raised by neighborhoods historically affected by other transportation projects (including specific mention of the Gardner neighborhood in that context).

The analysis in Chapter 5 considers a wide range of potential project effects to the Gardner/Willow Glen neighborhoods including construction and operational effects related to displacements, safety, traffic, aesthetics, noise, vibration, and parks.

As described in Chapter 5, Environmental Justice, of the Final EIR/EIS, residential displacements associated with Alternative 4 along the entire project section would be 44% in low-income areas. Although this would be less than half of the overall displacements, this is considered disproportionate because it would occur in a greater proportion than the 23 percent low-income population share in the reference community. As noted above, within the Gardner/Willow Glen community area, there would be only 2 residential displacements, both at the eastern end of Fuller Avenue near SR87.

The Authority would comply with federal and state laws that require that relocation assistance be provided to any person, business, farm, or nonprofit operation displaced because of the acquisition of real property by a public entity for public use. The provision of relocation assistance would assist displaced persons with the relocation process. The Authority conducted an analysis of relocation potential and found that there would be adequate relocation availability within San Jose for displaced residents to relocate to (with the relocation assistance) and also for other displaced residents outside San Jose

1812-3000

to relocate locally as well. Consequently, the Final EIR/EIS concludes that Alternative 4 would not result in a disproportionately high and adverse effect related to residential displacement.

Regarding barriers to movement within the Gardner/North Willow Glen community, Alternative 4 will not create any new physical barriers to movement. There are grade separated crossings at Bird Avenue, Delmas Avenue, and Prevost Avenue, all of which will be maintained. The fact that the rail bridges over these roads will be widened does not create any barrier to movement. The at-grade crossing at Virginia St. will be maintained for crossing by pedestrians, bicyclists, and vehicles, while it will be upgraded with quad safety gates. Sound walls are proposed along the corridor to address project noise effects, but will not create any barriers to movement in the neighborhood.

Please see the response to Submission 1812, Comment 2992 regarding potential project effects to parks, including Fuller Park. As noted there, the Authority is also proposing Fuller Park/Fuller Avenue Recreational Amenities to help offset residual project effects (even though the project would not result in significant impacts related to parks or Fuller Park in specific).

As described in Chapter 5, after considering all impact avoidance and minimization features (IAMFs), direct mitigation measures, the value of project benefits, and proposed offsetting mitigation regarding noise and Fuller Park, the Authority concludes that the project would not have residual disproportionately high and adverse effects on the Gardner/North Willow Glen community area.

Response to Submission 1812 (Harvey Darnell, Greater Gardner Coalition, June 23, 2020) - Continued

1812-3001

An Historic Conservation Area is not a type of historical resource, but it may be considered a CEQA historical resource if it is adopted in a qualified local register of historical resources or it has been evaluated as a CEQA historical resource in a qualified survey. See HASR Section 2.5, California Register of Historical Resources (Cal. Public Res. Code, §5024.1 and Cal. Code Regs., tit. 14, §4850), for the CEQA historical resources regulations and Section 6.1.4, CEQA Historical Resources, for CEQA historical resources identification methods. See HASR Section 8.2, Properties Eligible for Listing in the NRHP/CRHR, regarding methods for reviewing historic districts. All buildings and structures in the APE that were more than 50 years old as of 2016 were included in the HASR survey and evaluations, as concurred by SHPO. See HASR Sections 8.1, Properties Listed in the NRHP/CRHR, and 8.2 for properties listed or eligible for listing in the CRHR or NRHP, as concurred by SHPO. The Willow Glen Historic Conservation District was founded after the completion of the HASR, and may be analyzed in future project studies per the Section 106 PA and the BETP.

Alternative 4 would pass the Word of Faith Church at the corner of Fuller Ave and Delmas Ave. Neither the building nor its parking would be displaced by the project footprint; the analysis does not support a conclusion that the usability of the Church would be affected. As such, there is no mitigation is required.

1812-3002

The Final EIR/EIS includes revisions to Chapter 5 to provide additional geographic clarity and specificity, including additional tables and figures. The Authority is cognizant of the neighborhood history that has affected this community in the past. Section 5.5.5.1 of the Final EIR/EIS recognizes the unique concerns raised by neighborhoods historically affected by other transportation projects (including specific mention of the Gardner neighborhood in that context). The Authority has attempted to minimize placement of its alignment in residential areas, where possible. However, the alternatives studied in the EIR/EIS do include additional tracks adjacent to tracks or new embankments and viaducts, depending on alternative, in several residential neighborhoods in addition to Greater Gardner. For example, Alternatives 1, 2, and 3 passes through a residential neighborhood south and east of the San Jose Diridon Station; Alternatives 2 and 4 run through Morgan Hill; and Alternatives 1, 2, and 4 pass through Gilroy.

Impacts on the portion of the alignment that includes the Gardner neighborhood are described in the various resource sections in Chapter 3, Affected Environment, Environmental Consequences, and Mitigation Measures, of the Draft EIR/EIS. Where feasible, adverse effects in this area are minimized or avoided through the implementation of project features and mitigated through mitigation measures. The Authority recognized that the Gardner community includes a low-income population that is greater than that of the reference community and has applied mitigation where feasible to reduce disproportionately high and adverse effects to this population. As described in Chapter 5 of the Final EIR/EIS, after considering all impact avoidance and minimization features (IAMFs), direct mitigation measures, the value of project benefits, and proposed offsetting mitigation regarding noise and Fuller Park, the Authority concludes that the project would not have residual disproportionately high and adverse effects on the Gardner/North Willow Glen community area.

Regarding the request for where one can find reference to specific key impacts commonly raised as concerns in the Gardner/North Willow Glen community area in the EIR/EIS, the following references are provided (this list is not comprehensive of all potential local effects, the reader is referred to the EIR/EIS for analysis of effects not noted below):

Response to Submission 1812 (Harvey Darnell, Greater Gardner Coalition, June 23, 2020) - Continued

1812-3002

- Noise: The locations of operational noise impacts before mitigation can be seen in Figure 3.4-19 in Section 3.4, Noise and Vibration in Volume 1 of the EIR/EIS. As shown in that figure the impacts are located from east of Bird Avenue to I-280. With noise barriers in the affected areas, there would be remain severe noise impacts at approximately 7 locations. The locations of noise impacts with noise barrier mitigation (and locations of the barriers) can be seen in Figure 3.4-39. As shown with noise barriers, noise effects would be substantially reduced, but there would be some residual effects in areas along the alignment near I-280. The specific noise barriers are listed in Table 3.4-26 and in the Gardner/North Willow Glen community area include Barrier 4 (1,700 feet long adjacent to the southbound track from east of Bird Ave. to W. Virginia St., 12 feet high) and Barrier 5 (1,500 feet long adjacent to the northbound track from east of Bird Avenue to W. Virginia Street, 12 feet high). With a quiet zone, there would be no severe noise impacts and a few moderate noise impacts near Willow and SR 87. The locations of noise impacts with noise barrier mitigation and a quiet zone (if the City of San Jose were to implement one, which may or may not occur) are shown in Figure 3.4-42. By comparing Figures 3.4-39 and 3.4-42 to Figure 3.4-19, one can see that the severe noise impacts would be substantially reduced with noise barrier mitigation and further reduced with a quiet zone. In addition to noise barriers (per Mitigation Measure NV-MM#3) and potential quiet zones (per Mitigation Measure NV-MM#4, if the City decides to pursue a quiet zone), Mitigation Measure NV-MM#3 also includes the use of building insulation on a case-by-case basis as well as the purchase of noise easements. As described in Chapter 5 and Appendix 5-C, Attachment A, the Authority proposes to implement two offsetting mitigation measures to help offset residual severe noise impacts: 1) noise insulation for certain residences along I-280 and SR 87 to help offset existing; and 2) noise treatments at the Gardner Elementary School.
- Vibration: The location of operational vibration impacts before mitigation can be seen in Figure 3.4-29 in Section 3.4, Noise and Vibration in Volume of the EIR/EIS. As shown therein, prior to mitigation vibration impacts could occur along much of the rail alignment in Gardner/North Willow Glen. As discussed in section 3.4.7.2, Vibration Mitigation Analysis in the Final EIR/EIS, vibration impacts are expected to be substantially reduced through proposed mitigation measure NV-MM#8 which includes a variety of design treatments to reduce vibration and is described in Section 3.4.7. With implementation of NV-MM#8, vibration impacts could be reduced to only three locations

1812-3002

- in Gardner/North Willow Glen as described in Chapter 5 in the Final EIR/EIS.
- Emergency Vehicle Response Times: There is an at-grade crossing at W. Virginia St. and the project will increase the number of trains crossing at this location which will increase gate down time. As described in Section 3.11, Safety and Security, the Authority analyzed the potential effect of increased gate down time on emergency vehicle response times. As shown in Figure 3.11-10 in Volume 1, Section 3.11, Safety and Security, Alternative 4 would not result in delays to emergency vehicle response times in the Gardner/North Willow Glen community area above the threshold level (30 seconds), so this impact would be less than significant and mitigation is not required.
- Displacements: No business displacements would occur in the Gardner/North Willow Glen community with Alternative 4. An estimated 2 residential displacements would occur in the Gardner/North Willow Glen community area, both at the eastern end of Fuller Avenue near SR 87. The locations of residential displacements in the community can be identified in the preliminary engineering drawings in Volume 3, Book 4A, Sheet 4 (Drawing TT-D4004). Relocation assistance will be provided to the affected owners/renters in compliance with federal and state requirements as described in Section 3.12, Socioeconomics and Communities.
- Parks: See prior response to Submission 1812, Comment 2992 concerning Fuller Park. As described therein and as described in Section 3.5, Parks and Recreation, the Authority determined that Alternative 4 would have a less than significant impact on Fuller Park because the area of acquisition for Alternative 4 would not change the use of the park or diminish its capacity and given the existing rail operations, the expansion of rail use would not change the park's context. The area of encroachment into Fuller Park is shown in Figure 3.15-14, in Section 3.15, Parks and Recreation in Volume I of the Final EIR/EIS and can also be seen in the preliminary engineering drawings in Volume 3, Book 4A, Sheet 4 of the EIR/EIS. The Authority provided the City of San Jose with the analysis of effects to Fuller Park pursuant to the requirements of Section 4(f) of the 1966 Surface Transportation Act and the City concurred with the Authority's conclusion in Chapter 4 of the EIR/EIS that Alternative 4 would have *de minimis* effect on the park relative to Section 4(f). The Authority recognizes that some members of the community do not agree with the conclusions in the EIR/EIS that the project will have limited effects on Fuller Park. In recognition of those concerns, in Chapter 5, Environmental Justice, of the Final EIR/EIS, the Authority is proposing to implement Offsetting Mitigation Measure GWG-OMM#3 which includes enhancements to Fuller

Response to Submission 1812 (Harvey Darnell, Greater Gardner Coalition, June 23, 2020) - Continued

1812-3002

Park and along Fuller Avenue (even though the project would not result in a significant impact to Fuller Park).

•Aesthetics: Aesthetic impacts are discussed in Section 3.16, Aesthetics and Visual Quality, under Impact AVW#4. The Authority's aesthetic guidelines for project structures would be implemented of AVQ-IAMF#1 (Aesthetic Options) and AVQ-IAMF#2 (Aesthetic Review Process). In the Gardner/North Willow Glen area, Alternatives 1, 2, and 3 would include a new viaduct, but it would be located over the I-280/SR87 interchange and would not be within the neighborhood itself. The view of Alternatives 1, 2, and 3 from the Gardner Elementary School are shown in Figure 3.16-24, in Volume 1, Section 3.16, Aesthetics and Visual Quality. With Alternative 4, there would be a new railroad track added to the existing tracks and it would be at-grade. The railroad bridges at Bird Avenue and Delmas Avenue would be widened to accommodate the new track, but this would not substantially change existing views. The view of Alternative 4 from Fuller Avenue at Fuller Park is shown in Figure 3.16-25 in Section 3.16. As shown in Figure 3.16-25, Alternative 4 would add a third track to the existing railway, moving tracks slightly closer to the viewpoint and requiring construction of a retaining wall, visible in the simulation. No trees would be removed from Fuller Park or along Fuller Avenue. The church, lawn of Fuller Park, and streetscape would be unaltered. New fencing along the railway and a train control box would intrude into the corner of the park but would do little to affect the sense of community in the area, although the new fencing and retaining wall would increase the presence of the railway. Visual quality would remain moderate. Residents or recreationists with a moderately high visual sensitivity would not perceive a change in visual. As shown in Figure 3.16-26, the existing Caltrain/UPRR bridge over Delmas Avenue would be expanded to carry three tracks for the UPRR and blended HSR/Caltrain operations. All existing trees and buildings would also be unaltered, but the rail bridge would be rebuilt. The Authority's aesthetic guidelines and aesthetic review process will reduce the aesthetic and visual impacts of the bridge replacement by providing special design treatments to match or complement existing railway structures (AVQ-IAMF#1 and AVQ-IAMF#2). The appearance of the railway would change only slightly. The approximate height and span of the new bridge would not change substantially from the existing bridge. Visual quality would remain moderately low. Residents with a high visual sensitivity would not perceive a change in visual quality under Alternative 4. The EIR/EIS concludes that impacts associated with

1812-3002

Alternative 4 tracks and bridge modifications in this area would be less than significant and thus mitigation is not warranted for those elements. However, given that there are proposed noise barriers to address noise impacts, Mitigation Measures AVQ-MM#7 provides measures to mitigate the visual impacts of noise barriers, including surface design enhancements, vegetation, and landscaping. Please refer to Section 3.16, Aesthetics and Visual Quality, of the Draft EIR/EIS for more information.

•Cultural Resources: For cultural resource issues raised in Submission 1812 in regard to Gardner/North Willow Glen, see responses to Comments 2997 and 3001.

•Underpasses with Modification: As shown in the preliminary engineering drawings in Volume 3, Book 4A, Sheet 4 (Drawing TT-D4004), Alternative 4 would include modification of existing railroad bridges and associated underpasses at Bird Avenue and Delmas Avenue. Regarding potential construction vibration associated with bridge modifications and associated construction, as described in Section 3.4, Noise and Vibration, Construction noise and vibration would be controlled through NV-IAMF#1 Construction vibration mitigation measures are also discussed in NV-MM#2 in Section 3.4, Noise and Vibration, of the Draft EIR/EIS. The contractor would provide the Authority with a construction vibration technical memorandum stating how the project construction vibration criteria would be met. The contractor would then need to comply with required vibration reduction methods described in that memorandum. When a construction scenario has been established, the contractor would conduct pre-construction surveys at locations within 50 feet of pile driving to document the existing condition of buildings in case damage is reported during or after construction. If damage were to occur, the contractor would arrange for the repair of damaged buildings or would pay compensation to the property owner.

•Environmental Justice: Outreach regarding the Gardner/North Willow Glen Area is discussed in Chapter 5, Environmental Justice, Section 5.5.3, including listing of specific meetings in Table 5-12 and Table 5-14 and also relative to community improvements outreach in Section 5.5.4. Issues and concerns raised are discussed in Section 5.5.5. Section 5.6.3 presents the analysis of impacts to environmental justice communities, including Gardner/North Willow Glen, where appropriate. For a summary of environmental justice analysis conclusions before consideration of proposed offsetting mitigation regarding Gardner/North Willow Glen, please see Table 5-25, in Chapter 5, in Volume 1 of the EIR/EIS which describes that with Alternative 4, there would only be a residual disproportionately high and adverse effect related to noise

Response to Submission 1812 (Harvey Darnell, Greater Gardner Coalition, June 23, 2020) - Continued

1812-3002

after application of direct mitigation and consideration of project benefits. Proposed offsetting mitigation measures, including in Gardner/North Willow Glen, are described in Table 5-26 in Chapter 5 and in Appendix 5-C and include the following: 1) noise treatments at certain residences along I-280 and SR 87 to reduce existing noise affecting residences in the local area; 2) noise treatments at the Gardner Elementary School to benefit students from the local area; and 3) Recreational Enhancements at Fuller Park. As described in Section 5.8.4, after application of direct mitigation, project benefits, and proposed offsetting mitigation, the Authority has identified that Alternative 4 would not have any residual disproportionately high and adverse effects to low-income populations in Gardner/North Willow Glen community area (as noted in other responses, the percentage of minority populations in this area is not greater than the percentage in the reference community based on the census data used in the analysis).

1812-3003

Refer to Standard Response SJM-Response-OUT-1: Public Outreach.

Per the requirements set out by the CEQA Guidelines Sections 15086 and 15087, the Authority provided widespread notice of the availability of the Draft EIR/EIS to ensure that members of the public; local, state, and federal agencies; and tribes had the opportunity to review and provide comments. In addition to electronic methods of notification, the Authority provided notice of the availability of the Draft EIR/EIS in the legal section of eight local newspapers, including some in Spanish, Chinese, and Vietnamese, as well as direct mailing to those on the project mailing list and to owners/occupants of property within 1,000 feet of the project alternative's footprints for unincorporated areas, within 300 feet of the project footprint for incorporated areas, and within 1,200 feet of the HSR station footprint(s).

As described in Section 9.1, Environmental Justice Outreach, the Authority has conducted specific outreach efforts to low-income and minority populations and to communities of concern. The Authority's public outreach consultant organized on-the-ground outreach, such as information tables and booths at local community events and locations frequented by local residents. These locations were identified as an effective means to reach members of low-income and minority communities and included locations such as the Gilroy Downtown Library, Arteaga's Super Save Market in Gilroy, Edenvale Public Library in San Jose, and the Gardner Community Flea Market in San Jose. The full list of these events is provided in Appendix 9-A, Public and Agency Involvement.

Submission 1308 (Alice Kaufman, Green Foothills, May 20, 2020)

San Jose - Merced - RECORD #1308 DETAIL

Status : Action Pending
Record Date : 5/27/2020
Submission Date : 5/20/2020
Interest As : Business and/or Organization
First Name : Alice
Last Name : Kaufman

Stakeholder Comments/Issues :

1308-92

I would like to formally request an extension of the public comment period for the California High-Speed Rail Project - San Jose to Merced Project Section Draft EIR/EIS.

The current pandemic and the stay-at-home order have severely disrupted the ability of the public, including our organization, to effectively review and provide comments on the Draft EIR/EIS. As an example, several of our staff have small children at home whom they are attempting to supervise with distance learning while simultaneously performing their full-time jobs.

We believe there is more than enough justification for the HSRA to grant a significant extension of time for the review period. At a minimum, the review period should be 60 days rather than 45, and we believe that the circumstances warrant a 75-day review period. This would make the last day for comments to be submitted July 8, 2020.

Thank you for your consideration of this request.

[image: photo] <<https://www.greenfoothills.org/>>

Alice Kaufman (Pronouns: She/Her/Hers)

Legislative Advocacy Director

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Response to Submission 1308 (Alice Kaufman, Green Foothills, May 20, 2020)

1308-92

Refer to Standard Response SJM-Response-OUT-1: Public Outreach.

Submission 1680 (Brian Schmidt, Green Foothills, June 23, 2020)



June 23, 2020

Northern California Regional Office
California High Speed Rail Authority
100 Paseo De San Antonio, Suite 300
San Jose, CA 95113
san.jose_merced@hsr.ca.gov

Re: Comment on the High Speed Rail San Jose to Merced Draft Environmental Impact Report

Dear California High Speed Rail Authority:

Thank you for the opportunity to comment on the High Speed Rail San Jose to Merced Draft Environmental Impact Report/Environmental Impact Statement (DEIR). Green Foothills submits these comments in support of its mission to protect the open spaces, farmlands, and natural resources of San Mateo and Santa Clara Counties for the benefit of all through advocacy, education, and grassroots action.

Summary

While Green Foothills takes no position on the general issue of whether High Speed Rail (HSR) should be constructed, we find that absent substantial revision, the DEIR cannot be used as the basis of approval for the High Speed Rail (HSR). The DEIR wrongly concludes that the rail's impact on wildlife connectivity, with mitigation to the extent that the mitigation is described, is not significant in Coyote Valley and in the Upper Pajaro/Soap Lake Area to Pacheco Pass. The DEIR fails to provide substantial evidence in support of this conclusion. The DEIR's description of the wildlife crossings in Coyote Valley is insufficient to determine whether they will work, and it may interfere with already-planned wildlife crossings. In the southern end of Santa Clara County running up to the Pacheco Pass area, the proposed wildlife crossings are inadequate to mitigate the impacts of the project. The crossings are too small, too long, too dark for the animals to see through to the other side, and too few in number compared to the impact of construction and operation of the rail.

On agricultural and related impacts, the DEIR fails to acknowledge the significantly-greater agricultural and wildlife impacts resulting from potentially placing a station and maintenance facility in the County's Agricultural Resource Area on the east side of Gilroy. The mitigation for agricultural impacts stating mitigation will occur in the "same agricultural regions as the impacts" is insufficiently specific when better specificity can feasibly mitigate the significant impact to a greater extent. Cumulative and growth-inducing impacts from the Gilroy Stations and especially the East Gilroy Station are not described in the DEIR and constitute additional reason to reject the East Gilroy Station.

The Authority should work with local expert conservation agencies to revise these issues in the DEIR, and reject the east-of-Gilroy station location.

1. Impacts to Wildlife Connectivity

The DEIR finds that impacts to wildlife connectivity from the project without mitigation are significant, but with mitigation are no longer significant. DEIR at 3.7-218 and 3.7-221. The DEIR as written and unmodified provides an insufficient basis for this conclusion, for the reasons described below.

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1680-2474

The insufficient description of wildlife connectivity measures in Coyote Valley fails to support the conclusion that impacts are less than significant. The insufficient description of the mitigation leaves open the possibility that it will not succeed, and the conclusion that it will succeed is inaccurate. For example, fencing along rail lines designed to exclude wildlife and direct them to crossing structures is unspecified, so the mitigation can fail. Absent a revision to fully specify how the mitigation would work, the DEIR remains inadequate.

1680-2475

The DEIR underestimates the project's impact because its baseline assumptions and cumulative impacts analyses overestimate connectivity barriers from other existing and planned projects. The DEIR states "Ongoing development and transportation projects have created new barriers to wildlife movement, reducing habitat connectivity for wildlife throughout the region" and that "most of the planned transportation projects consist of improvements to existing roads or railroads that already serve as barriers to wildlife movement" (page 3.19-53). In fact, despite permeability issues, Coyote Valley, the Upper Pajaro/Soap Lake Area, and Pacheco Pass have documented levels of landscape permeability (Seriese and Wilmers 2019, Pathways for Wildlife 2020). In effect, the DEIR appears to be taking a "snapshot" of wildlife connectivity limitations in the future with the project in place, and misattributing some future impacts away from HSR and towards other transportation modes. That misattribution inappropriately reduces the amount of mitigation required of HSR. This mistake also means the DEIR underestimates cumulative impacts to wildlife connectivity after mitigation. The cumulative impact analysis of wildlife movement at 3.19-53 reinforces this problem in that it expressly discusses new, adverse impacts from other proposed projects while failing to discuss proposed connectivity improvements.

1680-2476

In section 3.7 the DEIR acknowledges that HSR increases the complexity and scale of the previously-proposed crossings at Metcalf Canyon Road and Bailey Avenue, but this fails to describe adequately the scale of the problem and the possibility that these crossings will become infeasible. Mitigation planning that fails to incorporate local agencies with their local expertise on an ongoing basis is unlikely to resolve these issues. Remedying these issues may require the HSR Authority to add as mitigation that it would work with other stakeholders to build a wildlife overcrossing at Bailey Avenue in addition to the proposed undercrossings. Absent a revision that acknowledges the permeability of existing and planned transportation and upgrades the mitigation to account for the role played by HSR, the DEIR is insufficient.

1680-2477

Habitat protection as an alternative to increased permeability under Mitigation Measure 79 fails to adequately mitigate connectivity impacts. BIO-MM#79 mitigates for connectivity impacts by allowing either improved permeability or by preserving 238 acres "prioritized important to wildlife movement" under Alternatives 1, 2, and 4, or 239 acres under Alternative 3. DEIR at 3.7-169. It also allows some combination of partly improved permeability and land preservation of less than the above amounts. The land preservation could be helpful as an addition to mitigations for permeability but it should not substitute for some or all of the requirements in this mitigation measure to improve permeability.

1680-2478

Specific aspects of the Project and mitigations in Coyote Valley meant to assist wildlife movement are inadequate or inadequately described. The intent of creating gaps for wildlife

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Submission 1680 (Brian Schmidt, Green Foothills, June 23, 2020) - Continued



1680-2478 | movement through the Monterey Road median will be made inadequate under Alternatives 1 and 3 because the retaining wall along Coyote Creek in those Alternatives would trap wildlife. In addition, absent improved mitigation along Fisher Creek, Tulare Swale, and Emado Avenue, the impact would remain significant.

1680-2479 | At Fisher Creek, the fencing description for Alternatives 1 and 3 is inadequate to demonstrate that the mitigation is functional, and for all Alternatives at Fisher Creek the mitigation to "improve" hydrology and flows could have significant environmental impacts on the proposed project to restore Laguna Seca. Alternatives 1 and 3 at Tulare Swale do not meet standard criteria for undercrossings, a problem repeated elsewhere in the DEIR. Crossings at Emado Avenue for all Alternatives except Alternative 4 also fail to meet generally-accepted design criteria and therefore may fail their function.

1680-2480 | **Impacts to wildlife connectivity in Pacheco Pass are underestimated and mitigations are insufficient.** The description of the Project in both Table 2-1 and in Figure 2-2 of the Wildlife Connectivity Analysis report (Appendix C of the Biological and Aquatic Resources Technical Report) incorrectly describes the Pacheco Pass segment as being in a tunnel, when 2.5 miles will be at grade. The part at grade can have extensive impacts to wildlife connectivity. The failure to acknowledge these impacts render the DEIR inadequate without revision. Any revision must fully consider these impacts and propose interspersed mitigations of bridges and overcrossings to allow wildlife passages, especially larger wildlife like deer, mountain lion, and tule elk.

1680-2481 | In addition, wildlife crossings are not located based on wildlife movement. BIO-MM#78 locates crossings at regular intervals as opposed to best locations for wildlife and are not designed to accommodate tule elk. This fails to mitigate the barrier to wildlife movement, especially large wildlife.

1680-2482 | **Other wildlife-related comments.** Green Foothills disagrees with the conclusion that intermittent and permanent lighting impacts on wildlife are less than significant. The DEIR fails to consider how lighting impacts will exacerbate and be exacerbated by simultaneous noise and vibration impacts, often in wildlife linkage areas that currently experience no disturbance, and as a result are likely to deter wildlife movement and gene flow. Inhibiting genetic connections directly contradict the assertion that lighting impacts are "localized". DEIR at 3.7-118. The DEIR correctly notes greater impacts from Alternative 3 to lighting (DEIR at 3.7-118), occurring on agricultural land that would be primarily valuable for non-localized wildlife movement. These impacts are significant and must be mitigated.

1680-2483 | Better monitoring and an adaptive management program are required to mitigate wildlife connectivity impacts. The large scale of this project including both pristine areas where it would be the first major impact; the frayed-but-existing linkages in Coyote Valley that cannot easily withstand additional impacts; the unknown outcome regarding whether the project and mitigations will actually function; and the small populations of tule elk along with small numbers of badgers and mountain lions able to make the connection to the Santa Cruz Mountain Range, all demonstrate the impact is significant and hard to mitigate for in advance. Monitoring and adaptive management program done in conjunction with local expert agencies is a feasible and practicable mitigation. Revision of the DEIR would be necessary to proceed and must include monitoring and adaptive management.

2. Agricultural impacts and impacts from the East Gilroy Station location

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Agricultural impacts are acknowledged and significant impacts in the DEIR, even after mitigation. Impact AG#2 and AG#3, DEIR at 3.14-51. Any feasible mitigation to reduce this significant impact is required under CEQA, as is the necessity to avoid any underestimation of these impacts.

1680-2484 | **Alternative 3 and the East Gilroy Station create greater agricultural impacts compared to the Downtown Gilroy Station and Alternative 4, and therefore must be rejected.** Alternative 3, running through farmland outside of San Martin and Gilroy urban areas on an alignment not used by the other Alternatives, consumes significantly more farmland than all the other Alternatives. The East Gilroy Station and associated MOWF contribute considerably to this unnecessary farmland loss. Alternative 3 consumes approximately 1,343 acres of farmland as compared to Alternative 4's approximately 1,150 acres, with other Alternatives falling in between. DEIR at 3.14-31 to 3.14-33. This amount and the differential between Alternatives are likely underestimated as discussed below. The LESA scores, likely also an underestimate of agricultural value, show Alternative 3 consuming the most high value farmland relative to other Alternatives, with Alternative 4 again showing the least amount of harm.

The obligation under the California Environmental Quality Act to mitigate significant impacts apply here. Alternative 3 and the East Gilroy Station increase significant impacts which can be avoided by adopting other Alternatives, at least insofar as the different alignments affect agriculture. Similarly, the fact that Alternative 4 has the least impact indicates that Alternative should be chosen, again at least in regards to the characteristics of that Alternative that affects agriculture.

1680-2485 | **Cumulative and growth-inducing impacts to land use are inadequately described and require rejection of Alternative 3/East Gilroy Station.** In discussion of the cumulative and growth-inducing land use impacts of the East Gilroy Station, the DEIR analysis essentially limits the discussion to Gilroy proper and states that Measure H will constrain growth. DEIR at 3.19-88. This fails to capture impacts for several reasons, one of them being that Measure H expires in 20 years. Intensive development pressure associated with the East Gilroy Station might force changes even before Measure H expires, and together with existing mall development form the nucleus of an extended urban area spreading east and along Highway 101. Even within Gilroy city limits, significant agricultural land is available for development under Measure H, and the East Gilroy Station favors car-dependent transportation compared to the Downtown Station. This will skew development patterns to an earlier development of farmland in Gilroy.

1680-2486 | Furthermore, both the Downtown and East Gilroy Stations facilitate rural sprawl outside of Gilroy with the East Gilroy Station having greater impact. Both stations shorten the commute distance for rural residential development that could then get to Silicon Valley or to points south on HSR. The East Gilroy Station's location on Highway 101 and near Highway 152 makes this even worse because of the greater car-dependency of that Station. This significant impact, not described in the DEIR constitutes a reason under CEQA to reject the East Gilroy Station and to mitigate the Downtown Station's impacts to favor urban usage over drivers commuting long distances to access the Station. Finally, while the DEIR states County plans "have accounted for the potential for HSR" (DEIR at 3.19-88) that does not eliminate potential significant impacts on land conversion away from agriculture and habitat, nor does it state that plans have accounted for the differential and greater impact from the East Gilroy Station. Without revisions and changes, these problems again render the DEIR inadequate.

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Submission 1680 (Brian Schmidt, Green Foothills, June 23, 2020) - Continued



1680-2487

Mitigation in the “same agricultural regions as the impacts” is insufficiently specific and fails to adequately mitigate agricultural impacts when specific mitigation is practicable. The DEIR states that preservation of farmland in response to the conversion of farmland will occur in the “same agricultural regions as the impacts”. AG-MM#1 at DEIR 3.14-41. Because the “same agricultural regions” is undefined, the DEIR as written is inadequate for decision-making. If the same region is defined as being in the same county, then a loss of farmland in Coyote Valley, for example, could be ‘mitigated’ with a purchase of an easement on farmland near the San Benito County line in an area with virtually no likelihood of development. The requirement to mitigate in the same area conveys a false sense that some actual mitigation has occurred when it has not.

Defining the mitigation more specifically makes the DEIR more accurate and constitutes an improved and feasible mitigation. For example, if the same region were defined as within the same city’s jurisdiction should the impact occur within a city’s jurisdiction, that would better practically mitigate the impact. Should the impact occur outside a city’s jurisdiction but within the city’s Sphere of Influence, then the mitigation should occur within that Sphere of Influence. Finally, agricultural impacts in the San Martin area between the Morgan Hill and Gilroy Spheres of Influence should be mitigated within that San Martin area. These feasible changes should be included in a DEIR revision.

1680-2488

Additional agricultural impact comments requiring DEIR revision. The DEIR contains several other deficiencies requiring revision. It incorrectly states that no farmland conversion will occur in the Monterey Corridor/Coyote Valley area, when Alternatives 1, 2, and 3 convert Important Farmland to other uses. The DEIR should be revised to acknowledge this important omission and the acreage figures at pages 3.14-31 to 3.14-33 should also be revised accordingly. Because Alternative 4 is a feasible and practicable means to reduce this significant impact, the HSR Authority, if it proceeds with HSR, would have to choose Alternative 4 at least insofar as it affects the Monterey Corridor’s farmland.

1680-2489

Insufficient mitigation for remnant parcels and loss of farmland in other adjacent parcels. The DEIR assumes a loss of farmland use in some remnant parcels adjoining HSR even after it offers some mitigation. While accurate, it fails to expressly offer the sale of land or easements on the land to local conservation organizations as a way to reduce the loss before mitigation. It further fails to discuss how the parcels could be converted to other uses such as non-agricultural residences that would be in conflict with adjoining farmland. It also fails to acknowledge how reconfigured adjoining farmland parcels greater than 20 acres will also have to reconfigure their own access on their properties, likely by running dirt roads along the property line that would exceed the 25-foot margin described at DEIR 3.14-41. This amount and mitigation ratio should be revised.

1680-2490

3. Other comments
Cultural impacts and impacts on Indigenous communities. Part of potential HSR impacts in Santa Clara County include portions of the traditional areas of the Muwekma and Amah Mutsun peoples. Green Foothills does not assert any authorization to represent or speak for them, but we encourage the HSR Authority during revision of the DEIR to consult with Indigenous communities and both consider and mitigate the cultural impacts from HSR. We note a strong emphasis of the Amah Mutsun Tribal Band on protection of the environmental values for the areas they resided for thousands of years including wildlife connectivity and elk movement. Lopez (undated). Impacts to wildlife connectivity should be noted as cultural impacts to the Amah Mutsun. Similarly, HSR should limit development in the Upper Pajaro/Soap Lake Area to minimize cultural impacts and to allow potential restoration of environmental features like water bodies and wetlands traditionally used by the Amah Mutsun. We note that the DEIR

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1680-2490

does acknowledge receiving communications from the Amah Mutsun emphasizing that “Pacheco Pass, and Pajaro floodplain in particular, were identified as culturally important landscapes highly sensitive for pre-contact cultural as well as natural resources.” DEIR at 3.17-11. However, the DEIR fails to acknowledge the natural resource impacts from HSR are themselves a cultural impact as identified by the Amah Mutsun. These include relatively pristine areas of Pacheco Pass, habitat restoration possibilities in the Upper Pajaro/Soap Lake area, and wildlife connectivity and restoration across Coyote Valley to the Santa Cruz Mountains. The failure to acknowledge and mitigate these impacts requires revision of the DEIR.

1680-2491

Alternatives comparison appear to mandate rejection of Alternative 3 and possible acceptance only of Alternative 4 with modifications. While Green Foothills did not have the opportunity to review the entire DEIR, our analysis discussed above appear to generally show Alternative 3 as having the most impacts and Alternative 4 having the least. Given that Alternative 4 seems practicable and feasible as a way to reduce significant impacts, this would mandate rejection of Alternative 3 and use of Alternative 4, if HSR is to proceed. Even if other parts of the DEIR show Alternative 4 as having greater impacts, a final decision must still incorporate those aspects of Alternative 4 discussed above that reduce significant impacts. And as discussed above, the DEIR would still have to be revised to adequately treat significant significant impacts that it omits or underestimates.

1680-2492

Mistakes and potential mistakes in the DEIR. The cumulative impact analysis refers to “a proposed sand and gravel mining operation on the 320-acre Sargent Ranch...in San Jose.” DEIR at 3.19-87. The proposed sand and gravel operation is 320 acres but Sargent Ranch is much larger, and is located southwest of Gilroy, not in or near San Jose. In addition, the description of AG-MM#5 states “AG-MM#4 would also result in minor, localized beneficial effects for wildlife” (DEIR at 3.14-43), which is potentially a mistake meant to reference AG-MM#5.

Conclusion

To proceed further with HSR, the DEIR must be revised and mitigations changed and improved as discussed above, and especially in conjunction with local expert agencies and Indigenous communities.

Please contact me if you have any questions.

Sincerely,

Brian Schmidt
 Interim Legislative Advocate

References:

Lopez, Valentin (undated). A Message from Chairman Valentin Lopez. <http://amahmutsun.org/land-trust-newsevents/a-message-from-chairman-valentin-lopez-2>

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6

Submission 1680 (Brian Schmidt, Green Foothills, June 23, 2020) - Continued



Pathways for Wildlife. 2020. Wildlife Permeability and Hazards across Highway 152 Pacheco Pass 2018-2019. Report prepared for the Habitat Agency. February 2020.

Serieys, L.E.K. and C. Wilmers. 2019. Coyote Valley Bobcat Habitat Preference and Connectivity Report. https://www.openspaceauthority.org/system/documents/COVA_FinalReport_05072019_sm.pdf



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Response to Submission 1680 (Brian Schmidt, Green Foothills, June 23, 2020)

1680-2472

Refer to Standard Response SJM-Response-BIO-1: Wildlife Connectivity in Coyote Valley and Pacheco Pass, SJM-Response-BIO-2: Greater Wildlife Impacts Associated with Alternative 3, SJM-Response-BIO-3: Coyote Valley Wildlife Crossings.

1680-2473

Refer to Standard Response SJM-Response-ALT-3: Rejection of Alternative 3, SJM-Response-BIO-2: Greater Wildlife Impacts Associated with Alternative 3.

The comment stated that the Draft EIR/EIS failed to acknowledge the greater agricultural impacts resulting from constructing a station and maintenance facility in east Gilroy. Please refer to Table 3.14-6 in Section 3.14.6.2, Important Farmland and Williamson Act and Agricultural Conservation Easement Contract Lands, of the Draft EIR/EIS, which discloses agricultural and related impacts. This table shows that Alternative 3 through east Gilroy would have the greatest direct impacts on Important Farmland. Similarly, Table 3.14-8 shows that Alternative 3 would have the greatest indirect impacts on Important Farmland as a result of creation of remnant parcels. The comment also stated that use of the phrase "in the same agricultural regions" in AG-MM#1 is not sufficiently specific because "agricultural regions" is not defined. The agricultural conservation easement program described in AG-MM#1 utilizes clear performance standards that guide the types of agricultural conservation easements that the Authority should purchase, focusing on quality and quantity of the land, not simply geographic location. Furthermore, the agricultural conservation easement program requires willing sellers. These performance standards are designed to ensure enforceability and require that the mitigation functions as intended.

The comment also stated that the Draft EIR/EIS failed to acknowledge the greater wildlife impacts that would result from placing a station and maintenance facility in the County's Agricultural Resource Area on the east side of Gilroy. Table 8-1 in Chapter 8, Preferred Alternative shows that impacts to wildlife habitat are greater under Alternative than all other alternatives. Additionally, as noted in the Draft EIR/EIS, Section 3.7, Biological and Aquatic Resources, BIO-MM#79 acknowledges impacts on wildlife movement caused by construction of the MOWF and provides for land acquisition and enhancement efforts to address impacts on wildlife movement and linkages in that region.

The comment further stated that cumulative and growth-inducing impacts from the Gilroy Stations were not described in the Draft EIR/EIS. Potential growth inducement of the San Jose to Merced Project Section is described in Section 3.18, Regional Growth, pages 3.18-31 through 3.18-32 of the Draft EIR/EIS. Cumulative effects are described in

Response to Submission 1680 (Brian Schmidt, Green Foothills, June 23, 2020) - Continued

1680-2473

Section 3.19.6.13, Agricultural Farmland. While the project would overall result in a small increase in unplanned growth in the region, it is uncertain where this growth would be located. Local government general plans and zoning ordinances would determine the location and character of future growth.

1680-2474

Refer to Standard Response SJM-Response-BIO-3: Coyote Valley Wildlife Crossings.

1680-2475

The Authority disagrees with the commenter's characterization of the cumulative impacts analysis related to wildlife movement. The Authority is required to assess impacts resulting from the incremental impacts of a proposed project when added to other past, present, and reasonably foreseeable future actions. In consideration of this requirement, the Authority acknowledges in the Draft EIR/EIS that other projects have affected wildlife movement, which reduces the permeability for wildlife movement across the landscape. The Authority's assessment does not conclude that there is no permeability in Coyote Valley, the Upper Pajaro/Soap Lake Area, and Pacheco Pass. The assessment finds that past and present projects have reduced landscape permeability and that future projects (e.g., HSR), will further reduce landscape permeability. As a result of this conclusion, the Authority has included numerous dedicated wildlife crossings in the proposed project as well as additional mitigation measures in the Draft EIR/EIS to avoid or minimize effects from the construction of the project. These measures include additional wildlife crossings, additional noise barriers, specific design criteria for wildlife crossings, and compensatory mitigation in locations where permeability cannot be improved. To the extent proposed connectivity improvements are "reasonably foreseeable," they have been considered in the cumulative analysis. Aspirational connectivity improvements (i.e., those not reasonably certain to occur based on a lack of dedicated funding/capital commitments, or specific legislative or local agency commitments) proposed in the region are not currently funded or in the planning stages and therefore do not meet the standard of being "reasonably foreseeable"; however, the Authority notes that we have worked closely with wildlife movement stakeholders in the region to design proposed crossings to ensure they would complement, or not conflict with, future aspirational connectivity improvements. The Authority believes the cumulative impacts analysis is correct and appropriately describes past, present, and reasonably foreseeable projects as well as HSR's contribution to ongoing impacts on wildlife connectivity. In addition, the Authority has made an additional effort, not required under CEQA, to consider future aspirational connectivity improvements by working with local wildlife stakeholders (numerous meetings were conducted prior to the Draft EIR/EIS release) to take and consider input on planned dedicated wildlife crossings so that they would not conflict with or detract from future aspirational connectivity projects. Lastly, the Authority notes that at the project level, the Final EIR/EIS includes several revisions intended to further solidify the continued coordination with local wildlife stakeholders to ensure the correct placement

Response to Submission 1680 (Brian Schmidt, Green Foothills, June 23, 2020) - Continued

1680-2475

and functionally of wildlife crossings. BIO-MM#77a in the Final EIR/EIS includes requirements for the Authority to work with agency and stakeholder partners to validate and optimize wildlife crossing locations at the 75% to 90% design phase. BIO-MM#79 in the Final EIR/EIS requires the Authority to consider acquisition of open space corridors and other landscape features where necessary to ensure the functionality of wildlife crossings.

1680-2476

Refer to Standard Response SJM-Response-BIO-1: Wildlife Connectivity in Coyote Valley and Pacheco Pass, SJM-Response-OUT-3: Coordination with Local Conservation Agencies.

1680-2477

The Authority believes the commenter has misinterpreted the requirements of BIO-MM#79. Based on the reduction in permeability expected from the proposed project, the measure requires compensatory mitigation to offset this effect. The measure does not allow some combination of permeability improvement with a corresponding reduction in compensatory mitigation. The Authority believes the measure is the most prudent and feasible way to mitigate for the expected loss of permeability in the area and no other feasible measures exist.

1680-2478

Refer to Standard Response SJM-Response-BIO-3: Coyote Valley Wildlife Crossings.

1680-2479

The Authority has modified BIO-MM#77a in the Final EIR/EIS to further describe how final designs for wildlife crossings would be determined. Additionally, the Authority has included a new measure, BIO-MM#77b in the Final EIR/EIS, which requires monitoring of wildlife crossings for effectiveness and which requires adaptive management to ensure the use of wildlife crossings.

1680-2480

Refer to Standard Response SJM-Response-BIO-1: Wildlife Connectivity in Coyote Valley and Pacheco Pass.

The commenter notes potential errors in the description of the Pacheco Pass Subsection pointing to general overview figures and tables in Chapter 2 of the WCA (Appendix C to Authority 2020a, as cited in Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS) as evidence that the assessment was in error. The Authority notes that regardless of the very general description of the proposed project in Chapter 2 of the WCA, and minor errors in the project description there, the detailed assessment in the remainder of the WCA is correct and considers each of the alternatives and their individual profiles (i.e., tunnel, embankment, aerial) individually down to specific stationing and there were no errors in the analysis. Consequently, the WCA and the EIR/EIS do not fail to assess wildlife connectivity in the Pacheco Pass Subsection.

1680-2481

The Authority disagrees with the commenter's characterization of wildlife crossing placement. Wildlife crossings are placed at somewhat regular intervals, however, as described in the WCA (referenced in the Draft EIR/EIS), the spacing depends on the permeability analysis and specific needs of individual movement guilds. The Authority also notes that in response to this comment and other similar comments, BIO-MM#77 (now BIO-MM#77a) in the Final EIR/EIS has been modified to require coordination with local stakeholders regarding wildlife crossing placement and design. Additionally, the measure now notes that final crossing locations can be adjusted if necessary, to make sure they are in optimal locations to facilitate wildlife movement.

1680-2482

Refer to Standard Response SJM-Response-BIO-5: Lighting Impacts to Wildlife.

Response to Submission 1680 (Brian Schmidt, Green Foothills, June 23, 2020) - Continued

1680-2483

The Authority has carefully reviewed these comments and has modified BIO-MM#77a in the Final EIR/EIS to further describe how final designs for wildlife crossings would be determined. Additionally, the Authority has included a new measure, BIO-MM#77b in the Final EIR/EIS, which requires monitoring of wildlife crossings for effectiveness and which requires adaptive management to ensure the use of wildlife crossings.

1680-2484

The comment stated a preference for Alternative 4 because it would have the least impact on agricultural resources. As discussed in Chapter 8, Preferred Alternative, Alternative 4 is the preliminary preferred alternative.

In addition, the comment states that the LESA scores are an underestimate of agricultural value. The LESA analysis was prepared in accordance with federal guidance. It and was reviewed and concurred with by the Natural Resources Conservation Service. The comment noted significant impacts must be mitigated. Section 3.14.7, Mitigation Measures, of the Draft EIR/EIS identifies the several mitigation measures for impacts on agricultural lands. All of the alternatives would have a significant and unavoidable impact related to permanent conversion of Important Farmland.

1680-2485

The Authority disagrees with the comment's assertion that the cumulative and growth-inducing impacts on land use are inadequately described. Section 3.13, Station Planning, Land Use, and Development, of the Draft EIR/EIS concludes that construction of the East Gilroy Station under Alternative 3 would convert agricultural land to a transportation use and introduce a use incompatible with the primarily agricultural uses and agricultural-related residential uses immediately adjacent to the station site. This resulted in a significant and unavoidable impact under Alternative 3 due to the change in land use patterns associated with introducing incompatible land uses.

The Authority evaluated Alternative 3 but selected Alternative 4 as the Preferred Alternative. As summarized in Chapter 8, Preferred Alternative, of the Draft EIR/EIS, Alternative 3 includes a station in the less-developed east Gilroy area, would permanently convert the most agricultural farmland, and would have higher impacts on biological and aquatic resources than the Preferred Alternative.

1680-2486

Refer to Standard Response SJM-Response-ALT-1: Alternatives Selection and Evaluation Process, SJM-Response-ALT-2: Project-Specific Alternatives Considerations, SJM-Response-BIO-2: Greater Wildlife Impacts Associated with Alternative 3.

The comment expresses concern over facilitation of rural sprawl outside of Gilroy with either station alternative. Section 3.2, Transportation, of the EIR/EIS discusses transportation impacts of the project alternatives in Gilroy, including an analysis of VMT for all project alternatives. Impacts of conversion of land from agricultural and habitat are discussed in Section 3.7, Biological and Aquatic Resources, and Section 3.13, Station Planning, Land Use, and Development, of the Draft EIR/EIS for each of the four project alternatives. Additionally, Section 3.13.5.2 discusses Measure H, adopted by voters in 2016, which amended the City's general plan to establish an Urban Growth Boundary (UGB) and designate land outside the UGB as open space. An objective of the UGB is to reduce sprawl and concentrate development within existing developed areas in the city. The analysis and conclusions in this section considers this measure.

Response to Submission 1680 (Brian Schmidt, Green Foothills, June 23, 2020) - Continued

1680-2487

The comment noted that the Draft EIR/EIS does not define the term "agricultural region" in AG-MM#1. The agricultural conservation easement program described in AG-MM#1 utilizes clear performance standards that guide the types of agricultural conservation easements that the Authority should purchase, focusing on quality and quantity of the land, not simply geographic location. Furthermore, the agricultural conservation easement program requires willing sellers. These performance standards are designed to ensure enforceability and require that the mitigation functions as intended.

In addition, the comment noted that any impacts on Important Farmland in the San Martin area between Morgan Hill and Gilroy should be mitigated in the same area. The Authority has not committed to mitigating for impacts on Important Farmland within an area more specific than the same agricultural region.

The Authority has looked carefully at the concept of offering more specific geographic parameters associated with AG-MM#1. However, adding more specific geographic parameters to AG-MM#1 would not be considered an effective measure to mitigate for Impacts AG#2 and #3, because doing so could hinder the Authority's ability to meet the performance standards of quality of land available, quantity of land available, and existence of willing sellers during implementation.

1680-2488

The comment stated that the Draft EIR/EIS incorrectly states that no conversion of Important Farmland would occur in the Monterey Corridor/Coyote Valley. In addition, the commenter expressed a preference for Alternative 4 because it results in a reduced impact on Important Farmland with respect to the Monterey Corridor/Coyote Valley area.

With respect to Impact AG#2 in Section 3.14, Agricultural Farmland, the Draft EIR/EIS finds that the impact would be significant and unavoidable, which is the correct determination based on the effects analysis and evidence presented. Prior to publication of the Final EIR/EIS, the San Jose to Merced Project Section team recalculated the Draft EIR/EIS impact findings using data from the baseline year and confirmed that, based on analysis of baseline conditions, no permanent conversion of Important Farmland would occur in the Monterey Corridor Subsection. As such, no changes were made to the environmental document on this issue.

Further, as discussed in Chapter 8, Preferred Alternative, in the Draft EIR/EIS, the Authority has selected Alternative 4 as the preferred alternative. This alternative extends through downtown Gilroy within an existing railway right-of-way. Alternative 4 was selected as the Preferred Alternative in part because it minimizes impacts on agricultural lands, community impacts, natural resources, and land use patterns.

Response to Submission 1680 (Brian Schmidt, Green Foothills, June 23, 2020) - Continued

1680-2489

Refer to Standard Response SJM-Response-OUT-3: Coordination with Local Conservation Agencies.

The comment stated that the impacts for remnant parcels and the 25-foot buffer are inadequate to mitigate for loss of farmland use in some remnant parcels. The Authority added a 25-foot buffer to account for indirect impacts, including the ability to turn around machinery. As a result, this area is not a direct loss of production and should be mitigated at a lesser rate than direct impacts. The mitigation for indirect impacts, which identifies a 0.5:1 ratio, is based on Department of Conservation guidance as part of a settlement achieved between the Authority and agricultural stakeholders, the Madera Settlement Agreement. This agreement was entered into by the County of Madera, representing multiple petitioners, and the Authority to address concerns about impacts on Important Farmland through the HSR Merced to Fresno Project Section. Engagement with agricultural stakeholders led to consensus that the mitigation ratios were acceptable, including the 0.5:1 ratio to mitigate for indirect effects on Important Farmland. To address this comment and better clarify the difference in mitigation ratios, the text for AG-MM#1 was revised in the Final EIR/EIS to indicate the difference between mitigation ratios for direct and indirect impacts. The comment also asked whether the Authority would expressly offer the sale of land or easements on the land to local conservation organizations as a way to reduce conversion of Important Farmland before mitigation. The Authority would work with all potential buyers to purchase conservation easements and would be glad to work with local conservation organizations.

1680-2490

Refer to Standard Response SJM-Response-CUL-4: Continued Tribal Consultation.

1680-2491

Refer to Standard Response SJM-Response-ALT-1: Alternatives Selection and Evaluation Process, SJM-Response-ALT-2: Project-Specific Alternatives Considerations, SJM-Response-BIO-2: Greater Wildlife Impacts Associated with Alternative 3.

The comment discusses alternative comparison and supports Alternative 4.

1680-2492

With respect to discussions of the sand and gravel mining operation, Section 3.19.6.11, Socioeconomics and Communities, of the Final EIR/EIS was revised to reflect the size of the sand and gravel operation. Table 1 in Appendix 3.19-A, Cumulative Nontransportation Plans and Projects List (located in Volume 2, Technical Appendices, of the Draft EIR/EIS), had the correct information about the 6,400-acre Sargent Ranch. In addition, the text referring to AG-MM#4 was revised to reflect the correct mitigation number in the statement of secondary effects in Section 3.14.7, Mitigation Measures, of the Final EIR/EIS.

Submission 1475 (Brett Bymaster, Healing Grove Health Center, June 23, 2020)

San Jose - Merced - RECORD #1475 DETAIL

Status : Unread
Record Date : 6/23/2020
Submission Date : 6/23/2020
Interest As : Business and/or Organization
First Name : Brett
Last Name : Bymaster

Stakeholder Comments/Issues :

I live, work and lead a non-profit in the San Jose Washington/Guadalupe/Tamien environmental justice RSA. I live very near the rail line on Goodyear St. I support the high speed rail with consideration given to the following mitigations.

- 1475-2343

1) Tamien Park needs a tall sound wall (10ft) to separate park uses from the rail traffic -- both a physical, sound & sight barrier. The wall needs to be tall enough to prevent balls & Kids from accessing the high speed rail adjacent to the park and the soccer field. There is already very significant sound pollution in the park from freeway noise, rail noise, and overhead flight noise. The additive noise of high speed rail needs to be mitigated. This wall should double as sound mitigation as well as a physical safety barrier.
- 1475-2344

2) Careful consideration should be given to the Tamien Transit Oriented housing development to ensure safety and noise mitigation.
- 1475-2345

3) To mitigate increased impacts in the Washington/Guadalupe environmental justice RSA, there should be consideration given to Lick Ave traffic. We would request traffic calming along Lick Ave, particularly in front of Tamien Park. A cross-walk at Tamien park would be a significant improvement in to mitigate environmental justice impacts.
- 1475-2346

4) Another environmental justice impact mitigation consideration would be the dangerous intersection at Alma & Almaden Ave. Improved crosswalks & traffic calming there would be very beneficial.
- 1475-2347

5) There is a large homeless population that lives along the west side of the rail line at Tamien. There should be consideration given to rail safety for homeless individuals. Tall fencing/walls on the west side of the rail line should be considered to prevent accidental death. This is particularly critical since the train doesn't stop at Tamien and will come through at high speeds.

Response to Submission 1475 (Brett Bymaster, Healing Grove Health Center, June 23, 2020)

1475-2343

As described in Table 3.4-15, Tamien Park is not considered a noise-sensitive park. As a result, no mitigation is proposed at this location. To address safety issues, as described in Chapter 2, HSR design and operations would include appropriate barriers (fences and walls) and state-of-the-art communication, access control, and monitoring and detection systems to keep people, animals, and obstructions off the tracks.

1475-2344

The comment is noted. Only existing structures and developments that are already approved are included in the noise and vibration analyses. As noted in Section 3.11, Safety and Security, of the Draft EIR/EIS, as part of the design of the HSR system, the Authority's Safety and Security Management Plan (Authority 2018, as cited in Section 3.11 of the Draft EIR/EIS) establishes the Authority's commitment and philosophy to achieve the highest practical level of safety and security throughout the California HSR System's life cycle.

1475-2345

The project traffic analysis did not identify any adverse effects due to project traffic in the Washington/Guadalupe community, which is why no mitigation for traffic effects has been considered at this location. The project would not alter any local roadways, and the area is far enough from the San Jose Diridon Station to not be affected by station traffic.

1475-2346

The project traffic analysis did not identify any adverse effects due to project traffic in the Washington/Guadalupe community, which is why no mitigation for traffic effects has been considered at this location. The project would not alter any local roadways, and the area is far enough from the San Jose Diridon Station to not be affected by station traffic.

1475-2347

Please refer to SS-IAMF#3 in the Draft EIR/EIS, provisions of which include fencing along the entire right-of-way. Trespassing within a railroad right-of-way is unsafe, is illegal today for the current railroad right-of-way, and will remain illegal in the future. Caltrain is the owner of the railroad at Tamien, and it is their responsibility to maintain a safe right-of-way for their operations and all tenants (including HSR). The Authority will work with Caltrain and area service providers to remove homeless persons from inside of the right-of-way prior to construction and during operations.

Submission 1880 (Marne Sussman, HOLLAND & KNIGHT LLP, June 23, 2020)

Holland & Knight

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Marne S. Sussman
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June 23, 2020

Via E-mail (san.jose_merced@hsr.ca.gov)

Attn: Draft San Jose to Merced Project Section EIR/EIS
100 Paseo de San Antonio
Suite 300
San Jose, CA 95113

Re: Comments on the San Jose to Merced Project Section Draft EIR/EIS

To Whom it May Concern:

Holland & Knight submits these comments on behalf of Copart, Inc. (“Copart”). Copart appreciates the opportunity to provide comments in response to the California High-Speed Rail Authority’s (“CHSRA”) Draft Environment Impact Report/Statement (“DEIR”) for the San Jose to Merced Project Section (“Project”). Copart bases these comments on the publicly available information in the DEIR and reserves the right to supplement these comments as additional or different information is made available to the public.

Copart is a leader in the vehicle auction business and offers a range of services for processing vehicles, including selling vehicles over the Internet through its online auction technology platform. As part of its business, Copart operates several physical locations, including on property it owns at 11395 Llagas Avenue in San Martin, California. One of the parcels Copart owns in San Martin, APN 825-03-010 (“Copart Parcel”), is located within the Project footprint. Copart therefore has a strong interest in understanding the scope of the Project and its effects.

Based on its review of the DEIR and its supporting materials, Copart believes that the DEIR does not provide sufficiently detailed information for stakeholders to adequately assess either the scope of the Project alternatives or their effects. Copart therefore respectfully requests that (1) CHSRA supplement the available information by providing a Geographic Information System database depicting the information in Appendix 3.1-A, (2) CHSRA incorporate additional detail and standards regarding its proposed construction mitigation, and (3) CHSRA incorporate in the DEIR more specific information with regard to its compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act.

Anchorage | Atlanta | Austin | Boston | Charlotte | Chicago | Dallas | Denver | Fort Lauderdale | Houston | Jacksonville | Lakeland
Los Angeles | Miami | New York | Orlando | Philadelphia | Portland | San Francisco | Stamford | Tallahassee | Tampa | Tysons
Washington, D.C. | West Palm Beach

1880-3198

Attn: Draft San Jose to Merced Project Section EIR/EIS
June 23, 2020
Page 2

A. Insufficient Information Provided to Assess Property Impacts.

While the DEIR explains that, “Appendix 3.1-A, Parcels within the HSR Project Footprint, in Volume 2 provides detailed mapping of the project footprint and parcels intersected by each of the project alternatives,”¹ these maps lack sufficient definition for property owners within the Project Footprint to ascertain the potential effects of the Project on their respective properties. For example, the parcel lines in Appendix 3.1-A obfuscate the boundaries of the proposed rights-of-way and easements. Further, the overlapping layers make it unreasonably difficult to determine what property interest CHSRA make seek to acquire. An excerpt from Appendix 3.1-A illustrates this problem:²



1880-3199

Due to the lack of granularity and the overlapping elements, the DEIR fails to adequately inform stakeholders of the scope and effects of the Project. However, the DEIR goes on to explain that:

Analysts used information relevant to the project from published maps, land use plans, and aerial reconnaissance using Google Earth pertaining to communities within and adjacent to the project footprint to describe the affected environment and evaluate the potential environmental impacts of the project on socioeconomics and communities. The following sections discuss topic-specific evaluation methods for communities, children’s health and safety, property displacements and relocations, and economic impacts. Much of the data were

¹ DEIR at p. 3.1-4.
² DEIR at Appendix 3.1-A, p. 76.

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1880-3197

Submission 1880 (Marne Sussman, HOLLAND & KNIGHT LLP, June 23, 2020) - Continued

Attn: Draft San Jose to Merced Project Section EIR/EIS
June 23, 2020
Page 3

Attn: Draft San Jose to Merced Project Section EIR/EIS
June 23, 2020
Page 4

1880-3199

compiled into a geographic information system (GIS) database to analyze potential impacts.³

Thank you for considering these comments.

Sincerely yours,

HOLLAND & KNIGHT LLP

1880-3200

Copart respectfully requests that CHSRA make the proposed alignments, rights-of-way, and easements for each alternative available through a GIS database in order to facilitate meaningful review by stakeholders within the Project footprint.

B. Insufficient Information to Assess Mitigation.



Marne S. Sussman

MSS:mb

While various mitigation measures,⁴ require the preparation of a construction management plan and a construction transportation management plan, these measures lack sufficiently specific information to ensure that property owners in the area are adequately notified of construction and are provided access to their properties.

SS-IAMF#1 provides that prior to “any ground disturbing activity,” the CHSRA’s contractor must submit a construction safety transportation management plan that identifies the procedures for temporary road closures, including access to residences and businesses.⁵ However, the measure does not provide any standards against which the plan will be evaluated to ensure the plan provides adequate access or notice. Similarly, SOCIO-IAMF#1 requires that the construction management plan “verify that property access is maintained for local businesses, residences, and emergency services,”⁶ but does not provide any standards regarding notice to affected properties or standards for determining whether adequate access is provided.

1880-3201

Finally, while the DEIR repeatedly confirms that the Project is required to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act) (42 U.S.C. § 61), the DEIR does not provide sufficient detail on the notification, appraisal, and acquisition process for subject properties. In order to be an adequate informational document, the DEIR should be revised to include further detail regarding the acquisition process for each property interest that CHSRA intends to acquire.

1880-3202

C. Alternative 4 Creates the Least Impacts to Adjacent Communities.

Based on the available information, Copart supports CHSRA’s identification of Alternative 4 as the Preferred Alternative. By situating the Project within the existing Caltrain right-of-way and at-grade, Alternative 4 presents the fewest displacements of local businesses and residents, the least environmental impacts, and the lowest cost.⁷

³ DEIR at p. 3.12-11.

⁴ Including GEO-IAMF#1, GEO-IAMF#3, GEO-IAMF#4, GEO-IAMF#5, HMW-IAMF#5, HMW-IAMF#6, SS-IAMF#1, SOCIO-IAMF#1, TR-IAMF#4, TR-IAMF#5, TR-IAMF#11.

⁵ DEIR at Appendix 2-E, p. 2-E-29.

⁶ DEIR at Appendix 2-E, p. 2-E-32.

⁷ DEIR at pp. 8-16-18.

Response to Submission 1880 (Marne Sussman, HOLLAND & KNIGHT LLP, June 23, 2020)

1880-3197

The Authority believes that with the information provided in Appendix 3.1-A, Parcels within the HSR Project Footprint, located in Volume 2 of the Draft EIR/EIS, combined with the Preliminary Engineering for Project Design Record provided in Volume 3 of the Draft EIR/EIS, landowners have the information necessary to identify the scope of the project alternatives. Additional detail is also available in the Draft Relocation Impact Report.

Each resource section in the Draft EIR/EIS describes in the necessary detail how the mitigation measures would avoid or reduce significant impacts. Under CEQA, where development of specific mitigation would rely upon information not yet available, an EIR may take a phased approach to the development of specific mitigation, provided that it has analyzed the impact and made a significance determination, commits to mitigation in the form of a mitigation measure for the significant effect, and specifies "performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way" (14 CCR 15126.4(a)(1)(b)). The same is true under NEPA. The EIS must discuss mitigation "insufficient detail to ensure that environmental consequences have been fairly evaluated," but it is not necessary to formulate and adopt a complete mitigation plan (Robertson v. Methow Valley Citizens Council, 490 U.S.332, 352 [1989]). The mitigation measures identified in the EIR/EIS meet these requirements.

As identified in SOCIO-IAMF#2, the Authority would acquire the land of property owners whose land is directly affected by the project in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act). The Uniform Act establishes minimum standards for treatment and compensation of individuals whose real property is acquired for a federally funded project. For more information on the Uniform Act, see Section 3.12, Socioeconomics and Communities, and Appendix 3.12-A, Relocation Assistance Documents, of the Draft EIR/EIS.

1880-3198

The Authority believes that with the information provided in Appendix 3.1-A, Parcels within the HSR Project Footprint, located in Volume 2 of the Draft EIR/EIS, combined with the Preliminary Engineering for Project Design Record provided in Volume 3 of the Draft EIR/EIS, landowners have the information necessary to identify the scope of the project alternatives. The Authority is willing to coordinate with landowners to help them better understand the potential impacts on their property. Additional detail is also available in the Draft Relocation Impact Report.

1880-3199

The Authority believes that with the information provided in Appendix 3.1-A, Parcels within the HSR Project Footprint, located in Volume 2, Technical Appendices, of the Draft EIR/EIS, combined with the Preliminary Engineering for Project Design Record provided in Volume 3 of the Draft EIR/EIS, landowners have the information necessary to identify the scope of the project alternatives. Additional detail is also available in the Draft Relocation Impact Report.

1880-3200

Draft EIR/EIS Appendix 2-E, Project Impact Avoidance and Minimization Features (IAMFs) Analysis, provides a list of project IAMFs. These IAMFs are different from mitigation measures. IAMFs are incorporated into the Project Section design, construction, or operation to avoid or minimize environmental or community impacts. The description of each feature details the means and effectiveness of the feature in avoiding or minimizing impacts, as well as the environmental benefits of implementing the feature. SS-IAMF#1 indicates that the construction safety transportation management plan would describe coordination efforts, and SOCIO-IAMF#1 states that the construction management plan would include actions pertaining to communications. Several other IAMFs include measures to ensure proper notification to property owners and the public, including AG-IAMF#4, PUE-IAMF#3, and SOCIO-IAMF#2.

Response to Submission 1880 (Marne Sussman, HOLLAND & KNIGHT LLP, June 23, 2020) - Continued

1880-3201

As described in Section 3.12, Socioeconomics and Communities, and Appendix 3.12-A, Relocation Assistance Documents, of the Draft EIR/EIS, the Uniform Act requires that the owning agency provide notification to all affected property owners of the agency's intent to acquire an interest in their property. This notification includes a written offer of just compensation. A right-of-way specialist would be assigned to each property owner to assist him or her through the acquisition process. The Uniform Act also provides benefits to displaced individuals to assist them financially and with advisory services related to moving or relocating their residence. Benefits are available to both owner occupants and tenants of either residential or business properties. Owners of private property have federal and state constitutional guarantees that their property would not be acquired or damaged for public use unless owners first receive just compensation. Just compensation is measured by the "fair market value," where the property value is considered to be the highest price that would be negotiated on the date of valuation. Additional information is also available in the Draft Relocation Impact Report.

Compliance with the Uniform Act is incorporated into the project design in SOCIO-IAMF#2 in Section 3.12 of the Draft EIR/EIS. However, SOCIO-IAMF#3 (also in Section 3.12 of the Draft EIR/EIS) is also crucial to the relocation process. Before any acquisitions occur, the Authority would develop a relocation mitigation plan, in consultation with affected cities and counties and property owners. Among other components, the relocation mitigation plan would include a description of the appraisal, acquisition, and relocation process as well as a description of the activities of the appraisal and relocation specialists. This plan would include the details being requested in this comment.

1880-3202

Refer to Standard Response SJM-Response-GEN-1: Opposition and Comments on the Merits of the Project.

The comment's support of Alternative 4 is noted.

Submission 1216 (Katherine Knabke, Knabke Family Farm, April 26, 2020)

San Jose - Merced - RECORD #1216 DETAIL

Status : Action Pending
Record Date : 4/26/2020
Affiliation Type : Business and/or Organization
Submission Date : 4/26/2020
Interest As : Business and/or Organization
Submission Method : Website
First Name : Katherine
Last Name : Knabke
Business/Organization : Knabke Family Farm
EIR/EIS Comment : Yes

Stakeholder Comments/Issues :

1216-13 | My family's farm in San Martin appears to be affected by the project. Looking at the map included in the April 17 mailing or online, I can't tell how severely. How can I find that info, hopefully with a map that includes San Martin street names? I really would like the info to be prepared for the San Jose or Gilroy Community Open Houses.
Thanks!

Response to Submission 1216 (Katherine Knabke, Knabke Family Farm, April 26, 2020)

1216-13

The Online Open House for the San Jose to Merced Section included "Address Lookup & Interactive Online Map (Station 5)." This application allowed any member of the public the opportunity to type in your address and see the preliminary engineering drawings at that location for Alternatives 1, 2, 3, and 4. The open house application is still available, and the HSR website contains the EIR/EIS, Appendix 3.1-A, Parcels within the HSR Project Footprint, and Volume 3, Preliminary Engineering for Project Design Record. By using Appendix 3.1-A and these composite plans one has the ability to find a particular address.

Submission 1360 (Norman Matteoni, Matteoni, O'Laughlin & Hetchman Lawyers, June 1, 2020)



June 1, 2020

Norman E. Matteoni
Peggy M. O'Laughlin
Bradley M. Matteoni
Barton G. Hetchman
Gerry Houlihan

Via Email and U.S. Mail to boardmembers@hsr.ca.gov

Board of Directors
California High-Speed Rail Authority
770 L Street, Suite 620
Sacramento, CA 95814

Re: Comments on CHSR Draft EIR of San Jose to Merced Section Concerning Monterey Corridor Segment

1360-179

I represent the Saso Family that owns 3 parcels in the Monterey Corridor Section of the proposed HSR project from San Jose to Merced. The three addresses are 9690 Monterey Road, 9760 Monterey Road and 9940 Monterey Road, San Jose, California.

First, it is difficult to search through numerous documents placed on the website looking for specifics on particular properties; and when something is found it appears general. Thus, to be clear on the Saso Family comments, I have attached aerial exhibits of the three properties of concern.

Each parcel has improvements close to the roadway but with different features. For example, the 9940 property has agricultural buildings, a roadside fruit stand with an adjacent orchard, and a large historic family residence. It has two points of driveway access – the main one is opposite Palm Avenue that also serves the fruit stand; the other is approximately 200 feet to the south. The house's western wall is less than 40 feet from the edge of the right of way of Monterey Road.

As I read the Draft EIR I cannot ascertain from the general maps in Part 3 of the Draft, Alternatives 1A (aerial), 2A (embankment), and 3A (viaduct), except 4A (RR tracks)* of the proposed route, any specific details of the alternatives on these properties. But the first three all appear to take a substantial depth along the frontage of the three properties. The 9940 Monterey parcel also appears to be at a

* In fact, there are passages in the document suggesting that there is a combination of the alternatives that may take place, e.g., going from viaduct to embankment or grade on segments of the route.

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1360-179

1360-180

1360-181

1360-182

Board of Directors
California High-Speed Rail Authority

June 1, 2020
Page 2

transition point where the route veers eastward as it proceeds toward Cochrane Road in Morgan Hill. It is not clear the exact location where a transition from viaduct in the middle of Monterey Road to grade may occur.

I know that that there are multiple segments on the project and that causes the maps to be generalized with colored ribbons stacked on top of each other when each can have a different impact. But overall, unless Alternative 4 is ultimately selected each appears to take a major part of the identified parcels and affects access. The residence on 9940 Monterey appears to be wiped out by the first three alternatives. If the embankment alternative is chosen, what is the height and width and how is access preserved? If there is a viaduct down the middle of the highway, it will cause the north bound lane to move eastward into the properties. What effect is there on access? What happens to access during construction on any of the alternatives?

Of further concern, Figure 2-49 Vol. 1, p. 2-71 (with cross reference to Appendix Table 1, 2-A) regarding local roadway modifications indicate 3 modifications for Palm Avenue and Monterey Road intersection – Quad Gate, Grade Separation and alignment change. Specifically for 9940 Monterey Road what are the potential changes to the intersection at Palm and the driveway connection to that intersection? The northerly driveway and Palm are directly opposite each other. As to the adjacent fruit stand at 9940 Monterey, what is the impact both to access and off-road parking as a result of the alternatives? The above references do not show any detail.

How were the noise measurements at 7465 and 8470 Monterey (the closest I could find in the document) used to measure impacts on the three Saso properties?

I am submitting these comments both by hard copy and email. Although the draft suggested that email comments could be made in individual sections, by marking them and activating a mailbox, that approach did not serve me well for these comments.

The concern as you can see is for specifics affecting these three properties.

Very truly yours,

NORMAN E. MATTEONI

NEM:cab
Attachments
cc: Saso Family
California High-Speed Rail Authority, Northern California Regional Office

Submission 1360 (Norman Matteoni, Matteoni, O'Laughlin & Hetchman Lawyers, June 1, 2020) - Continued

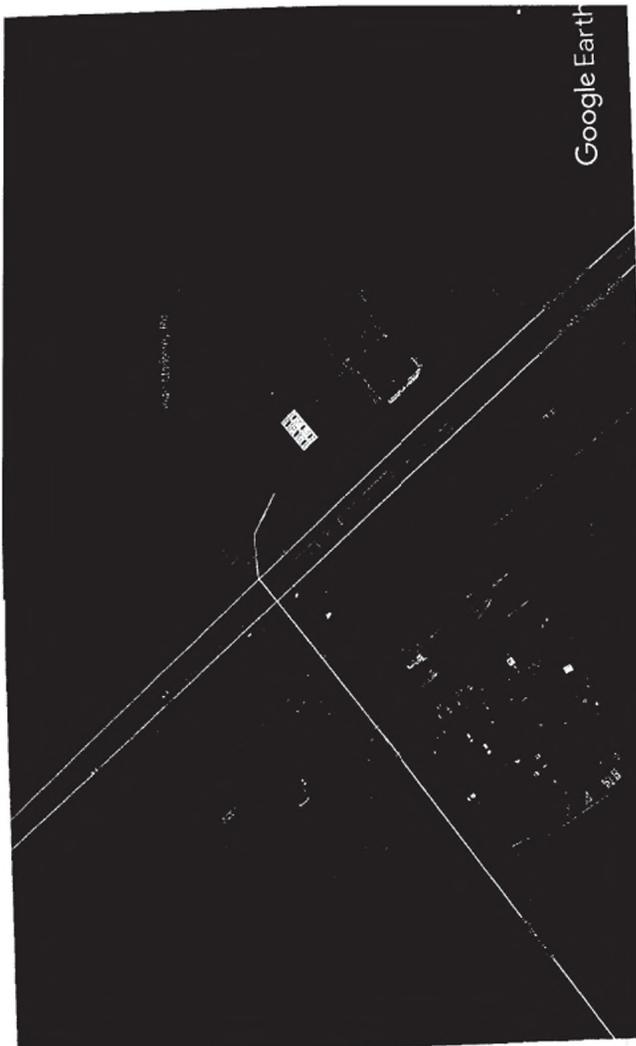


EXHIBIT A

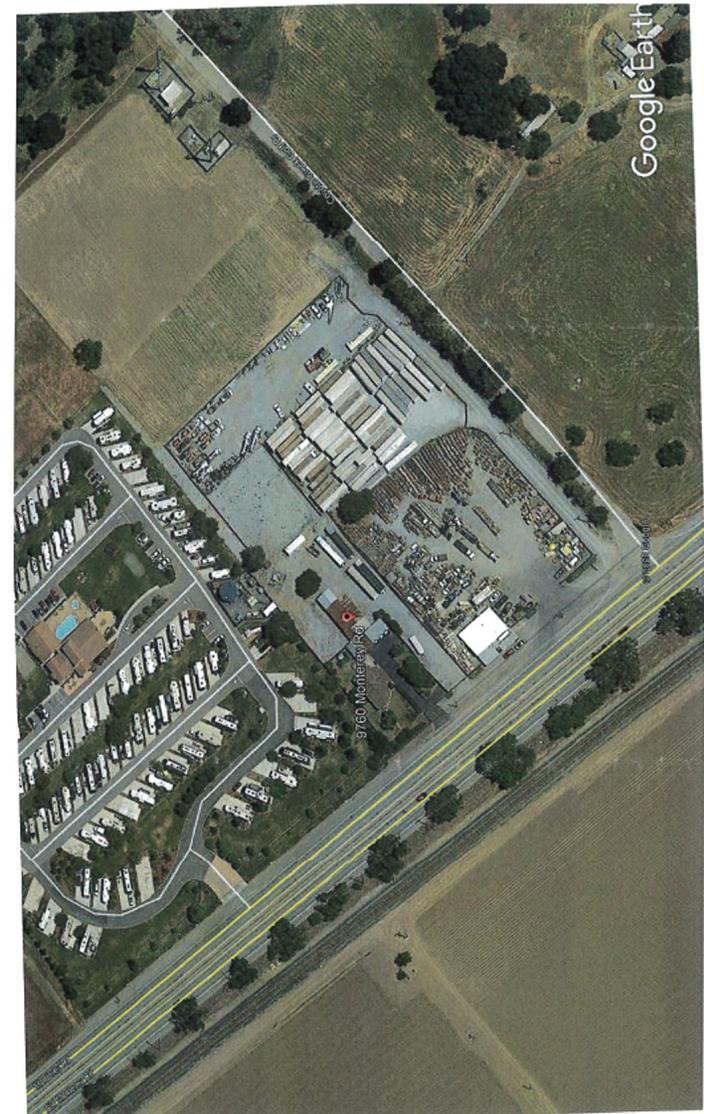


EXHIBIT B

Submission 1360 (Norman Matteoni, Matteoni, O'Laughlin & Hetchman Lawyers, June 1, 2020) -
Continued

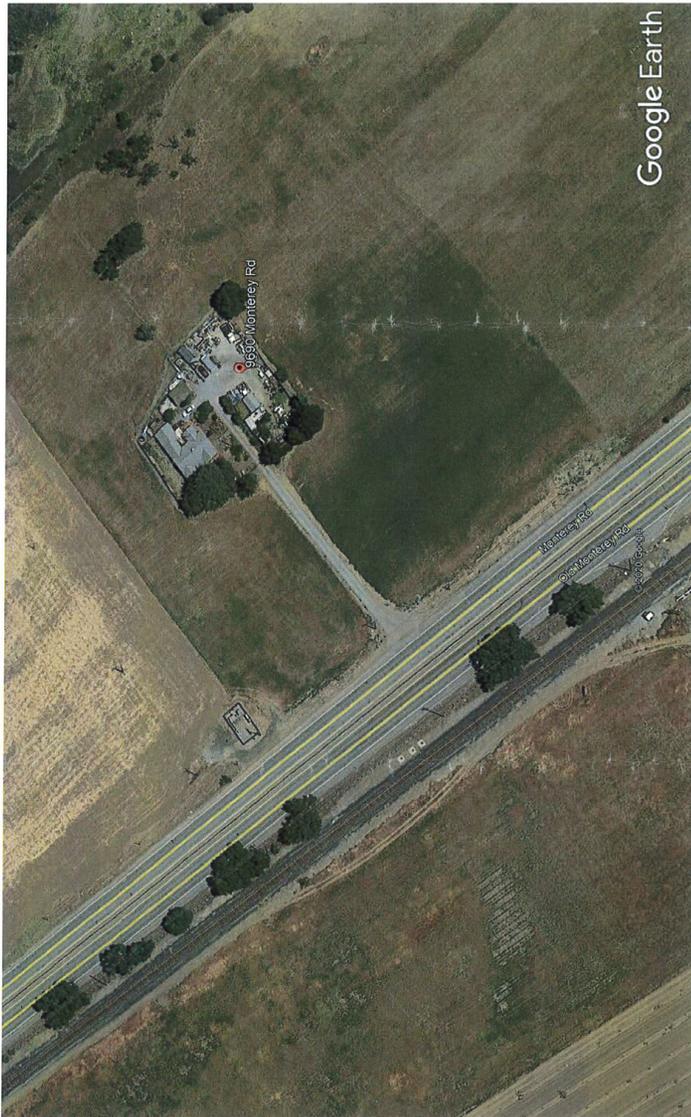


EXHIBIT C

Response to Submission 1360 (Norman Matteoni, Matteoni, O'Laughlin & Hetchman Lawyers, June 1, 2020)

1360-179

Thank you for your comments regarding these three properties along Monterey Road. Alternatives 1 and 3 would be the same through this portion of the alignment and would be on viaduct past all three properties. Alternative 2 would be on embankment, and Alternative 4 (the Preferred Alternative) would be blended and at grade. More detail is available in Volume 3, Preliminary Engineering for Project Design Record and in Appendix 3.1-A.

Based on the preliminary analysis of potential relocations, all alternatives may require the full acquisition of the property at 9690 Monterey Road. For 9760 Monterey Road, the eastward shift of Monterey Road may require a partial acquisition under Alternatives 1 and 3, and a full acquisition under Alternative 2. There is no expected property acquisition of the property located at 9760 Monterey Road under Alternative 4. The 9940 Monterey Road property may be displaced by Alternatives 1 through 3. If the embankment alternative (Alternative 2) is selected, property access could not be maintained and the property would be acquired. For the viaduct alternatives (Alternatives 1 and 3), the property may be acquired due to the impacts of the systems sites on Important Farmland. There is no expected property acquisition to occur from at 9940 Monterey Road under Alternative 4.

Please refer to Section 3.12, Socioeconomics and Communities, for information about the Authority's relocation resources and relocation plan. Refer to Appendix A, Relocation Assistance Documents, of the Draft Relocation Impact Report for more information regarding the Authority's relocation assistance programs. These programs address the rights and benefits of individuals displaced from residences and mobile homes, as well as businesses, farms, and nonprofit organizations. Specific consultations and arrangements with property owners would occur once the design is finalized.

Property acquisitions will be verified as part of Detailed Design Post-ROD for the selected alternative.

1360-180

Based on the preliminary analysis of potential relocations, all alternatives may require the full acquisition of the property at 9690 Monterey Road. For 9760 Monterey Road, the eastward shift of Monterey Road may require a partial acquisition under Alternatives 1 and 3, and a full acquisition under Alternative 2. There is no expected property acquisition of the property located at 9760 Monterey Road under Alternative 4. The 9940 Monterey Road property may be displaced by Alternatives 1 through 3. If the embankment alternative (Alternative 2) is selected, property access could not be maintained, and the property would be acquired. For the viaduct alternatives (Alternatives 1 and 3), the property may be acquired due to the impacts of the systems sites on Important Farmland. There is no expected property acquisition to occur at 9940 Monterey Road under Alternative 4. Access during construction would be maintained during construction as described in TR-IAMF#2 (Appendix 2-E, Project Impact Avoidance and Minimization Features). Please also refer to the response to submission SJM-1360, comment 179.

1360-181

Please refer to the response to submission SJM-1360, comment 179. Modifications at the intersection of Palm Avenue and Monterey Road would be a shift of Monterey Road eastward under Alternatives 1, 2, and 3 (Alternative 2 would shift Monterey Road farther east than Alternatives 1 and 3), a grade separation of Palm Avenue is also included in Alternative 2. Four-quadrant gates would be installed at the Palm Avenue railroad crossing under Alternative 4.

Please refer to Volume 3, Preliminary Engineering for Project Design Record, for a detailed view of the project elements near Palm Avenue and Monterey Road.

Response to Submission 1360 (Norman Matteoni, Matteoni, O'Laughlin & Hetchman Lawyers, June 1, 2020) - Continued

1360-182

Please refer to Section 3.4.4.3, Methods for Impact Analysis, of the Draft EIR/EIS for information regarding noise impact assessment methodology.

The measured noise levels at 7465 and 8470 Monterey Road were not used directly at the Saso Family parcels but were used with other noise measurements to calculate existing noise levels, consistent with standard FRA methodology. The FRA noise impact criteria are a comparison of the existing noise levels to the future noise levels with the project.

Submission 1733 (Joan A. Wolff, McGuireWoods LLP, June 23, 2020)

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Joan A. Wolff
Direct: 310.315.8275

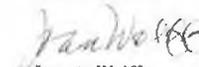
McGUIREWOODS

jwolff@mcguirewoods.com
Direct Fax: 310.956.3
File No. 2072318.0

Please include the undersigned in all future communications regarding the EIR/EIS and the San Jose to Merced Project Section. Please let me know if you have any questions or concerns, and thank you for this opportunity to comment on the EIR/EIS.

June 23, 2020

Very truly yours,



Joan A. Wolff

BY EMAIL ONLY

California High Speed Rail Authority

Re: Draft EIR/EIS Comment
San Jose to Merced Project Section

Dear Sir or Madam:

1733-2902

This firm represents Nanook Ventures One LLC and Nanook Ventures Two LLC (collectively, "Nanook"), the owners of (i) 1850 De La Cruz Boulevard and (ii) 552 & 556-558 Reed Street, all located in Santa Clara, California (collectively, the "Nanook Property") in the immediate vicinity of the San Jose Diridon Station Approach portion (the "Diridon Approach") of the Proposed San Jose to Merced Project Section of the California High Speed Rail System as further described in the Draft Environmental Impact Report/Environmental Impact Statement dated April 30, 2020 ("EIR/EIS").

We are writing to express our client's concern that most of the scenarios for this portion, including the Preferred Alternative, will necessitate modifications and closures of De La Cruz, Lafayette and Grant, all of which streets provide primary access to the Nanook Property and will impact both the existing use of the Nanook Property as well as the contemplated development of the Nanook Property to a state of the art data center which we anticipate to occur in the next several years.

The purpose of this letter is to advise the California High Speed Rail Authority of our client's plans for the Nanook Property in order to insure that the planning and development of the Diridon Approach is managed in a way to preserve (i) the existing access to and use of the Nanook Property and (ii) the development potential of the Nanook Property as a state of the art data center. Data center use will necessitate, among other factors, access to fiber and power.

132146544

119747150

Response to Submission 1733 (Joan A. Wolff, McGuireWoods LLP, June 23, 2020)

1733-2902

The comment expresses concern over roadway modifications and closures that provide primary access to specific property and affect the contemplated development of the property to a data center. Please refer to Volume 2, Appendix 2-E, Project Impact Avoidance and Minimization Features, which describe Transportation and Socioeconomics and Communities features to maintain property and business access during construction. For all alternatives, project design would maintain access from Lafayette Street, Reed Street, and De La Cruz Boulevard to the specific Nanook properties during project operations.

Submission 1759 (Breanne Ramos, Merced County Farm Bureau, June 23, 2020)



June 22, 2020

California High Speed Rail Authority
C/O Northern California Regional Office
100 Paseo De San Antonio, Suite 300
San Jose, Ca 95113

RE: San Jose to Merced Project Section Environmental Impact Report

California High Speed Rail Authority,

We appreciate the opportunity to comment on the San Jose to Merced Project Section Environmental Impact Report/Environmental Impact Statement (EIR/EIS). It is no secret that we have called into question many of the decisions made by this body and will continue to have many questions. As an organization Merced County Farm Bureau (MCFB) represents approximately 1,000 farmers, ranchers, and dairy families with several being impacted by the plans presented by the California High Speed Rail Authority (the "Authority"). MCFB is a 103-year-old organization that advocates for our members on a host of issues including water availability and rights, land-use and other topics impacting agriculture.

1759-3194

We have a large amount concern for our landowners and growers that are caught in limbo. Landowners in Los Banos are subject to the EIR, yet to our knowledge you do not have proper funding to move through the Pacheco Pass mountain range. Growers in this area are projected to have ground removed from their ownership, yet do not know how to plan for this as a timeline is not stable. We understand the Authority is mandated to have all environmental documents completed by 2022. We are curious as to how much funding will later be used to re-evaluate and redo this EIR/EIS since there is a strong possibility that the San Jose to Merced Section will be out of date if and when funding becomes available.

1759-3195

There are also concerns on current funding as state legislators are attempting to remove money from the Central Valley to benefit the areas they represent. In addition, the impacts of the Novel Coronavirus (COVID-19) continue to raise concern as the economy of both the state government and residents are experiencing unprecedented ramifications. Concerns surrounding continued funding abound, yet the Authority continues to push forward against the better judgement of many.

1759-3196

There have been several mitigation measures mentioned within the document that the Authority has committed to including providing notice to landowners 3-12 months in advance of certain actions. For instance, under *Important Farmland Used for Project Construction Section 3.14-30* and *Temporary Disruption of Ag Infrastructure Serving Important Farmland Section 3.14-33*, the Authority indicates that they will provide such notice during the fore mentioned timeframe. We would strongly suggest providing notice closer to the 12-month period rather than 3 months due to cultural practices, planting needs, etc.

We understand that the goal is to bring a connected transportation system to California, however we are concerned with the management issues the project has faced to date and the sustainability of the project's long-term growth. We surely have our doubts and will continue to remain watchful as you continue your path. Thank you for the opportunity to comment on this monumental project.

Sincerely,

Breanne Ramos
Executive Director

(209) 723-3001 • Fax: (209) 722-3814 • 646 South Highway 59 • P.O. Box 1232 • Merced, CA 95341
Email: info@mercedfarmbureau.org
www.mercedfarmbureau.org

Response to Submission 1759 (Breanne Ramos, Merced County Farm Bureau, June 23, 2020)

1759-3194

The comment expresses concern for landowners and growers in Los Banos regarding the uncertainty of property acquisitions due to lack of funding. The ROD will determine the selection of an alternative, which will reduce the uncertainty with regard to property acquisition. Temporary and permanent property acquisitions will be confirmed during Detailed Design of the selected alternative after ROD. Detailed Design, property acquisition, and construction will occur when funding is available. The Authority will validate that Detailed Design Post-ROD conforms with the impacts evaluated in the Final EIR/EIS. The Authority will conduct additional environmental analysis where required to comply with CEQA and NEPA. No further environmental documents are expected for the San Jose to Merced Project Section and therefore no funding is required.

1759-3195

Refer to Standard Response SJM-Response-GEN-1: Opposition and Comments on the Merits of the Project.

1759-3196

The comment suggests that the Authority strive to provide the maximum amount of notice possible within the Authority's 3-12-month range for notice to adjacent agricultural landowners and leaseholders in advance of any construction activities. The comment does not dispute the overall appropriateness of the range. The Authority complies with its standard right-of-way notification requirements, which provide for a 3- to 12-month notification window. See also response to submission SJM-1618, comment 2666.

Submission 2069 (Jason Lee, Monterey Plaza LP, June 23, 2020)

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Monterey Plaza LP
2429 Park Avenue
Tustin, CA 92782



Jason Lee
Regional General Counsel

Writer's Direct Dial: 949.252.3876
Writer's Direct Fax: 760.727.1430
E-Mail: jlee@kimcorealty.com

VIA FEDERAL EXPRESS

June 22, 2020

100 Paseo de San Antonio, Suite 300
San Jose, CA 95113

Attn: Draft San Jose to Merced Project Section EIR/EIS

Re: Draft San Jose to Merced Project Section EIR/EIS

Two Whom it May Concern:

2069-2314

Monterey Plaza LP is the owner of the Monterey Plaza shopping center located at Monterey Road & Blossom Hill Road, San Jose, CA 95138. Monterey Plaza LP is concerned about the operational, property, leasing, and other impacts that may arise from the above-referenced project, but support Alternative 4 over the other 3 alternatives. The foregoing is not intended to be a recitation of all of Monterey Plaza LP's claims at law or in equity which Monterey Plaza LP may have, each of which is expressly reserved.

Very truly yours,

DocuSigned by:

A handwritten signature in blue ink, appearing to be 'Jason Lee'.

Jason Lee, Esq.

Regional General Counsel – Western Region

Western Region

Phone: 949-252-2705 • Fax: 760.727.1430 • kimcorealty.com

Response to Submission 2069 (Jason Lee, Monterey Plaza LP, June 23, 2020)

2069-2314

The comment's support of Alternative 4 as well as general concerns with the operational, property, leasing and other impacts are noted.

Submission 1434 (Margo Hinnenkamp, Morgan Hill Historical Society, June 22, 2020)

San Jose - Merced - RECORD #1434 DETAIL

Status Unread
Record Date 6/22/2020
Submission Date 6/22/2020
Interest As Business and/or Organization
First Name Margo
Last Name Hinnenkamp

Stakeholder Comments/Issues

1434-2329

We are writing to you as members of the Morgan Hill Historical Society and concerned residents of Morgan Hill regarding the proposed route for the HSR that would be constructed along the existing Union Pacific Railroad tracks. This route would result in 16 trains per hour at peak travel times running through the center of downtown Morgan Hill.

The resulting noise, traffic congestion and safety concerns all make this proposed route completely unacceptable to the residents of our city.

1434-2330

Villa Mira Monte, our treasured historic property, lies directly next to the current railroad tracks. This property, which is listed on the National Registry of Historic Places, is the site of 2 historic houses, one of which was built by Morgan Hill and his wife, Diana Murphy Hill. The city was named after this historic home and is meticulously maintained and operated by the all-volunteer Morgan Hill Historical Society.

If the proposed route for the HSR along the existing tracks were to be chosen, the noise and vibration from these trains would make this property totally unsuitable for the myriad of activities that are held there annually. These activities focus on community education regarding local history as well as essential fundraising activities.

We are hopeful that the proposed route through our downtown will be discarded in favor of the proposed route that parallels highway 101. Thank you for your consideration in this matter.

Margo and Rich Hinnenkamp

Response to Submission 1434 (Margo Hinnenkamp, Morgan Hill Historical Society, June 22, 2020)

1434-2329

Refer to Standard Response SJM-Response-GEN-1: Opposition and Comments on the Merits of the Project.

1434-2330

The comment notes concerns with operational noise and vibration impacts on Villa Mira Monte, a historic property, under Alternatives 2 and 4.

Impacts on historical resources are analyzed in Section 3.17, Cultural Resources, of the Draft EIS/EIR. Specifically, operational impacts on the setting of Villa Mira Monte are discussed in Section 3.17.7.3, Historic Built Resources.

Although the noise and vibration of the existing and proposed train service may be deemed as unsuitable for certain activities, unless a quiet setting is considered to be a character-defining feature or an important aspect of integrity of a historic property, operational alterations to a setting, such as increased noise levels, are generally not considered a significant impact or a significant change to historic built resources. Villa Mira Monte does not have a quiet setting as a character-defining feature or important aspect of integrity. Impacts on built resources caused by operations is analyzed under Impact CUL#6.

Vibration analysis in Section 3.4.6.3, Vibration, did not identify Villa Mira Monte as a vibration-sensitive facility. Please refer to Impact NV#10.

The project would have no impact on NRHP- or CRHR-eligible or CEQA-only built historic resources from intermittent noise and vibration caused by operations. Therefore, CEQA does not require mitigation.

Chapter 4, Section 4(f)/6(f) Evaluation, specifies that additional project features would apply to Villa Mira Monte as related to potential aesthetic and noise/vibration impacts, including adoption of design standards (AVQ-IAMF#1) and design review process to guide the development of non-station area structures (AVQ-IAMF#2). Mitigation measures calling for noise barriers (NV-MM#1) and visual screening will also apply (AVQ-MM#3, AVQ-MM#4, and AVQ-MM#6). As outlined in Section 3.4, Noise and Vibration, and Section 3.16, Aesthetics and Visual Quality, these measures will minimize the noise and visual impacts on Villa Mira Monte. As a result, the site's diminished use and associated loss of revenue are not reasonably foreseeable consequences of HSR operation.

Response to Submission 1434 (Margo Hinnenkamp, Morgan Hill Historical Society, June 22, 2020) - Continued

1434-2330

The comment's support of Alternatives 1 and 3, which run along US 101 through Morgan Hill, is noted.

Submission 1702 (Kathy Sullivan, Morgan Hill Historical Society, June 23, 2020)



Morgan Hill Historical Society

To preserve and share the history of Morgan Hill, and its environs, to inspire a sense of community.

June 23, 2020

Boris Lipkin, Northern California Regional Director
Dave Shpak, Deputy Project Manager of San Jose to Merced California High Speed Rail Authority
100 Paseo De San Antonio, #206
San Jose, CA 95113

RE: San Jose to Merced Project Section Draft EIR/EIS

Dear Mr. Lipkin,

On behalf of the Board of Directors of the Morgan Hill Historical Society (MHHS) and our community who benefits from the Villa Mira Monte (VMM) historical park, we appreciate the opportunity to respond to the EIR/EIS findings for the San Jose to Merced project section. The MHHS does not have the financial resources to hire a consultant to advise us on codes, technology, impact and responses to specifics in the DEIR/EIS. Therefore, we are relying on the response provided by the City of Morgan Hill (City) and its consultant as a basis for our comments to the HSR draft EIR/EIS. We concur with the City's comments. The City has a vested interest in protections to Villa Mira Monte. The MHHS holds title to the site, but should it be unable to fulfill the required conditions in the deed of trust, ownership and obligations will revert to the City. Obligations are that the site be preserved, maintained and open to the public in perpetuity as an historical resource for educational and recreational activities.

Please consider the following comments and issues:

I. MHHS is a Responsible Entity

The MHHS holds title to VMM located at 17860 Monterey Road, Morgan Hill, CA and is responsible for its preservation, maintenance and operation. The site is listed on the National Register of Historic Places which provides certain protections by the National Park Service. The MHHS Board of Directors is the responsible entity for CHSRA actions undertaken in-regards-to this site. These actions include but are not limited to cooperative agreements, rights of entry, land transactions, and maintenance agreements. MHHS is an all-volunteer 501(c)(3) corporation with a Board of Directors that serves as its governing body. All communications should be addressed to MHHS, P.O. Box 1258, Morgan Hill, CA 95038-1258 – or – info@morganhillhistoricalsociety.com.

17860 Monterey Road
P.O. Box 1258, Morgan Hill, CA 95038
408.779.5755
www.morganhillhistoricalsociety.org
Tax ID 94-2562450

1702-2744

II. MHHS Preferred Alternatives

The MHHS agrees with the City, its preferred alignments are 1 or 3 which fall within the U.S. Highway 101 right of way as they run through the City. These alternatives are the least impactful on the City and VMM. They will not diminish the historical value of VMM, nor interfere with the ability to operate the site as required by the deed of trust and raise funds to support its preservation, maintenance and operation.

1702-2745

III. HSR Selected Alternative

Alternatives 2 and 4 have major implications for the VMM site and MHHS will bear the brunt for significant construction and operational impacts, economic losses with not a single benefit provided to the site and the community. As is demonstrated by the Draft EIR/EIS and proposed project plans, the embankments and sound wall in alternative 2 would have the most negative impacts for cultural aesthetics, sound and vibrations. The sheer height of this alternative would create a mountain with walls behind the historical resource. The MHHS supports the City's request that the HSR Authority reject Alternative 2.

If Alternative 4 (Preferred Alternative) is ultimately selected for implementation there are considerable mitigations that need to be addressed. They are identified below in the appropriate sections.

IV. Downtown Morgan Hill Caltrain Station Refinements

The MHHS agrees with the City's comments on this item.

1702-2746

V. Economic Concerns

The project will result in significant economic losses to the MHHS due to the loss of use of the site for community education and fundraising events. Under Alternatives 2 and 4, VMM will be affected during construction by the loss of parking and gathering space. No timeframe is provided for this activity. These lost revenues directly impact the MHHS's ability to provide services to preserve, maintain and operate VMM, thus the danger that it will become a blighted property.

VI. Specific Environmental Issues

The following comments pertain to specific environmental sections in the EIR/EIS.

Sections 3.2 Transportation and 3.11 Safety

- The EIR/EIS needs to clearly identify the total trains (both directions) in the year 2040 peak hour between San Jose and Gilroy. Include HSR, Caltrain, Amtrak, and freight as well as account for gate-down time caused by maintenance of the tracks. Without this information, the CHSRA cannot appropriately account for the cumulative impacts to intersections and safety response times that impact safety and security of the VMM site.
- The MHHS further requests the following: The MHHS supports the City's position: Under Alternatives 2 and 4, the MHHS requests mitigation through the expansion of the adjacent freeway in alignment with the State of California's US 101 South Comprehensive Corridor Plan for Caltrans District 4, specifically the construction of the

1702-2747

1702-2748

Submission 1702 (Kathy Sullivan, Morgan Hill Historical Society, June 23, 2020) - Continued

1702-2748

improvements identified in the plan as “US 101 Express Lanes: Cochrane Rd. to Masten Ave.”

1702-2749

- The MHHS supports the City’s position: The EIR/EIS needs to clearly identify the total trains (both directions) in the year 2040 peak hour between San Jose and Gilroy. Include HSR, Caltrain, Amtrak, and freight as well as account for gate-down time caused by maintenance of the tracks. Without this information, the CHSRA cannot appropriately account for the cumulative impacts to intersections and safety response times.

Chapter 3.4 Noise & Vibration

The ongoing operational noise impacts of the project under all alternative alignments is a primary concern of the City and the MHHS. Specific issues the MHHS requests to be addressed include:

1702-2750

- The MHHS agrees with the City’s position: From the Noise and Vibration Technical Report, it cannot be determined if these data effect the estimation of the existing levels within the City and as they impact VMM. In order to determine this, the City and the MHHS request the results of existing noise level modeling done within Morgan Hill.

1702-2751

- The EIR should provide a discussion specific to the issues with train horn blasts sounding as each of the 176 HSR trains per day pass through intersections at-grade in Downtown Morgan Hill with Alternative 4. Given the need to sound the horn prior to crossing each at-grade intersection, and the speeds at which the trains are moving, the horns will be sounded nearly continuously as they pass through intersections a matter of seconds apart. This will apparently be unprecedented for any segment HSR has studied so far, to have so many at-grade crossings in a densely populated Downtown area and the need to sound horns at each crossing. These horns will be very audible at VMM.

1702-2752

- The cumulative effect of this should be described over the course of a day on affected residences and businesses. Given the noise barriers are not present at intersections, this noise will escape into the adjacent neighborhood and business district. The EIR/EIS does not adequately disclose conditions under Alternative 4, assuming no Quiet Zone is in place and train horns will sound at each at-grade crossing. The cumulative impact of all trains blasting their horn, including Amtrak, UPRR and Caltrain should be incorporated into the analysis.

1702-2753

- The EIR should conduct an analysis for all proposed alternatives as to the impacts of horizontal and vertical vibrations combined as they are specific to the deterioration of wooden structures with wooden foundations such as VMM. Vibrations and sound impacts will differ for each alternative. Provide specifics on the studies and the timing for evaluation.

Chapter 3.16 Aesthetics and Visual Quality

The MHHS agrees with the City’s response: Given the EIR/EIS evaluates nearly 90 miles of HSR alignments, the analysis of aesthetics is at a very high level, and in Morgan Hill only two ‘landscape units’ and four ‘Key View Points’ (KVPs) are identified. The long-term visual impacts of the project throughout our City under all alternative alignments is a primary concern of the City and MHHS.

1702-2754

The City’s Comment letter refers to EIR Figure 3.16-35, illustrates a view of Alternative 2 along Monterey Road in northern Morgan Hill at the KVP identified as ‘Peebles Avenue’. All of the Keesling’s Shade Trees have been removed for the HSR. The Keesling Shade Trees are a California Registered Point of Historical Interest Number SCL-056. The loss of these significant heritage trees would significantly degrade the local visual environment. The EIR should recognize this and their loss needs to be mitigated by relocation or replacement of trees in same size and species.

- The MHHS agrees with the City finding the following requests qualify and should be incorporated within the EIR as mitigation. If the Authority finds that one of the following does not apply, we would like a response as to why it does not qualify.
- General comments: All trees to be removed shall be replaced at a 2:1 planting ratio. Fencing: Barbed wire, razor wire, chain link, and electric fences are prohibited within Morgan Hill. Materials for proposed fencing where a sound wall is proposed should provide a neighborhood friendly fence such as wood or tubular steel. In the case of VMM the fence will be compatible with the existing tubular fencing.

1702-2755

Chapter 3.17 Cultural Resources – Villa Mira Monte

This section lists specific VMM issues and supports issues the City requests to be addressed. VMM, 17860 Monterey Rd. Alternative 2 would include the following project components within and east of the existing rail right-of-way that forms the northeastern boundary of the legal parcel containing VMM: temporary construction easement (TCE) adjacent to the rear (east) of the legal parcel, which is the resource boundary; underground sewer utility relocation 40 feet from the resource; HSR right-of-way (ballasted track on retained fill, approximately 20 feet above grade, with additional 27-foot-tall OCS poles) 65 feet east of the resource boundary; and staging area 215 feet east of the resource. Under Alternative 2, no project components would occur within the historical resource boundary. While the HSR embankment would be visible from VMM, it would not hinder the resource’s ability to convey its era of construction, associations with Diana and Hiram Morgan Hill, and distinctive and refined architectural style. The impact would be less than significant under CEQA for Alternative 2.

- The MHHS disagrees. The size and nature of the HSR improvements are not appropriately considered in comparison to this resource, its cultural value and its current uses. Appropriate mitigation measures should be identified and agreed upon with the City and the MHHS, including the addition of walls the entire length of the adjacent property boundary, appropriate fencing from the property to the sound wall, landscaping, an artistic mural by a commissioned artist and professional installation, and/or other features consistent with maintaining the sites historical significance. If underground water is to be installed along this line, tie into the back of VMM for irrigation to the back of the site.
- Under Alternative 2, the distance of 65’ for Alternative 2 vs. an estimated 20’ for Alternative 4 is not that significant as far as the reduction of sound and vibrations. CHSRA need to back up its statement with onsite research to confirm its conclusions.

1702-2756

Submission 1702 (Kathy Sullivan, Morgan Hill Historical Society, June 23, 2020) - Continued

1702-2757

Under Alternative 4, the HSR right-of-way would be blended with the Caltrain tracks in the existing Caltrain right-of-way, which passes along the northeastern boundary of the legal parcel containing VMM. OCS poles 27 feet tall would be installed within the Caltrain and HSR right-of-way. The Caltrain right-of-way runs adjacent to the resource's eastern boundary. An area designated for temporary HSR access adjacent to the HSR right-of-way would extend approximately 20 feet into the resource boundary. However, the HSR access area would be in an area of the site that is currently undeveloped and is separated from the primary building by a distance of approximately 245 feet, such that it would not alter any of the resource's character-defining features. Sanitary sewer infrastructure would be relocated on the far side of the HSR right-of-way from the resource, approximately 60 feet northeast of the parcel containing VMM.

- The MHHS disagrees. The area designated for temporary HSR access extending 20 feet into the resource boundary is slated for 2022 -23 development into a paved parking area with landscaping and required City infrastructure. Plans for this development have been tentatively approved by the City and capital funds have been set aside. Use of this area will decrease the usable parking space for activities at Villa Mira Monte. No timeframe is given for HSR use of the site.

1702-2758

Mitigation measures:

- If the MHHS has no recourse against the temporary use of its property as a staging area for HSR, it is to be compensated for this use and inconvenience as well as compensated for any damage and repairs incurred during this use. Define the timeframe for use and the specific activities that will occur on the site. Be specific about what vehicles and construction equipment will access the site and how frequent. Define the appeal process for making any claims against the CHRSA.

1702-2759

- Under Alternative 4, the introduction of the HSR right-of-way and OCS poles within the existing Caltrain right-of-way, as well as the use of a limited and currently vacant portion of the resource for temporary HSR access, would represent a minor change in the characteristics and setting of VMM. The impact would be less than significant under CEQA for Alternative 4. The MHHS disputes this statement. The size and nature of the HSR improvements are not appropriately considered in comparison to this resource, its cultural value and its current uses. Appropriate mitigation measures should be identified and agreed upon with the City and the MHHS, including the addition of walls, fencing, landscaping and/or other features consistent with maintaining the sites historical significance.

1702-2760

- Under all four alternatives, project construction activities would occur a minimum of 245 feet from the northeastern boundary of the legal parcel that contains VMM. Under all four alternatives, there would be no construction activities within 50 feet of the VMM; thus, there would be no increased vibration that could cause substantial adverse change to this resource such that it would no longer qualify for the NRHP/CRHR. There would be no construction vibration impact under CEQA for Alternatives 1 through 4. The MHHS disagrees and requires more information to support this conclusion. VMM is an historic asset within the City and serves as a museum and an event center. The house, built in 1884, is a wooden structure that will be severely impacted by noise and vibration from the project's construction and operation.

1702-2761

- Long-term impacts of the combined noise and vibrations will leads to even greater annoyance and inability to operate the site for its intended purposes. A structural analysis needs to be prepared to identify necessary mitigations to noise and combined vertical and horizontal vibration impacts over time given the frequency of all trains running on the tracks.

1702-2762

- The reports below document the significant impacts on the combined annoyance of noise and vibrations impacts. Damage to wooden structures resulting from combined vertical and horizontal vibrations is much more significant than to structures with concrete foundations. These vibrations are amplified as multiple trains cross paths at the same time.
 - o Info on vibration impacts; the horizontal vibrations can have negative impacts over a longer distance from the tracks; the more "carriages" on a given train, the more vibration is created; HSR built along existing railroad tracks may have additional negative impacts; then there's the impact of vibrations in an area with major earthquake faults and a major dam nearby in dire need of repair; vibrations have been shown to disrupt operation of sensitive machinery - like at nearby hospitals or clinics. https://www.researchgate.net/publication/332262348_Noise_Mitigation_and_Related_Factors_of_High_Speed_Railways
 - o In a report on Japan's HSR, [1] railway-induced vertical vibrations slightly increased when transmitted to wooden detached houses and decreased when transmitted to reinforced concrete apartment buildings. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5580549/>

1702-2763

- Further, event center operations fund the maintenance of the site. Even if the project does not directly impact the historic character of the property, impacts that reduce or eliminate the revenues needed to maintain the historic character of the site could result in the loss of this historic resource. The deed of title to this site requires that the land be preserved in perpetuity as a community educational and recreational resource.

1702-2764

Chapter 4 Section 4(f) Public Facilities

The impact under CEQA would be significant for Alternatives 2 and 4 at the gardens at VMM. Construction noise would impair use of this resource. The Authority would implement NV-MM#1 to minimize the impact of construction noise and PR-MM#6 to minimize construction noise during special events at VMM. Accordingly, the EIR/EIS concludes this construction noise impact would not be of a severity that the protected activities, features, or attributes that qualify the center for protection under Section 4(f) would be substantially impaired. Therefore, a Section 4(f) use would not result at VMM.

- The MHHS disputes this statement. Continual sounds and vibrations throughout the day would be unbearable for any event. Events like outside weddings, the most popular rental request, would be subject to the constant and significant sounds making it unrentable. The EIR should also disclose the impacts on the use of this resource with the sounding of train horn blasts under Alternative 4, taking into account the number of trains throughout the day and frequency, as the horns would be sounded near the property as trains approach the Main Avenue at-grade crossing. The house is an historic wooden structure

Submission 1702 (Kathy Sullivan, Morgan Hill Historical Society, June 23, 2020) - Continued

1702-2764

that will be severely impacted by noise and vibration from the project. A structural analysis should be prepared to identify necessary mitigations to noise and vibration impacts.

The Morgan Hill Historical Society appreciates your consideration of these comments and concerns. We look forward to HSR staff's willingness to clarify the project design and objectives, and to discuss and resolve issues that result in a project that achieves the HSR Authority's mandate while minimizing impacts on the communities that will have to co-exist with the operating rail system long-term.

Sincerely,

Kathy Sullivan
President
Morgan Hill Historical Society

cc: Morgan Hill Historical Society Board of Directors
Morgan Hill City Manager
City Attorney
Mayor
City Council
Elected Officials

Response to Submission 1702 (Kathy Sullivan, Morgan Hill Historical Society, June 23, 2020)

1702-2744

Refer to Standard Response SJM-Response-GEN-1: Opposition and Comments on the Merits of the Project.

The comment expresses preference for Alternatives 1 or 3 and concern regarding Villa Mira Monte, which are noted. Impacts on historical resources are analyzed in Section 3.17, Cultural Resources, of the Draft EIR/EIS. Specifically, operational impacts on the setting of Villa Mira Monte are discussed in Section 3.17.7.3, Historic Built Resources.

Although the noise and vibration of the existing and proposed train service may be deemed as unsuitable for certain activities, unless a quiet setting is considered to be a character-defining feature or an important aspect of integrity of a historic property, operational alterations to a setting, such as increased noise levels, are generally not considered a significant impact or a significant change to historic built resources. Villa Mira Monte does not have a quiet setting as a character-defining feature or important aspect of integrity. Impacts on built resources caused by operations is analyzed under Impact CUL#6.

Vibration analysis in Section 3.4.6.3, Vibration, did not identify Villa Mira Monte as a vibration-sensitive facility. Please refer to Impact NV#10.

The project would have no impact on NRHP- or CRHR-eligible or CEQA-only built historic resources from intermittent noise and vibration caused by operations. Therefore, CEQA does not require mitigation.

Chapter 4, Section 4(f)/6(f) Evaluation, specifies that additional project features would apply to Villa Mira Monte as related to potential aesthetic and noise/vibration impacts, including adoption of design standards (AVQ-IAMF#1) and design review process to guide the development of non-station area structures (AVQ-IAMF#2). Mitigation measures calling for noise barriers (NV-MM#1) and visual screening will also apply (AVQ-MM#3, AVQ-MM#4, and AVQ-MM#6). As outlined in Section 3.4, Noise and Vibration, and Section 3.16, Aesthetics and Visual Quality, these measures will minimize the noise and visual impacts on Villa Mira Monte. As a result, the site's diminished use and associated loss of revenue are not reasonably foreseeable consequences of HSR operation.

1702-2745

Refer to Standard Response SJM-Response-GEN-1: Opposition and Comments on the Merits of the Project.

The comment expresses concern regarding impacts from Alternatives 2 and 4 on the Villa Mira Monte and Morgan Hill Historical Society historic resources. Impacts on historical resources are analyzed in Section 3.17, Cultural Resources, of the Draft EIR/EIS. Specifically, operational impacts on the setting of Villa Mira Monte are discussed in Section 3.17.7.3, Historic Built Resources.

Although the noise and vibration of the existing and proposed train service may be deemed as unsuitable for certain activities, unless a quiet setting is considered to be a character-defining feature or an important aspect of integrity of a historic property, operational alterations to a setting, such as increased noise levels, are generally not considered a significant impact or a significant change to historic built resources. Villa Mira Monte does not have a quiet setting as a character-defining feature or important aspect of integrity. Impacts on built resources caused by operations is analyzed under Impact CUL#6.

Vibration analysis in Section 3.4.6.3, Vibration, did not identify Villa Mira Monte as a vibration-sensitive facility. Please refer to Impact NV#10.

The project would have no impact on NRHP- or CRHR-eligible or CEQA-only built historic resources from intermittent noise and vibration caused by operations. Therefore, CEQA does not require mitigation.

Chapter 4, Section 4(f)/6(f) Evaluation, specifies that additional project features would apply to Villa Mira Monte as related to potential aesthetic and noise/vibration impacts, including adoption of design standards (AVQ-IAMF#1) and design review process to guide the development of non-station area structures (AVQ-IAMF#2). Mitigation measures calling for noise barriers (NV-MM#1) and visual screening will also apply (AVQ-MM#3, AVQ-MM#4, and AVQ-MM#6). As outlined in Section 3.4, Noise and Vibration, and Section 3.16, Aesthetics and Visual Quality, these measures will minimize the noise and visual impacts on Villa Mira Monte. As a result, the site's diminished use and associated loss of revenue are not reasonably foreseeable consequences of HSR

Response to Submission 1702 (Kathy Sullivan, Morgan Hill Historical Society, June 23, 2020) - Continued

1702-2745

operation.

The comment's request for rejection of Alternative 2 is noted.

1702-2746

Based on analysis in this Draft EIR/EIS, the project is not anticipated to result in significant economic losses to the Morgan Hill Historical Society due to the loss of the site for community education and fundraising events. As described in Chapter 4, Section 4(f)/6(f) Evaluation, of the Draft EIR/EIS, construction of Alternative 2 would not require the temporary or permanent use of property owned by the Morgan Hill Historical Society. Construction of Alternative 4 would only require the temporary use of 0.09 acre of the property. The area proposed to be used during the construction period is currently undeveloped, and the Authority would provide fair compensation for use of this land. Related to potential indirect impacts caused by the site's lost revenues, the Authority will implement the project features and mitigation measures outlined in Chapter 4, involving design standards and review, noise barriers, and visual screening. As outlined in Section 3.4, Noise and Vibration, and Section 3.16, Aesthetics and Visual Quality, these measures would minimize the noise and visual impacts on Villa Mira Monte. As a result, a loss of revenue and potential blight of the Villa Mira Monte property are not foreseeable consequences of HSR operation.

1702-2747

Refer to Standard Response SJM-Response-TR-3: Gate-Down Time Calculation Details.

The Draft EIR/EIS transportation assessment accounts for the gate-down time associated with all anticipated train movements.

1702-2748

Refer to Standard Response SJM-Response-TR-1: Site-Specific Mitigation for Traffic Impacts.

The comment states that under Alternatives 2 and 4 the Draft EIR/EIS should consider the widening of US 101 as mitigation for project effects consistent with State of California's US101 South Comprehensive Corridor Plan for Caltrans District 4, specifically between Cochrane Road to Masten Avenue. The analysis of project effects in Section 3.2, Transportation, and Appendix 3.2-A, Transportation Data on Roadways, Freeways, and Intersections (located in Volume 2, Technical Appendices), of the Draft EIR/EIS did not identify an adverse project effect on the freeway segment between Cochrane Road and Masten Ave for any alternative. No adverse effects are identified on freeway operations for Alternative 4. The EIR/EIS does identify an adverse project effect on freeway operations for Alternatives 1, 2 and 3 on freeway operations on US 101 segments in San Jose north and south of SR 85. The EIR/EIS does not identify any project effects on US 101 freeway operations between Cochrane Road and Masten Avenue because there are no project operations or roadway modifications that would increase freeway traffic volume or alter freeway conditions in this segment. As such, there is no nexus for the requested mitigation.

1702-2749

Refer to Standard Response SJM-Response-TR-3: Gate-Down Time Calculation Details.

The Draft EIR/EIS transportation assessment accounts for the gate-down time associated with all anticipated train movements.

1702-2750

Please refer to Tables 5-10 through 5-13 in Appendix 3.4-A, Noise and Vibration Technical Report (located in Volume 2, Technical Appendices, of the Draft EIR/EIS), for more information regarding existing and future sound levels with the project.

Response to Submission 1702 (Kathy Sullivan, Morgan Hill Historical Society, June 23, 2020) - Continued

1702-2751

The noise analysis prior to mitigation and without quiet zones assumes all trains would sound horns approaching at-grade crossings and passenger stations. Table 3.4-31 in Section 3.4.7.1, Noise Mitigation Analysis, of the Draft EIR/EIS summarizes noise impacts, including horn sounding, for Alternative 4 in the Morgan Hill and Gilroy Subsection without mitigation, with noise barriers, and with a combination of quiet zones and noise barriers. Please refer to Appendix 3.4-A, Noise and Vibration Technical Report (located in Volume 2, Technical Appendices, of the Draft EIR/EIS), Section 4.1.5.2, Horn Noise, for detailed horn noise prediction methods. Villa Mira Monte is located more than 0.25 mile from the nearest crossing at East Main Avenue, so trains would not be sounding horns at Villa Mira Monte; however, some horn noise may still be audible.

Please also refer to new Appendix 3.4-C, Noise Impact Locations (located in Volume 2, Technical Appendices, of the Final EIR/EIS) for detailed maps of the 2040 Plus Project noise impacts for Alternative 4 in downtown Morgan Hill: Figures C-71 and C-72 (without mitigation), C-97 and C-98 (with only noise barriers as mitigation), and C-107 and C-108 (with a combination of quiet zones and noise barriers).

The noise analysis includes all trains operating in the corridor during a 24-hour period, including all daytime and nighttime HSR, Caltrain, and other passenger trains and freight trains.

Villa Mira Monte and noise impacts on this resource are discussed in Impact PK#7 in Section 3.15, Parks, Recreation, and Open Space, of the Draft EIR/EIS. The impact would be significant under all project alternatives. NV-MM#3, NV-MM#4, and NV-MM#8 would be implemented to mitigate these impacts.

1702-2752

The noise analysis prior to mitigation and without quiet zones assumes all trains would sound horns approaching at-grade crossings and passenger stations. Table 3.4-31 in Section 3.4, Noise and Vibration, of the Draft EIR/EIS fully discloses noise impacts for Alternative 4 in the Morgan Hill and Gilroy Subsection without mitigation, with noise barriers, and with a combination of quiet zones and noise barriers.

The noise analysis includes all trains operating in the corridor during a 24-hour period, including all daytime and nighttime HSR, Caltrain, and other passenger trains and freight trains.

1702-2753

A detailed vibration analysis for all sensitive locations along the project alignment for all alternatives has been conducted. The analysis accounts for wood-framed vibration-sensitive buildings. Please refer to Appendix 3.4-A, Noise and Vibration Technical Report (located in Volume 2, Technical Appendices, of the Draft EIR/EIS), Tables 5-28 through 5-31 for detailed results. Vibration impact is not predicted at Villa Mira Monte due to the distance of the building from the HSR tracks. There would not be building damage due to project train operations at this location.

1702-2754

Mitigation measure AVQ-MM#1 replaces trees in compliance with based on local jurisdictional requirements. At this location, the requirement would be to replace mature trees would be replaced at a 2:1 ratio. AVQ-IAMF#2 ensures community input on non-station aesthetics, allowing the concern to which will provide the community with an opportunity to provide input on the replacement of replace the Keesling Shade Trees in a manner suitable to their status to be addressed. With regard to the fencing, please refer to mitigation measure AVQ-MM#3, which requires the incorporation of design criteria for non-station structures, such as fencing, retaining walls, and overcrossings, that can adapt fit within the to local context. The measure specifically requires the design/build contractor to prepare and submit to the Authority a technical memorandum that describes how it coordinated with local jurisdictions on the design of the non-station structures so that they fit in with the existing visual context of the areas near them (please refer to page 3.16-156 of the Draft EIR/EIS).

Response to Submission 1702 (Kathy Sullivan, Morgan Hill Historical Society, June 23, 2020) - Continued

1702-2755

With respect to Alternative 4's impact on Villa Mira Monte, the Final EIR/EIS finds that the impact would be less than significant, which is the correct determination based on the effects analysis and evidence presented. Villa Mira Monte's historic setting has already experienced considerable change, such that the OCS poles would not materially impair the characteristics that qualify the resource for historic register listing.

Furthermore, Chapter 4, Section 4(f)/6(f) Evaluation, specifies that additional project features will apply to Villa Mira Monte as related to potential aesthetic and noise/vibration impacts, including adoption of design standards (AVQ-IAMF#1) and design review process to guide the development of non-station area structures (AVQ-IAMF#2). Mitigation measures calling for noise barriers (NV-MM#1) and visual screening will also apply (AVQ-MM#3, AVQ-MM#4, and AVQ-MM#6).

Regarding underground water installation, any affected irrigation facilities or water utilities would be replaced in kind and would be coordinated with appropriate utility/service providers as part of Detailed Design Post-ROD.

1702-2756

Detailed noise and vibration analyses for all sensitive land use locations, including Villa Mira Monte, have been conducted for all project alternatives. The methodology for assessing impact is provided in Section 3.4.4.3, Methods for Impact Analysis, of the Draft EIR/EIS. The results of the noise assessment are included in Section 3.4.6.2, Noise, Impact NV#2. The results indicate that there would be moderate noise impact in 2040 under Alternatives 2 and 4. With NV-MM#3, there would be no noise impact.

1702-2757

With respect to Alternative 4's impact on Villa Mira Monte, the Final EIR/EIS finds that the impact would be less than significant, which is the correct determination based on the effects analysis and evidence presented. As described in Section 3.17, Cultural Resources, the area proposed for temporary HSR access during the construction of Alternative 4 does not contain any historic character-defining features of Villa Mira Monte. Therefore Alternative 4 would not have a significant impact on the historic property. Furthermore, the Authority has revised Chapter 4, Section 4(f)/6(f) Evaluation, to clarify the temporary reduction of 7% of the site's parking would not constitute a use under Section 4(f).

1702-2758

The commenter requested additional information be provided about the proposed use of a portion of property owned by the Morgan Hill Historical Society. The Authority would acquire all land from property owners that would be either temporarily or permanently affected by the project in accordance with the Uniform Relocation Act (42 U.S.C. Chapter 61). Parcel-specific analysis would take place during the appraisal process before property acquisition, consistent with the Uniform Relocation Act, which establishes minimum standards for the treatment of and compensation to individuals whose real property is acquired for a federally funded project. Additional information about acquisition and compensation is also available at the Authority's website: http://www.hsr.ca.gov/Programs/private_property.html.

The Authority also is committed to restoring land temporarily used for construction to a condition equal to the pre-construction staging condition (LU-IAMF#3). Prior to any ground-disturbing activities at the site of land to be used temporarily during construction, the contractor would prepare a restoration plan addressing specific actions, sequence of implementation, parties responsible for implementation and successful achievement of restoration for temporary impacts. The restoration plan would include time-stamped photo documentation of the pre-construction conditions of all temporary staging areas. All construction access, mobilization, material laydown, and staging areas would be returned to a condition equal to the pre-construction staging condition. This requirement is included in the design-build construction contract requirements.

With respect to the comment's request for additional information about the duration, timeline, and specific activities and equipment to be used on the site, that would be determined by the Authority's design-build contractor at a later stage of project design. Note that the additional information requested by the commentor would be detailed in the temporary construction easement agreement negotiated with the property owner prior to the time the property would need to be acquired for temporary construction use.

1702-2759

With respect to Alternative 4's impact on Villa Mira Monte, please refer to the response to submission SJM-1702, comment 2755.

Response to Submission 1702 (Kathy Sullivan, Morgan Hill Historical Society, June 23, 2020) - Continued

1702-2760

The Authority conducted a detailed vibration analysis for all sensitive locations along the project alignment, including Villa Mira Monte, for all alternatives. The analysis accounts for wood-framed vibration-sensitive buildings. Please refer to Appendix 3.4-A, Noise and Vibration Technical Report (located in Volume 2, Technical Appendices, of the Draft EIR/EIS), Tables 5-28 through 5-31 for detailed results. Vibration impact is not predicted at Villa Mira Monte due to the distance of the building from the HSR tracks. There would not be building damage due to project train operations at this location.

1702-2761

A detailed vibration analysis for all sensitive locations along the project alignment, including Villa Mira Monte, for all alternatives has been conducted. The analysis accounts for wood-framed vibration-sensitive buildings. Vibration impact is not predicted at Villa Mira Monte due to the distance of the building from the HSR tracks. There would not be building damage due to project train operations at this location.

1702-2762

A detailed vibration analysis for all sensitive locations along the project alignment, including Villa Mira Monte, for all alternatives has been conducted. The analysis accounts for wood-framed vibration-sensitive buildings. Please refer to Appendix 3.4-A, Noise and Vibration Technical Report (located in Volume 2, Technical Appendices, of the Draft EIR/EIS), Tables 5-28 through 5-31 for detailed results. Vibration impact is not predicted at Villa Mira Monte due to the distance of the building from the HSR tracks. There would not be building damage due to project train operations at this location.

1702-2763

With respect to the project's impacts on Villa Mira Monte, Section 3.17, Cultural Resources, was modified in the Final EIR/EIS to further describe the vibration impact thresholds used (Section 3.17.7.3, Historic Built Resources, in Impact CUL#5). In addition, this section was revised to clarify that although construction would occur along the northeastern boundary of the historical resource boundary (the legal parcel containing Villa Mira Monte), it would occur over 200 feet from the residence's character-defining features. Under Alternative 4, the Preferred Alternative (Appendix 3.17-C, Archaeological and Built Resources, Figure 22, located in Volume 2, Technical Appendices, of the Draft EIR/EIS), the HSR right-of-way would be blended with the Caltrain tracks in the existing Caltrain right-of-way, which passes along the northeastern boundary of the legal parcel containing Villa Mira Monte. The Final EIR/EIS finds that the historical resource impact would be less than significant, which is the correct determination based on the effects analysis and evidence presented. Related to potential indirect impacts caused by the site's lost revenues, the Authority will implement the project features and mitigation measures outlined in Chapter 4, Section 4(f)/6(f) Evaluation, involving design standards and review, noise barriers, and visual screening. As outlined in Section 3.4, Noise and Vibration; Section 3.12, Socioeconomics and Communities; and Section 3.16, Aesthetics and Visual Quality, IAMFs NV-IAMF#1, SOCIO-IAMF#1, AVQ-IAMF#1, and AVQ-IAMF#2 and mitigation measures NV-MM#1 through NV-MM#8, AVQ-MM#3, AVQ-MM#4, and AVQ-MM#6 would minimize the noise and visual impacts on Villa Mira Monte. As a result, a loss of revenue and subsequent neglect of Villa Mira Monte are not foreseeable consequences of HSR operation.

1702-2764

Please see response to SJM-1702, comment #2760 for a description of horn noise and vibration from trains at this location. In addition, operational noise would not be continual. It would be intermittent and very brief when a train passes by, and train horns would not be sounded at this location. Construction noise would also not be continuous. Rather, construction noise would depend on the specific phase of construction, and with implementation of NV-MM#1 and PR-MM#6, construction noise would be minimized during special events, which will allow special events to continue during construction without significant sources of construction noise. Therefore, a Section 4(f) use would not result.

Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020)

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June 23, 2020

High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, and TNC Comments

June 23, 2020

Brian P. Kelly, CEO
California High-Speed Rail Authority
770 L Street, Suite 620
Sacramento, CA 95814

1618-2571

RE: Draft Environmental Impact Report/Environmental Impact Statement for the San Jose to Merced Project Section of the California High-Speed Rail

Dear Mr. Kelly:

Peninsula Open Space Trust (POST), Santa Clara Valley Open Space Authority (Open Space Authority), and the Nature Conservancy (TNC) submit the following comments on the Draft Environmental Impact Report/Environmental Impact Statement (DEIR/EIS) for the San Jose to Merced Project Section (Project) of the California High Speed Rail (HSR).

We appreciate the collaborative spirit that High-Speed Rail Authority (HSRA) staff have brought to our multiple conversations about the Project over the past few years, and hope that collaboration will continue. This comment letter was prepared by Jodi McGraw on behalf of POST, the Open Space Authority, and TNC based on a synthesis of comments provided by Neal Sharma (POST), Tanya Diamond (Pathways for Wildlife), Edmund Sullivan (Santa Clara Valley Habitat Agency), and Jake Smith (Open Space Authority).

The comment letter begins with an overview of the region's significance for biodiversity conservation in California. It then summarizes key issues in the DEIR/EIS and provides detailed comments on the Biological and Aquatic Resources Analysis (Volume 1, Chapter 3, Section 3.7 and associated Technical Reports) and Preliminary Engineering Design Plans (Volume 3). Detailed comments relate to issues with: 1) landscape connectivity, 2) the proposed compensatory mitigation, 3) impacts to existing conservation lands, 4) impacts from construction, and 5) impacts to sensitive species.

We provide comments on the DEIR/EIS analysis of the Project's compatibility with government conservation plans, specifically the Santa Clara Valley Habitat Plan (Valley Habitat Plan), which is an approved federal Habitat Conservation Plan and California Natural Communities Conservation Plan (HCP/NCCP), and the Coyote Valley Landscape Linkage report and Santa Clara Valley Greenprint, both published by the Open Space Authority.

The letter provides comments on the Agricultural Farmland Analysis (Volume 1, Chapter 3, Section 3.14) regarding impacts to the important agricultural resources in the region, especially those identified in the State funded Santa Clara Valley Agricultural Plan adopted by Santa Clara County and the Open Space

Authority. In addition, the letter includes comments on the analysis of impacts to parks, recreation, and open space resources (Volume 1, Chapter 3, Section 3.15). We identify other key documents and scientific research not sufficiently integrated or cited in Appendix 2-J and elsewhere, and additional conservation lands not properly considered.

Finally, we offer brief recommendations for next steps, including our hope that the HSRA will work with our organizations, regulatory agencies, and other stakeholders to refine the Project design, environmental analysis, and mitigations as outlined, in order to both minimize and adequately mitigate the Project's significant impacts on biological resources, including landscape connectivity, and related conservation values pertaining to working lands and public recreational access.

Based on this region's well-documented ecological significance, the significant impacts of every alternative on critical landscape linkages, and extensive issues with the DEIR/EIS's identification and analysis of significant effects, alternatives, and potential mitigation measures (including its lacking in use of the best available scientific information), we are gravely concerned with the Project's negative consequences and irreversible impacts.

The HSRA is charged with ensuring the Project will not harm our region's environment, including its fish and wildlife populations and plant and animal communities, as well the region's agricultural vitality and public recreation benefits, and simply must do better.

We are committed to working with the High-Speed Rail Authority to ensure that the Project utilizes comprehensive mitigation solutions that support the many excellent regional planning and conservation efforts that our organizations and others have invested in together.

Sincerely,

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Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

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**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

Regional Significance of the San Jose to Merced Project Area

The proposed San Jose to Merced Project Section has the potential to irreversibly alter a region of statewide importance for the conservation of biodiversity.

1618-2572

- Habitat Connectivity:** The Project traverses critical linkages connecting core habitat in the Santa Cruz Mountains and Diablo Range. The Project threatens to sever connectivity in two tenuous linkages between these mountain ranges: Coyote Valley and the Upper Pajaro River (Penrod et al. 2013). It could similarly impact wildlife movement through the Pacheco Pass, which connects extensive core habitat in the northern and southern portions of the Diablo Range Mountains. If not properly designed and adequately mitigated, the Project's impacts on regional habitat connectivity will inhibit species dispersal that is essential for maintaining genetic diversity and persistence of wide-range species such as mountain lion, a candidate species under the California Endangered Species Act, which has experienced declines in genetic diversity in the Central Coast that are attributable to reduced habitat connectivity (Gustafson et al. 2018). Severing connectivity through the Pacheco Pass can impede species migrations along an extensive latitudinal gradient in the Diablo Range, which is essential to their adaptation to climate changes (Penrod et al. 2013). Likewise, lack of connectivity between the Santa Cruz Mountains and Diablo Range threatens the long-term viability of mountain lion and other species populations that could become isolated within the Santa Cruz Mountains.

1618-2573

- Habitat for Special-Status Species:** The Project area supports numerous federal and state listed threatened, endangered, and other special-status species. These include species found nowhere else in the world, such as Coyote ceanothus and Mount Hamilton thistle, which are endemic to serpentine soils in the region, and species for which long-term recovery has been linked to the maintenance of critical habitat in the area, including California tiger salamander and San Joaquin kitfox. If not properly designed and adequately mitigated, the Project has the potential to imperil these species by: 1) reducing their populations directly, 2) fragmenting their habitat, and 3) degrading adjacent habitat by promoting the invasion and spread of exotic plants and other stressors associated with human development and activities. Given the long, linear nature of the Project, it is anticipated to have significant direct and indirect effects on a large area of adjacent habitat, and significantly alter pristine landscapes such as Pacheco Pass.

1618-2574

- Sensitive Natural Communities:** The Project area features a diverse mosaic of natural communities including sensitive communities such as serpentine communities, streams, ponds, wetlands, and riparian areas. The Project will traverse and will directly and indirectly impact several of these communities that are widely diminished in the region and state, including the globally rare Sycamore Alluvial Woodland in the Pacheco Creek Reserve.

1618-2575

- Significant Conservation Lands and Landscapes:** Recognizing its global conservation significance, the Project area has been a focus of significant conservation investment by a broad coalition of federal, state, and local conservation agencies and organizations. Over the past several decades, these entities have protected tens of thousands of acres of conservation lands and have collectively invested millions of dollars – including substantial State funding – and as a result have made significant progress in addressing the effects of historic land use by restoring and enhancing habitat. They have also worked closely with the community to develop and gain broad support for plans to protect important biological resources, enhance landscape connectivity, and safeguard water, scenic, cultural, and agricultural conservation values in the region. These plans include the Santa Clara Valley Habitat Plan (HCP/NCCP), Santa Clara Valley

**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

Greenprint, Coyote Valley Landscape Linkage, and Santa Clara County Regional Conservation Investment Strategy.

The Project will traverse this significant conservation landscape and be built directly on existing conservation lands, such as the Pacheco Creek Reserve and Romero Ranch. In doing so, it will impact protected populations of species and occurrences of sensitive natural communities in the Project footprint, as well as indirectly affect a much larger swath of important protected lands along and near the alignment, by introducing a variety of anthropogenic stressors including invasive plants and pathogens, noise, light, and trash, among others. The Project will also impede future conservation efforts in the region, by increasing the complexity and cost of land protection, restoration, and enhancement, including wildlife crossing infrastructure improvements for Coyote Valley, the Upper Pajaro River Area, and Pacheco Pass, and Sycamore Alluvial Woodland restoration in Pacheco Pass. It could also eliminate or reduce the suitability of lands identified as important for habitat conservation and restoration.

Summary of Issues with the DEIR/EIS

The following summarizes the main issues identified in review of the DEIR/EIS and Project. The extent of the issues as well as the recommended revisions to the Project and DEIR/EIS are detailed in the individual comments that follow.

1618-2576

- Inadequate Mitigation for Connectivity:** The Wildlife Corridor Assessment (WCA) does not accurately reflect the extent to which the existing landscape is permeable, nor does it acknowledge the anticipated benefits of existing, extensive efforts to enhance connectivity that are underway and that could be impeded by the Project. As a result, the DEIR/EIS analysis underestimates the impacts of the Project on important landscape linkages and does not propose adequate mitigation for habitat connectivity. Though Coyote Valley, Upper Pajaro River, and Pacheco Pass do have impediments to wildlife movement, abundant wildlife tracking data for the region reflects that wildlife do move through these important landscape linkages. The WCA fails to adequately identify the reduction in permeability that will be caused by the at-grade railway, including light, noise, and vibration, which will deter wildlife activity near the Project including use of the crossing structures proposed as mitigation. Additionally, the analysis does not acknowledge the importance of the Pacheco Pass area as a regional landscape linkage. As a result, the Project design and mitigation measures are inadequate for addressing the effects of the Project on connectivity for wildlife.

1618-2577

- Wildlife Crossing Infrastructure may not be Effective:** The Project relies on culverts and other wildlife crossing infrastructure to mitigate its impacts on wildlife connectivity. However, review of the DEIR/EIS reveals the following issues and deficiencies related to wildlife crossing infrastructure:

- Locations:** The structures in Pacheco Pass are not sited in areas of concentrated wildlife movement (and instead are based on topography and other considerations) and therefore are unlikely to be effective.
- Landscapes Context:** The DEIR/EIS does not address habitat protection and restoration near the wildlife crossing structures, which will be essential to promoting their use by wildlife.

1618-2578

Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

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**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

- 1618-2579
 - o Design: Aspects of the design do not adhere to the widely accepted standards for effective crossing structures. The culverts in Pacheco Pass are too long (>120 feet) and other structures have limited vertical clearance (<10 feet) which is necessary to promote effective use by multiple species including mountain lion, black-tailed deer, and tule elk. The preliminary engineering designs lack sufficient detail about directional fencing, which is essential to the effectiveness of such structures at promoting safe passage by wildlife, and wildlife intrusion deterrents, which are intended to prevent wildlife from accessing the railway in areas of alternatives where HSR is at-grade.
- 1618-2580
 - o Monitoring: The DEIR/EIS does not address the need for monitoring of the structures to evaluate their effectiveness, nor does it propose remedial actions and adaptive management measures to ensure they promote wildlife movement. Such monitoring and adaptive management will be essential to mitigate the Project impacts to habitat connectivity.
- 1618-2581
 - **Compensatory Mitigation is Inadequate**: Effective compensatory mitigation will be essential to adequately mitigate the impacts of the Project on special status species, sensitive natural communities, and wildlife connectivity, among other biological resources. However, the methods proposed to compensate for the Project are unlikely to adequately mitigate the Project for the following reasons:
 - o Delayed Planning for Compensation: The DEIR/EIS defers planning for the compensatory mitigation until after the DEIR/EIS is reviewed, limiting the public's ability to evaluate its adequacy.
- 1618-2582
 - o Mitigation Ratios are Low: The mitigation ratios offered for sensitive species, communities, and other biological resources are highly variable, without justification for the varying levels (0.5:1 to 4:1). Many of the proposed ratios are likely to be too low to compensate for the impacts of the Project given its disproportionate effects. Due to its long, linear nature, the Project will have extensive edge effects on sensitive species and communities by reducing use of adjacent habitat by species wary of humans; promoting the invasion and spread of exotic plants, pests, and pathogens; polluting adjacent intact habitats; and facilitating populations of human commensal species (e.g., common raven) that can alter natural ecosystems and affect native populations.
- 1618-2583
 - o No Mitigation provided for Unoccupied Habitat: Although the DEIR/EIS analyzes impacts on suitable habitat, it proposes only replacing habitat found to be occupied based on subsequent focal species surveys. Abundant literature has demonstrated that temporarily unoccupied habitat is essential to the long-term persistence of populations, including those that exhibit metapopulation dynamics (e.g., Hanski 1994). Habitat that is not occupied at a given time (i.e., during a survey) is not synonymous with non-habitat (Hall et al. 1997). Additionally, focal species surveys are imperfect and may not detect individuals present, and are expensive and those resources could be better spent on actions that promote long-term viability of species populations in the region, including habitat protection, restoration, and management.
- 1618-2584
 - o Mitigation Ratios Need to be Additive: The DEIR/EIS does not specify that the compensatory mitigation for special-status species, sensitive habitats, and existing conservation lands will be additive, as it must be to adequately mitigate the Project impacts.

**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

- 1618-2584
 - o Alternatives to Transplantation should be Specified: As transplantation projects for rare plants and host plants oftentimes fail, the DEIR/EIS should identify alternative/backup mitigation, which should include permanent habitat protection.
- 1618-2585
 - **Impacts to Existing Conservation Lands**: The effects of the Project on existing conservation lands traversed by the Project should be minimized; moreover, the analysis of these impacts is not complete, and the mitigations provided are not sufficient to adequately address the effects.
 - o Minimize Impacts: The Project must minimize the impacts on existing conservation lands within the Project footprint by limiting the area that HSR condemns and removes from conservation land ownership.
 - o Mitigation Inadequate: The mitigation provided for impacts to existing conservation lands should: 1) be extended to all lands owned and managed for conservation purposes, and not just lands protected by conservation easement (as currently stated in the DEIR/EIS); 2) occur at a higher ratio than just 2:1 to recognize the significant lost public and private investment in the habitat, which has been restored and/or managed to improve its condition; 3) include compensation for staff time and associated costs to address the condemnation and its effects on the remainder of the conservation property, including related legal issues; 4) include compensatory mitigation that is in addition to that provided for impacts to the species habitat and sensitive communities in the land (i.e., the mitigation should be additive).
 - o Missing Lands: The DEIR/EIS analysis of impacts to conservation lands needs to be extended to all conservation lands, including those omitted from the DEIR/EIS such as Tulare Meadows Conservation Easement, Tulare Hill, and the new addition to Pacheco Creek Reserve, as well as new lands protected that might be protected between now and Project implementation.
- 1618-2587
 - **Compatibility with Other Plans**: The DEIR/EIS understates the Project impacts on the effective implementation of conservation plans, including the Valley Habitat Plan (HCP/NCCP), Coyote Valley Landscape Linkage, and the Santa Clara Valley Greenprint. Though the DEIR/EIS evaluated impacts to the plans, the analysis underestimated the impacts due to the following:
 - o Lack of Consideration of Opportunity Costs: The DEIR/EIS does not adequately consider the opportunity cost that the Project presents to plan implementers, who may not be able to pursue anticipated habitat protection and restoration opportunities on critical lands, such as Sycamore Alluvial Woodland restoration in Pacheco Creek Reserve.
 - o Lack of Consideration of Impacts to Non-Quantitative Goals: The DEIR/EIS failed to analyze the impacts of the Project on goals, actions, and other plan elements unless they featured quantitative targets. Though it is understandably more difficult to assess impacts if goals lack quantitative metrics, the Project could still impact the ability of plans to achieve the goals and implement actions that are not quantified, and these impacts should be evaluated and mitigated, as needed.
 - o Lack of Recognition of the Constraints Caused by the Project on the Other Plans: Even where the Project may not preclude a conservation project, it may make it impracticable by increasing the complexity and/or cost, and such constraints should be addressed in the DEIR/EIS.
 - o Lack of Understanding of the Plans: The DEIR/EIS analysis reflects some misunderstandings of the plans, which HSRA should work to clarify by coordinating with the conservation agencies and organizations that developed and are working to
- 1618-2588
 - o Mitigation Ratios are Low: The mitigation ratios offered for sensitive species, communities, and other biological resources are highly variable, without justification for the varying levels (0.5:1 to 4:1). Many of the proposed ratios are likely to be too low to compensate for the impacts of the Project given its disproportionate effects. Due to its long, linear nature, the Project will have extensive edge effects on sensitive species and communities by reducing use of adjacent habitat by species wary of humans; promoting the invasion and spread of exotic plants, pests, and pathogens; polluting adjacent intact habitats; and facilitating populations of human commensal species (e.g., common raven) that can alter natural ecosystems and affect native populations.
- 1618-2589
 - o No Mitigation provided for Unoccupied Habitat: Although the DEIR/EIS analyzes impacts on suitable habitat, it proposes only replacing habitat found to be occupied based on subsequent focal species surveys. Abundant literature has demonstrated that temporarily unoccupied habitat is essential to the long-term persistence of populations, including those that exhibit metapopulation dynamics (e.g., Hanski 1994). Habitat that is not occupied at a given time (i.e., during a survey) is not synonymous with non-habitat (Hall et al. 1997). Additionally, focal species surveys are imperfect and may not detect individuals present, and are expensive and those resources could be better spent on actions that promote long-term viability of species populations in the region, including habitat protection, restoration, and management.
- 1618-2590
 - o Mitigation Ratios Need to be Additive: The DEIR/EIS does not specify that the compensatory mitigation for special-status species, sensitive habitats, and existing conservation lands will be additive, as it must be to adequately mitigate the Project impacts.
- 1618-2591
 - o Mitigation Ratios Need to be Additive: The DEIR/EIS does not specify that the compensatory mitigation for special-status species, sensitive habitats, and existing conservation lands will be additive, as it must be to adequately mitigate the Project impacts.

Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

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**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

- 1618-2591 | implement the respective plans. There are notable misunderstandings regarding the wildlife crossing structures as part of the Coyote Valley Landscape Linkage, which have been refined by the Santa Clara County Wildlife Corridor Technical Working Group (2019) as part of plan implementation.
- 1618-2592 |
- **Agricultural Farmland:** The DEIR/EIS analysis mischaracterizes agricultural conservation easements and fails to analyze the Project’s full effects on agricultural resources and farm operators. The DEIR/EIS fails to recognize the substantial efforts underway to protect agricultural lands in the region. Agriculture conservation goals contained in Santa Clara County’s Agricultural Plan and the Open Space Authority’s Santa Clara Valley Greenprint will be hindered by the Project, and the mitigation is proposed is neither justified nor adequate.
 - 1618-2593 | • **Parks, Recreation, and Open Space Resources:** The DEIR/EIS underrepresents existing and planned park, recreation, and public access resources in the resource study area that will be directly and indirectly impacted by the project during construction and ongoing operations, resulting in an inadequate analysis of Project impacts on these lands.
 - 1618-2594 | • **New Information to be Addressed:** The DEIR/EIS needs to be updated to reflect new information including:
 - o **Mountain Lion Listing:** As a candidate for listing under the California Endangered Species Act, mountain lion in the Central Coast will require additional Project design considerations and compensatory mitigation to adequately mitigate the Project impacts on this species, which is vulnerable to population declines due to reduced genetic diversity as a result of habitat fragmentation created by the Project.
 - 1618-2595 | o **Important Reports and Plans:** The DEIR/EIS should integrate results of several reports and plans that are not adequately addressed in the Project design and analysis, including plans developed during preparation of the EIR.
 - 1618-2596 | o **Additional Protected Lands:** The DEIR/EIS needs to address additional conservation lands including the Tulare Meadows Conservation Easement, the Northern Coyote Valley Conservation Area, Tulare Hill, and the Pacheco Creek Reserve.

1618-2597 | To address the issues in this letter, HSR should work actively with conservation agencies and organizations, including regulatory agencies, as well as stakeholders that are actively working on conservation in the region. Discussions should address the comments, including the following main issues:

 - **Habitat Connectivity,** including aspects of the wildlife crossing infrastructure designs to ensure that they are informed by the best available scientific information and integrate with efforts to promote connectivity through the region;
 - **Impacts to existing conservation lands,** including habitat, agriculture, parks, and other open space, to minimize and adequately mitigate them;
 - **Impacts to implementation of existing plans,** including the Valley Habitat Plan, which must be successful to help safeguard biodiversity conservation in the region; and

Develop the compensatory mitigation plan, to ensure that it reflects the best available scientific information and will complement, and not conflict with, the efforts of conservation organizations to implement their plans, including achievement of the goals by the Valley Habitat Plan.

**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

Biological Resource Impacts and Mitigations

Most of the following comments include three elements: 1) the comment (in bold); 2) the description of the comment, background information, and a discussion of the issue (regular font); and 3) a request, usually written in the form of a question, to solicit a written response (numbered, bold, and italics). Some comments requiring a response may not be in this format. Also see the following appendices as noted:

- **Appendix A:** Detailed comments on the preliminary engineering designs for the Project;
- **Appendix B:** Responses to the DEIR/EIS’s analysis of conflicts with the Valley Habitat Plan.

Landscape and Habitat Connectivity

Analysis Underrepresents Impacts on Habitat Connectivity

Integrate Successful Conservation to Improve Landscape Connectivity

The DEIR/EIS fails in its analysis of the impacts of the Project to consider the successful, proactive work that is being conducted by conservation agencies and organizations in Coyote Valley, Upper Pajaro Area/Soap Lake, and Pacheco Pass to promote wildlife connectivity and safeguard other conservation values.

Section 3.7.7.7 states that, “Under the No Project Alternative.... future infrastructure improvements such as highway expansions to accommodate population growth, would have impacts on wildlife movement similar to those that have resulted from past development, such as impediments to wildlife movement along established corridors.” (page 3.7-110). This analysis fails to acknowledge the past and ongoing work of Peninsula Open Space Trust, Santa Clara Valley Open Space Authority, Santa Clara Valley Habitat Agency, The Nature Conservancy, Caltrans, and their partners including Pathways for Wildlife, to protect habitat, enhance and restore habitat, improve wildlife crossing infrastructure, and advise agencies and organizations on how to safeguard connectivity when planning infrastructure and development in the area, in order to promote habitat connectivity through these important choke points within the landscape linkages.

Likewise, Section 3.19 states, "Past development in the cumulative RSA has resulted in the widespread conversion of undeveloped land to commercial, residential, transportation, and agricultural land uses, resulting in large-scale destruction of habitats for plants and wildlife. These trends are expected to continue, although at a slower pace, resulting in additional conversion or degradation of land cover types for special-status species, non-special-status wildlife, special-status plant communities, aquatic resources, and wildlife movement corridors." (page 3.19-49). This fails to acknowledge trends in conservation, including published/adopted plans, relevant policies (e.g., CA Public Resources Code Section 35180 et seq./Coyote Valley Conservation Program), and the pace and scale of conservation activity such as land acquisition and habitat restoration.

Finally, Section 3.19 goes on to state, "Ongoing development and transportation projects have created new barriers to wildlife movement, reducing habitat connectivity for wildlife throughout the region" and "Most of the planned transportation projects consist of improvements to existing roads or railroads that already serve as barriers to wildlife movement" (page 3.19-53). While it is true that these factors have contributed to degraded habitat and connectivity, studies in Coyote Valley, Upper Pajaro Area/Soap Lake, and Pacheco Pass have documented some degree of landscape permeability, including across

Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

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**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

1618-2598

highways (Serieys and Wilmers 2019, Pathways for Wildlife 2020). Due to the stated impacts on wildlife movement due to HSR, further mitigation through design, onsite and offsite compensatory mitigation, and a dedicated monitoring plan to evaluate the effectiveness of features such as wildlife crossing infrastructure will be essential to adequately mitigate the Project impacts on wildlife connectivity.

(1) Will the DEIR/EIS be revised to provide discussion of these past and current conservation efforts and plans which could improve connectivity, acknowledge that connectivity remains (albeit impaired), and discuss the need to coordinate the Project and its mitigation with the ongoing conservation efforts in the region?

1618-2599

Pacheco Pass as a Critical Landscape Linkage

The DEIR/EIS does not acknowledge the importance of the Pacheco Pass area as a critical landscape linkage within the region and the state, nor does it identify or adequately mitigate the project impacts on wildlife connectivity in this area.

Pacheco Pass has been identified as a priority for connectivity by the California State Wildlife Action Plan (CDFW 2015) and the Santa Clara County Regional Conservation Investment Strategy (ICF 2019), and is a natural landscape block in the California Essential Habitat Connectivity Project (Spencer et al 2010). The Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan (Valley Habitat Plan or VHP) identifies Pacheco Pass on SR-152 as a focal area in the Biological Goals and Objectives, Reserve System Design, and long-term monitoring (Santa Clara Valley Habitat Plan 2012). A recent report, *Wildlife Permeability and Hazards across Highway 152 Pacheco Pass 2018-2019* (Pathways for Wildlife 2020), documents wildlife use of bridges and culverts to cross under SR-152 and recommended improvements to wildlife crossing infrastructure. Stakeholders who participated in the HSRA's Wildlife Corridor Assessment (Appendix C of the Biological and Aquatic Resources Technical Report) emphasized the importance of maintaining permeability through this essential linkage area.

Nonetheless, the Project proposes 2.5 miles of cut and fill to install the rail at grade with extensive fencing, which will fragment habitat within this important landscape linkage which is essential for maintaining species populations including adapting to climate change. As designed, the Project will limit the potential for movement by wide-ranging species for which the Project area provides suitable habitat including mountain lion, tule elk, black-tailed deer, and American badger. These species have been documented using wildlife crossing infrastructure and moving at grade through SR-152 (Pathways for Wildlife 2020, POST et al. unpublished data). The embankment and associated fence proposed for the Project will direct wildlife towards SR-152, increasing wildlife mortality due to wildlife-vehicle collisions.

Despite the broad recognition of the importance of the Pacheco Pass region for wildlife connectivity, the DEIR/EIS analysis of impacts to wildlife movement in Section 3.7.9.6 (page 3.7-198) and Section 3.7.7.7 (page 3.7-110) (Impact Bio#42 Temporary Impacts to Wildlife Movement and Impact Bio#43 Permanent Impacts to Wildlife Movement) does not mention Pacheco Pass. The area is not characterized in the Wildlife Connectivity Analysis report, which is Appendix C of the Biological and Aquatic Resources Technical Report, which therefore does not provide recommended design measures for habitat connectivity in this segment.

Moreover, BIO-MM#79 provides for land protection and conservation in Coyote Valley and Upper Pajaro Area/Soap Lake, but not in Pacheco Pass. Likewise, BIO-MM#76 minimizes impacts on wildlife movement during construction within known movement routes for wildlife, but does not reference Pacheco Pass. Additionally, the wildlife crossing infrastructure proposed for this region was not sited based on wildlife movement data, nor is it designed to accommodate the large, wide-ranging species,

**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

1618-2599

including tule elk, that will need to utilize it to avoid having the Project fragment their populations as described further below.

(2) How will the DEIR/EIS be revised to address the gaps in the analysis of the importance of maintaining permeability through Pacheco Pass, including: 1) add design features to prevent habitat fragmentation in this area, 2) analyze the impacts of the Project on wildlife movement through this landscape linkage, and 3) provide mitigation including compensatory mitigation for the Project impacts on connectivity through the Pacheco Pass?

1618-2600

Misleading Figure and Table in Wildlife Connectivity Analysis

Table 2-1 and Figure 2-2 of the Wildlife Corridor Assessment (Appendix C of the Biological and Aquatic Resources Technical Report) characterizes the Pacheco Pass segment as being in a tunnel, which is misleading as the rail will be at grade for 2.5 miles in Pacheco Pass. This segment will be created using cut and fill and will include extensive fencing to keep wildlife and people off the rail. This is then properly displayed in Figure 2.6.

(3) Will Table 2-1 and Figure 2-2 be revised in the DEIR/EIS to accurately characterize the rail alignment in Pacheco Pass?

1618-2601

Reduction in Permeability at Pacheco Pass

The permeability analysis in the Wildlife Corridor Assessment failed to identify the reduction in permeability post Project at the cut and fill section of the Project design within the Pacheco Pass, where the Project will be at grade for 2.5 miles. Specifically, the analysis appears to fail to acknowledge the reduction in permeability due to installation of fencing to exclude wildlife from the tracks in this section. The failure to identify a reduction in permeability in this area may be the reason that the Project does not incorporate sufficient wildlife crossing infrastructure and other mitigations to safeguard connectivity in this important landscape linkage.

(4) Will the DEIR/EIS permeability analysis be revised to address the impacts of the rail design in Pacheco Pass, and adjust the Project design and mitigations to address the anticipated decline in permeability due to the Project being at grade for 2.5 miles?

1618-2602

Inadequate Mitigation for Connectivity to Pacheco Pass

The DEIR/EIS should be revised to apply all mitigation measures for habitat connectivity to Pacheco Pass, which has been identified as part of the landscape linkage (Penrod et al. 2013) and large landscape block (Spencer et al. 2010). The following specific measures should be applied to Pacheco Pass:

1. **BIO-MM#76:** This measure minimizes impacts on wildlife movement during construction within known movement routes for wildlife, which should include a specific reference to Pacheco Pass.
2. **BIO-MM#79:** This measure will protect 238 acres (or 239 acres for Alternative 3) of, "lands prioritized for importance to wildlife movement in the Santa Cruz Mountains to Diablo Range Wildlife Linkage and the Soap Lake 100-year floodplain, which corresponds to a 1-to-1 ratio of protected land to project footprint at the MOWF [maintenance of way facility]." This measure should be expanded to include land protection to safeguard wildlife connectivity in the landscape linkage within Pacheco Pass (Penrod et al. 2013), where priorities are identified in

Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

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**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

1618-2602

coordination with the Valley Habitat Agency, which is working on landscape connectivity in the region.

(5) Will the DEIR/EIS be revised to incorporate mitigations including minimization measures as well as land acquisition to promote connectivity in Pacheco Pass where such measures are recommended for other areas important for wildlife connectivity including Coyote Valley and Soap Lake?

1618-2603

Roads as Barriers

The DEIR/EIS Wildlife Corridor Assessment methods characterizes existing roads as barriers, causing the analysis to underestimate the impacts of the Project on permeability of the landscape for wildlife. For example, wildlife in Coyote Valley are impacted by the presence of roads; however, the available data suggest roads are somewhat permeable (Serieys and Wilmers 2019, SCOSA and CBI 2017, SCCWCTWG 2019). Nonetheless, it is imperative that the Project not further degrade permeability through this tenuous linkage. Published and ongoing studies in the Upper Pajaro River Area and Pacheco Pass similarly reflect a degree of permeability across (under) existing roads, including for HSR focal species (Pathways for Wildlife 2020; POST et al. unpublished data).

(6) Will the DEIR/EIS be revised to reflect that roads are not impermeable and therefore document and mitigate the additional impact of the Project on wildlife movement near roads?

1618-2604

Reduction in Permeability due to Rail Design

The designs reflected on Preliminary Engineering for Project Design sheet TT-D4011 will reduce permeability across areas of the Union Pacific Railroad Tracks. The existing rails are slightly elevated above the ballast on the railway sleeper (tie) so that a small animal (e.g., California tiger salamander or small California red-legged frog) would be able to crawl between the rails and ballast at multiple spots throughout the length of the track. A California red-legged frog could hop over the rails anywhere along these tracks. At Blanchard Road, Emado Avenue (north of Bailey Avenue), Fox Lane, Palm Avenue, Live Oak Avenue, and Tilton Avenue, the existing rails are at the same level as the road, which would allow western pond turtle, California red-legged frog, and California tiger salamander to cross, although increased train traffic frequency from HSR operations, as described in 3.19-77, would present further hazards for attempted at-grade crossings by wildlife. There is at least one record for western pond turtle mortality on Monterey Road (gravid female; H.T. Harvey 2020). Thus, the existing rail line is somewhat permeable for wildlife including herpetofauna, and the permeability analysis presented in the Wildlife Corridor Assessment for the Project does not reflect the reduction in net permeability that will be caused by the Project, especially for smaller animals.

(7) Will the DEIR/EIS be revised to more critically analyze and correctly characterize the current permeability of the landscape and accurately represent the decline in wildlife connectivity that will be caused by the Project, and then identify additional measures to adequately mitigate these impacts?

1618-2605

Effects of Noise, Vibration, and Light

Measures to minimize noise, visual, and train strike impacts (BIO-MM#80) should be implemented throughout the entire Coyote Valley, Upper Pajaro River/Soap Lake, and Pacheco Pass sections. Will this be included prior to train operation? If so, to what extent will it mitigate impacts to focal species? In particular, to what extent will it sufficiently mitigate noise, vibration, and light to an extent that is comparable with wildlife crossing structures that have been proven effective for the focal species in

**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

1618-2605

other locations? Operations impacts caused by noise, vibration, and light could present such a deterrent that there would be avoidance behavior across a variety of taxa, with associated life history, demographic, and natural community impacts (Shilling, 2020).

(8) Will the DEIR/EIS be revised to include mitigation measures for noise, light, and vibration along the Coyote Valley, Soap Lake, and Pacheco Pass sections, specify that the measures will be installed prior to operation, include monitoring to evaluate the effectiveness of the mitigation measures, and provide remedial measures to promote animal movement through the train corridor if mitigation proves to be insufficient?

1618-2606

Vibration

The DEIR/EIS states, "While reptiles, amphibians, and burrowing rodents may perceive ground vibrations caused by passing trains, such vibrations have low potential to affect wildlife movement because they would be of short duration and would occur primarily during the day when most vibration-sensitive wildlife species are inactive. Therefore, CEQA does not require mitigation." (page 3.7-116). However, many native animals sensitive to vibration (e.g., pocket gophers) are diurnal species and are active during the day. Several keystone species including American badger, California tiger salamander, and burrowing owl are fossorial linkage dwellers, which dig or use burrows within landscape linkages as they are traveling through them (Quinn and Diamond 2008, Penrod et al. 2006, Penrod et al. 2013). Burrowing owl and American badger, which occur within the Project area, are very sensitive to human disturbance around burrows and can be easily displaced (Pathways for Wildlife 2020).

(9) Will the DEIR/EIS be revised to conclude that noise and vibration will significantly impact special-status species and wildlife movement including on diurnal species, and develop adequate mitigation for these impacts?

1618-2607

Also, the DEIR/EIS notes that Alternative 4 (the identified Preferred Alternative) would have the greatest contribution to operational vibration impacts (page 3.19-104).

(10) Will the DEIR/EIS include additional design considerations to minimize impact of vibration on wildlife use of crossing structures?

1618-2608

Light

With regards to light, the DEIR/EIS states, "The impact under CEQA would be less than significant for all four alternatives. While artificial light from passing trains and HSR track and systems may result in altered movement or foraging patterns of terrestrial and aerial wildlife species, particularly in non-urban areas, such effects would be localized. Therefore, CEQA does not require mitigation." (page 3-117).

However, several species such as tule elk, mountain lion, and American badger, which utilize the Project area, are sensitive to light disturbance (Beier 2006, Rich and Longcore 2006, Quinn and Diamond 2008, Wilmers et al. 2013). The Project will introduce light into Pacheco Pass, which features limited human development and light.

More detail is needed in the DEIR/EIS regarding specific mitigation measures intended to minimize the significant and unavoidable impacts of new sources of artificial light (e.g., due to the railway and trains, facilities and buildings, maintenance-of-ways, etc.), particularly in conservation areas, where it is important to avoid or reduce contribution to light pollution.

Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

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**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

1618-2608

Additionally, localized light impacts near wildlife crossing infrastructure should be fully mitigated to ensure wildlife crossings are effective and adequately mitigate for impacts elsewhere in essential landscape linkages including Coyote Valley, Upper Pajaro Area/Soap Lake, and Pacheco Pass.

(11) Will the DEIR/EIS be revised to acknowledge the significant effects of intermittent and permanent lighting on species that are sensitive to light disturbance and avoid lighted areas at night? How will HSR mitigate the effects of light disturbance, which can deter animal movement through the well-documented linkages such as the Pacheco Pass, Coyote Valley, and the Upper Pajaro River floodplain? How will the EIR address the potential for light to limit wildlife use of wildlife crossing infrastructure, which the Project and DEIR/EIS are relying on to mitigate otherwise significant impacts on wildlife connectivity?

1618-2609

Noise

The DEIR/EIS states, "Alternative 4 would have the most noise impacts because it would result in HSR trains sounding horns at the at-grade crossings and the Caltrain Morgan Hill, San Martin, and Gilroy Stations, whereas the other project alternatives would not." (p. 3 8-17).

(12) What design and operational mitigations will be used to reduce noise impacts along at-grade crossings in Coyote Valley, given its ecological significance?

1618-2610

The DEIR/EIS does not appear to quantify the effects of the portal noise effect, whereby a loud noise (i.e., a 'boom') will occur when the trails emerge from the tunnels, nor does it mitigate the effects of this noise on wildlife. Section 3.4.1 discusses how the tunnel portal design will attenuate the noise associated from the train as it leaves the tunnel; however, a discussion of the specific impacts of this noise on wildlife could not be found. The tunnels are located in areas important for wildlife, including the Upper Pajaro Area and Pacheco Pass, where loud noises associated with the train could inhibit wildlife habitat use and movement through important landscape linkages.

(13) Will the DEIR/EIS be revised to discuss such sound from rail operation at the tunnel ends and how its impacts on wildlife and habitat connectivity will be mitigated?

1618-2611

Effects of Noise Mitigation on Wildlife Movement

The DEIR/EIS mitigation for noise may exacerbate the effects of the Project and should be mitigated. Specifically, BIO-MM#80 states that, "noise barriers would be a minimum height of 17 feet and would be designed to provide a minimum of 10 dBA attenuation of sound generated by HSR operations..." (page 3.7-170).

(14) How will these additional barriers to wildlife movement be mitigated? Will HSR coordinate design of the noise barriers with the appropriate regulatory agencies and stakeholders working to address habitat connectivity in Pacheco Pass, the Upper Pajaro Area, and Coyote Valley?

1618-2612

Issues with Wildlife Crossing Infrastructure (includes Appendix A)

Overreliance on Wildlife Crossing Infrastructure to Mitigate Connectivity

Impacts

The DEIR/EIS relies heavily on wildlife crossing infrastructure included in the Project design and mitigations to address the Project's significant effects on wildlife connectivity and associated impacts on populations in the region, including mountain lion, San Joaquin kit fox, and other protected

**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

1618-2612

species. However, the effectiveness of the infrastructure at mitigating the Project impacts may be limited due to a variety of factors including:

1. Wildlife may be deterred from using the structures by the Project's significant light, vibration, and noise, which may not be fully mitigated;
2. The ecological context including location of the infrastructure with respect to wildlife movement is not fully considered, such that the crossing structures may not be located in areas important for wildlife use;
3. The Project does not address the need for habitat protection and restoration to ensure habitat on either side is intact and can promote effective use of the crossing infrastructure; and
4. Aspects of the crossing structure design do not adhere to the widely accepted standards, as some structures have limited vertical clearance and/or are too long to be used by many wildlife species.

The DEIR/EIS does not include monitoring to evaluate the effectiveness of the structures at facilitating wildlife passage through the train corridor, nor does it include an adaptive management plan with remedial actions to promote wildlife movement in the event that the proposed infrastructure is not sufficient to mitigate the impacts.

(15) Due to the stated impacts on wildlife movement by the Project, further mitigation through design is encouraged, onsite and offsite compensatory mitigation will be needed, and a dedicated monitoring and adaptive management plan will be essential to evaluate the effectiveness of features such as wildlife crossing infrastructure and to prevent the Project from severing connectivity in critical landscape linkages that it traverses including Coyote Valley, the Upper Pajaro Area/Soap Lake, and Pacheco Pass.

1618-2613

Need to Monitor Wildlife Crossing Infrastructure

The DEIR/EIS relies heavily on wildlife crossing infrastructure to mitigate the Project impacts on wildlife connectivity. However, the DEIR/EIS does not discuss how monitoring will be used to evaluate effectiveness of the structures, including through documenting wildlife use, or identify alternative mitigations and remedial actions in the case that they are not effective at preventing habitat fragmentation.

(16) Will the DEIR/EIS be revised to discuss how wildlife underpasses will be monitored and how remedial actions will be taken to improve wildlife connectivity if/where monitoring indicates that one or more species are not able to utilize the structures and the Project is impeding wildlife connectivity?

1618-2614

Mitigate Impacts to Habitat On-Site to Ensure Crossing Structures are Effective

In areas important for wildlife connectivity, including where wildlife crossing infrastructure will be installed or improved, the temporary Project impacts should be restored and additional habitat mitigation should be conducted *on site*, where feasible and necessary to maintain the larger landscape linkage and promote wildlife use of the crossing infrastructure. This approach is recommended generally and is specifically warranted in regards to the design in TT-D1201, in the Lover's Lane/Tequisquita Slough in the Upper Pajaro area, where an embankment feature would destroy a riparian area that is likely serving as refugia habitat and a wildlife corridor in a landscape that has otherwise been highly altered by agricultural use. Remaining habitat and connectivity in that landscape, which is vulnerable to

Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

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**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

1618-2614

the impacts of the Project, necessitate on-site restoration and related mitigation to offset impacts on wildlife movement and to avoid severing connectivity in this landscape.

(17) Will the DEIR/EIS be revised to ensure the habitats impacted temporarily by the Project are restored and additional habitat mitigation is conducted on site, where feasible and necessary to maintain habitat connectivity and promote wildlife use of the crossing infrastructure?

1618-2615

Pacheco Pass Crossings is not Well Sited, Too Long to Facilitate Wildlife Movement, and Lacks Directional Fencing

The proposed culverts in Pacheco Pass are not sited in locations known to be important for wildlife movement, in contrast to the DEIR/EIS which states, "all alternatives would include wildlife undercrossings in locations known to be important for wildlife movement in Coyote Valley, eastern Pacheco Pass, and the Central Valley" (Section 3.7.7.7 BIO#43).

The culverts for western Pacheco Pass (between Casa de Fruta and Pacheco Creek Reserve), which are not mentioned in this section, are not sited in locations identified as important for wildlife connectivity based on animal movement data; instead, they appear to have been selected based on geography and topographical considerations.

Moreover, Crossings A, B, C, and D proposed for Pacheco Pass are also too long to promote effective use by wildlife, including wide-ranging species that rely on the landscape linkage such as mountain lion, tule elk, black-tailed deer, and American badger (Beier 1993, Beier 1995, Forman 2000, Cramer 2002, Dickson et al. 2005, Penrod et al. 2006, Ruediger 2007, Meese et al. 2009, Beckmann et al. 2010, Forman 2010, Clevenger and Huijser 2011, Wilmers et al. 2013).

In an email dated December 13, 2018, Pathways for Wildlife provided feedback on draft designs for wildlife crossing infrastructure for the Pacheco Pass region and advised HSRA on the need to review the literature above, particularly Cramer 2002, to design crossing structures that are no more than 120 feet in length to facilitate use by black-tailed deer. The email recommended bridges to promote movement by tule elk (Diamond 2018). However, these identified issues were not addressed and the proposed culverts are inadequate mitigation for the 2.5 miles of cut and fill where the rail will be on embankment and heavily fenced. Additionally, the Project does not appear to incorporate directional fencing to guide animals to the culverts and wildlife crossing infrastructure, which is essential to its effectiveness (Dodd et al. 2007, Gagnon et al. 2010, Loberger et al. 2013).

As a result, the Project, as currently designed and mitigated, will create a formidable barrier to wildlife movement within a designated landscape linkage (Penrod et al. 2013) where extensive wildlife movement has been documented (Pathways for Wildlife 2020). The Valley Habitat Agency and Pathways for Wildlife are working with CDFW and Caltrans to promote wildlife movement through SR-152. The Project will conflict with these efforts by introducing a new barrier with poorly designed wildlife crossings that do not adequately mitigate the Project.

The Wildlife Corridor Assessment included analysis and recommendations for areas of permeability reductions as outlined in Section 4.3.8 of said appendix. However, these analyses and recommendations were not conducted for Pacheco Pass.

The supplemental permeability modelling described in Section 4.3.9 of the Wildlife Corridor Assessment describes how local data and linkage designs were used to develop a supplemental model for Coyote Valley. The stakeholder group that supplied data for Coyote Valley also provided data and a report documenting wildlife movement through Pacheco Pass (Pathways for Wildlife 2020); however, these data were not used to develop a supplemental permeability model for this area.

15

**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

1618-2615

The Wildlife Corridor Assessment post-Project fencing analysis does not appear to have adequately addressed the fencing in the 2.5-mile long segment in Pacheco Pass where the rail will be at grade and fencing will be used to keep wildlife and people off the rail. As a consequence, the permeability of the Project area post Project is not reduced to reflect the fencing.

(18) How will the DEIR/EIS be revised to provide specific analysis and recommendations and incorporate adequate mitigation for wildlife connectivity in the Pacheco Pass area, including by creating crossing structures that can promote wildlife movement? Will the data provided for Pacheco Pass be used to develop a supplemental permeability analysis and recommendations for designs for this area? Will the influence of fencing be integrated into the permeability analysis to identify impacts in the 2.5-mile long segment at grade? Will HSRA revisit the location, type, and dimensions of the proposed wildlife crossing infrastructure in this area to ensure it can mitigate the impacts of the Project on movement of a broad suite of animals in this important landscape linkage? Specifically, will the DEIR/EIS replace the excessively long culverts with one or more bridges or wildlife crossing overpasses, reduce culvert lengths to no more than 120 feet where culverts must be used instead of bridges, and locate crossing infrastructure in areas of documented wildlife movement?

1618-2616

**Impacts of the Train on Wildlife Movement through Pacheco Creek Reserve
Require Mitigation**

The Project would cause unmitigated impacts to wildlife movement under the bridge under SR-152 in the Pacheco Creek Reserve during construction as well as from vibration, light, and noise during operation. The Project traverses the Valley Habitat Agency's Pacheco Creek Reserve, where wildlife movement monitoring has documented multiple species moving under the Pacheco Creek Bridge to move through the SR-152 corridor. These species include mountain lion, a State Candidate Endangered Species, for which the bridge is the only location where the species has been observed traversing through SR-152 in the area (Pathways for Wildlife 2020).

While the Project rail line will be constructed on a bridge through the Pacheco Creek Reserve, operation of the Project will cause noise, vibration, and light that will likely deter wildlife from using the Pacheco Creek Bridge; such impacts are also anticipated to occur during construction. Many wildlife species are active during the day, and could be impacted by construction and operations, contrary to the DEIR/EIS assessment that, "vibrations have low potential to affect wildlife movement because they would be of short duration and would occur primarily during the day when most vibration-sensitive wildlife species are inactive." (p. 3.7-116). Introduction of artificial lighting as part of the Project into the Pacheco Creek Reserve, where there is currently no artificial lighting, will deter use of the Pacheco Creek Bridge as a wildlife crossing, as light disturbance has been shown to cause wildlife to avoid areas including use of important wildlife linkages (Beier 2006, Rich and Longcore 2006).

(19) Will the DEIR/EIS be revised to discuss and mitigate the effects of the Project construction and operations on wildlife movement, including through the Pacheco Creek Bridge which is important for wildlife movement through SR-152?

1618-2617

Lack of Detail in Wildlife Crossing Infrastructure

The DEIR engineering plans lack sufficient detail regarding directional fencing and wildlife intrusion deterrents, which can make or break the effectiveness of wildlife crossing infrastructure.

1. **Directional Fencing:** The DEIR/EIS designs for wildlife crossing infrastructure do not provide detail on the configuration and extent of directional/exclusionary fencing, which is critical to

16

Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

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High-Speed Rail San Jose to Merced DEIR/EIS POST, Open Space Authority, TNC Comments

1618-2617

achieving passage structure effectiveness and promoting permeability through/across highways (Dodd et al. 2007, Gagnon et al. 2010, Loberger et al. 2013) and by extension applies to railway ecology. Appendix J of the Wildlife Corridor Assessment provides some description of tax-specific and multispecies fencing consideration and BIO-MM#81 provides some narrative description of fencing; however, the Preliminary Engineering for Project Design plans do not provide the details including the extent and tie-ins, which are critical to effectiveness. Appropriately designed and maintained fencing will be essential to prevent wildlife from entering the HSR right of way and adjacent Monterey Road and Union Pacific railway in Coyote Valley.

2. **Wildlife Intrusion Deterrents:** More detail is needed regarding the specifications of the wildlife intrusion deterrents (BIO-MM#81) for at-grade crossings, given the variability of effectiveness of these features to deter deer (Kintsch et al. 2017), as well as a discussion of design considerations for local focal species, including special-status herpetofauna.

(20) Will the DEIR/EIS be revised to include detailed designs for directional fencing and wildlife intrusion deterrents and ensure that these elements are designed based on the literature documenting factors influencing their effectiveness?

1618-2618

Crossing Structure Height

The Project and DEIR/EIS include crossing structures that are of insufficient height to promote use by many native animal species. A minimum height of 10' (feet/foot) is recommended for wildlife undercrossings intended for use by large mammals including mountain lion, black-tailed deer, and tule elk (Clevenger and Huijser 2011). Shorter structures, such as the 10' wide, 4.1' tall crossing between B4080 and B4085 (TT-D1411), are unlikely to facilitate wildlife movement by multiple species/guilds as necessary to mitigate the Project impacts on animal populations including mountain lion, deer, and tule elk, and promote connectivity for wildlife. An overcrossing may be needed to provide safe passage for these and other species through the Project in this area.

(21) Will the DEIR/EIS be revised to ensure that all wildlife crossing infrastructure achieve the minimum height necessary to ensure the mitigation is effective?

1618-2619

Viaduct through Coyote Valley

The DEIR/EIS includes construction of a viaduct through Coyote Valley, which may preclude the ability for conservation agencies and organizations to work to promote landscape connectivity in the region and/or to construct a functional wildlife overcrossing, due to impacts on engineering feasibility, cost, and operational impacts from the Project.

(22) To address these conflicts, HSR should meet with stakeholders and regulatory agencies in the region to discuss the engineering/design and biological resource considerations in order to refine the Project, including by evaluating whether an overcrossing (ecoduct) can be implemented and used by the focal species.

Preliminary Engineering Designs

Appendix A provides additional feedback on the Preliminary Engineering Designs for the wildlife crossing infrastructure.

17

High-Speed Rail San Jose to Merced DEIR/EIS POST, Open Space Authority, TNC Comments

1618-2620

Compensatory Mitigation

Development of the Compensatory Mitigation Plan

BIO-MM#10 calls for preparation and implementation of the compensatory mitigation plan (CMP) for species and species habitat. The CMP should be developed with input from conservation agencies and organizations with expertise in the Project Area, to ensure that it promotes, rather than conflicts with, the goals of conservation plans, strategies, and other initiatives in the region, and that it reflects local expertise and the region's conservation values. These agencies and organizations can play a key role in successful implementation of the CMP by providing local knowledge and capacity in the field of land conservation and management.

(23) Will the DEIR/EIS be revised to state that the CMP will be developed in close coordination with conservation agencies and organizations with expertise and active conservation programs in the Project area in order to enhance the effectiveness of the compensatory mitigation?

1618-2621

Mitigation Ratios Insufficient to Offset Disproportionate Impacts of the Linear Project Area

As a result of its long-linear nature, the Project will likely have extensive edge effects and indirect effects on sensitive species and communities that are disproportionately high relative to the size of the area of impact. The exceptionally high perimeter-to-area ratio of the Project area will result in extensive indirect effects of the Project on adjacent habitat outside of the Project footprint including by:

1. Reducing or eliminating use of habitat by species that are wary of humans;
2. Promoting the invasion and spread of exotic plants, which are promoted by disturbance and invade intact habitat along infrastructure corridors (Hobbs and Huenneke 1992);
3. Facilitating the spread of pests and pathogens in association with human activities including vegetation management;
4. Polluting intact habitats with dust and other airborne pollutants as well as trash; and
5. Promoting populations of human commensal species (e.g., common raven) that can displace native species that occupy areas away from human activities (Kristan et al. 2007).

As a result of its high perimeter-to-area ratio, the Project's impacts are disproportionate to its size when compared with a Project of the same impact area that is more compact/discrete geographically speaking. As a result, the compensatory mitigation ratios that are provided for special-status species and sensitive habitat as well as other sensitive biological resources should be much higher in order to adequately mitigate the impacts of the Project.

(24) Will the DEIR/EIS be revised to increase the mitigation ratios in order to reflect the disproportionate effects of the Project on sensitive biological resources, to ensure the mitigation is appropriate and will reduce the impacts to below a significant level?

1618-2622

Mitigate for Suitable Habitat

The DEIR/EIS specifies that mitigation will not be provided if, "habitat is determined to be unoccupied based on negative species surveys" (page 3.7-141). Such presence/absence surveys cannot reliably conclude a species is absent. Animals may move through habitat periodically and be missed during

18

Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

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**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

1618-2622

‘snapshot’ surveys. Surveys of long, linear features such as the Project area may also fail to detect species occurring in the landscape due to the nature of the survey area. Abundant literature has demonstrated that temporarily unoccupied habitat is essential to the long-term persistence of populations, including those that exhibit metapopulation dynamics (e.g., Hanski 1994). Habitat important for conservation can include a wide variety of space and resource configurations, including areas that are marginal or of low quality (Vanbianchi et al. 2018) and stopover habitats that are occupied temporarily or sporadically such as during migration (Sheehy et al. 2011). Habitat that is not occupied at a given time is not synonymous with non-habitat (Hall et al. 1997). Finally, such surveys are expensive and those resources could be better spent on actions that promote long-term viability of species populations in the region, including habitat protect, restoration, and management.

(25) Will the DEIR/EIS be revised to provide compensatory mitigation for suitable habitat rather than occupied habitat to maximize the cost effectiveness of the resources expended by HSRA on environmental mitigation?

1618-2623

Mitigation Ratios are Highly Variable, Not Supported, and Often Too Low

The DEIR/EIS proposes compensating for Project impacts to special-status species habitat at a wide range of mitigation ratios from 0.5:1, which is less than replacement value, to 4:1. In most cases, the DEIR/EIS does not provide a rationale for the mitigation ratio; therefore, it is not possible to evaluate whether the mitigation is appropriate, proportional, and will avoid or substantially reduce the impacts, or whether it will reduce impacts to below a significant level.

Many of the proposed ratios are very low, such as 1:1 for burrowing owl breeding habitat and 0.5:1 for low-value and 1:1 for moderate or high-value land for San Joaquin kit fox. While these and other low ratios may be applied elsewhere in the state, they will be inadequate to mitigate the impacts of the Project in this region due to the species’ rarity in this landscape, and the disproportionate effect of the Project due to its high perimeter-to-area ratio as described above.

(26) Will the DEIR/EIS be revised to increase the compensatory mitigation for species habitat and provide the rationale for the mitigation ratios, which should be developed based on the impacts of the Project, be appropriate, and sufficient to reduce the impacts below a significant level?

1618-2624

No Compensatory Mitigation Provided for Some Special-Status Species

The DEIR/EIS fails to provide compensatory mitigation for the Project impacts to certain special-status species, including American badger as outlined in Impact BIO#28 (page 3.7-213). While the DEIR/EIS identifies mitigations including compensation for habitat loss of burrowing owl, a California Species of Special Concern, the DEIR/EIS identifies numerous impacts to American badger, including loss of denning and dispersal habitat, direct mortality, disturbance, and habitat fragmentation; however, the DEIR does not compensate for Project impacts to this other Species of Special Concern. Moreover, while the DEIR/EIS follows the Valley Habitat Plan’s conditions of approval for burrowing owl, the DEIR/EIS does not incorporate the conditions of approval for American badger. The Valley Habitat Agency is amending their HCP/NCCP permits to include American badger. Lack of effective mitigation for the Project will negatively impact these efforts by imperiling this species.

(27) Will the DEIR/EIS be revised to provide mitigation for American badger, a California Species of Special Concern, including: 1) compensatory mitigation for habitat loss, and 2) incorporation of the conditions of approval for projects under the Valley Habitat Plan designed to protect American badger?

19

**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

1618-2625

Multiple Mitigation Ratios Require Clarification

The DEIR/EIS identifies multiple mitigation ratios for Sycamore Alluvial Woodland:

- **BIO-MM#72:** “The Authority would compensate for permanent impacts on riparian habitats at a ratio of 2:1 (mixed riparian and palustrine forested wetland) or 4:1 (California sycamore woodland...” (p. 3.7-168) as compensation for permanent impacts on riparian habitat.
- **BIO-MM#85:** “To offset permanent impacts at the Pacheco Creek Reserve and alleviate conflict with the SCVHP, the Authority would provide compensatory mitigation at a 1:1 ratio” (p. 3.7-172).

(28) Will the DEIR/EIS be revised to clarify this language? As noted below, the mitigation ratios provided for special-status species, sensitive natural communities, and existing conservation lands, should be additive, such that impacts to Sycamore Alluvial Woodland in the Pacheco Creek Reserve should be provided at a 7:1 ratio: 4:1 for the community type, 1:1 for impacts to the community at the Pacheco Creek Reserve, and 2:1 for loss of existing conservation lands per BIO-MM#84.

1618-2626

Alternatives to Transplantation

The DEIR/EIS should specify alternative/remedial actions for transplantation of rare plants and host plants for rare species to address the likely event that transplantation fails. Transplantation projects are oftentimes not successful at achieving their goals and success criteria and thus fail to offset Project impacts. To address this, the DEIR/EIS should provide backup or alternative mitigation, which should include permanent protection of land supporting the rare species affected.

(29) Will the DEIR/EIS be revised to specify the alternative/backup mitigation for mitigation measures involving transplantation including permanent habitat protection for the impacted species?

1618-2627

Mitigation Land Recipients

The DER states, “Title to lands acquired in fee would be transferred to CDFW and conservation easements would be held by an entity approved in writing by the applicable regulatory agency.” The DEIR/EIS does not state why CDFW was identified as the future landowner. Additionally, Table 3.7-25 states that, “the mitigation sites would not be open to the public”; however, CDFW fee lands may be open to the public.

(30) Will the DEIR/EIS be revised to state that the mitigation lands will be transferred to the most suitable landowner/manager in the region, which will be determined in coordination with conservation agencies and organizations in the region, including CDFW, as part of development and implementation of the CMP?

1618-2628

Impacts to Existing Conservation Lands

Some Conservation Lands are Not Included in the Analysis

The DEIR/EIS analysis omits existing conservation properties in its analysis of the Project impacts to conservation lands that have or will be protected by the time of the Project including:

- Pacheco Creek Reserve, along Pacheco Creek (Santa Clara Valley Habitat Agency);

20

Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

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**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

1618-2628

- Tulare Meadows Conservation Easement and the rest of the North Coyote Valley Conservation Property (Santa Clara Valley Open Space Authority, POST, and the City of San Jose); and
- Tulare Hill Reserve, on the eastern slope of Tulare Hill (Santa Clara Valley Habitat Agency).

The Project could impact additional lands protected between now and its implementation.

(31) Will the DEIR/EIS be revised to include a comprehensive list of all of the existing conservation lands impacted by the Project, as well as acknowledge that additional lands could be protected prior to the Project and would also require mitigation?

1618-2629

Project Must Minimize and Adequately Mitigate Impacts to Existing Conservation Lands

The Project must minimize and more adequately mitigate its impacts on existing conservation lands.

The Project will condemn and develop portions of existing protected lands that were conserved to safeguard critical conservation values in the region, including to promote habitat connectivity. The DEIR/EIS does not describe the process or the measures that will be taken to ensure that impacts to the existing protected lands and their conservation values are minimized, including by working with the conservation agencies and organizations.

(32) Will the DEIR/EIS be revised to describe how HSRA will work with conservation agencies and organizations to minimize impacts to existing protected lands, including by taking only the land that is necessary to implement the Project?

1618-2630

Also, Bio-MM#84 calls for replacing conservation easements at a 2:1 and also compensation for easement violations. The mitigation measure should be revised to state that: 1) it will apply to lands protected in fee title as well as those featuring conservation easements, 2) the mitigation ratio will be increased to reflect the investment of resources into these lands, 3) funding will be provided for conservation agency and organization staff to replace the lands, and 4) the mitigation for conservation lands will be in addition to any mitigation provided for the biological and other resources impacted on the lands.

(33)

- Will the DEIR/EIS be revised to clarify that mitigation applies to all conservation lands including those held in fee title by conservation agencies and organizations but that may not feature conservation easements?

1618-2631

- Will the mitigation ratio for conservation lands be increased so that this measure adequately mitigates impacts of fragmentation and habitat degradation on these important conservation lands, given the investments made on them including restoration, management, and monitoring?

1618-2632

- Will compensation be provided to conservation agencies and organizations whose lands are condemned to offset staff time and other costs associated with identifying and protecting replacement sites, and not just addressing easement violations as noted in the DEIR/EIS?

1618-2633

- Will the DEIR/EIS be revised to explicitly state that the compensation for impacts to existing conservation lands will be in addition to that provided for the habitat they support, as described in other mitigation measures?

1618-2634

- If the Project impacts Sycamore Alluvial Woodland within an existing conservation area, compensatory mitigation should be provided at the ratio for the rare community

**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

1618-2634

(4:1 per BIO-MM#72) plus the conservation area (2:1 per BIO-MM#84), with additional mitigation provided if it is in the Pacheco Creek Reserve (1:1, per BIO-MM#85)?

1618-2635

- In general, will the DEIR/EIS clarify how the mitigation ratios proposed for the various mitigation measures relate to one another, including where they are additive (i.e., stack) to reflect the additional needs for mitigation to offset compounding impacts of the Project on the conservation lands, sensitive communities, and special-status species?

1618-2636

Assessment of Impacts to All Existing Conservation Lands

In its assessment of impacts to existing conservation lands in Impact BIO#54, the DEIR/EIS failed to analyze the impacts of the Project to lands deemed protected for agricultural purposes. Specifically, the DEIR/EIS states, "Certain land parcels—the contiguous Bloomfield North and Bloomfield South easements—have already been protected by the SCVOSA and accordingly constitute functional elements in implementation of the Greenprint. Alternative 3 would bisect both parcels with a guideway on viaduct and part of the footprint for the existing Gilroy Station. These parcels, however, have been protected consistent with the agricultural lands protection goal of the Greenprint, rather than with its habitat conservation goals. Therefore, impacts on these parcels are not evaluated." (p. 3.7-126).

The Bloomfield Easement includes a wetland easement which states, "7. Wetland Easement. Grantors hereby conveys to Grantee a nonexclusive wetland corridor easement which includes passive restoration consisting of livestock exclusionary fencing on both sides of the wetland within parcel 841-40-010 and 841-40-009, southern portion of the Property (as identified within the Baseline Documentation Report). Said exclusionary fencing will be paid for, installed and maintained by the Grantee." "WHEREAS, the Property possesses agricultural, scenic, open space, trail and wetland values (collectively, "Conservation Values") of importance to Grantors, the people of Santa Clara County and the people of the State of California; and WHEREAS, Grantors intend that the Property be maintained in agricultural production, and that the Conservation Values of the Property be protected, in perpetuity."

Given the habitat conservation goals of conservation easement, the DEIR/EIS should analyze the Project impacts on these parcels.

(34) Will the DEIR/EIS be revised to include the analysis of the Project impacts to this and other exiting conservation lands with biological resource conservation values and ensure that adequate mitigation is provided for them?

1618-2637

Conflicts with Infrastructure in Tulare Meadows Property

The DEIR/EIS includes features within Preliminary Engineering for Project Design sheet TT-D4011 and TT-D4012 that may conflict with the Tulare Meadows Conservation Easement recorded in 2019 and impact the feasibility of planned wildlife overcrossing at this location. Specifically:

1. The new access road (CV-S4001); and
2. New access and relocation of the municipal water well and pump station.

(35) To avoid and mitigate conflicts of the Project with wildlife connectivity and related conservation work in the Tulare Meadows Conservation Easement, HSRA should work with the landowner and conservation easement holder to refine the design and implementation of the Project.

Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

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1618-2638 | **High-Speed Rail San Jose to Merced DEIR/EIS POST, Open Space Authority, TNC Comments**

Project Construction Methods and Impacts

Bore Rather Than Dig Tunnels to Reduce Impacts

To minimize impacts to sensitive communities, special-status species, and habitat connectivity, tunnels should be completed using the boring machine rather than digging from the surface. By minimizing the surface-level disturbance, this technique can reduce the extensive indirect impacts associated with surface disturbances, including the introduction and spread of exotic plant species to natural lands adjacent to the Project area.

(36) Will the DEIR/EIS be revised to discuss how tunnels will be bored rather than dug to minimize surface impacts to habitat and species?

1618-2639 | *Naturally Occurring Asbestos*

Will the disturbance of naturally occurring asbestos noted in Section 3.10 present adverse impacts to the health of wildlife? If excavated material is used in Project features such as embankments, is there a risk of exposure to hazardous material?

(37) Will the DEIR/EIS be revised to discuss impacts of asbestos on the health of native wildlife and provide mitigations to minimize its impacts?

1618-2640 | **Sensitive Species**

Project Impacts on Mountain Lion as a Candidate Species

The DEIR/EIS does not specifically analyze the impacts of the Project on Central Coast mountain lion, which is a candidate for listing under the California Endangered Species Act. The petition and candidacy are due, in part, to the low genetic diversity of mountain lions in the region relative to other regions (e.g., the Sierra Nevada Mountains), which reflects limited dispersal due to degraded habitat connectivity (Gustafson et al. 2018). The significant barrier imposed by the Project, if not adequately mitigated, will further impact habitat connectivity for mountain lion within the Central Coast region. Given the candidate status of the species, the DEIR/EIS should be revised to include the following, at a minimum:

1. Address the direct, indirect, and cumulative impacts of the Project on mountain lion;
2. Redesign the Project including wildlife crossing infrastructure to ensure it can be used by mountain lion, to mitigate its effects on habitat connectivity which is imperative for this wide-ranging species that has exhibited declines in genetic diversity due to existing habitat fragmentation which the Project will exacerbate, if not adequately mitigated;
3. Develop minimization measures to limit negative impacts of construction and operations, including noise, lights, vibration, and human activities associated with maintenance; and
4. Identify compensatory mitigation to address the impacts of the Project on habitat for mountain lion.

(38) Will the DEIR/EIS be revised to address these and other elements to ensure that the impacts of the Project on mountain lion are identified and adequately mitigated?

High-Speed Rail San Jose to Merced DEIR/EIS POST, Open Space Authority, TNC Comments

Monarch Butterfly

The DEIR/EIS did not address monarch butterfly, which meets the criteria for Special-Status species under CEQA and could be listed under the federal Endangered Species Act by the time the Project is implemented.

(39) Will the DEIR/EIS be revised to identify and adequately mitigate the Project impacts on western monarch butterfly?

Compatibility with HCP and Other Conservation Plans

Valley Habitat Plan Conflicts (includes Appendix B)

Conflicts with Implementation of the Valley Habitat Plan

The Project has the potential to conflict with several design principles, goals, and actions of the Valley Habitat Plan—the approved HCP/NCCP in the Santa Clara Valley, the success of which is vital for conservation in the region. Appendix B identifies specific conflicts identified.

Conflicts for Protection of Sycamore Alluvial Woodland

The Project has the greatest potential to impede the ability of the Valley Habitat Agency to achieve the Valley Habitat Plan goals and implement necessary actions related to Sycamore Alluvial Woodland and connectivity.

The DEIR/EIS notes the potential for conflict between the Project and the VHP ability to achieve goals related to Sycamore Alluvial Woodland, which is a rare habitat type. However, it concludes that there is sufficient mitigation available for both the Project and the VHP by stating there is 2,544 acres of available (unprotected) lands. This number is not supported by SFEI and H.T. Harvey (2017), which is cited by the DEIR/EIS. Keeler-Wolf et al. (1996) estimates there was only 2,000 acres of true Sycamore Alluvial Woodland remaining in the state in the mid-1990s. Keeler-Wolf (1996) mapped stands greater than 10 acres. In Santa Clara County, the limits on size of what could potentially be considered as Sycamore Alluvial Woodland was pushed due to lack of sites suitable to support 10 or more acres. The results of the study were simply looking for areas that supported stands of sycamores that could be considered for further evaluation of regeneration and habitat restoration/creation.

SFEI and H.T. Harvey (2017) used coarsely mapped polygons to draw areas observed as supporting some sycamores to provide a general understanding of locations of areas to potentially be considered for further assessment; it did not quantify areas of Sycamore Alluvial Woodland. It is clearly stated that these areas are what is recommended for consideration for enhancement, and detailed site-specific surveys would be required before determining if they are actually suitable. Much of the mapped area in the study may not be Sycamore Alluvial Woodland, and given hybridization, climate change, and the disruption of the historical hydro-curve, most of those acres are not suitable for Sycamore Alluvial Woodland conservation or mitigation.

In addition, the Project will potentially derail the VHP's Sycamore Alluvial Woodland mitigation strategy at the Pacheco Creek Reserve property, where VHA plans to protect 8 acres and restore/create up to 20 acres. Pacheco Creek is one of the last areas of this rare community type that features naturally recruiting California sycamore in the Plan area.

Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

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**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

1618-2642

(40) How will the DEIR/EIS reassess and analyze conflicts with the Valley Habitat Plan regarding Sycamore Alluvial Woodland, and develop a proper mitigation measure for Impact BIO#53?

1618-2643

Connectivity within the Diablo Range

The project would negatively affect the connectivity within the Diablo Range at the Pacheco Pass, which was identified as a critical linkage in the VHP, including for its ability to promote species movements along a north-south latitudinal gradient in response to a warming climate. The 2.5 miles of cut and fill will be heavily fenced off resulting in a large barrier within the linkage.

(41) How will the DEIR/EIS be revised to reflect this conflict with the VHP?

1618-2644

Reliance on the Existence of Quantitative Targets to Conclude a Conflict

The DEIR/EIS concludes that there is no conflict for goals or actions that lack quantitative targets. The logic of this is not clear, as the Project could impact goals or actions that are not quantified, though it is understandably more difficult to assess this. Appendix B highlights some of these conflicts which were dismissed due to lack of quantitative elements.

(42) Will the DEIR/EIS be revised to address general conflicts based on the types of actions and goals rather than defaulting to a conclusion of no conflict in the absence of a quantitative target?

1618-2645

HCPs and Conservation Plans

The DEIR/EIS states, "Construction of the project alternatives would result in potential impacts on three HCPs: the SCVHP, the Greenprint, and the Coyote Valley Linkage" (page 3.7-198). While it is good that the DEIR/EIS analyzed the Project impacts on other regional conservation plans, the Greenprint and Coyote Valley Landscape Linkage are not HCPs (habitat conservation plans) as defined under Section 10(a) of the ESA.

(43) Will the EIR be revised to clarify that the Valley Habitat Plan is the only regional HCP/NCCP in the Project area?

1618-2646

Coyote Valley Landscape Linkage

Overall Insufficient Detail and Understated Impacts

The DEIR/EIS does not provide sufficient detail about the Project to evaluate impacts to the Coyote Valley Linkage from Impact BIO#55. The DEIR/EIS concludes that, "the impact under CEQA would be significant for all four alternatives..." (p. 3.7-129). However, additional information, including designs for directional/exclusionary fencing associated with wildlife crossing structures and the wildlife intrusion barriers, is needed to support the conclusions in BIO-MM#77-81.

Similarly, the DEIR/EIS does not provide sufficient detail about the Project to support the conclusion that, "Project operations are not expected to have any conflicts with the SCVHP, Coyote Valley Linkage, or the Greenprint. Therefore, the project alternatives would not have any impacts on an approved HCP." (p. 3.7-129). Additional analyses of the Project design including fencing are needed to support the finding regarding project operations.

(44) Will the DEIR/EIS be revised to include additional details needed to support the analysis?

25

**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

1618-2647

Additionally, with regards to the Metcalf Canyon Road overpass and Bailey Road wildlife undercrossing at Blanchard road, the DEIR/EIS states that the Project, "would increase the complexity of construction and incrementally increase the length of the proposed crossings (except under Alternative 4)." (p. 3.7-189). However, this understates the impacts of the Project on these planned wildlife crossing infrastructure improvements as the Project would greatly increase the complexity of design and construction of the projects and thus increase their cost and decrease the likelihood they will be able to be constructed as outlined in the plan.

(45) Will the DEIR/EIS be revised to reflect the greater impact of the Project on the feasibility of implementation of planned wildlife crossing infrastructure improvements, and thus the cumulative impacts of the Project on regional habitat connectivity

1618-2648

The DEIR/EIS focuses on wildlife crossing infrastructure on Monterey Road. A rail-effect zone analysis (following the road-effect zone research methods in road ecology as pioneered by Dr. Richard Forman) should be conducted so that the potential conflicts are more comprehensively assessed relative to the entire Coyote Valley Linkage vision, which involves protection of existing habitat, restoration of degraded habitat, and implementation of wildlife crossing infrastructure.

(46) This more comprehensive analysis should be conducted with the appropriate regulatory agencies and stakeholders working to implement the linkage design in Coyote Valley to ensure that the best available information is integrated in the analysis and resulting designs/mitigation.

1618-2649

Specific Crossings and Geographies

The following are specific comments regarding the DEIR/EIS assessment of conflicts with recommended crossing modifications which are outlined in Table 3.7-23 of the DEIR/EIS.

Metcalf Bridge

The DEIR/EIS analysis presented for Impact BIO-#55 does not appropriately assess the relationship between the Recommended Crossing Modification for Metcalf Bridge and its associated conflicts with HSR. The Metcalf Bridge is proposed to provide animals with safe passage across Highway 101 and Monterey Road. If implemented, wildlife would need to be able to access the proposed undercrossings at Tulare Swale and/or Fisher Creek. For Project Alternatives 1 and 3, the retaining wall in Coyote Creek could preclude effectiveness of this project, if implemented. However, the designs do not provide detail on the configuration and extent of directional/exclusionary fencing incorporated with wildlife crossing structures to evaluate this.

In Alternative 2, the intrusion barrier would reduce permeability for wildlife to cross Monterey Road at grade near Metcalf Road, as evidenced by successful crossing events (i.e. without wildlife-vehicle collision) by collared bobcats (SCCWCTWG 2019; Serieys and Wilmers 2019). Again, the specifications for the directional fencing as well wildlife intrusion deterrents will come into play. Alternative 4 would present similar concerns identified for Alternatives 1, 2, and 3.

(47) To avoid and mitigate potential conflicts of the Project with the Metcalf Bridge, HSR should work with the appropriate regulatory agencies and stakeholders to refine the design and implementation of Project features and their mitigations, including to develop a spatially-explicit fencing plan that is integrated with wildlife crossing structures.

26

Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

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**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

1618-2650

Monterey Road Median

The DEIR/EIS analysis presented for Impact BIO-#55 does not adequately consider the full range of potential conflicts between the Recommended Crossing Modification and HSR with regards to the Monterey Road Median. In Alternatives 1 and 3, the presence of a retaining wall in a noted wildlife movement area would conflict with the intent of creating gaps in the median to increase permeability for wildlife crossing at-grade. Seventy-eight percent of the roadkill on Monterey Road was observed in the section from approximately Metcalf Road to Bailey Avenue (SCCWCTWG 2019), where multiple collared bobcats have also crossed Monterey Road (Serieys and Wilmers 2019). It would be more effective to use directional fencing to direct wildlife to safe passage rather than increase the likelihood for wildlife-vehicle collisions on Monterey Road through implementation of this measure when combined with design elements such as the retaining wall in Coyote Creek.

The presence of the retaining wall in Coyote Creek, even if there are gaps in the median on the east side of Monterey Road, would present a barrier and trap/hazard for American badger and juvenile bobcat, which are documented as roadkill on Monterey Road in the vicinity of Tulare Hill (SCCWCTWG 2019). Enhancements to the Fisher Creek underpass, as well as other planned wildlife crossing structures in Coyote Valley, particularly at Tulare Swale and Emado Ave, should be implemented.

Under Alternative 4, the ballast retainer would create a barrier for certain small taxa including western pond turtle, which has been observed as roadkill in the vicinity of Blanchard Ave (SCCWCTWG 2019). For wildlife that are able to traverse the ballast retainer feature, the increased frequency of train traffic under the Project would increase risk of wildlife-train collisions (train strikes) for wildlife attempting at-grade crossings of the railway. This may be mitigated by directional fencing, though the effectiveness of such fencing would depend on the specifications, which were not provided in the DEIR/EIS.

(48) To avoid and mitigate potential conflicts of the Project with wildlife connectivity work proposed for the Monterey Road corridor, HSRA should work with the appropriate regulatory agencies and stakeholders to refine the design and implementation of Project and its mitigations.

1618-2651

Tulare Swale

The DEIR/EIS analysis presented for Impact BIO-#55 with regards to Tulare Swale needs to be updated based upon information provided in the Monterey Road Report (SCCWCTWG 2019), which was published to further develop wildlife crossing concepts described in the Coyote Valley Landscape Linkage Report (SCOSA and CBI 2017). The conceptual design calls for a 15'H x 100'-150'W wildlife crossing to connect Tulare Hill and Coyote Creek Parkway. Alternatives 1 and 3 present a substantial departure from the design, given the spacing of the crossings and reduction in height, which may reduce effectiveness. Alternatives 2 and 4 are closest to the conceptual design, though review of detailed specifications regarding directional fencing would be needed to fully evaluate the Project and its conflict with this planned connectivity enhancement work. This location has been identified as especially important for wildlife connectivity based on animal movement data (GPS-collared bobcats and multi-species roadkill), its location between existing protected land on both sides of the crossing since the Santa Clara Valley Habitat Agency acquired land in 2019, and other site characteristics that render it uniquely suited for a large (wide) wildlife undercrossing.

(49) To avoid and mitigate potential conflicts of the Project with wildlife connectivity work proposed for the Tulare Swale, HSRA should work with the appropriate regulatory agencies and stakeholders to refine the design and implementation of Project and its mitigation.

27

**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

1618-2652

Fisher Creek

The DEIR/EIS analysis presented for Impact BIO-#55 does not capture the potential conflict with Fisher Creek improvements for wildlife connectivity. The specifications for directional fencing would be needed to evaluate the Project impacts under Alternatives 1 and 3. Alternative 2 appears to suggest a culvert with a jog/bend, which would reduce line of sight (i.e. visibility through)—an essential characteristic of functional wildlife crossing structures, as described in BIO-MM#77 and broadly supported in the literature.

The analysis states that Alternative 4 would not modify the Fisher Creek culvert and also says that Alternative 4 (and 2) would increase the height and width of the Fisher Creek culvert. This is contradictory and needs clarification.

The DEIR/EIS states that the Fisher Creek (#4) culvert project is designed to “reduce seasonal flooding” (p. 3.7-128). This should be revised to state that the project is designed to “provide wildlife passage during seasonal flooding.”

Additionally, the DEIR/EIS states, “Under all alternatives, existing and new Fisher Creek culverts would maintain the existing hydrologic condition. The project would increase the engineering complexity and cost of modifications to the existing underpass to improve conveyance of seasonal flood flows.” (p 3.7-128). However, it is unclear how existing and new Fisher Creek culverts maintain the existing hydrologic condition while simultaneously improving conveyance of seasonal flood flows, since increased conveyance of seasonal flood flows from Fisher Creek will reduce seasonal flooding of upstream valley floor wetlands. The ability to maintain and increase seasonal flooding along Fisher Creek is essential for restoring the Laguna Seca Wetland Complex, and other valley floor wetlands, which are the focus of restoration by conservation agencies and organizations working in the region.

Given the issues raised above, additional design is needed to determine whether the structure will be functional for wildlife passage. This is particularly important as this is the only existing location for safe wildlife passage across (under) Monterey Road (Diamond and Snyder 2016, SCOSA and CBI 2017, and SCCWCTWG 2019). The recommended modification as stated to reduce seasonal flooding would be important to generally provide passage in dry substrate for certain taxa, as described in BIO-MM#77.

(50) To avoid and mitigate potential conflicts of the Project with wildlife connectivity work proposed for Fisher Creek and its culvert, HSRA should work with the appropriate regulatory agencies and stakeholders to refine the design and implementation of Project and its mitigations.

1618-2653

Emado Avenue

The DEIR/EIS analysis presented for Impact BIO-#55 needs to be updated based upon information provided in the Monterey Road Report (SCCWCTWG 2019), which was published to further develop wildlife crossing concepts described in the Coyote Valley Landscape Linkage Report (SCVOSA and CBI 2017). The conceptual design developed by the SCCWCTWG (2019) calls for a wildlife undercrossing 15'H x 40'-150'W. Only Alternative 4 meets the minimum design criteria. Any increase in length would reduce effectiveness for wildlife use.

(51) To avoid and mitigate potential conflicts of the Project with wildlife connectivity work proposed for the Emado Avenue culvert, HSRA should work with the appropriate regulatory agencies and stakeholders to refine the design and implementation of Project and its mitigations.

28

Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

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**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

1618-2654

Bailey Avenue

All of the Project Alternatives in the DEIR/EIS may preclude the ability for conservation stakeholders to construct a functional wildlife overcrossing at Bailey Avenue, due to impacts on engineering feasibility, cost, and operational impacts from the Project.

(52) To avoid and mitigate potential conflicts of the Project with wildlife connectivity work proposed for the Bailey Avenue overpass, HSRA should work with the appropriate regulatory agencies and stakeholders to design and build a wildlife overcrossing as well as the proposed undercrossings—a key element of the conservation vision for an area recognized as important to the state per CA Public Resources Code Section 35180 et seq.

1618-2655

Santa Clara Valley Greenprint

Understates Project impacts on the Santa Clara Valley Greenprint

The DEIR/EIS concludes that, “the project alternatives would not conflict with implementation of the Greenprint” (p. 3.7-189) because the strategy lacks quantitative goals and because it would only impact the Bloomfield parcels which were protected for agriculture and not habitat conservation. This assessment fails to acknowledge that the Project can impact the ability of a plan to achieve goals even if they are not quantified. It also does not recognize the wetland easement recorded on the Bloomfield property.

Two editorial notes related to the Greenprint: 1) Current DEIR/EIS references to the “Silacci Property” should refer to Bloomfield North and Bloomfield South” and the Greenprint Conservation Focus Area should be referred to as “Upper Pajaro River” rather than “UPR.”

(53) Will the DEIR/EIS be revised to reflect these conflicts with the Santa Clara Valley Greenprint and ensure that mitigation is provided for any impacts to existing conservation lands which, like the Bloomfield Property, may have biological resource as well as other conservation values not apparent to the DEIR/EIS preparers?

Agricultural Resources and Parks, Recreation, and Open Space Impacts

1618-2656

Agricultural Resources

Recognizing Impacts to Agriculture Conservation Easements and Other Lands

Section 3.14-1 defines Agricultural Conservation easements as, “Conservation easement lands are lands that have been dedicated to agricultural use under the California Farmland Conservation Program Act (California Public Resources Code [Cal. Public Res. Code] §§ 10200–10277). The term agricultural conservation easement means an interest in land, less than fee simple that represents the right to prevent the development or improvement of the land for any purpose other than agricultural production. The easement is granted for the California Farmland Conservancy Program by the owner of a fee simple interest in land to a local government, nonprofit organization, resource conservation district, or to a regional park or open-space district or regional park or open-space authority that has the conservation of farmland among its stated purposes or as expressed in the entity’s locally adopted policies.” and concludes that, “there are no agricultural conservation easements or forest lands in the RSA; therefore, they are not discussed further in this section.” (page 1).

**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

1618-2656

This is an inaccurate and incomplete definition of agricultural easements. There are multiple agricultural conservation easements as well as fee lands held by conservation organizations within the RSA. These easements, although not granted by the California Farmland Conservancy Program, have the stated purpose of conservation of farmland and dedicating land for agricultural uses, and easement holders are legally obligated to defend these easements from impacts to their agricultural productivity and other conservation values. In some cases, these lands were protected for agricultural uses in addition to other complementary co-benefits, such as wildlife habitat connectivity or flood protection.

(54) Will the DEIR/EIS be revised to expand its definition of conservation easements to recognize conservation easements that have not been granted by or for the California Farmland Conservancy Program, including the Tulare Meadows Conservation Easement, Bloomfield North and Bloomfield South Conservation Easements?

1618-2657

Clarification of Impacts to Important Farmland

Section 3.14-.30 states that, “For all project alternatives, no permanent conversion of Important Farmland would occur in the San Joaquin Diridon Station Approach or Monterey Corridor Subsections.” (page 30) This is false. Multiple Project alternatives (notably alternatives 1, 2, and 3) would result in permanent conversion of Important Farmland in the Monterey Corridor.

(55) Will the EIR be updated to reflect permanent conversion impacts to important farmland in the Monterey Corridor?

1618-2658

Recognizing Regional and Local Plans and Policies for Agriculture

Appendix 2-J does not include the Santa Clara County and the Open Space Authority adopted Santa Clara Valley Agricultural Plan (2018) and does not include analysis of agricultural goals that are included in the Santa Clara Valley Greenprint. The Santa Clara Valley Agricultural Plan, which received significant funds from the State’s Sustainable Agricultural Lands Conservation (SALC) program through multiple planning grants, identifies a defined agricultural resource area and a spatially explicit representation of successful implementation of agricultural conservation efforts in the Santa Clara Valley. Moreover, the Santa Clara Valley Agricultural Plan was developed in partnership with the State of California to help the State meet its greenhouse gas reduction targets while supporting the State’s agricultural economy, which is mutually reinforcing to the HSRA stated priority of, “furthering economic development and mobility without producing greenhouse gas emissions” (from High Speed Rail website).

(56) Will the DEIR/EIS be revised to recognize the state-funded Santa Clara Valley Agricultural Plan and include an analysis of impacts to the agricultural goals specified in the Santa Clara Valley Agricultural Plan and the Santa Clara Valley Greenprint?

1618-2659

Appendix 2-J does not include the Pajaro River Flood Prevention Authority’s Soap Lake Floodplain Preservation Project Initial Study (2005), which sets out goals and supports funding for conservation easements on agricultural lands to protect the floodplain capacity of the Upper Pajaro River floodplain (commonly known as Soap Lake). This document provides information on the benefits of permanent protection of lands in agricultural use for the purpose of maintaining flood hydrology across Soap Lake. Several easements and fee lands purchased or by conservation organizations in Soap Lake that are characterized as agricultural in the DEIR/EIS were in fact protected for reasons related to floodplain hydrology with recognized co-benefits for wildlife habitat and connectivity for wide-ranging wildlife.

Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

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**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

1618-2659

(57) Will the DEIR/EIS be revised to include consideration of the Pajaro River Floodplain Preservation Project Initial Study and include an analysis of impacts to protected agricultural lands that also provide hydrological benefits by attenuating regional flooding?

1618-2660

Updated Mapping of Farmland of Local Importance in Santa Clara County

Santa Clara County Planning Department and the Open Space Authority formally engaged California Department of Conservation Farmland Mapping and Monitoring Program staff in February 2020 to update Santa Clara County's definition for farmland of Local Importance, and add the category of Farmland of Local Potential. These updates will designate thousands of acres of additional farmland in Santa Clara County as Important Farmland in the 2018 Important Farmland Map series for Santa Clara County.

(58) Will the DEIR/EIS be revised to include an analysis of impacts to updated best available Important Farmland Map data provided by the California Department of Conservation, including Santa Clara County's updated definitions for Farmland of Local Importance and Farmland of Local Potential?

1618-2661

Minimization and Mitigation of Permanent Conversion of Important Farmland

Section 2-k-25 of the appendix states that, "the Authority would fund the DOC California Farmland Conservancy Program's purchase of agricultural easements from willing sellers. This program would preserve Important Farmland in an amount commensurate with the quantity and quality of the converted farmlands, within the same agricultural regions as the impacts occur." (page 25). However, the Project does not define what constitutes an agricultural region, or how it would handle updated farmland designations as conditions change on properties within the RSA.

(59) Will the DEIR/EIS be revised to include a definition for agricultural regions to align to County boundaries, and clarify how it will address changing conditions as they relate to the quality of farmland that will be converted by the Project?

1618-2662

Section 3.14-54 states, "These mitigation measures would preserve some Important Farmland and minimize the impacts; however, there would still be a net loss of Important Farmland. While these mitigation measures would provide for preservation of agricultural land in agricultural conservation easements and minimize the area of Important Farmland near aerial guideways that would be converted, they would not avoid all conversion." (page 54). Coordination with local conservation entities and local agricultural conservation plans would align the Project's Important Farmland mitigation activities with local priorities for conservation, thus increasing the conservation benefit of the Project's mitigation.

(60) Will mitigation of permanent conversion of Important Farmland be done in coordination with local conservation entities and provide preference to projects that occur within approved local agricultural preservation plan areas?

1618-2663

Additionally, Section 3.14-33 states that, "Project features, specifically the Farmland Consolidation Program (AG-IAMF#3), would minimize the permanent conversion of Important Farmland resulting from creation of remnant parcels by facilitating the sale of remnant parcels to neighboring landowners for consolidation with adjacent farmland properties. Remnant farmland parcels that are consolidated with adjacent farmland parcels are anticipated to remain in agricultural use. Some remnant parcels, however, would not be viable for continued agricultural use, so the program would minimize but not avoid the permanent conversion of Important Farmland to nonagricultural use." (page 33). Although the Project

**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

1618-2663

seeks to keep remnant farmland in production, it does not seek to permanently conserve this remnant farmland to prevent development in addition to impacts from the Project.

(61) Will the DEIR/EIS include additional mitigation measures for remnant farmland that ensure these lands are permanently conserved from additional development, including offering sale of fee title or conservation easement to local conservation organizations?

1618-2664

Section 3.14-41 states, "In addition to mitigation for Important Farmlands that are permanently converted to nonagricultural use, the Authority would fund the purchase of an additional increment of acreage for agricultural conservation easements at a ratio of not less than 0.5:1 for Important Farmland within a 25-foot-wide area adjacent to permanently fenced HSR infrastructure." (page 41).

The DEIR/EIS does not explain the rationale behind the 0.5:1 mitigation ratio for agriculture land within the 25-foot-wide area adjacent to permanently fenced HSR. It is likely that a 25-foot area adjacent to HSR facilities would be used for access roads to access cultivated areas, ultimately reducing the acreage of farmland that is used for cultivation, making the 0.5:1 ratio too low to effectively mitigate for impacts to cultivated agricultural lands.

(62) Will the DEIR/EIS be updated to increase its proposed mitigation ratio to 1:1 for agricultural land within the 25-foot-wide area adjacent to permanently fenced HSR?

1618-2665

Consideration of Ongoing Agricultural Conservation Efforts by Conservation Organizations and Local Municipalities

Section 3.14-27 states that, "Planned and other reasonably foreseeable projects anticipated to be built by 2040 include residential, commercial, industrial, recreational, and transportation development. Specifically, future development projects in Santa Clara, San Benito, and Merced Counties include implementation of general and specific plans throughout the counties, resource management plans, solar farm projects, water transfer programs, commercial development plans, quarry projects, and reclamation plans. Planned and other reasonably foreseeable projects under the No Project Alternative also include such transportation projects as reconstruction of interchanges; overcrossing construction; bridge replacements; road widenings and lane additions, including high-occupancy vehicle or express lanes; road realignment and extensions; recreational bike/pedestrian trail construction; and transit projects such as train and HSR projects and, in Santa Clara County, train electrification, bus rapid transit, and light rail. Pressure to convert Important Farmland as a result of these types of development activities is anticipated to continue in the three-county region—approximately half of Santa Clara's remaining 27,000 acres of farmland is at immediate risk of development (County of Santa Clara 2018), and Merced County anticipates conversion as a result of a high projected population growth of 8 percent between 2010 and 2018 (CDOF 2018). These future development activities would continue the historical trend of agricultural conversion and urbanization in the region." (page 27).

This section fails to recognize renewed agricultural preservation efforts in Santa Clara County, including:

- Preservation of over 900 acres of prime farmland within San Jose City limits in Coyote Valley;
- conservation easement acquisitions in support of the Soap Lake Floodplain Preservation project;
- Santa Clara County's efforts to establish dedicated local funding sources for proactive agricultural conservation;
- Santa Clara County's ongoing efforts to update local zoning ordinances to mitigate and reduce conversion of agricultural land;

Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

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**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

1618-2665

- Ongoing efforts by Santa Clara County Local Area Formation Commission to avoid premature development of agricultural lands;
- Efforts by the Cities of Gilroy and Morgan Hill to administer agricultural mitigation ordinances; and
- California Department of Conservation funded efforts by Santa Clara County and the Santa Clara Valley Open Space Authority to develop and implement a centralized agricultural conservation easement purchasing program in the Santa Clara Valley.

Also, the EIR does not recognize the potential growth-inducing impacts associated with the Project, and how they may increase conversion of agricultural land and agricultural parcels to rural residential uses near Project station areas.

(63) Will the DEIR/EIS be updated to include documentation and analysis of these local agricultural conservation efforts, how these efforts are addressing historic agricultural conversion trends, and the Projects impacts on the successful implementation of these growing agricultural conservation efforts in Santa Clara County?

1618-2666

Insufficient Notice to Farmland Property Owners and Lease Holders

Section 3.14-34 states, "The notice would be provided at least 3 months but no more than 12 months prior to the start of construction activity. With adequate lead time, property owners or leaseholders could prepare functionally and economically for the temporary change in circumstances. This measure would allow agricultural property owners and leaseholders to make changes to their operations in anticipation of and in response to project construction under any of the alternatives." (page 34)

At least 3 months but no more than 12-months' notice is inadequate lead time for property owners and leaseholders to prepare for impacts to local farming or ranching operations. Local property owners or lease holders should be notified as soon as practicable, but no less than 12 months in advance of construction activities to help ensure farm operations are not making investments in farmland that will be impacted by the Project.

Also, construction activities could impact the economic viability of some leaseholder operations in the region, potentially reducing agricultural operations from the Santa Clara Valley, and undermining ongoing local efforts to increase the diversity and viability of farming operators in Santa Clara County.

(64) Will the DEIR/EIS be updated to increase notice provisions to as soon as practicable, but no less than 12 months in advance of construction activities, and will it add mitigation activities to ensure the property owners and leaseholders are able to find alternative farmland to support their operations in the region?

1618-2667

Parks, Recreation, and Open Space Resources

Underrepresentation and Analysis of Parks, Recreation, and Open Space Areas

Section 3.15-5 states, "For the purposes of this analysis, information on parks, recreation, and open space resources was collected by reviewing local and regional land plans and policies identified in Volume 2, Appendix 2-J, local jurisdiction websites, and the California Protected Areas Database (CPAD), and by using geographic information system (GIS) data layers and Google Earth aerial imagery. Only parks and recreational facilities open to the public were considered in the analysis."

**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

1618-2667

The DEIR/EIS's analysis does not include an assessment of lands where public access is planned, and underrepresents lands that currently provide public access and events (most notably Coyote Ridge Open Space Preserve, the Northern Coyote Valley Conservation Area, and Tulare Meadows Conservation Easement), apparently relying on 2016 California Protected Areas Database's spatial data to accurately reflect public access in the resource study area. California Protected Areas Database's Disclaimer clearly states that, "Independent verification of all data contained herein should be obtained by any user of these products, or the underlying data." The DEIR/EIS needs to be updated with independently verified public access data provided directly by the managing agencies and needs to also consider impacts to planned or negotiated public access facilities within the resource study area.

(65) Will the DEIR/EIS be updated to expand its analysis to include planned or negotiated public access facilities within the resource study area, and will it independently verify the location of where parklands exist with local managing agencies?

1618-2668

Underrepresentation and Analysis of Planned Trails

Section 3.15-3 states, "General plans for the counties and cities within the resource study area (RSA) and the municipal codes for these counties and cities were consulted for applicability to the project, as well as the Santa Clara County Countywide Trails Master Plan and the Santa Clara County Valley Greenprint." However, Figures 3.15-1 to 3.15-7 do not include or analyze impacts to planned trails that are included in the Santa Clara County Countywide Trails Master Plan and the Santa Clara Valley Greenprint. In addition, the Bay Area Ridge Trail Council is conducting a Feasibility Study for a trail(s) across Coyote Valley that would augment and connect to trails identified in the Santa Clara County Countywide Trails Master Plan and the Santa Clara Valley Greenprint, that should be consulted as well.

(66) Will the DEIR/EIS be updated to include and analyze planned trails that are included in the Santa Clara County Countywide Trails Master Plan, the Santa Clara Valley Greenprint, and the Bay Area Ridge Trail Council's Coyote Valley Trails Feasibility Study?

Changed Circumstances and Additional Information

Other Documents not Used or Cited

The DEIR/EIS does not integrate or effectively utilize all of the available scientific information in aspects of Project design, impact analysis, and mitigation. The *References* provided in this document include additional resources that should be used to revise the DEIR/EIS and Project. The following local reports and plans were not adequately addressed and can improve the Project and its environmental review.

RMC Water & Environment. 2005. Soap Lake Floodplain Preservation Project Final Initial Study and Negative Declaration. Prepared for the Pajaro River Watershed Flood Prevention Authority. <https://pajaroriverwatershed.org/pages/downloads.htm>

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1618-2669

Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

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**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

1618-2669

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Serieys, L.E.K. and C. Wilmers. 2019. Coyote Valley Bobcat Habitat Preference and Connectivity Report. https://www.openspaceauthority.org/system/documents/COVA_FinalReport_05072019_sm.pdf

(67) As the landscape traversed by the Project is an active conservation landscape, in which new studies, plans, and projects are being implemented continually, HSRA should coordinate closely with regulatory agencies and stakeholders to obtain the best available scientific information and plans and integrate them into the Project and DEIR/EIS.

1618-2670

Additional Conservation Lands

The DEIR/EIS list of conservation lands impacted by the Project should be expanded to include the following lands:

1. Pacheco Creek Reserve (which was expanded in 2020);
2. Tulare Meadows Conservation Easement (Santa Clara Valley Open Space Authority);
3. Northern Coyote Valley Conservation Area (Santa Clara Valley Open Space Authority);
4. Coyote Ridge Open Space Preserve (Santa Clara Valley Open Space Authority); and
5. Tulare Hill (Santa Clara Valley Habitat Agency)
6. Pajaro Ranch (The Nature Conservancy)

Also, the Silacci property should be referred to as "Bloomfield North and Bloomfield South" throughout the DEIR/EIS.

Next Steps

**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

1618-2671

To address the issues in this letter, HSRA should work actively with conservation agencies and organizations including regulatory agencies as well as stakeholders working in the region. Discussions should address the following:

- **Connectivity issues**, including aspects of the wildlife crossing infrastructure designs, to ensure that they are informed by the best available scientific information and integrate with efforts to promote connectivity through the region;
- **Impacts to existing conservation lands**, including habitat, agriculture, and recreational, to minimize them and adequately mitigate them;
- **Impacts to implementation of existing plans**, including the Valley Habitat Plan, which must be successful to help safeguard biodiversity conservation in the region; and
- **Develop the compensatory mitigation plan**, to ensure that it reflects the best available scientific information and will complement, and not conflict with, the efforts of conservation organizations to implement their plans, including achievement of the goals of the Valley Habitat Plan.

Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

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High-Speed Rail San Jose to Merced DEIR/EIS POST, Open Space Authority, TNC Comments

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37

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38

Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

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**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

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Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

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High-Speed Rail San Jose to Merced
POST, Open Space Authority, TNC Comments

Appendix A:
Detailed Engineering Design Comments

Appendix A: Detailed Comments on Preliminary Engineering and Project Design for Wildlife Crossing Infrastructure

Section	Page	Figure/Table	Comment
1618-2672 Volume 3 - Alternative 4	TT-D4012	B770-B780	New access and relocation of municipal water well and pump station facility may conflict with conservation easement on the Tulare Meadows property (North Coyote Valley Conservation Area). May impact feasibility of planned wildlife overcrossing at this location.
1618-2674 Volume 3 - Alternative 4	TT-D4012	Richmond Ave	Why is the wildlife crossing structure located at cul-de-sac and switching station infrastructure? Wildlife crossing should be located (buffered) from human activity.
1618-2679 Volume 3 - Alternative 4	TT-D1201	B2160-B2175	Permanent impact to riparian forest, should be mitigated onsite for habitat/refugia (including connectivity/landscape linkage) value.
1618-2678 Volume 3 - Alternative 4 (as well as Alts 1 and 2)	TT-D1202; TT-D1203	Tunnel	How is sound from rail traffic/operation mitigated at tunnel ends? This is known badger habitat (and suitable for other wildlife), so any features such as fencing along the ROW or TCE should be permeable to wildlife.
1618-2673 Volume 3 - Alternative 4 (as well as Alts 1 and 2)	TT-D1402	Section A	How are wildlife protected from drop and other hazards?
1618-2680 Volume 3 - Alternative 4 - Book 4E	TN-D1406	Plan	Any fencing to delineate ROW and/or TCE should be wildlife-friendly, when located in natural areas.
1618-2676 Volume 3 - Alternative 1	TT-D0702	Section A	Example of why appropriate wildlife fencing is needed on the outside of all transportation infrastructure – Given the design of the retaining wall in Coyote Creek, need to prevent animals from access from west and getting trapped on the road (for wildlife-vehicle collisions). Wall will act as directional feature for animals within Coyote Creek Parkway, as long as it properly ties into wildlife crossing structures.
1618-2675 Volume 3 - Alternative 1	TT-D1202	Plan and profile	Embankment and associated fence will direct wildlife towards Highway 152. For example, this area has multiple recent badger observations (live and roadkill). What design elements will mitigate the potential to increase wildlife-vehicle collisions?
1618-2677 Volume 3 - Alternative 2	TT-D0804	B930-B935	How will impacts from operations (e.g. light, noise) be mitigated, including through site design?

Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

DocuSign Envelope ID: 4E6F4C1C-E973-4273-B96B-EA7D761E3383

**High-Speed Rail San Jose to Merced
POST, Open Space Authority, TNC Comments**

**Appendix A:
Detailed Engineering Design Comments**

Table A-1: Detailed comments on the Project wildlife connectivity infrastructure in the Preliminary Engineering and Project Design

Section	Page	Figure/Table	Comment
1618-2682 Volume 3 - Alternative 2 - Book C - Roadway	CV-S0802	Plan	This new proposed road should be coordinated with land manager (Santa Clara Valley Open Space Authority).
1618-2685 Volume 3 - Alternative 2 - Book C - Roadway	CV-T0803	Plan	This proposed road is routed near sensitive and important habitat connectivity area in Coyote Creek. What is the anticipated traffic? How will impacts from traffic, light, noise, and pollutants be mitigated?
1618-2681 Volume 3 - Alternative 2 - Book C - Roadway	CV-T0804	Plan	Bridge and new road results in permanent loss of farmland and impact to operations as well as potential impacts to wildlife use (e.g. bobcat activity documented by Serieys et al. 2019). How will impacts to wildlife be mitigated through road design?
1618-2684 Volume 3 - Alternative 2 - Book D - Roadway and Maintenance of Way	TN-D1405	Plan	How will impacts from operations (e.g. traffic, light, noise) be mitigated, including through site design?
1618-2686 Volume 3 - Alternative 3	See note	See note	Same comments about design details as applicable from other Alternatives for Coyote Valley (e.g. retaining wall in Coyote Creek and wildlife fencing on west side of UPRR -NS 18), Soap Lake, Pacheco (B3255 example – how to protect wildlife from drop and other hazards? Fencing to keep off tracks?
1618-2683 Volume 3 - Alternative 3	TT-D1403	Plan	How will impacts of operations, including traffic, lighting, etc. be minimized/mitigated? Will there be curbs or fences adjacent to road and facility?

Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

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High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments

Appendix B:
Conflicts with the Valley Habitat Plan

Appendix B: Conflicts between the Project and the Valley Habitat Plan

Table B-1: Comments on the DEIR/EIS Assessment of the Project’s Impacts on the Valley Habitat Plan

	Statement of Action	DEIR/EIS Assessment of Impacts	Comment
1618-2687	LAND-WP4. Acquire habitat that is adjacent to permanently protected aquatic resources with a high potential to support CRLF and is in the East San Francisco Bay Recovery Unit for red-legged frog (USFWS 2002) (Coyote Creek, Pacheco, and Pescadero Watersheds).	Action does not include quantitative targets for performance, thus the project alternatives would not have any potential to conflict with performance of action.	The impact will depend on what HSRA purchases to mitigate its impacts, rendering it essential that HSRA coordinate their acquisition strategy with the VHA to avoid a conflict.
1618-2690	LAND-R3. Acquire in fee title or obtain conservation easements on lands that protect at least 40 acres of existing Central California sycamore alluvial woodland to ensure that this very rare and threatened land cover type is preserved in the study area.	Effects along Pacheco Creek on an appreciable percentage of this habitat type in the plan area. Moreover, the greatest effects occur in an area not modeled as sycamore woodland (although it is) that SCVHA has recently acquired. It is possible that project alternatives could be modified to avoid this effect, which in the absence of mitigation would constitute a significant impact.	The project could derail VHA’s capstone sycamore alluvial mitigation strategy at the Pacheco Creek Reserve property where VHA will implement 8 acres of preservation and up to 20 acre of restoration/creation. Pacheco Creek itself is one of the last bastions of intact sycamore alluvial community featuring with natural California sycamore recruitment in the Plan Area.
1618-2691	CHAP-1. Conduct prescribed burns in chaparral and northern coastal scrub to maintain canopy gaps and promote regeneration. Use targeted studies to inform locations and frequency.	Action does not include quantitative targets for performance, thus the project alternatives would not have any potential to conflict with performance	One does not need to have a quantitative target to conflict with an action. How does HSR plan to resolve this issue in the DEIR/EIS?
1618-2689	GRASS-1. Continue or introduce livestock and native herbivore (e.g., elk) grazing in a variety of grazing regimes.	This action only occurs with Reserve System lands, which would not occur within the project extent, so there is no potential for a conflict with action GRASS-1.	The Project could impact VHA’s ability to graze current and future reserve system lands in the Pacheco Pass area, as well as the viability of grazing and the ranching community in the Pacheco Pass area.
1618-2688	GRASS-4. Conduct selected seeding of native forbs and grasses in the Reserve System.	This action only occurs with Reserve System lands, which would not occur within the project extent, so there is no potential for a conflict with action GRASS-4.	The Project will impact VHA’s ability to implement GRASS-4 on the Pacheco Creek Reserve Property. How does HSR plan to resolve this issue in the DEIR/EIS?

Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

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**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

**Appendix B:
Conflicts with the Valley Habitat Plan**

Table B-1: Comments on the DEIR/EIS Assessment of the Project's Impacts on the Valley Habitat Plan

	Statement of Action	DEIR/EIS Assessment of Impacts	Comment
1618-2694	GRASS-6. Introduce livestock grazing where it is not currently used, and where conflicts with covered activities are minimized, to reduce vegetative cover and biomass that currently excludes ground squirrel and encourage ground squirrel colonization of new areas within the Reserve System.	This action only occurs with Reserve System lands, which would not occur within the project extent, so there is no potential for a conflict with action GRASS-6.	The Project will impact VHA's ability to implement GRASS-6 on the Pacheco Creek Reserve property. How does HSR plan to resolve this issue in the DEIR/EIS?
1618-2693	GRASS-9. Create and maintain artificial burrows to encourage colonization of sites where ground squirrels establishment is not feasible or during the interim before ground squirrel colonies naturally establish.	This action only occurs with Reserve System lands, which would not occur within the project extent, so there is no potential for a conflict with action GRASS-9.	The Project will impact VHA's ability to implement GRASS-9 on the Pacheco Creek Reserve Property and TNC's Pajaro Ranch Property. How does HSR plan to resolve this issue in the DEIR/EIS?
1618-2696	OAK-1. Conduct prescribed burns in low-density oak woodlands to enhance the community and to reduce non-native, invasive grass cover beneath oaks and encourage growth of a native understory and oak seedlings.	Action does not include quantitative targets for performance, thus the project alternatives would not have any potential to conflict with performance of action.	If the Project is constructed, the VHA may not be able to implement this management action in Reserve System lands adjacent to the Project alignment. How does HSR plan to resolve this issue in the DEIR/EIS?
1618-2692	POND-13. Excavate sections of ponds to provide deeper pools that will be utilized by California red-legged frog adults and sub-adults and western pond turtles, while maintaining shallow areas to provide rearing habitat for California red-legged frog tadpoles, California tiger salamander larvae, and western pond turtle hatchlings.	This action only occurs with Reserve System lands, which would not occur within the project extent, so there is no potential for a conflict with action POND-13.	The Project will impact the VHA's ability to implement POND-13 on the Pacheco Creek Reserve Property. How does HSR plan to resolve this issue in the DEIR/EIS?
1618-2695	POND-16. Restore freshwater marsh, seasonal wetlands, and/or ponds that will support dense reed-like vegetation (cattails) or other native vegetation that will attract nesting tricolored blackbirds.	This action only occurs with Reserve System lands, which would not occur within the project extent, so there is no potential for a conflict with action POND-16.	The Project will impact VHA's ability to implement POND-16 on the Pacheco Creek Reserve and Tulare Hill properties as well as within North Coyote Valley. How does HSR plan to resolve this issue in the DEIR/EIS?

Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

DocuSign Envelope ID: 4E6F4C1C-E973-4273-B96B-EA7D761E3383

High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments

Appendix B:
Conflicts with the Valley Habitat Plan

Table B-1: Comments on the DEIR/EIS Assessment of the Project’s Impacts on the Valley Habitat Plan

	Statement of Action	DEIR/EIS Assessment of Impacts	Comment
1618-2699	POND-17. In areas with non-native vegetation (e.g., Himalayan blackberry) that supports existing tricolored blackbird colonies, initiate a gradual (3-4 year) transition from non-native vegetation to native vegetation that is structurally similar.	This action only occurs with Reserve System lands, which would not occur within the project extent, so there is no potential for a conflict with action POND-17.	The Project will impact VHA’s ability to implement POND-17 on the Pacheco Creek Reserve Property and within North Coyote Valley, given project footprint and the anticipated impacts of noise and vibration for the tricolored blackbird colonies. How does HSR plan to resolve this issue in the DEIR/EIS?
1618-2697	POND-10. In addition to the creation of ponds described in POND-9, create up to 52 acres of ponds in-kind within the Reserve System to increase the amount available habitat and enhance connectivity among existing ponds and wetlands if all anticipated impacts occur.	This action only occurs with Reserve System lands, which would not occur within the project extent, so there is no potential for a conflict with action POND-10.	The Project will impact VHA’s ability to implement POND-10 on the Pacheco Creek Reserve and Tulare Hill properties. How does HSR plan to resolve this issue in the DEIR/EIS?
1618-2700	GRASS-2. Conduct prescribed burns. Use targeted studies to inform methods, timing, location, and frequency.	Project alternatives intersect a substantial acreage of modeled grassland habitat for these species, but the affected area is a very small fraction of this habitat type in the plan area. Also, most of project extent would be in agricultural/developed areas where prescribed burning is not feasible, and in general, prescribed burning has been a minor management tool under the SCVHP due to regulatory challenges in getting burn permits. Accordingly, the project alternatives would not affect the feasibility of completing action LAND-WP1a.	The Project will impact VHA’s ability to implement GRASS-2 on the Pacheco Creek Reserve property as well as any future Pacheco Pass area acquisitions, which currently features extensive intact habitat suitable for controlled burns that could be inhibited or prohibited near HSR infrastructure. How does HSR plan to resolve this issue in the DEIR/EIS?
1618-2698	LM-7a. Restore a minimum of 1.0 miles of stream, 50 acres of riparian forest and scrub, and 20 acres of freshwater marsh, and create 20 acres of ponds to contribute to species recovery.	Project alternatives would affect few streams or freshwater wetlands relative to their abundance, and would affect a small linear length of streams. All project alternatives would affect a variety of ponds in the Pacheco and Llagas Creek watersheds, but the number and area of effects is small relative to the availability of pond habitat in these areas. Project alternatives would also have few effects on riparian	The Project will impact VHA’s ability to implement its upcoming stream restoration project on our Pacheco Creek Reserve property and will prevent implementation of a marsh/pond/wetland restoration on our Tulare Hill property. Moreover, the project will potentially derail VHA’s capstone sycamore alluvial mitigation strategy at the Pacheco Creek Reserve property, which includes 8 acres of

Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

DocuSign Envelope ID: 4E6F4C1C-E973-4273-B96B-EA7D761E3383

High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments

Appendix B:
Conflicts with the Valley Habitat Plan

Table B-1: Comments on the DEIR/EIS Assessment of the Project's Impacts on the Valley Habitat Plan		
Statement of Action	DEIR/EIS Assessment of Impacts	Comment
1618-2698	forest and scrub, apart from the sycamore forests along Pacheco Creek (treated in action LAND-R3); however those effects would not be extensive enough to affect the feasibility of completing action LM-7a.	preservation and up to 20 acres of restoration/creation. Pacheco Creek itself is one of the last areas of sycamore alluvial community featuring natural recruiting California sycamore within the Plan Area. How does HSR plan to resolve this issue in the DEIR/EIS?
1618-2704	POND-19. Restore a minimum of 20 acres and up to 45 acres of freshwater marsh within the Reserve System in the Santa Cruz Mountains, Santa Clara Valley, and Diablo Range.	The Project will impact VHA's ability to implement the wetland component of its upcoming restoration project on the Pacheco Creek Reserve property and will prevent implementation of a marsh/pond/wetland restoration within the Tulare Hill property. How does HSR plan to resolve this issue in the DEIR/EIS?
1618-2702	POND-6. Restore 20 acres of perennial freshwater marsh within the Reserve System in suitable sites and those likely to support covered species.	The Project will impact VHA's ability to implement the wetland component of its upcoming restoration project on the Pacheco Creek Reserve property and will prevent implementation of a marsh/pond/wetland restoration within the Tulare Hill property. How does HSR plan to resolve this issue in the DEIR/EIS?
1618-2701	POND-7. In addition to the perennial freshwater marsh restoration described in POND-6, restore up to 25 acres of perennial freshwater marsh within the Reserve System in the Santa Cruz Mountains, Santa Clara Valley, and Diablo Range.	The Project will impact VHA's ability to implement the wetland component of its upcoming restoration project on the Pacheco Creek Reserve property and will prevent implementation of a marsh/pond/wetland restoration within the Tulare Hill property. How does HSR plan to resolve this issue in the DEIR/EIS?
1618-2703	POND-9. Create at least 20 acres of ponds at 40 sites, at least 10 sites in the Santa	The Project will impact VHA's ability to implement restoration on the Pacheco Creek Reserve property and will prevent implementation of a

Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

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High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments

Appendix B:
Conflicts with the Valley Habitat Plan

Table B-1: Comments on the DEIR/EIS Assessment of the Project’s Impacts on the Valley Habitat Plan

	Statement of Action	DEIR/EIS Assessment of Impacts	Comment
1618-2703	Cruz Mountains and 20 sites in the Diablo Range.	areas). However, the number and area of effects is small relative to the availability of pond habitat in these areas, so the effects would not affect the feasibility of completing action POND-9.	marsh/pond/wetland restoration on the Tulare Hill property. How does HSR plan to resolve this issue in the DEIR/EIS?
1618-2705	STREAM-4. Replace concrete, earthen or other engineered channels as part of the 10.4 miles of stream restoration to restore floodplain connectivity. Location and length will be determined by site-specific conditions.	Project alternatives would affect few streams relative to their abundance, and would affect a small linear length of streams. Project alternatives therefore would not affect the feasibility of completing action STREAM-4.	The Project will impact VHA’s ability to implement an upcoming stream restoration project on its Pacheco Creek Reserve property. How does HSR plan to resolve this issue in the DEIR/EIS?
1618-2706	STREAM-5. Replace confined channels to restore floodplain connectivity and commensurate functions as part of the 10.4 miles of stream restoration. Location and length will be determined by site-specific conditions.	Project alternatives affect few streams relative to their abundance, and affect a small linear length of streams. Therefore, the project alternatives would not affect the feasibility of completing action STREAM-5.	The Project will impact VHA’s ability to implement an upcoming stream restoration project on its Pacheco Creek Reserve property. How does HSR plan to resolve this issue in the DEIR/EIS?
1618-2707	LM-2. When replacing small culverts ensure that the culvert has a natural bottom and is large enough for larger mammals such as deer and mountain lions to pass, if feasible. Culverts must provide direct movement from one side of the road to the other and ensure that the culvert is visible to the target species (i.e., do not obscure entrance with vegetation). Install fencing or other features that will direct wildlife towards the culvert or other safe crossing within the first 20 years of implementation.	BIO-IAMF#25 would provide equivalent protection within the project footprint for each alternative, so there is no potential for a conflict with action LM-2.	For each alternative, BIO-IAMF #25 does not provide equivalent protection within the project footprint. None of these management recommendations are being applied to Pacheco Pass. Will the FIER include these management plans for Pacheco Pass? How does HSR plan to resolve these conflicts in the DEIR/EIS?
	LM-3. Where structurally possible, replace culverts with free span bridges to ensure free movement for wildlife under roadways.	BIO-IAMF#25 would provide equivalent protection within the project footprint for each alternative, so there is no potential for a conflict with action LM-3.	

Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

DocuSign Envelope ID: 4E6F4C1C-E973-4273-B96B-EA7D761E3383

High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments

Appendix B:
Conflicts with the Valley Habitat Plan

Table B-1: Comments on the DEIR/EIS Assessment of the Project's Impacts on the Valley Habitat Plan

Statement of Action	DEIR/EIS Assessment of Impacts	Comment
LM-4. Ensure that median barrier removal and/or median perforations are considered as alternatives during project design.	BIO-IAMF#25 would provide equivalent protection within the project footprint for each alternative, so there is no potential for a conflict with action LM-4.	
LM-5. Remove median barriers or perforate sections of median barriers along roadways to improve successful wildlife crossings and install fencing or other features to direct wildlife to those open sections within first 20 years of implementation. Use feasibility study to determine location and length of barrier removal.	BIO-IAMF#25 would provide equivalent protection within the project footprint for each alternative, so there is no potential for a conflict with action LM-5.	
1618-2709 POND-3. Plant native emergent vegetation around the perimeter and in ponds and wetlands.	BIO-IAMF#5 and BIO-IAMF#6 would provide equivalent protection within the project footprint for each alternative, so there is no potential for a conflict with action POND-3.	The Project will impact VHA's ability to implement the wetland component of its upcoming restoration project on the Pacheco Creek Reserve property and will prevent implementation of a marsh/pond/wetland restoration within the Tulare Hill property. How does HSR plan to resolve this issue in the DEIR/EIS?
1618-2708 STREAM-2. Plant and/or seed in native understory and overstory riparian vegetation within 15 feet of the edge of the low-flow channel to create structural diversity, provide overhead cover, and moderate water temperature at all riparian restoration sites.	BIO-IAMF#5 and BIO-IAMF#6 would provide equivalent protection within the project footprint for each alternative, so there is no potential for a conflict with action STREAM-2.	The Project will impact VHA's ability to implement the Pacheco Creek restoration project. How does HSR plan to resolve this issue in the DEIR/EIS?
1618-2710 STREAM-3. Plant and/or seed in native riparian vegetation in gaps in existing riparian corridors, or re-establish severely degraded or historic riparian corridors, to promote continuity within conservation lands.	BIO-IAMF#5 and BIO-IAMF#6 would provide equivalent protection within the project footprint for each alternative, so there is no potential for a conflict with action STREAM-3.	The Project creates a potential conflict with the VHP in the Pacheco Pass area; in particular, the Pacheco Creek Reserve property is primarily riparian and floodplain habitat which the Project will directly impact. How does HSR plan to resolve this issue in the DEIR/EIS?

Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

DocuSign Envelope ID: 4E6F4C1C-E973-4273-B96B-EA7D761E3383

High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments

Appendix B:
Conflicts with the Valley Habitat Plan

Statement of Action	DEIR/EIS Assessment of Impacts	Comment
1618-2711 Goal: Protect and manage an interconnected system of wildlands and natural areas to support native habitats and species and to ensure resilience to a changing environment.	Goal does not include quantitative or specific targets for performance, thus the project alternatives only have potential to conflict with attainment of goal if there is a conflict with one of the Strategies for Protecting Wildlands and Natural Areas listed in this table.	The Project is in direct conflict with the VHP's ability to achieve this goal especially in Pacheco Pass area. How does HSR plan to resolve this issue in the DEIR/EIS?
1618-2714 Strategy 1. Focus land conservation efforts in areas critical for the long-term viability of native species and biological communities and the ecosystem services they provide.	No specific focus areas are named, and there are no quantitative or measurable targets named under this strategy. Elsewhere the Greenprint identifies natural communities of concern. With regard to potential effects from the project alternatives, the Greenprint and the SCVHP include the same areas of potential effect, apart from a small area within the City of Gilroy that is not under SCVOSA jurisdiction. Since the analysis of SCVHP effects on natural communities (Table 1) did not find any conflicts, there would also be no conflict between the project alternatives and Strategy 1.	The Project is in direct conflict with the VHP's ability to achieve Strategy 1 especially in Pacheco Pass area. How does HSR plan to resolve this issue in the DEIR/EIS?
1618-2712 Strategy 3. Protect and maintain connections between large open space parcels to provide large habitat blocks, ensure critical linkages, and provide climate resilience.	Areas critical for habitat connectivity are identified on Figure 5 of the Greenprint. There are no quantitative or measurable targets named under this strategy. With regard to potential effects on connectivity, all areas of concern identified in the Greenprint are also identified in the SCVHP. Since the analysis of SCVHP effects on habitat connectivity (Table 1) found that a final determination of the potential for conflict must await conclusion of the analysis of project extent effects on connectivity, determination of the potential for conflict between the project alternatives and Strategy 3 must also await conclusion of that analysis.	The Project will have significant and detrimental impacts on the VHA's ability to implement Strategy 3 in the Pacheco Pass area. How does HSR plan to resolve this issue in the DEIR/EIS?
1618-2713 Goal 3: Permanently protect habitat connectivity for terrestrial and aquatic species.	Goal does not include quantitative or other specific targets for performance. Project alternatives only have the potential to conflict with attainment of goal if	The project will impact VHA's ability to achieve this goal, especially in the Pacheco Pass area. How does HSR plan to resolve this issue in the DEIR/EIS?

Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

DocuSign Envelope ID: 4E6F4C1C-E973-4273-B96B-EA7D761E3383

High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments

Appendix B:
Conflicts with the Valley Habitat Plan

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Statement of Action	DEIR/EIS Assessment of Impacts	Comment
1618-2713	there is a conflict with one of the associated Design Principles or proposed wildlife crossings (which are listed below in this table).	
1618-2716	Goal: Provide live-in and dispersal habitat for full community of species, including sensitive species, that can also facilitate daily and seasonal migrations, as well as long-term range shifts as species adapt to changing climate.	Goal does not include quantitative or other specific targets for performance. Project alternatives only have the potential to conflict with attainment of goal if there is a conflict with one of the associated Design Principles or proposed wildlife crossings (which are listed below in this table).
1618-2715	Goal: Accommodate the range of taxa and guilds between mountain ranges, even those that are not currently in the area but might be in the future as species shift distribution in response to climate change.	Goal does not include quantitative or other specific targets for performance. Project alternatives only have the potential to conflict with attainment of goal if there is a conflict with one of the associated Design Principles or proposed wildlife crossings (which are listed below in this table).
1618-2717	Goal: Protect, expand, and connect habitat patches in a way that minimizes edge effects.	Goal does not include quantitative or other specific performance targets by which the project's effects can be evaluated. The project alternatives only have the potential to conflict with attainment of goal if there is a conflict with one of the associated Design Principles or proposed wildlife crossings (which are listed below in this table).
1618-2719	Goal: Prevent linkage fragmentation from future incompatible land uses (e.g. urban development, transportation projects, etc.).	Goal does not include quantitative or other specific performance targets by which the project's effects can be evaluated. The project alternatives only have the potential to conflict with attainment of goal if there is a conflict with one of the associated Design Principles or proposed wildlife crossings (which are listed below in this table).
1618-2718	Goal: Use landscape resilience planning principles for sustainability (Beller <i>et al.</i>	Goal does not include quantitative or other specific performance targets by which the project's effects can be evaluated. The project alternatives only have the

Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

DocuSign Envelope ID: 4E6F4C1C-E973-4273-B96B-EA7D761E3383

High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments

Appendix B:
Conflicts with the Valley Habitat Plan

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<p>1618-2718</p> <p>2015) in an urban ecosystem in the face of a changing and uncertain future: Incorporate as much terrestrial and aquatic landform diversity, complexity, and connectivity as possible. Provide redundancy of elements (both habitat types and safe crossings). Consider historical ecology to understand the driving factors of setting. Provide space for dynamic natural processes (e.g. flooding) to operate. Develop the project at the scale at which landscape processes can operate meaningfully.</p>	<p>potential to conflict with attainment of goal if there is a conflict with one of the associated Design Principles or proposed wildlife crossings (which are listed below in this table).</p>	<p>processes to operate. How does HSR plan to resolve this issue in the DEIR/EIS?</p>
<p>1618-2722</p> <p>Design Principle: Maintain a wide wildland area.</p>	<p>Design principle is qualitative in nature and does not provide specific performance targets by which the project’s effects can be evaluated. The project alternatives only have the potential to conflict with attainment of the design principle if there is a conflict with one of the proposed wildlife crossings listed below in this table.</p>	<p>The Project will create a direct conflict in the Pacheco Pass area. How does HSR plan to resolve this issue in the DEIR/EIS?</p>
<p>1618-2721</p> <p>Design Principle: Protect nature’s stage – areas with the least fragmentation, existing protected lands, and the most landform diversity and topographic and hydrological complexity</p>	<p>Design principle is qualitative in nature and does not provide specific performance targets. The project alternatives only have the potential to conflict with attainment of the design principle if there is a conflict with one of the proposed wildlife crossings listed below in this table.</p>	<p>The Project conflicts with connectivity implementation and preservation but also fragmentation at a landscape scale as well as disruption of hydrological complexity. How does HSR plan to resolve this issue in the DEIR/EIS?</p>
<p>1618-2720</p> <p>Design Principle: Restore freshwater wetlands and a more natural hydrologic regime.</p>	<p>Design principle is qualitative in nature and does not provide specific performance targets. The project alternatives only have the potential to conflict with attainment of the design principle if there is a conflict with one of the proposed wildlife crossings listed below in this table.</p>	<p>The Project may disrupt the natural hydrologic processes and limited any wetland restoration envisioned in North Coyote Valley including Tulare Hill drainage basin. How does HSR plan to resolve this issue in the DEIR/EIS?</p>

Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

DocuSign Envelope ID: 4E6F4C1C-E973-4273-B96B-EA7D761E3383

High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments

Appendix B:
Conflicts with the Valley Habitat Plan

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1618-2725 Design Principle: Restore a mosaic of natural communities along the valley floor, especially rare habitat that complements wetlands, such as Valley oak woodlands and savanna.	Design principle is qualitative in nature and does not provide specific performance targets. The project alternatives only have the potential to conflict with attainment of the design principle if there is a conflict with one of the proposed wildlife crossings listed below in this table.	Achievement of this goal could be at risk dependent upon whether or not the hydrologic regime in both the Pacheco and Fisher Creek watersheds is disrupted. How does HSR plan to resolve this issue in the DEIR/EIS?
1618-2724 Design Principle: Improve permeability throughout the linkage by maintaining as much open space as possible and constraining further urban development.	Dedicated crossings and project design features are intended to minimize fragmentation at linkages within the Coyote Valley.	Pacheco Pass is identified in the VHP as a critical north-south linkage which is supported by the data the SCVHA has collected (Pathways for Wildlife 2020). How does HSR plan to resolve this issue in the DEIR/EIS?
1618-2726 Design Principle: Increase the number of engineered strategic connections across the more significant barriers.	Dedicated crossings and project design features are intended to minimize fragmentation at linkages within the Coyote Valley and may contribute to improvements of existing barriers	Again, what about Pacheco Pass where the Project will have a significant impact on connectivity (wildlife permeability) How does HSR plan to resolve this issue in the DEIR/EIS?
1618-2723 Design Principle: Use multi-benefit landscape planning to ensure actions maximize public benefits while protecting unique values.	Design principle is qualitative in nature, does not provide specific performance targets, and does not define criteria for a "wide wildlife area". The project alternatives only have the potential to conflict with attainment of principle if there is a conflict with one of the proposed crossing modifications for protecting habitat connectivity listed in this table.	The Project will affect multiple benefits as well as connectivity? How does HSR plan to resolve this issue in the DEIR/EIS?

Response to Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020)

1618-2571

Refer to Standard Response SJM-Response-GEN-1: Opposition and Comments on the Merits of the Project.

The EIR/EIS is based on the best data available at the time the analysis was conducted. The Authority is responsible for planning, designing, building and operation of the nation's first high-speed rail system. All of the alternatives for implementing the HSR project between San Jose and the Central Valley Wye would have adverse environmental impacts. The Authority has committed to impact avoidance and minimization features to avoid or reduce the project's impacts, and the project includes mitigation measures where practicable to avoid, minimize, or compensate for the project's significant impacts.

1618-2572

The EIR/EIS finds that the project, without the application of mitigation measures, would affect wildlife movement in the Coyote Valley, Upper Pajaro River floodplain (Soap Lake), and western Pacheco Pass. In response to discussions with local wildlife movement stakeholders, the project design includes wildlife crossings in Coyote Valley and a viaduct (as a replacement for long at-grade sections) in Soap Lake. In addition, mitigation requires four crossings through a 2.5-mile, at-grade section of rail in western Pacheco Pass (although much of the rail alignment in Pacheco Pass is underground and avoids impacts on wildlife movement). In response to comments, additions to BIO-MM#77a and new measure BIO-MM#77b in the Final EIR/EIS improve wildlife crossing siting and overall function. The primary additions include: a 75-90 percent design review by agency staff and stakeholders; the creation of a wildlife crossing design, inspection, and maintenance plan in coordination with agency staff and stakeholders; and the requirement for a wildlife crossing monitoring and adaptive management plan. With the revisions to BIO-MM#77, along with many other mitigation measures and the consideration of the existing condition (which is degraded in many of these locations), the project's impacts on wildlife movement would not significantly degrade the existing condition for any of the movement guilds, including the mountain lion.

1618-2573

The commenter introduces comments regarding impacts on special-status species. The Authority addresses each of the commenter's more specific comments in subsequent responses.

1618-2574

The commenter introduces comments regarding impacts on sensitive natural communities. The Authority addresses each of the commenter's more specific comments in subsequent responses.

1618-2575

The commenter introduces comments regarding impacts on conservation lands and landscapes. The Authority addresses each of the commenter's more specific comments in subsequent responses.

Response to Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

1618-2576

Refer to Standard Response SJM-Response-BIO-1: Wildlife Connectivity in Coyote Valley and Pacheco Pass, SJM-Response-BIO-3: Coyote Valley Wildlife Crossings, SJM-Response-BIO-5: Lighting Impacts to Wildlife, SJM-Response-BIO-6: Noise Impacts on Wildlife.

While the EIR/EIS does not evaluate effects on "anticipated benefits" of future projects because this not a requirement of CEQA, the WCA (Appendix C of Authority 2020a, as cited in Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS) does accurately reflect existing permeability and consider future plans. The WCA uses a GIS-based permeability model to compare existing, post-project, and improved project scenarios and the existing, pre-project permeability is relatively high, especially in locations where there is little development and very few roads. The modeling method and approach are well established and well accepted. The permeability model method was used by Kristen Penrod and Paul Beier (known wildlife movement and modeling experts) to evaluate the impacts on a rail section in Southern California and the modeling inputs were taken from the Bay Area Critical Linkages document (Penrod et al. 2013, as cited in Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS) and were only modified where there was new information. The movement guild focal species selection questions were also taken from the Penrod et al. 2013document. The permeability model output indicates permeability throughout the alignment and conservatively reflects the existing condition. The existing permeability model is considered conservative (likely overestimates the value of the existing condition) because it does not include the median barriers that separate opposing lanes of traffic along Monterey Road and SR 152 as complete barriers, though they likely function as complete barriers for smaller, less mobile species and as an additional impediment for others. The undercrossing placement in Coyote Valley is consistent with the Coyote Valley Landscape Linkage (SCVOSA 2017, as cited in Section 3.7 of the Draft EIR/EIS) and up-to-date stakeholder knowledge regarding protected lands (so that entrances and exits of crossings would be on protected lands to the extent feasible). The Authority has worked with local stakeholders to avoid existing protected lands in Soap Lake and to convert at-grade/trenched or embankment rail segments to viaduct. In Pacheco Pass, much of the region is avoided as the rail is underground or minimized with the rail on viaduct. Where the rail is at grade, trenched, or on embankment along a 2.5-mile stretch of rail in western Pacheco Pass, four wildlife crossings are required to maintain north-

1618-2576

south permeability in the region. The placement of crossings or viaduct in all three locations has resulted in changes to modeled permeability scores in important wildlife linkage areas such as Coyote Valley, Soap Lake, and Western Pacheco Pass. However, permeability modeling results and assumptions about the success of crossings are not absolute or guaranteed for every movement guild, and therefore revisions have been made to BIO-MM#77a as well as a new measure BIO-MM#77b in the Final EIR/EIS to improve the potential success of these measures as described in the response to submission SJM-1618, comment 2572. Please refer to Standard Responses SJM-Response-BIO-5 and SJM-Response-BIO-6 regarding the approach and results of the analysis of noise and light impacts. The analysis uses a combination of qualitative and quantitative analyses to identify areas and taxonomic groups likely to be sensitive to increased background levels of light, noise and vibration and then, based on the existing literature and reports, describes the existing condition and the condition with the rail relative to the taxonomic groups' sensitivity to determine the potential for effect. The impact analysis associated with noise and light were revised following releases of the Draft EIR/EIS. With the revised analyses, and the addition of a wildlife crossing monitoring and adaptive management plan to BIO-MM#77b, the Authority has made an effort to improve the analyses and create a process by which the success of wildlife crossings can be evaluated.

Please refer to Standard Responses SJM-Response-BIO-5 and SJM-Response-BIO-6 regarding the approach and results of the analysis of noise and light impacts. The analysis uses a combination of qualitative and quantitative analyses to identify areas and taxonomic groups likely to be sensitive to increased background levels of light, noise and vibration and then, based on the existing literature and reports, describes the existing condition and the condition with the rail relative to the taxonomic groups' sensitivity to determine the potential for effect. The impact analysis associated with noise and light were revised following releases of the Draft EIR/EIS. With the revised analyses, and the addition of a wildlife crossing monitoring and adaptive management plan was added to BIO-MM#77b., the Authority has made an effort to improve the analyses and create a process by which the success of wildlife crossings can be evaluated.

Response to Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

1618-2577

The Authority cited the wildlife crossings along the at-grade/embankment/trenched HSR section in western Pacheco Pass, because that is the location of effect. The number of crossings is dictated by a frequency recommended for relevant taxonomic groups (in this case, San Joaquin kit fox). Then, the four crossings were located where the length of the crossing could be minimized, and the width and height maximized. In the context of existing studies, the four proposed undercrossings are located within the Santa Cruz Mountain to Gabilan Range modeled wildlife linkage by Penrod et al. (2013, as cited in Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS), and the easternmost crossing is relatively close to and south of the Elephant Creek bridge crossing (also a known movement location per Pathways for Wildlife [2020, as cited in Section 3.7 of the Final EIR/EIS] monitoring). In this area, noise, light, and motion impacts of train passage would be mitigated by construction of a noise barrier along the alignment, as specified in BIO-MM#80.

1618-2578

The Authority has considered the comment and made several changes in the Final EIR/EIS. BIO-MM#77a has been revised to state that wildlife crossing locations would be optimized to orient them to protected and natural lands to the extent possible. Additionally, BIO-MM#79 has been clarified to note that the protection of open space corridors to facilitate the functionality of wildlife crossings would be considered in acquisition and enhancement efforts for wildlife linkages. Collectively, these changes address the commenter's concerns and ensure that crossings are suitable for wildlife.

1618-2579

Commenter is correct that proper design of each wildlife crossing is important. In recognition of likely changes in land use and other factors prior to construction and operation of the project, Mitigation Measure BIO-MM#77 has been revised in the Final EIR/EIS to require that "HSR would work with agency and stakeholder partners—CDFW, USFWS, NMFS, the Santa Clara Open Space Authority, Santa Clara Valley Habitat Agency, Peninsula Open Space Trust and The Nature Conservancy—to validate and optimize wildlife crossing locations at the 75% to 90% design phase." This measure ensures application of best available design measures in an intensively reviewed process under a timeframe pertinent to construction of each crossing.

1618-2580

The Authority has included a new mitigation measure in the Final EIR/EIS, BIO-MM#77b. The new measure requires the monitoring of wildlife crossings and application of adaptive management measures to facilitate the use of crossings by wildlife.

1618-2581

The Authority disagrees with the commenter and notes that the overall requirements and process for compensatory mitigation in the Draft EIR/EIS are clear. Numerous mitigation measures in the Draft EIR/EIS outline the mitigation requirements for individual species and other biological resources. BIO-MM#10 outlines the overall requirements of this mitigation including mitigation options, the process used to confirm impacts, as well as requirements for success criteria, management actions for mitigation sites, adaptive management measures, and financial assurances to ensure that the funding to implement mitigation is assured. Additionally, the Authority has already prepared a pCMP, available on the Authority's website, which evaluates the overall feasibility of mitigation and which further outlines the process for reaching a final CMP.

1618-2582

The Authority has included extensive survey, avoidance, and minimization measures in the Draft EIR/EIS. Together, these measures help to reduce impacts. For remaining impacts, the Authority has also included compensatory mitigation to further offset impacts, reducing them to a less-than-significant level. Collectively, avoidance, minimization, and compensatory mitigation all help to mitigate effects and in the judgement of the Authority, will reduce impacts to a less than significant level. Lastly, numerous other state and federal permits and authorizations will be required for the proposed project, many with different mitigation standards (e.g., CESA requires impacts to be "fully mitigated"), and the Authority recognizes this fact in appropriate measures by noting mitigation will be at the stated ratio "unless a higher ratio is required by authorizations issued under the FESA or CESA." The Draft EIR/EIS acknowledges and requires the use of higher ratios, if determined to be necessary by the regulatory agencies.

Response to Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

1618-2583

The Draft EIR/EIS includes numerous mitigation measures requiring compensatory mitigation for impacts on species. In some cases, these are specific to occupied habitat, when species can be readily identified and quantified. For other cryptic species (e.g., California tiger salamander), the presence or absence of species may be difficult to determine, and mitigation would be based on modeled habitat, as outlined in BIO-MM#31. Consequently, considering the number of species requiring mitigation and the broad range of habitat types affected by the project, the amount of mitigation required for all species is likely to be large and would undoubtedly contain occupied as well as unoccupied habitat for various species.

1618-2584

The Authority notes that mitigation lands selected to offset project impacts can and often do provide benefits to multiple species. However, given the long and linear nature of the project, and the fact that it crosses several ecoregions, mitigation for all species and biological resources would not necessarily occur in the same location. The Authority has already begun planning for mitigation and prepared a pCMP, which is available on the Authority's website, which outlines the approach and assesses the feasibility of mitigation. The pCMP uses an approach based on the use of Marxan software, which considers all mitigation needs and the habitat suitability models to assesses the most efficient ways to achieve the mitigation. The results of this analysis indicate that while all compensatory mitigation would not be "additive" as suggested by the commenter, significant mitigation lands would be required to meet The Authority's mitigation commitments outlined in the Draft EIR/EIS. This approach is in line with common and accepted practice, as documented in the Draft EIR/EIS. Regarding the comment regarding transplantation and alternative mitigation, the Draft EIR/EIS includes BIO-MM#12, which requires compensatory mitigation for impacts on listed plant species affected by the project.

1618-2585

As discussed in Impact BIO#51, the Authority has incorporated numerous project features (BIO-IAMF#1, BIO-IAMF#3, BIO-IAMF#5, BIO-IAMF#8, BIO-IAMF#9, BIO-IAMF#10, and BIO-IAMF#11 (described in Impact BIO#1) into project design to avoid and minimize impacts on conservation areas. Tunnels would be designed and constructed to avoid or minimize groundwater inflows into tunnels during construction that may affect surface water resources overlying the tunnel alignment (IAMF-HYD#5), including those within conservation areas.

As a result of coordination with SCVOSA, the Authority has revised the conservation lands database and updated discussions in Section 3.7, Biological Resources and Section 3.14, Agricultural Farmland.

1618-2586

In Section 3.7.5.3, Methods for Impact Analysis, of the Draft EIR/EIS, conservation areas includes lands identified in the CPAD. As defined, the CPAD includes "lands that are owned in fee and protected for open space purposes..." The Authority believes that this definition includes all conservation lands as indicated by the commenter. Regarding the commenters second comment, the Authority believes that a 2:1 ratio (protected:affected) is sufficient to fully mitigate impacts on conservation easements. Regarding the commenter's third comment, BIO-MM#84 in the Draft EIR/EIS already includes compensation for any incurred penalties. The Authority has modified BIO-MM#84 in the Final EIR/EIS to further clarify that funding to offset staff time associated with identifying and protecting replacement sites would be required. The Authority believes that for impacts on conservation areas as described in the Final EIR/EIS, BIO-MM#84 will reduce impacts on conservation areas to a less-than-significant level. Regarding the commenter's last comment, the Authority must obtain state and federal take permits as well as disclose and mitigate for the impacts on special-status species, regardless of whether they occur in conservation areas. The Draft EIR/EIS includes numerous impacts on species and their habitats and a number of these impacts would require compensatory mitigation to reduce those impacts to a less-than-significant level. Additionally, mitigation ratios for impacts on species and their habitats may exceed the mitigation ratio required for impacts on the underlying conservation area. Consequently, the Authority believes that they have assessed impacts on species and habitats as well as on conservation areas and have provided appropriate mitigation in the EIR/EIS.

Response to Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

1618-2587

The Authority has revised Tables 3.7-11 and 3.7-22 in the Final EIR/EIS to include the Tulare Meadows Conservation Easement as well as the additional area protected in the Pacheco Creek Regional Open Space Reserve. Tulare Hill is already addressed in the Draft EIR/EIS, and no changes are necessary. Table 3.7-22 describing impacts on conservation easements has been corrected in the Final EIR/EIS to clarify the acres of the Tulare Meadows Easement and Pacheco Creek Regional Open Space Reserve that would be affected. If additional lands are protected under conservation easement following the NOD/ROD, BIO-MM#84 requiring compensatory mitigation for effects on conservation areas would apply.

1618-2588

Refer to Standard Response SJM-Response-BIO-7: Clarifications Regarding Project Conflicts with the Santa Clara Valley Habitat Plan.

The Authority notes that an analysis of “opportunity costs” is subjective and not required under NEPA or CEQA. However, the Authority also acknowledges that there may be administrative costs to plan managers associated with implementation of the HSR project. Consequently, the Authority has modified BIO-MM#84b in the Final EIR/EIS to require the Authority to provide additional funding to offset staff time associated with identifying and protecting replacement lands.

1618-2589

With regard to the SCVHP, it is an HCP/NCCP and as such its goals are closely tied to its objectives, such that fulfillment of the objectives provides a reasonable confidence that the goals will be achieved. Impact BIO#53 identifies those objectives that the HSR project may conflict with, and to that extent, identifies potential impairment to SCVHP goals. Only a small subset of the SCVHP objectives, in a small portion of covered lands, would be affected, so the effect on SCVHP goals, though real, is small. Regarding the Greenprint (Impact BIO#54), the subject of impacts on goals is directly discussed in the analysis, and the analysis refers to the main geographic areas addressed by the Greenprint, and which would be affected by the HSR project, and whether those effects would have consequences for the goals of the Greenprint. For the Coyote Valley Linkage (Impact BIO#55), the analysis includes an explicit discussion of potential conflicts with the HSR project and shows how the conflicts would be resolved. The analysis found no evidence for conflict with the goals of the Coyote Valley Linkage.

1618-2590

The Authority has evaluated adopted conservation plans consistent with applicable requirements under CEQA and NEPA. Additionally, Tthe Authority has coordinated with various wildlife movement stakeholders, including the commenter, regarding other plans in the region. The commenter does not mention specific aspirational plans in their comment and thus Tthe Authority cannot respond in the Final EIR/EIS. In addition, "aspirational" plans are not required to be evaluated under CEQA or NEPA.

1618-2591

Refer to Standard Response SJM-Response-BIO-3: Coyote Valley Wildlife Crossings.

The Authority also notes that it has conducted extensive outreach and coordination with wildlife stakeholders in the region and plans to continue this coordination in the future. To solidify this commitment, the Authority has modified BIO-MM#77a in the Final EIR/EIS to require the Authority to work with agency and stakeholder partners to validate and optimize wildlife crossing locations.

Response to Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

1618-2592

This comment is acknowledged. The comment noted that the Draft EIR/EIS analysis mischaracterized impacts on land under agricultural conservation easement and failed to disclose full effects on agricultural resources. In addition, the comment noted that the project would hinder implementation of agriculture conservation goals in Santa Clara County's Agricultural Plan and the Santa Clara Valley Open Space Authority's Santa Clara Valley Greenprint.

Section 3.14.5.2, Resource Study Area, of the Final EIR/EIS was revised to include an inventory of the agricultural conservation easements that intersect the RSA. Impact AG#8 was revised to acknowledge impact on Important Farmland within agricultural conservation easements. Note that all permanent impacts on Important Farmland were disclosed in the Draft EIR/EIS in Impact AG#2 and Impact AG#3; no new impacts on Important Farmland were identified. In addition, Table 3.14-14 in Section 3.14, Agricultural Farmland, of the Final EIR/EIS was revised to provide a comparison of impacts related to agricultural conservation easements under NEPA; and Table 3.14-15 was revised to acknowledge agricultural conservation easements under Impact AG#8.

Section 3.14.3, Consistency with Plans and Laws, of the Final EIR/EIS was revised to include a consistency analysis for Santa Clara County's Agricultural Plan and the Santa Clara Valley Open Space Authority's Santa Clara Valley Greenprint.

Temporary impacts on Important Farmland are addressed under Impact AG#1, permanent direct impacts are addressed under Impact AG#2, and permanent indirect impacts as a result of creation of unfarmable remnant parcels are addressed under Impact AG#3.

In subsequent individual comments, the commenter provided specific suggestions regarding the regulatory discussion for agricultural farmland, mitigation ratios, remnant parcels, agricultural easements, and the No Project Alternative analysis. Each of these specific comments is addressed below in response to submission SJM-1618, comment 3343 through comment 3351.

1618-2593

Section 3.15, Parks, Recreation, and Open Space, of the Draft EIR/EIS includes all existing and planned park, recreation, and public access resources within the RSA. In order to be included in the analysis, each resource must be publicly accessible and have readily available vehicular and/or pedestrian access. Planned resources were included if they would be built by the time the project would be under construction and if funding and programming have been identified. To address public comments received on the Draft EIR/EIS, five parks and one bicycle route were added to the analysis in Section 3.15 of the Final EIR/EIS. Therefore, the analysis captures all resources that could be directly or indirectly affected by the project during construction and operations. These additions include Impact PK#6, which was revised to state that the impact under CEQA would be significant for Reed and Grant Streets Sports Park under Alternatives 2 and 3 because of the permanent acquisition of parkland, which would result in a diminished capacity for use of the resource. PR-MM#8 was developed to address these impacts by reconfiguring the soccer fields and reduce this impact to less than significant.

1618-2594

The Draft EIR/EIS was recirculated on a limited basis in February 2021 to address the new listing of mountain lion as a candidate for listing under CESA. Comments received on the Revised/Supplemental Draft EIR/EIS have been considered in the Final EIR/EIS.

1618-2595

Section 1.3, Relationship to Other Agency Plans, Policies, and Programs, and Section 1.4, Relationship to Other Transportation Projects in the Study Area, of the Draft EIR/EIS have been reviewed for updates, and status revisions have been made accordingly throughout Chapter 1, Project Purpose, Need, and Objectives, of the Final EIR/EIS.

Response to Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

1618-2596

The Authority has revised Tables 3.7-11 and 3.7-22 in the Final EIR/EIS to include the Tulare Meadows Conservation Easement and has included other corrections to the Pacheco Creek Open Space Regional Reserve. Tulare Hill is already addressed in the Draft EIR/EIS, and no changes are necessary. Table 3.7-22, describing impacts on conservation easements, has been corrected in the Final EIR/EIS to clarify the acres of the Tulare Meadows Easement and Pacheco Creek Open Space Regional Reserve that would be affected by the project. The Northern Coyote Valley Conservation Area is a general region, not a specific protected parcel or area. To the extent that protected lands and conservation easements are located within this area, they are included in Tables 3.7-11 and 3.7-22 and are assessed in the EIR/EIS.

1618-2597

Refer to Standard Response SJM-Response-OUT-3: Coordination with Local Conservation Agencies.

The commenter summarizes their more detailed comments on the Draft EIR/EIS. The Authority has responded to each of the detailed comments submitted by the commenter. Additionally, the Authority notes that we have worked with stakeholders in the region in good faith for several years to address commenter's stated concerns, as well as other and related concerns raised by stakeholders. We have also made numerous adjustments to mitigation in the Final EIR/EIS to address commenters' concerns. Collectively, the Authority believes that we have addressed the comments noted by the commenter.

1618-2598

The existing conditions analysis in Section 3.7.6.2, Biological Conditions, of the Draft EIR/EIS discusses existing efforts addressing wildlife movement in the analysis area and notes many conservation areas, easements, and public lands that are helping to facilitate wildlife movement in the area. The topic also appears in Chapter 5 of the WCA (Appendix C of the Biological and Aquatic Resources Technical Report [Authority 2020a, as cited in Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS]). The analysis cites many publications from the parties involved in efforts to improve wildlife passage.

1618-2599

Refer to Standard Response SJM-Response-BIO-1: Wildlife Connectivity in Coyote Valley and Pacheco Pass.

Impact BIO#43 discusses impacts on wildlife movement in the Pacheco Pass area, and those impacts are discussed in much more detail in Chapter 6 of the WCA (Appendix C of the Biological and Aquatic Resources Technical Report [Authority 2020a, as cited in Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS]). Most of the sources cited by commenter are included in the analysis of Pacheco Pass impacts; the importance of the area to the goals of the SCVHCP/NCCP is reviewed in the Biological and Aquatic Resources Technical Report, and the work by Pathways for Wildlife (2020, as cited in Section 3.7 of the Final EIR/EIS) is cited repeatedly in the analysis of wildlife passage effects, e.g., in Final EIR/EIS Appendix 3.7-E, Supplemental Noise Analysis on Terrestrial Wildlife Species. As noted in that analysis, the majority of the rail alignment through this area would be on viaduct, which offers little resistance to passage by wildlife, and the noise and light impacts of the trains would be further minimized by noise barriers on parts of the viaduct as required by BIO-MM#80. For further details, please refer to Draft EIR/EIS Section 3.7, Impact BIO#43 for an assessment of impacts on wildlife movement, including in the Pacheco Pass area. Please also refer to Impact BIO#44 for an assessment of potential noise impacts on wildlife movement in that area. Both impacts are significant, and mitigation is required, as specified in Mitigation Measures BIO-MM#76 through BIO-MM#81.

1618-2600

Commenter notes that portions of the alignment west of Pacheco Pass but in the Pacheco Pass Subsection of the project are not in a tunnel, pointing to a general description of the proposed project in the WCA. The extent of the Pacheco Pass tunnel is described accurately in the detailed assessment in the WCA and in the EIR/EIS. Consequently, the description referenced by the commenter does not represent an error in the analysis, and no changes to the EIR/EIS are necessary.

Response to Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

1618-2601

The permeability model did identify a post-project permeability impact in western Pacheco Pass, because the wildlife crossings in this location are not part of the project design as they are in all other locations. That is why there is a need for BIO-MM#78, which requires the wildlife crossings. In addition, BIO-MM#76 requires wildlife-friendly fencing around soil stabilization areas and 8-foot security fencing only nearest the rail to improve access to the larger right-of-way extent in this region. In response to comments, mitigation measures have been revised in the Final EIR/EIS to require monitoring and adaptive management of the wildlife crossings, noise reduction in specific locations, agency and stakeholder involvement in final design and placement of wildlife crossings as well as in land acquisition, and a maximum length of crossings in this location of 120 feet. With the existing and added mitigation measures, impacts on wildlife movement in western Pacheco Pass are considered less than significant.

1618-2602

Text addressing Pacheco Pass was added to BIO-MM#76 in the Final EIR/EIS. Text addressing the Santa Cruz to Gabilan and Diablo to Gabilan linkages was added to BIO-MM#79 in the Final EIR/EIS. BIO-MM#77a was revised in the Final EIR/EIS to allow for agency and stakeholder input, where feasible, into wildlife crossing placement and land acquisition. The intent of these changes is to work with local and regional experts that have up-to-date on-the-ground expertise about property availability, prioritized placement, and wildlife movement.

1618-2603

The analysis does not assume that the roads are complete barriers, and thus the EIR/EIS will not be changed. The local permeability analysis performed for the study area found locations such as Coyote Valley, Soap Lake, and western Pacheco Pass to be permeable. It is to offset the impacts on wildlife movement in these regions that the project was changed to include wildlife crossings in Coyote Valley and a long viaduct section in Soap Lake. It is also why four wildlife crossings are proposed as mitigation in western Pacheco Pass. However, there are additional qualitative analyses provided in the WCA (Appendix C of Authority 2020a, as cited in Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS) that recognize variability in permeability for specific movement guilds. For example, the median barrier along Monterey Road is not included in the local permeability model, but it is part of the existing conditions and likely poses a barrier for species like badger, whereas bobcat, deer, and larger species are able to jump the barrier. Thus, the median barrier is discussed to provide context about the existing permeability for some species. Another example of qualitative discussions that provide context around existing conditions have to do with species that are very rarely observed moving through or under existing crossing features such as culverts or underpasses. Lion and elk, for example, are rarely captured moving through these culverts or underpasses (as deer, coyote, and bobcat are), suggesting the roads/development/human presence may be greater barriers to movement for those species.

Response to Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

1618-2604

The EIR/EIS recognizes the loss of permeability for small animal movement guilds, with California tiger salamander as the representative (as this species is federally and state listed, as described in the WCA [Appendix C to Authority 2020a, as cited in Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS], Appendix C, Focal Species Selection). The analysis concluded an impact, and thus the project design includes wildlife crossings along Coyote Valley. The fencing surrounding the rail would exclude larger herpetofauna such as turtles in Coyote Valley; however, frogs, snakes, and turtles could gain entry through the fence holes. To encourage use of wildlife crossings by all species, turtles included, an additional measure was added to BIO-MM#77a in the Final EIR/EIS to install wildlife funnel fencing on both sides of the wildlife crossing entrances/exits to the maximum distance feasible for the greatest number of movement guilds feasible on the eastern side of Coyote Valley wildlife crossings where fencing does not already exist. Another measure added to BIO-MM#77a in the Final EIR/EIS would require the Authority to work with agency and stakeholder partners to validate and optimize wildlife crossing locations at the 75 to 90 percent design phase

1618-2605

Refer to Standard Response SJM-Response-BIO-6: Noise Impacts on Wildlife. Operations noise impacts are addressed in Impact BIO#44, visual impacts in Impact BIO#46, and train strike in Impact BIO#48. Each impact is found to be significant and mitigation is required. Noise impact mitigation would occur in Coyote Valley, the Upper Pajaro River IBA, upper Pacheco Creek, near the California Aqueduct, and at two locations in the GEA IBA. The other mitigation is not limited by site. Timing of mitigation is as described in the various mitigation measures, but in general, mitigation is required to be implemented prior to the onset of an impact. For example, the noise mitigation in the Upper Pajaro River IBA will be in place prior to train operations.

1618-2606

Refer to Standard Response SJM-Response-BIO-6: Noise Impacts on Wildlife.

The Draft EIR/EIS was recirculated on a limited basis in April 2021 to address the new listing of mountain lion as a candidate under CESA. The document included supplemental noise and vibration analysis for terrestrial species; found additional noise impacts on special-status species, wildlife, and wildlife movement as noted by the commenter; and additional mitigation to address the impacts of operations noise on special-status species, particularly the mountain lion and San Joaquin kit fox, was added to mitigate and reduce the impacts to less than significant. Additional vibration analysis was added to the Revised/Supplemental Draft EIR/EIS discussing potential vibration impacts to diurnal species as noted by the commenter. The analysis and conclusions have been carried forward into the Final EIR/EIS.

1618-2607

Refer to Standard Response SJM-Response-BIO-6: Noise Impacts on Wildlife. Operations impacts of vibration are closely related to noise impacts and are addressed in Impact BIO#47, with reference to a more detailed evaluation in the WCA (Appendix C of the Biological and Aquatic Resources Technical Report [Appendix C of Authority 2020a, as cited in Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS]). Impacts of vibration are found to be less than significant, and the analysis cites a variety of studies in evidence. No evidence has been brought forward supporting an assertion of significant impact from vibration. Accordingly, no mitigation is required.

Response to Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

1618-2608

Refer to Standard Response SJM-Response-BIO-5: Lighting Impacts to Wildlife.

As noted in other comments, the Authority has completed additional analysis of artificial lighting impacts in the Final EIR/EIS. Impact BIO#47 evaluates visual disturbance due to light from passing trains and due to the sight of passing trains and determines that this is a significant impact for all alternatives. Mitigation measures are required. With specific regard to the upper Pacheco Creek area (there are no impacts at Pacheco Pass, where the rail alignment is in a tunnel deep underground), the only new sources of operational lighting would be security lighting at the tunnel portal, directed to avoid illuminating the surrounding habitat, and the train lighting, which is the minimum required under FRA regulations. Mitigation Measure BIO-MM#80 calls for installation of noise barrier walls in the upper Pacheco Creek area, which would further reduce incidental lighting impacts on wildlife in that area. Lastly, BIO-MM#89 requires additional mitigation to reduce the operational effects of train lighting on wildlife movement.

1618-2609

Refer to Standard Response SJM-Response-BIO-6: Noise Impacts on Wildlife. The analysis of Impact BIO#44 identifies significant impacts due to train noise where the proposed alignment passes through the wildlife passage corridors at Coyote Valley, upper Pacheco Creek, near the California Aqueduct, and in the Upper Pajaro River and GEA IBAs. Mitigation for these impacts is identified in Section 3.7.10, CEQA Significance Conclusions and includes BIO-MM#58: Provide Compensatory Mitigation for Impacts on Waterfowl, Shorebird, and Sandhill Crane Habitat, BIO-MM#80: Minimize Permanent Intermittent Noise, Visual, and Train Strike Impacts on Wildlife Movement, and BIO-MM#87: Provide Compensatory Mitigation for Impacts on Mountain Lion Habitat.

1618-2610

Refer to Standard Response SJM-Response-BIO-6: Noise Impacts on Wildlife.

Train noise effects are evaluated in Impact BIO#44 in Section 3.7, Biological Resources. As the commenter notes, tunnel design would minimize portal noise. As a result, there is no evidence that train noise at the portals would have any effects upon wildlife incremental to those created by train noise in general.

1618-2611

Refer to Standard Response SJM-Response-BIO-6: Noise Impacts on Wildlife.

As noted in the Final EIR/EIS, the construction of noise barriers could have some secondary impacts on visual resources. These impacts are addressed under mitigation measure NV-MM#3 in the Draft EIR/EIS. Additionally, the noise barriers could have some effects on wildlife movement; however, overall, the effect is expected to be beneficial because the noise barriers would help to funnel or direct animals to dedicated crossings, and the noise barriers do not obstruct those crossings.

1618-2612

Refer to Standard Response SJM-Response-BIO-5: Lighting Impacts to Wildlife.

An additional measure was added BIO-MM#80 in the Final EIR/EIS to include noise barriers in prioritized crossings in Coyote Valley, western Pacheco Pass, and eastern Pacheco to improve use by species such as kit fox and mountain lion. Wildlife crossings adhere to minimum design standards informed by wildlife movement literature wherever feasible. An additional measure was added to BIO-MM#78 of the Final EIR/EIS to limit the length of crossings at western Pacheco Pass to 120 feet (as this was found to be feasible given current design). Further, additional measures were added to BIO-MM#77a of the Final EIR/EIS to allow agency and stakeholder input on a 75%–90% design review, location and prioritization of mitigation land acquisition, and a newly required wildlife crossings design, inspection, and maintenance plan to allow for the most up-to-date wildlife movement information and land acquisition knowledge to be incorporated. And, finally, the new BIO-MM#77b of the Final EIR/EIS provides for a wildlife crossing monitoring and adaptive management plan.

1618-2613

In consideration of the comment, the Authority has included a new mitigation measure in the Final EIR/EIS. BIO-MM#77b has been included to describe how the Authority will monitor the use of wildlife crossings and how adaptive management will be implemented to achieve optimum effectiveness of crossing structures.

Response to Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

1618-2614

BIO-MM#71 requires temporary riparian impacts be revegetated within 90 days. BIO-MM#10 was revised in the Final EIR/EIS to include on-site and in-kind mitigation for temporary impacts (where feasible) and in-kind and near-site as much as possible, especially where those impacts occur in natural areas, near areas known or likely to support wildlife movement or near wildlife crossings that would be constructed as part of the rail (to contribute to the long-term function of the crossing). Further, BIO-MM#77a was revised in the Final EIR/EIS to include agencies and local stakeholders in 75%–90% design review and land acquisition planning to further improve the placement and benefit of mitigation lands for wildlife movement and landscape-level function.

1618-2615

The western Pacheco Pass wildlife crossings are proposed at the location of impact where the crossing width and height can be maximized, length minimized, and frequency commensurate with movement guilds in the region. The crossings are located between known movement culverts and underpasses; the parts of the rail closest to the culverts and underpasses where wildlife movement is known to occur are primarily viaduct sections where crossings are not required. The exception is the SR 152 bridge nearest Casa de Fruta. The rail in this location is near a tunnel portal, and a crossing is not feasible in this location. BIO-MM#78 was revised in the Final EIR/EIS to require lengths no greater than 120 feet consistent with comments from the SCVHA. The rail is fenced for the duration of the at-grade section of rail that requires crossings and thus would function as a funnel to the crossings. Regarding elk, the 2017 radio collar data obtained by Hobbs did not show elk presence in western Pacheco Pass. In eastern Pacheco Pass, near San Luis Reservoir where presence is concentrated, the rail is north of SR 152, which functions, at the least, as a partial barrier to elk movement. When/if elk are to move north of SR 152 in eastern Pacheco Pass, the rail is assumed reasonably permeable, as it is mostly on viaduct in this region. Revisions to BIO-MM#77a in the Final EIR/EIS allow for agency and stakeholder review of 75%–90% design so that up-to-date information about crossing placement can be incorporated. Other revisions to this measure provide for stakeholder input on crossing design and mitigation land acquisition placement and prioritization to benefit wildlife movement.

1618-2616

BIO-MM#80 was revised in the Final EIR/EIS to include a noise barrier along the rail section nearest the Pacheco Creek Reserve and the culverts and underpasses in the region. The noise barrier would also reduce train light in the region.

1618-2617

The rail is fenced for all at-grade, embankment, and trenched profiles. These fences are assumed to act as wildlife funnels. Fencing parameters are detailed in BIO-MM#81. Intrusion deterrents are specified in the current design; however, revisions to BIO-MM#77a in the Final EIR/EIS provide for 75%–90% design review by agencies and stakeholders to help ensure mitigation commitments are implemented consistent with mitigation measures and the most up-to-date information where feasible. At the eastern entrance/exits for wildlife crossings in Coyote Valley, where fencing is not present, BIO-MM#77a was further revised in the Final EIR/EIS to require wildlife funnel fencing, where feasible, to benefit as many movement guilds as possible.

1618-2618

The WCA (Appendix C to Authority 2020a, as cited in Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS) includes a detailed assessment of structure heights for different guilds of animals. The assessment was based on an extensive review of literature as well as information from local stakeholders. Crossings were placed where feasible; however, with respect to the specific stationing mentioned by the commenter, the Authority notes that aerial sections at the approximate Stations B4070 and B4095 are sufficiently near to provide crossing potential for larger mammals, including highly mobile species like the lion and elk referenced by the commenter.

1618-2619

The Preferred Alternative, Alternative 4, is at grade or on embankment through Coyote Valley and is not expected to pose a significant constraint on future wildlife overcrossing structures. Stakeholder review of the 75%–90% design, as required by BIO-MM#77a in the Final EIR/EIS, would provide additional opportunities to understand final design.

Response to Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

1618-2620

BIO-MM#10 has been revised in the Final EIR/EIS to clarify that the CMP would include coordination with local conservation agencies and organizations.

1618-2621

The Authority believes that the analysis and various mitigation as outlined in the Draft EIR/EIS support the findings made under CEQA and NEPA. The Authority agrees that there are extensive effects on various resources resulting from the long linear nature of the project; however, the Draft EIR/EIS includes extensive avoidance, minimization, and mitigation measures for biological and aquatic resources—greater than 80 individual measures in the Final EIR/EIS—representing a substantial effort to reduce biological resources effects to a less-than-significant level.

1618-2622

The Draft EIR/EIS includes numerous mitigation measures requiring compensatory mitigation for impacts on species. In some cases, these are specific to occupied habitat, when species can be readily identified and quantified. For other cryptic species (e.g., California tiger salamander), the presence or absence of species may be difficult to determine and mitigation will be based on modeled habitat as outlined in MM-BIO#31. Consequently, considering the number of species requiring mitigation, and the broad range of habitat types affected by the project, mitigation would be provided for the loss of modeled habitat and would not depend on the occupancy of the habitat by the species.

1618-2623

The Authority believes that the analysis and various mitigation as outlined in the Draft EIR/EIS support the findings made under CEQA and NEPA. The Authority agrees that there are extensive effects on various resources resulting from the long linear nature of the project; however, the Draft EIR/EIS includes extensive avoidance, minimization, and mitigation measures for biological and aquatic resources—greater than 80 individual measures in the Final EIR/EIS—representing a substantial effort to reduce biological resources effects to a less-than-significant level. The totality of these measures, in concert with compensatory mitigation support the findings in the EIR/EIS. The Authority notes that compensatory mitigation ratios have been considered and designed according to common practice or agency guidelines (where they exist), and in the context of the individual conservation and biological needs for the species.

1618-2624

The Authority believes that the extensive avoidance, minimization, and mitigation provided in the Draft EIR/EIS is extensive and has been applied to the affected species consistent with common practice. Additionally, the Authority notes that the compensatory mitigation for listed species will have numerous benefits for other special-status and non-special status species as well. Lastly, the commenter references the Santa Clara Valley Habitat plan and conditions of approval for projects under the plan. The Authority notes that they are not a participant in the Habitat Plan and therefore cannot legally participate in the plan. The Authority believes that the analysis and various mitigation as outlined in the Draft EIR/EIS support the findings made under CEQA and NEPA. The Authority agrees that there are extensive effects to various resources resulting from the long linear nature of the project, however the Draft EIR/EIS includes extensive avoidance, minimization, and mitigation measures; greater than 80 individual measures in the Final EIR/EIS, representing a substantial effort to reduce biological resources effects to a less than significant level.

Response to Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

1618-2625

The Authority has assigned the mitigation noted by the commenter to compensate for impacts on several types of biological resources. The Authority has prepared a Preliminary Compensatory Mitigation Plan, which evaluates the feasibility of implementing mitigation for the project; however, the exact lands that would be used are not yet known and would not be known for some time. It is likely that mitigation would be "additive" (or partially additive), as described by the commenter, as a single area of land is not likely to meet all mitigation needs; however, this cannot be determined at this time. Consequently, the mitigation is described separately for each resource impact.

1618-2626

BIO-MM#8 requires the Authority to develop a plant species salvage plan, and as part of that plan, adaptive management is required in the event that translocation is not effective. In addition, under BIO-MM#10, the Authority will develop a CMP to offset permanent and temporary impacts on special-status species. Mitigation options under BIO-MM#10 include purchase of mitigation credits, protection of habitat in fee title or conservation easement and funding for long-term habitat management, or payment to an existing in-lieu fee program.

1618-2627

In response to this comment, the Authority has modified BIO-MM#10. Lands acquired would be transferred to the most suitable landowner/manager in the region. This could be CDFW, or other conservation agencies or organizations in the region, provided those agencies or organizations are approved by the regulatory agencies.

1618-2628

Tulare Hill is already addressed in the Draft EIR/EIS, and no changes are necessary. The Authority has revised Tables 3.7-11 and 3.7-22 in the Final EIR/EIS to include the Tulare Meadows Conservation Easement. The Northern Coyote Valley Conservation Area is a general region, not a specific protected parcel or area. To the extent that protected lands and conservation easements are located within this area, they are included in Tables 3.7-11 and 3.7-22 and are assessed in the EIR/EIS. Table 3.7-22, which describes impacts on conservation easements, has been corrected in the Final EIR/EIS to clarify the acres of the Tulare Meadows Easement that would be affected by the project. The commenter is correct that BIO-MM#84 addresses this impact and that mitigation would include compensation to replace the permanent loss of conservation lands at a ratio of 2:1 (protected:affected). The Authority understands that if additional lands are protected under conservation easement following the NOD/ROD, BIO-MM#84 requiring compensatory mitigation for effects on conservation areas would apply.

1618-2629

The Authority has considered the comment and has included a new mitigation measure in the Final EIR/EIS, BIO-MM#84a, which requires the Authority to avoid and minimize impacts on conservation easements, to the extent feasible, through coordination with affected organizations and landowners.

1618-2630

BIO-MM#84 has been revised in the Final EIR/EIS as suggested by the commenter to note that it applies to protected lands held in fee title, as well as lands held under conservation easement. The measure has also been modified to require funding to offset staff time of affected organizations in finding and replacing protected lands. Lastly, the Authority notes that the Draft EIR/EIS independently assesses potential impacts on special-status species and other resources in the Draft EIR/EIS, regardless of whether those impacts occur on protected lands or not. Mitigation for other biological resources is assessed on a case-by-case basis and is applied for each species or biological resource affected, as appropriate.

Response to Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

1618-2631

The Authority believes that mitigation for impacts on conservation areas as described in the Draft EIR/EIS, BIO-MM#84 would reduce impacts on conservation areas to a less-than-significant level because it provides for replacement of the lands over and above a 1:1 ratio and includes requirements to compensate for other fees and costs associated with the loss of the easements.

1618-2632

In response to this comment, the Authority has revised BIO-MM#83 in the Final EIR/EIS to clarify that it would also provide for funding to offset agency/organization staff time associated with the identification and protection of replacement conservation lands.

1618-2633

The Authority believes that the requirements outlined under BIO-MM#84b in the Final EIR/EIS are clear and require the Authority to mitigate for impacts on conservation areas. Mitigation for other species and habitats is also required as noted in numerous other mitigation measures.

1618-2634

The commenter is correct that mitigation for sycamore alluvial woodland impacts would be provided under BIO-MM#72. If the area is also a conservation area, BIO-MM#84b in the Final EIR/EIS would also apply. Lastly, within the Pacheco Creek Reserve, BIO-MM#85 would apply, requiring additional mitigation for sycamore alluvial woodland impacts at the reserve.

1618-2635

The Authority has not yet determined if or how mitigation required under various impacts would be additive or "stacked" as referenced by the commenter. We anticipate that decisions regarding the overall mitigation package will be developed through implementation of BIO-MM#10 and will depend on the final impacts as well as the lands available. As noted in BIO-MM#10, "The overview would include the ratios set forth in the species and habitat specific compensatory mitigation measures to be applied to determine mitigation levels and the resulting mitigation totals."

1618-2636

The reference to the statement on page 3.7-126 of the Draft EIR/EIS is in specific reference to conflicts with the goals and objectives of the Greenprint. With respect to impacts on the Bloomfield (referred to as North and South) Conservation Easement, the Draft EIR/EIS did include consideration of impacts on this conservation easement in Impact BIO#51. This conservation easement was mistakenly referred to as "Silacci" conservation area in the Draft EIR/EIS, but has been corrected in the Final EIR/EIS. Table 3.7-22 in the Final EIR/EIS includes the correct name and acreage affected by each of the alternatives. Conservation areas with biological resource conservation values are correctly considered in the Final EIR/EIS and adequate mitigation is provided for them in BIO-MM#84.

1618-2637

In response to this comment, the Authority has included a new mitigation measure in the Final EIR/EIS. BIO-MM#84a will allow the Authority to work with affected organizations to refine project components, if possible. BIO-MM#84b would still provide compensation for affected conservation areas if effects cannot be avoided.

1618-2638

Both tunnels in the San Jose to Merced Project Section would be constructed via boring. Please refer to Section 2.4.4.5, Tunnel Profile, of the Draft EIR/EIS for a brief description of the activity and a cross section of the profile. Additionally, Section 2.11.3.3, Tunnels, in the Draft EIR/EIS describes proposed tunnel construction activity.

1618-2639

No, the Final EIR/EIS has not been updated. As noted in Impact HMW#5 in the Draft EIR/EIS, the impact of disturbing naturally occurring asbestos would be less than significant to humans and the environment, including wildlife. Project features would facilitate safe and timely removal of asbestos.

Response to Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

1618-2640

The Authority revised the Draft EIR/EIS to include an analysis of the proposed project impacts on the mountain lion, now a candidate for listing under CESA. The Draft EIR/EIS was recirculated (on a limited basis) for public comment and the Authority will consider and respond to all comments received on the recirculation when preparing the Final EIR/EIS. Specific mitigation measures addressing potential impacts on mountain lion are included in the Final EIR/EIS.

1618-2641

The Authority revised the Draft EIR/EIS to include an analysis of the proposed project impacts on the monarch butterfly, under consideration for listing under FESA. The Draft EIR/EIS was recirculated (on a limited basis) for public comment and the Authority will consider and respond to all comments received on the recirculation when preparing the Final EIR/EIS.

1618-2642

As described in the Draft EIR/EIS, the Authority conducted an additional assessment for existing sycamore alluvial woodland, as well as areas suitable for sycamore alluvial woodland restoration. The assessment determined that there is sufficient area to implement mitigation, if restoration of this rare community type is undertaken. Consequently, the Authority believes that potential conflicts with the habitat plan can be mitigated to a less-than-significant level.

1618-2643

The rail is largely in a tunnel or on viaduct through much of Pacheco Pass, avoiding and minimizing impacts to north-south movement throughout much of the region. Due to construction/feasibility constraints, there is a 2.5-mile embankment section in western Pacheco Pass. To offset the impact of this section on movement, BIO-MM#78 provides for four wildlife crossings in this location, and BIO-MM#76 requires fencing around soil stabilization areas be replaced with wildlife-friendly fencing.

1618-2644

With regard to the SCVHP, it is an HCP/NCCP and as such its goals are closely tied to its objectives, such that fulfillment of the objectives provides a reasonable confidence that the goals will be achieved. Impact BIO#53 identifies those objectives that the project may conflict with, and to that extent, identifies potential impairment to SCVHP goals. Only a small subset of the SCVHP objectives, in a small portion of covered lands, would be affected, so the effect on SCVHP goals, though real, is small. Regarding the Greenprint (Impact BIO#54), the subject of impacts on goals is directly discussed in the analysis, and the analysis refers to the main geographic areas addressed by the Greenprint, and which would be affected, and whether those effects would have consequences for the goals of the Greenprint. For the Coyote Valley Linkage (Impact BIO#55), the analysis includes an explicit discussion of potential conflicts and shows how the conflicts would be resolved. The analysis found no evidence for conflict with the goals of the Coyote Valley Linkage. The Draft EIR/EIS does not conclude that there is no conflict because of the absence of quantitative goals; for each plan, the potential for a conflict is described with reference to the stated intentions of the plan.

1618-2645

In the Draft EIR/EIS, Section 3.7.1, Introduction, already describes that "one adopted federal HCP and state NCCP overlaps with the project alternatives" and therefore no change is necessary. As described in the Draft EIR/EIS, the Authority has considered other conservation plans consistent with our interpretation of Appendix G to the CEQA Guidelines, which includes "other approved local, regional, or state conservation plans". The Authority believes the description of HCPs in the Draft EIR/EIS is correct and no corrections are needed in the Final EIR/EIS.

Response to Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

1618-2646

All at-grade, trenched, and on-embankment profile sections of the rail are fenced with 8-foot-tall chain-link safety fencing, which is described in BIO-MM#81. BIO-MM#81 describes the requirements for additional fencing, exclusion features, and jump-outs. BIO-MM#81 was further modified in the Final EIR/EIS to require success monitoring of intrusion barriers. The rail fencing is assumed to function as a funnel for wildlife. In Coyote Valley, where crossing entrance/exits to the east of Monterey Road are not fenced, a measure was added to BIO-MM#77a in the Final EIR/EIS to require funnel fencing for as many movement guilds and for as great a distance from the crossing as feasible. The EIR/EIS concludes a significant conflict with the SCVHP as a result of the impacts at Pacheco Creek Reserve and potential conflict with the Coyote Valley Landscape Linkage document due to some additional constraints to wildlife overpass the rail might pose. With the wildlife crossings, wildlife-friendly fencing, and noise barriers near the Pacheco Creek Reserve (BIO-MM#80), along with stakeholder input in crossing design and land acquisition (BIO-MM#77a), as well as a new measure for monitoring and adaptive management of crossings (BIO-MM#77b), the potential conflict with the SCVHP is assumed to be less than significant in the Final EIR/EIS.

1618-2647

The Draft EIR/EIS evaluates potential conflicts with recommended wildlife crossing modifications proposed under the Coyote Valley Linkage, including Metcalf Canyon Road overpass and Bailey Road wildlife undercrossing (Impact BIO#55). Based on conversations regarding this topic with stakeholders, the crossing would likely have to be longer to span the rail, but this is not expected to increase the cost of the project such that it would become prohibitive.

1618-2648

The road-effect-zone GIS model described by Shilling and Waetjen (2012) provides for the integration of noise as a component of road projects. Noise and permeability modeling were performed separately for this project, and the methods employed are more than sufficient to describe the existing condition and impact. The Authority is confident that the methods for analysis are well rationalized and consistent with current methods in wildlife transportation. However, it should be noted that the more difficult nuance is to convert quantitative modeling results into significance findings, given the lack of precedent and literature to support species-taxa-specific criteria. Also, there is the integration of the existing condition into the analysis. The project is not occurring on a pristine landscape, and thus the challenge is to determine the incremental contribution the project would make toward an altered landscape. Revisions have been made to BIO-MM#77a in the Final EIR/EIS to allow for stakeholder review of the design at 75%–90% and stakeholder input on mitigation land acquisition and crossing design. With these revisions, and others, including the addition of the crossing monitoring and adaptive management plan, the Authority has found the overall effect in Coyote Valley to be less than significant.

1618-2649

The retaining wall under Alternatives 1 and 3 would not preclude use of the undercrossings at Tulare Swale. There is no directional fencing associated with wildlife crossings, because in most locations the rail fencing provides funnel fencing. BIO-MM#77a was revised in the Final EIR/EIS to include funnel fencing on the crossing entrances/exits on the east side of Monterey Road. Funnel fencing would be as long and address as many movement guilds as feasible. A funnel fencing plan requirement was added to BIO-MM#77a in the Final EIR/EIS.

Response to Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

1618-2650

Yes, the requirement for undercrossings at Tulare Swale and improvements to the Fisher Creek undercrossing are required under Alternatives 1 and 3 to offset the impact of the retaining wall. The crossings would allow for safe passage under the rail and roads as well as through the retaining wall. Further, for animals traveling west to east, the rail fence would force animals to use the crossings, as no other crossing route would be possible. On the east side of the rail and road in Coyote Valley, funnel fencing would be required, as feasible, to improve use of the crossing. Funnel fencing and other crossing design features are required to be included in a crossing design, implementation, and maintenance plan by BIO-MM#77a in the Final EIR/EIS. Agency and stakeholder review of this plan would be provided per the measure so that up-to-date information can be incorporated where possible and feasible.

1618-2651

The height and width of the wildlife crossings at Tulare Swale are dictated by engineering feasibility. Because of the amount of earth on top of the crossings, stabilizers are needed within the structure to support the width. It is for this reason that the requested width is not possible. However, the design widths are currently 30, 30, and 40 feet for each crossing. To compensate for the low height, which is constrained by engineering feasibility, three crossings are provided to improve the chances of use. As mentioned in other responses to POST comments, funnel fencing requirements were added to BIO-MM#77a in the Final EIR/EIS, as well as provisions for stakeholder review of the wildlife corridor design, implementation, and maintenance plan and mitigation planning. Finally, the Authority would work with the appropriate state and federal wildlife agencies through and beyond the permitting process to analyze and offset impacts.

1618-2652

BIO-MM#77a was revised in the Final EIR/EIS to include funnel fencing at crossing locations under Alternatives 1 and 3 and for crossings on the east side of Monterey Road under Alternatives 2 and 4, as feasible. The requirement that a wildlife crossing design, implementation, and maintenance plan be authored in coordination with agency and local stakeholders was also added to the measure in the Final EIR/EIS. These changes, along with the wildlife crossing monitoring and adaptive management plan requirement added as BIO-MM#77b in the Final EIR/EIS, should help address concerns about design and function. Regarding the commenter's note about improvements to the Fisher Creek culvert under Alternative 4, the Authority has clarified in the Final EIR/EIS that all alternatives would include improvements to the Fisher Creek culvert.

1618-2653

Alternative 4 is the Preferred Alternative, and thus the crossing would meet the commenter's suggested minimum design requirements. As noted in other POST responses, BIO-MM#77a was revised in the Final EIR/EIS to provide for agency and stakeholder review/coordination for 75%–90% design; mitigation land acquisition planning; and the wildlife crossing design, implementation, and monitoring program. These additions, along with the new wildlife crossing monitoring and adaptive management program in the Final EIR/EIS, are expected to considerably reduce stakeholder concern.

1618-2654

Per the WCA (Appendix C to Authority 2020a, as cited in Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS), which was summarized in the EIR/EIS and available upon request for review with the EIR/EIS, the wildlife crossings, combined with many other measures to reduce noise, light, train strike, etc., are considered sufficient to reduce impacts on wildlife movement to less than significant (without a wildlife overpass). HSR may increase the complexity and cost of building an overpass at Bailey Road because it would need to be longer, but that cost/complexity increase is not expected to preclude cost feasibility. Lastly, at the time of this writing, the Bailey Road overpass is not a funded project that would otherwise be built.

Response to Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

1618-2655

The Authority has corrected the names, locations, and acreages of affected conservation areas in the Final EIR/EIS. Bloomfield North and South are included in the Final EIR/EIS, replacing the area previously referred to as "Silacci Property". Regarding the comments on conflicts with the Santa Clara Valley Greenprint, the Authority recognizes that the plan has goals and objectives; however, without some quantitative metrics associated with them, the Authority is not able to fully assess the type or level of potential conflicts. Consequently, the assessment focuses on information that is known and that can be quantified, consistent with common practice under CEQA and NEPA.

1618-2656

The comment disagrees with the Draft EIR/EIS's conclusion that no agricultural conservation easements exist in the RSA. The comment notes that, in some cases, these lands are protected for agricultural uses in addition to other complementary co-benefits.

To address this comment, the Final EIR/EIS includes the following clarifications. Statements that there are no agricultural conservation easements in the RSA were removed from Section 3.14.1, Introduction, and from Section 3.14.1.1, Definition of Terminology, in the Final EIR/EIS. New text describing methods used to describe and analyze impacts on agricultural conservation easements was added to Section 3.14.4, Methods for Evaluating Impacts, of the Final EIR/EIS. New text describing the agricultural conservation easements present in the RSA was added to Section 3.14.5, Affected Environment, in a new subsection entitled Agricultural Conservation Easement Contract Farmlands, in the Final EIR/EIS. A discussion of agricultural conservation easement impacts was added to Section 3.14.6.2, Important Farmland and Williamson Act and Agricultural Conservation Easement Contract Lands, and Impact AG#8 in the Final EIR/EIS. Impact AG#8 was revised to account not only for Williamson Act Farmland but also agricultural conservation easements in the Final EIR/EIS.

With respect to agricultural conservation easements, the Draft EIR/EIS states that there would be no impact. Based on the revised analysis in the Final EIR/EIS, the impact would be less than significant. Table 3.14-14 in Section 3.14, Agricultural Farmland, was revised to reflect the changed content of Impact AG#8 in the Final EIR/EIS. However, there were no changes to the conclusions regarding Impact AG#8 because the impact conclusion in the Draft EIR/EIS was less than significant.

Response to Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

1618-2657

The comment states that the Draft EIR/EIS incorrectly reports that no conversion of Important Farmland would occur in the Monterey Corridor Subsection. The comment does not identify parcels of Important Farmland in the Monterey Corridor Subsection that would be permanently converted to nonagricultural use. Prior to publication of the Final EIR/EIS, the Authority recalculated the GIS findings using data from the baseline year and confirmed that, based on analysis of baseline conditions, no permanent conversion of Important Farmland would occur in the Monterey Corridor Subsection. As described in Impact AG#2 in Section 3.14, Agricultural Farmland, all four project alternatives would result in permanent conversion of Important Farmland to nonagricultural use. This impact under CEQA would be significant and unavoidable for all alternatives, which is the correct determination based on the effects analysis and evidence presented.

1618-2658

The comment noted that the Draft EIR/EIS does not include the Santa Clara Valley Agricultural Plan and the Santa Clara Valley Greenprint. To address this comment, additional discussion of these plans and relevant policies have been added to Section 3.14.3, Consistency with Plans and Laws; Volume 2, Appendix 2-J, Regional and Local Plans and Policies; and Volume 2, Appendix 2-K, Policy Consistency Analyses, of the Final EIR/EIS. The addition of these plans to the Final EIR/EIS did not change any impact conclusions.

1618-2659

The comment notes that the Draft EIR/EIS omitted discussion of the Pajaro River Soap Lake Floodplain Preservation Project Initial Study (Pajaro River Watershed Flood Prevention Authority 2005, as cited in Section 3.14 of the Final EIR/EIS). To address this comment, Section 3.14.5.2, Resource Study Area, was revised in the Final EIR/EIS to include reference to this environmental document and the easement that it evaluates. Because the Pajaro River Flood Prevention Authority's Soap Lake Floodplain Preservation Project Final Initial Study and Negative Declaration (Pajaro River Watershed Flood Prevention Authority 2005, as cited in Section 3.14, Agricultural Farmland, of the Final EIR/EIS) is an environmental document rather than a planning document, a discussion about this Initial Study was added to Section 3.14.5.2, but the Initial Study was not added to Appendix 2-J. The HSR project has been designed in full awareness of the sensitivity of the Soap Lake floodplain to development and analysis conducted on how the project could affect floodplain hydraulics both within Soap Lake and in downstream areas along Pajaro River. The Authority performed hydrologic and hydraulic modeling to ensure the project would be designed to avoid substantial impacts on the floodplain and downstream. As stated in the response to submission SJM-1743, comment 623, the project would conflict with terms of existing conservation easements by acquiring the easements or portions of the easements and converting them into a transportation corridor. However, hydraulic modeling indicates that developing these easements into the HSR corridor would not substantially affect the hydrology or hydraulics of Soap Lake. Additionally, the response to submission SJM-1743, comment 625 describes that while there would be increases in downstream flows under Alternative 4, this increase would not result in a substantial impact on downstream floodplains. Furthermore, the responses to both submission SJM-1743, comments 625 and 626 describe how additional mitigation for downstream flooding impacts is not required under CEQA for the project alternatives.

Response to Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

1618-2660

The comment asked whether the EIR/EIS would be updated with the newest data from the Department of Conservation FMMP from 2020. With respect to Important Farmland baseline data, updating the analysis to current FMMP data would cause the baseline to be changed between the draft environmental document and the final environmental document. The EIR/EIS correctly uses the same baseline agricultural data throughout, and the baseline was not updated for the Final EIR/EIS. The right-of-way and acquisition process, in contrast, would consider the acreages of agricultural resources affected by the project at the time of right-of-way and acquisition.

1618-2661

The comment noted that the Draft EIR/EIS does not define the term "agricultural region" in AG-MM#1. The agricultural conservation easement program described in AG-MM#1 utilizes clear performance standards that guide the types of agricultural conservation easements that the Authority should purchase, focusing on quality and quantity of the land, not simply geographic location. Furthermore, the agricultural conservation easement program requires willing sellers. These performance standards are designed to ensure enforceability and require that the mitigation functions as intended.

In addition, the comment asked whether the EIR/EIS would be revised to clarify how the project would address changing conditions as they relate to Important Farmland that would be converted by the project. The Draft EIR/EIS described the baseline of Important Farmland in terms of FMMP mapping as of 2014. The EIR/EIS correctly uses the same baseline data throughout, and the baseline was not updated for the Final EIR/EIS. Mitigation acreages would be based on conditions at the time of construction.

1618-2662

The comment asks whether mitigation of permanent conversion of Important Farmland would be done in coordination with local conservation entities and would provide preference to projects that occur within approved local agricultural preservation plans. As described in AG-IAMF#3, the Authority would engage with local and regional entities that are interested in purchasing remnant parcels, including entities whose purpose is to preserve lands in agricultural use. The Authority is committed to preserving Important Farmland and would look for opportunities to partner with entities that preserve Important Farmland.

Response to Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

1618-2663

Refer to Standard Response SJM-Response-AG-2: Farmland Impacts—Remnant Parcels.

The comment asks whether the EIR/EIS would include additional mitigation measures to ensure that remnant parcels that are not viable for continued agricultural use would be permanently conserved from additional development. The Authority administers the Farmland Consolidation Program as a project feature (AG-IAMF#3), facilitating the sale of remnant parcels to neighboring landowners for consolidation with adjacent farmland properties. As a part of that process, the Authority would engage with local and regional entities that are interested in purchasing remnant parcels, including entities whose purpose is to preserve lands in agricultural use. The Authority is committed to preserving Important Farmland and would look for opportunities to partner with entities that preserve Important Farmland. Any future development would be restricted and defined per local government adopted general plans and zoning ordinances.

The Authority has also developed mitigation measures to address Impact AG#3. Specifically, AG-MM#1 relates to the agricultural conservation easement program that applies to all conversion of Important Farmland, including remnant parcels; AG-MM#2 relates to minimizing the project footprint; and AG-MM#3 relates to the potential for modification of access to parcels that might otherwise be severed, including through the design of overcrossings or undercrossings, to allow property owners to continue to access and farm those parcels. Even with the application of mitigation, however, this impact remains significant and unavoidable.

1618-2664

The comment states that the Draft EIR/EIS does not explain the rationale for the 0.5:1 mitigation ratio used in AG-MM#1. See response to comment SJM-2489. In addition, the comment asked whether AG-MM#1 would be revised to increase the mitigation ratio from 0.5:1 to 1:1 for agricultural land within the 25-foot-wide area. Because this ratio was determined in consultation with the agricultural community, this ratio was not revised in the Final EIR/EIS.

1618-2665

The comment describes various recent agricultural preservation initiatives and requested the Final EIR/EIS discuss them in the No Project Alternative analysis. The Draft EIR/EIS description of the No Project Alternative properly focuses on reasonably foreseeable activities that would adversely affect the resource, whereas the activities discussed in the comment relate to improving the resource.

To address this comment, additional discussion of these initiatives to preserve agricultural farmland was added to the No Project Impacts discussion in Section 3.14.6.2, Important Farmland and Williamson Act and Agricultural Conservation Easement Contract Lands, in the Final EIR/EIS; however, the additional text does not change the conclusions of the No Project impacts discussion.

The comment also states that the Draft EIR/EIS does not recognize the potential growth-inducing impacts associated with the project. Please refer to Section 3.18, Regional Growth, in the Draft EIR/EIS, which does evaluate growth inducement and concludes the unplanned growth associated with the project would be small in comparison to anticipated population and employment growth. The discussion relies on adopted land use plans for a view of what the future might look like. The comment also states that the Draft EIR/EIS does not evaluate how growth-inducing impacts may increase conversion of agricultural land and agricultural parcels to rural residential uses near project stations. Please refer to Section 3.13.6, Environmental Consequences, Impact LU#4 of the Draft EIR/EIS for discussion of potential for conversion of agricultural land near project station areas. The key point, however, is that any future development accommodating induced growth would be consistent with adopted local government general plans, station-area plans, and zoning ordinances.

Response to Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

1618-2666

The comment refers to the Draft EIR/EIS's discussion on page 3.14-34 of notifications to agricultural property owners or leaseholders that are adjacent to the area of project footprint disturbance; this discussion of notifications does not refer to instances where an agricultural property owner's property would be acquired by the Authority for use as part of the project footprint, because that is a separate and distinct process. The comment requests a minimum 12-month notice to farmland property owners and leaseholders in advance of any construction activities. The Authority complies with right-of-way notification requirements, which provide for a 3- to 12-month notification window. This lead time allows property owners or leaseholders to prepare functionally and economically for the temporary change in circumstances, including to make changes to their operations in anticipation of and in response to project construction. This commitment is formalized in AG-IAMF#4.

In addition, the comment asked whether mitigation would be added to ensure that property owners and leaseholders whose operations are impacted by project construction are able to find alternative farmland in the agricultural region to support their operations. Temporary and permanent impacts to the agricultural economy are discussed in Section 3.12, Socioeconomics and Communities, of the Draft EIR/EIS, including Impacts SOCIO#12 and SOCIO#13, and agricultural displacements and relocations are discussed in Impact SOCIO#8. CEQA does not require mitigation for these economic and social changes.

Temporary impacts on agricultural land, therefore, would not receive financial compensation. However, as discussed in Section 3.12 of the Draft EIR/EIS, there would likely be sufficient relocation supply for permanently affected agricultural businesses, and the Authority's right-of-way agents would work with each affected agricultural business to address issues of concern. Agents would attempt to resolve conflicts; for example, facilities potentially could be reconfigured so that there would be no net loss of operational capacity. The agents may not be able to resolve all issues and may offer compensation to landowners who demonstrate a hardship from loss of facilities.

1618-2667

As stated in Section 3.15, Parks, Recreation, and OpenSpace, of the Draft EIR/EIS, "Resources not available for public use, such as privately owned churches with playfields, privately owned recreational facilities, private schools, conservation easements, or agricultural preserves, are not included in this analysis." Coyote Ridge Open Space Preserve, the Northern Coyote Valley Conservation Area, and Tulare Meadows Conservation Easement are not included in this analysis. Conservation easements' and agricultural preserves' primary purpose is conservation, not recreation. Impacts on these types of resources are included in Sections 3.7, Biological and Aquatic Resources, or 3.14, Agricultural Farmland, of the Draft EIR/EIS. The Authority verified data from the 2016 California Protected Areas Database and other sources of information on parks, recreation, and open space resources. Based on public comments received on the Draft EIR/EIS, the Authority added five parks and one bicycle route to the analysis in Section 3.15 of the Final EIR/EIS. Conservation easements are discussed in more detail in Section 3.7, Biological and Aquatic Resources.

Response to Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

1618-2668

As stated in Section 3.15, Parks, Recreation, and OpenSpace, of the Draft EIR/EIS, the Santa Clara County Countywide Trails Master Plan, the Santa Clara County Valley Green print, and the North Coyote Valley Ridge Trails Feasibility Study were consulted for the regional and local plans and policies analysis. Planned trails were included in the analysis only if they were approved as a capital project and funded. The Santa Clara County Countywide Trails Master Plan, Santa Clara County Valley Greenprint, and the Bay Area Ridge Trail Council's Coyote Valley Trails Feasibility Study were reviewed to determine if any of the planned trails were also approved and funded. The Santa Clara County Countywide Trails Master Plan is not a funding-constrained plan; thus, unless the trail was otherwise existing or planned/funded in other documents, trails in the plan are not funded or approved and were not included in the analysis. The Santa Clara County Valley Greenprint is a vision document and unless otherwise indicated in other documents, trails in the vision that are not indicated as existing are not funded or approved and therefore not included in this analysis. The Bay Area Ridge Trail Council's North Coyote Valley Ridge Trails Feasibility Study was approved in November 2020, and the Ridge Trail project includes redesigning a separated trail along the existing Bailey Avenue overpasses to connect Coyote Ridge Open Space to the Coyote Valley Conservation Areas. The Ridge Trail project is not funded or approved and is not included in this analysis. Changes to Section 3.15 and Appendix 2-J associated with approval of the NCVRT Feasibility Study include identification of one corridor across North Coyote Valley that was determined to be feasible by partners and land managers within the next 5 to 10 years. These trail improvements include four segments -- Santa Teresa County Park through IBM Lands; North Coyote Valley Conservation Area to Bailey Avenue; Bailey Avenue Class I Trail to Coyote Ridge Open Space Preserve; and Santa Teresa County Park to Calero County Park.

1618-2669

The Draft EIR/EIS did use several of the eleven references provided by the commenter, including the California Essential Habitat Connectivity Project and the Santa Clara Valley Habitat Plan, as listed in Chapter 12, References. The comment noted that the Draft EIR/EIS does not include the Santa Clara Valley Agricultural Plan and the Santa Clara Valley Greenprint. To address this comment, additional discussion of these plans and relevant policies have been added to Section 3.14.3, Consistency with Plans and Laws; Volume 2, Appendix 2-J, Regional and Local Plans and Policies; and Volume 2, Appendix 2-K, Policy Consistency Analyses, of the Final EIR/EIS. The addition of these plans to the Final EIR/EIS did not change any impact conclusions.

1618-2670

The Authority has revised Tables 3.7-11 and 3.7-22 in the Final EIR/EIS to make several corrections and to reflect the most up-to-date data on protected areas and conservation easements. These revisions include the revised boundaries of the Pacheco Creek Regional Open Space Reserve and other corrections to the names of easements as noted by the commenter.

1618-2671

Comment noted. Thank you.

1618-2672

The comment states that new access and relocation of municipal water well and pump station facilities in Alternative 4 may conflict with the conservation easement located on the Tulare Meadows property in the North Coyote Valley Conservation Area and may affect a planned wildlife overcrossing. Improvements to the existing access road are needed to access the PTC site. Relocating the municipal water wells and pump station facilities is required to accommodate an additional track. A wildlife crossing would fit between the existing well/pump locations north of Bailey Avenue. The Authority will work with Peninsula Open Space Trust, The Nature Conservancy, and SCVOSA during Detailed Design Post-ROD to resolve conflicts with adjacent land uses and projects.

Response to Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

1618-2673

The commenter is apparently referring to potential wildlife crossing design hazards that could result in animals dropping (falling off of) ledges or other exposed structures. As noted in revised mitigation measure BIO-MM#77a in the Final EIR/EIS, the Authority has further clarified the process that would be used to site and design crossings, in coordination with agency and stakeholder partners in the region to avoid and minimize these issues and to incorporate appropriate specific designs into the project. The Authority believes this measure is necessary because the project has not been fully designed yet and is therefore conceptual in nature. Additionally, land ownership and land use could change between the Final EIR/EIS and the time of construction. BIO-MM#77a would ensure that current land use is considered and the most optimal placement of wildlife crossings.

1618-2674

As noted in revised mitigation measure BIO-MM#77a in the Final EIR/EIS, the Authority has further clarified the process that would be used to site and design crossings, in coordination with agency and stakeholder partners in the region. Additionally, land ownership and land use could change between the Final EIR/EIS and the time of construction. BIO-MM#77a would ensure that current land use is considered in determining and the most optimal placement of wildlife crossings.

1618-2675

BIO-MM#76 in the Final EIR/EIS provides for wildlife-friendly fencing around soil stabilization areas, which would allow individuals to move through these areas. The embankment/at-grade section would pose a barrier, but there are aerial sections on each end so that animals can move around it or through it using the four crossings. The fence should funnel animals to aerial sections or crossings.

1618-2676

BIO-MM#77a was revised in the Final EIR/EIS to include the use of funnel fencing, where feasible, on all crossings east of Monterey Road under Alternatives 2 and 4 and for all crossings under Alternatives 1 and 3 to address this concern.

1618-2677

The comment asks how impacts from operations such as light and noise would be mitigated for Alternative 2. Impact BIO#47 in Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS is considered to be less than significant under CEQA, so mitigation is not required. The project would implement BIO-IAMF#12 and AVQ-IAMF#1 to avoid and minimize lighting impacts. The Final EIR/EIS revises mitigation measure AVQ-MM#7 in Section 3.16, Aesthetics and Visual Quality, to clarify that transparent materials would not be used in noise barriers located in Audubon Important Bird Areas or where noise barriers are being used to attenuate bird startle effects. As noted in Section 3.4.8.2, Operations Noise, of the Draft EIR/EIS under all project alternatives, the Ldn contribution from these facilities would not generate additional noise impact beyond the train operations noise impacts. According to the Noise and Vibration Technical Report (Appendix 3.4-A, located in Volume 2, Technical Appendices, of the Draft EIR/EIS), the highest noise levels from ancillary facilities like the TPF would be 63 Ldn dBA at 110 feet when combined with other operational noises, but no TPF would generate noise impact due to the substation facility alone. The response of terrestrial wildlife to noise depends on the timing, intensity, and frequency of the sound, as well as the species' tolerance to noise. Livestock within approximately 30 feet of the edge of the HSR right-of-way would experience startle effects and stress from train passbys, and livestock within 65 feet of horn-sounding locations would experience startle effects and stress from horn sounding. Section 3.4, Noise and Vibration, and Section 3.16, Aesthetics and Visual Quality, of the Draft EIR/EIS describe design features and mitigation that would reduce effects from operation of the project. Other resource sections contain appropriate mitigation measures to reduce impacts during operation.

1618-2678

While there is some additional noise associated with tunnel portals, impacts relative to tunnel portal noise would be less than significant. As such, CEQA does not require mitigation. Please refer to Impact NV#5 in Section 3.4, Noise and Vibration, of the Draft EIR/EIS for more information regarding tunnel portals. Tunnel and tunnel portal design features would be used to attenuate noise associated with HSR trains entering and exiting tunnels. The HSR right-of-way would be fenced off and dedicated wildlife crossings have been included in the proposed project to facilitate permeability to wildlife.

Response to Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

1618-2679

BIO-MM#72 outlines the requirements for compensatory mitigation for impacts on riparian habitats. Permanent impacts cannot be addressed on site (as that habitat is lost) but can be addressed near site. The compensation strategy is written to always prioritize lands in proximity to the impact unless the preservation/enhancement/restoration benefit would provide greater community/species benefit elsewhere.

1618-2680

The commenter's meaning is unclear; however, if by "wildlife-friendly fencing" the commenter means fencing that allows continued movement under or over the fencing around the rail, this is not a feasible measure because it would violate safety and security requirements, as well as allow wildlife onto the rail where it could be struck and killed. Fencing surrounding soil stabilization areas in western Pacheco Pass would be wildlife friendly (with another fence closest to the rail that would be impermeable).

1618-2681

Impacts on farmland and associated mitigation are described in Section 3.14, Agricultural Farmland, of the EIR/EIS. Roadway improvements or changes to be implemented as part of the project are not expected to change existing conditions. Therefore, no mitigation is required.

1618-2682

The comment requests that the Blanchard Road extension on Sheet CV-S0802 be coordinated with the land manager with the Santa Clara Valley Open Space Authority (SCOSA). If Alternative 2 is selected, the Blanchard Road extension design will be refined during Detailed Design and would occur Post-ROD in coordination with the SCOSA.

1618-2683

As noted in the Draft EIR/EIS, various HSR buildings and facilities would be lit throughout the night, contributing to localized increases in nighttime light levels. There would be no overhead lights on the HSR guideway. The project features (AVQ-IAMF#1) would provide lighting and building design intended to conform to the local design context. Fixed lighting sources at proposed HSR facilities, (including stations, tunnel portals, TPSS, and maintenance facilities), would be designed to direct lighting downward, minimizing light spillover; however, the 24-hour operation of the facilities would require a minimum level of lighting for work safety and security. Additionally, in Section 3.16, Aesthetics and Visual Quality, mitigation measures AVQ-MM#4: Provide Vegetation Screening along At-Grade and Elevated Guideways Adjacent to Residential Areas, AVQ-MM#6: Screen Traction Power Distribution Stations and Radio Communication Towers, and NV-MM#3: Implement Proposed California High-Speed Rail Project Noise Mitigation Guidelines are proposed to mitigate lighting impacts from HSR operations described in Impact AVQ#19: Permanent Direct Impacts on Nighttime Light Levels at Fixed Locations and Impact AVQ#20: Permanent Direct Impacts on Nighttime Light Levels from Trains. In Section 3.2, Transportation, Impacts TR#6, Continuous Permanent Delay/Congestion Consequences on Freeway Operations and TR#7, Continuous Permanent Delay/Congestion Consequences on Intersection Operations describe impacts of HSR operations on traffic under each alternative. TR-MM#1 describes potential mitigation that could be implemented to address traffic delays. In Section 3.4, Noise and Vibration, Impact NV#2: Intermittent Permanent Exposure of Sensitive Receptors to Noise from Train Operations describes impacts from HSR operation to sensitive receptors by alternative. Section 3.4.7 describes mitigation measures to reduce these impacts, including NV-MM#3: Implement Proposed California High-Speed Rail Project Noise Mitigation Guidelines, NV-MM#4: Support Potential Implementation of Quiet Zones by Local Jurisdictions, NV-MM#5: Vehicle Noise Specification, NV-MM#6: Special Trackwork at Crossovers, Turnouts, and Insulated Joints, and NV-MM#7: Additional Noise Analysis during Final Design. BIO-MM#80 was also modified in the Final EIR/EIS to further address noise and light impacts to wildlife from HSR facilities and operations. Additionally, the comment requests clarification on curbs and fencing adjacent to the facility shown on sheet TT-1403 for Alternative 3. Sheet TT-1403 is relevant for all four alternatives, as it shows the west portal of Tunnel 2, where the alignment is the same for all four alternatives. Maintenance access roads to HSR facilities will not typically be curbed. Fencing for the access road will be

Response to Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

1618-2683

provided as needed to control access to HSR facilities. The Authority will install fencing around the portal facility to restrict access.

1618-2684

Please refer to the response to submission SJM-1618, comment 2683.

1618-2685

The road referenced by the comment is Palm Avenue. As noted in Section 3.2, Transportation, of the Draft EIR/EIS, impacts were analyzed if they would increase traffic above baseline levels. The analysis assumes that little HSR station-related traffic would utilize Palm Avenue because the Downtown Gilroy and San Jose Diridon Stations are each more than 14 miles from the roadway. Alternative 2 would retain and improve the Palm Avenue connection to Monterey Road. Since the project would not negatively impact roadway operations at this location, detailed counts or forecasts of traffic levels were not prepared for Palm Avenue. Given the rural nature of the surrounding land uses, traffic levels at this location are expected to be light and therefore related impacts from light, noise, and pollutants are also expected to be insubstantial.

1618-2686

Please see response to submission SJM-1618, comment 2673.

1618-2687

Impacts on California red-legged frog and its habitat are identified in Impact BIO#8. Impacts are significant, and numerous mitigation measures are required, as listed in Table 3.7-27 in Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS. Most relevant to this comment are BIO-MM#10 and BIO-MM#33. BIO-MM#33 provides the possibility of mitigation through purchase of credits at an approved conservation bank, but, to the extent that the Authority does not utilize that option, BIO-MM#10 contains provisions that ensure coordination with SCVHA in development of the mitigation plan and, potentially, long-term management of the mitigation lands.

1618-2688

Refer to Standard Response SJM-Response-BIO-7: Clarifications Regarding Project Conflicts with the Santa Clara Valley Habitat Plan.

1618-2689

Refer to Standard Response SJM-Response-BIO-7: Clarifications Regarding Project Conflicts with the Santa Clara Valley Habitat Plan.

1618-2690

The analysis of Impact BIO#53 notes the conservation importance of the Pacheco Creek sycamore woodland, and that impact is found to be significant because of impacts in upper Pacheco Creek, including the impacts on sycamore woodland. Mitigation is required, and the analysis also notes that, within the study area, the availability of unprotected sycamore woodland far exceeds the combined conservation needs of SCVHA and HSR.

1618-2691

Refer to Standard Response SJM-Response-BIO-7: Clarifications Regarding Project Conflicts with the Santa Clara Valley Habitat Plan.

1618-2692

Refer to Standard Response SJM-Response-BIO-7: Clarifications Regarding Project Conflicts with the Santa Clara Valley Habitat Plan.

1618-2693

Refer to Standard Response SJM-Response-BIO-7: Clarifications Regarding Project Conflicts with the Santa Clara Valley Habitat Plan.

1618-2694

Refer to Standard Response SJM-Response-BIO-7: Clarifications Regarding Project Conflicts with the Santa Clara Valley Habitat Plan.

Response to Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

1618-2695

Refer to Standard Response SJM-Response-BIO-7: Clarifications Regarding Project Conflicts with the Santa Clara Valley Habitat Plan.

1618-2696

Refer to Standard Response SJM-Response-BIO-7: Clarifications Regarding Project Conflicts with the Santa Clara Valley Habitat Plan.

1618-2697

Refer to Standard Response SJM-Response-BIO-7: Clarifications Regarding Project Conflicts with the Santa Clara Valley Habitat Plan.

1618-2699

The analyses of noise (Impact BIO#44) and vibration (Impact BIO#47) impacts on wildlife did not identify any substantial noise or vibration impacts on tricolored blackbird colonies in upper Pacheco Creek or in the Coyote Valley. Accordingly, no issue appears to exist, and commenter provides no evidence in support of their assertion to the contrary.

1618-2698

Refer to Standard Response SJM-Response-BIO-7: Clarifications Regarding Project Conflicts with the Santa Clara Valley Habitat Plan.

1618-2700

Refer to Standard Response SJM-Response-BIO-7: Clarifications Regarding Project Conflicts with the Santa Clara Valley Habitat Plan.

1618-2701

Refer to Standard Response SJM-Response-BIO-7: Clarifications Regarding Project Conflicts with the Santa Clara Valley Habitat Plan.

1618-2702

Refer to Standard Response SJM-Response-BIO-7: Clarifications Regarding Project Conflicts with the Santa Clara Valley Habitat Plan.

1618-2703

Refer to Standard Response SJM-Response-BIO-7: Clarifications Regarding Project Conflicts with the Santa Clara Valley Habitat Plan.

1618-2704

Refer to Standard Response SJM-Response-BIO-7: Clarifications Regarding Project Conflicts with the Santa Clara Valley Habitat Plan.

1618-2705

Refer to Standard Response SJM-Response-BIO-7: Clarifications Regarding Project Conflicts with the Santa Clara Valley Habitat Plan.

1618-2706

Refer to Standard Response SJM-Response-BIO-7: Clarifications Regarding Project Conflicts with the Santa Clara Valley Habitat Plan.

1618-2707

Refer to Standard Response SJM-Response-BIO-7: Clarifications Regarding Project Conflicts with the Santa Clara Valley Habitat Plan.

The Authority is unable to find reference to a BIO-IAMF#25 or other IAMF similar to what is described in commenter's comment. However, as noted in Table 1 in the standard response, conflicts with LM-2 are not anticipated because other mitigation measures including BIO-MM#77a, BIO-MM#77b, BIO-MM#78, and BIO-MM#79, would also minimize the potential for any further conflicts. These measures require the Authority to develop plans for crossings in coordination with stakeholders such as the commenter to establish crossings in Pacheco Pass, to monitor crossings and implement adaptive management to ensure effectiveness, and to mitigate residual impacts through the conservation of lands important to facilitate movement between the Santa Cruz Mountains and the Diablo Range. Collectively, this approach supports the finding that conflicts will not occur.

Response to Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

1618-2708

Refer to Standard Response SJM-Response-BIO-7: Clarifications Regarding Project Conflicts with the Santa Clara Valley Habitat Plan.

1618-2709

Refer to Standard Response SJM-Response-BIO-7: Clarifications Regarding Project Conflicts with the Santa Clara Valley Habitat Plan.

1618-2710

Refer to Standard Response SJM-Response-BIO-7: Clarifications Regarding Project Conflicts with the Santa Clara Valley Habitat Plan.

1618-2711

Refer to Standard Response SJM-Response-BIO-7: Clarifications Regarding Project Conflicts with the Santa Clara Valley Habitat Plan.

1618-2712

Refer to Standard Response SJM-Response-BIO-7: Clarifications Regarding Project Conflicts with the Santa Clara Valley Habitat Plan.

The commenter asserts that there could be conflicts with the SCVHCP/NCCP related to maintenance of connections between large open parcels and habitat linkages. Potential conflicts with the SCVHCP are identified in Impact BIO#53, which finds impacts related to loss of California sycamore woodland habitat but does not find evidence for conflicts related to habitat connectivity. Commenter asserts such a conflict but provides no evidence or argument in support of the assertion. Lacking such evidence, there is no apparent conflict. The analysis of wildlife passage (Impact BIO#43) at western Pacheco Pass finds, however, that impacts are significant, and mitigation is required in the form of BIO-MM#77 and BIO-MM#78. Residual impacts are less than significant.

1618-2714

Refer to Standard Response SJM-Response-BIO-7: Clarifications Regarding Project Conflicts with the Santa Clara Valley Habitat Plan.

1618-2713

Refer to Standard Response SJM-Response-BIO-7: Clarifications Regarding Project Conflicts with the Santa Clara Valley Habitat Plan.

1618-2715

Refer to Standard Response SJM-Response-BIO-7: Clarifications Regarding Project Conflicts with the Santa Clara Valley Habitat Plan.

1618-2716

Refer to Standard Response SJM-Response-BIO-7: Clarifications Regarding Project Conflicts with the Santa Clara Valley Habitat Plan.

1618-2718

Refer to Standard Response SJM-Response-BIO-7: Clarifications Regarding Project Conflicts with the Santa Clara Valley Habitat Plan.

The commenter asserts that there might be a conflict related to landscape resilience goals in the SCVHP. As described in the BARTR [Appendix I to Authority2020a, as cited in Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS], the landscape resilience goals were assessed for potential conflicts. The goal referenced by the commenter is aspirational in nature, and it relies further on Design Principals which are also aspirational in nature, and thus it is difficult to assess for specific conflicts. However, the Authority has taken a methodical approach to assessing conflicts, including those related to wildlife movement as noted by the commenter as an example. The comment does not provide facts showing any definitive or potential conflicts related to landscape resilience goals and thus the analysis in the EIR/EIS is accurate and consistent with our requirements under CEQA and NEPA.

Response to Submission 1618 (Walter Moore, Peninsula Open Space Trust, The Nature Conservancy, Santa Clara Valley Open Space Authority, June 23, 2020) - Continued

1618-2717

Conflicts with the SCVHCP/NCCP are identified in Impact BIO#53, which finds impacts related to loss of California sycamore woodland habitat but does not find evidence for conflicts related to habitat fragmentation and patch effects. Fragmentation and patch effects are addressed on a species-by-species basis in the Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS analysis and are resolved primarily through the mechanism of compensatory mitigation, administered through Mitigation Measure BIO-MM#10 and through a large number of species-specific mitigation measures.

1618-2719

Refer to Standard Response SJM-Response-BIO-7: Clarifications Regarding Project Conflicts with the Santa Clara Valley Habitat Plan.

1618-2720

Refer to Standard Response SJM-Response-BIO-7: Clarifications Regarding Project Conflicts with the Santa Clara Valley Habitat Plan.

1618-2721

Refer to Standard Response SJM-Response-BIO-7: Clarifications Regarding Project Conflicts with the Santa Clara Valley Habitat Plan.

Please also refer to response to submission SJM-1618, comment 2712 regarding project effects on habitat connectivity and response to submission SJM-1618, comment 2717 regarding project effects on habitat fragmentation. Both impacts are considered significant, but they are reduced to less-than-significant after implementation of required mitigation. Section 3.8, Hydrology and Water Resources, of the EIR/EIS and associated technical analyses provide detailed descriptions of the hydrological setting and efforts to minimize or avoid disruptions to hydrological processes on the landscape from the project.

1618-2722

Commenter states there would be a "direct conflict" with an unclear, qualitative design principle and provides no evidence in support of this conclusory statement. No conflict is apparent.

1618-2723

Commenter states the project "will affect multiple benefits as well as connectivity." Commenter does not identify the "multiple benefits", and they are not apparent. See response to submission SJM-1618, comment 2712 regarding project effects on habitat connectivity. No issue is apparent.

1618-2724

Please refer to response to submission SJM-1618, comment 2712 regarding project effects on habitat connectivity, including the western Pacheco Pass area.

1618-2725

The NEPA/CEQA analysis does not identify an impact due to disruption of the hydrologic regime in the Pacheco or Fisher Creek watersheds, and commenter provides no evidence to the contrary. Thus, there is no issue to resolve.

1618-2726

Refer to Standard Response SJM-Response-BIO-1: Wildlife Connectivity in Coyote Valley and Pacheco Pass.

Please refer to response to submission SJM-1618, comment 2712 regarding project effects on habitat connectivity, including the western Pacheco Pass area.

Submission 1287 (Neal Sharma, Peninsula Open Space Trust, May 19, 2020)

San Jose - Merced - RECORD #1287 DETAIL

Status : Action Pending
Record Date : 5/19/2020
Submission Date : 5/19/2020
Interest As : Business and/or Organization
First Name : Neal
Last Name : Sharma

Stakeholder Comments/Issues :

To Whom It May Concern,

222 High Street
Palo Alto, CA 94301
Office: (650) 854-7696
Direct: (650) 352-6320
openspacetrust.org

1287-78

Peninsula Open Space Trust (POST) respectfully requests an extension of time for the public comment period of the "California High-Speed Rail Project - San Jose to Merced Project Section Draft EIR/EIS."

As posted, the DEIR/DEIS is available for public review for 45 days, ending on June 8, 2020. POST, like many other organizations, public agencies, and private individuals throughout California, has encountered disrupted work schedules and other complications from the current statewide stay-at-home order at a time when we are normally very busy. We believe we are not the only entity seeking to extend the public comment period for this Project Section because so many of us have been under duress for several weeks.

POST formally requests that the public comment period for the San Jose to Merced Project Section DEIR/DEIS be extended by a minimum of two weeks and would strongly recommend that the HSR Authority extend the period for a full 30 days beyond this initial 45-day comment period.

Thank you very much for your consideration,

Neal Sharma

Neal Sharma
Wildlife Linkages Program Manager
Peninsula Open Space Trust

Response to Submission 1287 (Neal Sharma, Peninsula Open Space Trust, May 19, 2020)

1287-78

Refer to Standard Response SJM-Response-OUT-1: Public Outreach.

Submission 1473 (Jacqui Sigg, Realty Income Corporation, June 23, 2020)

San Jose - Merced - RECORD #1473 DETAIL

Status : Unread
Record Date : 6/23/2020
Submission Date : 6/23/2020
Interest As : Business and/or Organization
First Name : Jacqui
Last Name : Sigg

Stakeholder Comments/Issues :

1473-2340

Realty Income Corporation is the Owner of two properties, Home Depot located at 860 East Dunne Ave, Morgan Hill, CA and Hobby Lobby located at 990 Cochrane Plaza, Morgan Hill, CA that have the potential to be significantly impacted by Route Alternatives 1 and 3 of the California High Speed Rail Project.

As landowners, we strongly oppose the Route Alternatives 1 and 3, due to the significant disruption and impacts to our parcels and business operations. Our tenants operate high demand business, and Routes 1 and 3 as proposed would adversely impact our current use and operations at each site and would further hinder our flexibility and optionality in the future. As the landowner, this is of extreme concern given the proposed design and rights to be acquired for Route Alternatives 1 and 3 would detrimentally impact our marketability of both properties.

The design proposed for Route Alternatives 2 and 4 have no impacts to either of our properties and their current operations, which is preferred in order to protect our property value, marketability, and Company's portfolio. Should the route finalized for the project result in significant impacts to either site, the necessary actions will need to be taken to mitigate any financial costs associated with said impacts and the rights acquired. We strongly suggest the DOT thoroughly consider either route alternative 2 or 4, as alternative 1 and 3 would significantly impact two of our business operations.

Please keep us apprised on the decision process and advise when a decision has been made and a route has been chosen.

Thank you,

Jacqui

Response to Submission 1473 (Jacqui Sigg, Realty Income Corporation, June 23, 2020)

1473-2340

Refer to Standard Response SJM-Response-ALT-1: Alternatives Selection and Evaluation Process, SJM-Response-ALT-2: Project-Specific Alternatives Considerations, SJM-Response-ALT-3: Rejection of Alternative 3.

The comment's support for Alternatives 2 and 4 and opposition to Alternatives 1 and 3 is noted.

Submission 1378 (Christophe Rebboah, Rebekah Children's Services, May 27, 2020)

San Jose - Merced - RECORD #1378 DETAIL

Status : Action Pending
Record Date : 6/16/2020
Submission Date : 5/27/2020
Interest As : Business and/or Organization
First Name : Christophe
Last Name : Rebboah

Stakeholder Comments/Issues :

MR. REBBOAH: Great. Hello, can you hear me?

MR. GOLDMAN: Yes, we can hear you.

MR. REBBOAH: Great. Yeah, my name's Christophe Rebboah, I'm the CEO for Rebekah Children's Services in Gilroy. We serve the local community, up to 7,000 kids and families per year. We serve those who are most disadvantaged in our community.

1378-152

The rail's going to certainly impact our area in a very significant way. My comment is just one -- I just want to verbalize really the need. And the need is just to ensure that when the rail comes through that the environment on IOOF by Rebekah Children's Services and South Valley School have well thought out safe access to and from IOOF to Monterey Highway and by way of a pedestrian bridge. There's a whole list of other things that we have put forth in terms of request but really want to make sure that the panel understands the need for safety and efficiency for our kids and our families in our area.

Thank you.

COURT REPORTER: Could you please spell your name again?

MR. REBBOAH: Yes. Christophe. Yes. So it's Christophe. It's Christopher without the R at the end, basically, Rebboah, R-E-B-B, as in boy, -O-A-H.

Yes. Thank you.

Response to Submission 1378 (Christophe Rebboah, Rebekah Children's Services, May 27, 2020)

1378-152

Refer to Standard Response SJM-Response-SS-1: At-Grade Crossing Safety.

The project includes all of the FRA/CPUC required improvements for at-grade crossings, including fencing of the right-of-way, four-quadrant gates, intrusion detection, and obstacle detection that meets the standards for safety. The Draft EIR/EIS does not identify a significant impact related to safety at at-grade crossings for Alternative 4. Therefore, the Draft EIR/EIS does not identify a need for mitigation for safety impacts beyond the inclusion of safety improvements in the project description. If a pedestrian bridge crossing is advanced separately from this project, the Authority would cooperatively work with the project sponsor, the City of Gilroy, UPRR, Caltrain, and other parties to advance that improvement.

Submission 1700 (Karminder Brown, San Benito Land Trust, June 23, 2020)



Boris Lipkin
 Northern California Regional Director
 California High-Speed Rail Authority
 100 Paseo de San Antonio, Suite 300
 San Jose, CA 95113

1700-2732

June 23, 2020

Re: Comments on Draft EIR/EIS for the San Jose to Merced Project Section

Dear Mr. Lipkin:

The San Benito Agricultural Land Trust (SBALT) is the only local land trust in San Benito County. Our mission is to conserve regionally significant lands that sustain productive agriculture, preserve open space and maintain the rural character of the county. We thank the Authority for the opportunity to comment on the Draft EIR/EIS for the San Jose to Merced Project Section, which we will refer to here as “the Report”, and for the responses to our questions in the forthcoming Final EIR for the project section.

SBALT’s Soap Lake Ranch Agricultural Conservation Easement (ACE)

Since 2014 SBALT has held an ACE on the 1,113-acre Soap Lake Ranch property (“the Ranch”), located in the northernmost portion of San Benito County (see attached map). This unique property consists of biologically rich wetlands at the convergence of Pacheco Creek, Tequisquita Slough, and Ortega Creek and contains the significant seasonal wetlands known as San Felipe Lake. The SBALT easement protects an important flood basin for the Pajaro River and provides habitat for many species of wildlife, including Burrowing Owl, a CDFW species of special concern, and many species of migratory waterfowl protected under the Migratory Bird Treaty Act (MBTA) and California Fish and Game Code Section 3503.

The Ranch also supports a historic cow/calf cattle grazing operation, forming part of San Benito County’s vital agricultural economy and heritage. Twenty-nine percent (29%) of the soils on Soap Lake Ranch are Prime and sixty percent (60%) are classified as “Farmland of Statewide Importance” by the U.S. Department of Agriculture’s Natural Resources Conservation Service and the California Department of Conservation. When the grazing land is inundated during the winter, cattle are moved to another property. When not inundated, up to 850 acres of land on the Ranch can be grazed. In 2018 the landowners built new corrals and parking infrastructure in the southern 5-acre building envelope.

1700-2733

The Ranch ACE includes all of the 75-acre San Felipe Lake, as well as 350 acres of surrounding wetlands that dry down in the summer and provide wildlife habitat during the winter. San Felipe Lake is identified in the Report as one of two important areas in the RSA for waterfowl. During very wet winters, nearly the entire Ranch floods. In addition to the vast open wetlands, there are strings of riparian forest that line Tequisquita Slough, Pacheco Creek and Ortega Creek. These three drainages flow into San Felipe Lake before leaving through Millers Canal.

Omission of SBALT’s Soap Lake Ranch ACE in the Report

Section 3.14.1 of the Report (Agricultural Farmland/Introduction) describes agricultural farmland in the resource study area (RSA), where agricultural farmland is most susceptible to conversion to nonagricultural uses as a result of potential direct or indirect impacts from the construction and operation of the project. This section includes the statement: *There are no agricultural conservation easements or forest lands in the RSA; therefore, they are not discussed further in this section.* In Section 3.14.1.1, which defines various types of conservation easements, the statement is repeated: *There are currently no agricultural conservation easements in the RSA.*

We find this statement to be incorrect, as SBALT’s 1,113-acre Soap Lake Ranch ACE is located squarely within in the RSA. Furthermore, the Ranch is located directly in the path of Alternative 3 and just slightly to the north of Alternatives 1, 2 and 4. In addition to the Ranch, there are a number of other conservation easements nearby and adjacent to the Ranch, all of them within the RSA. As noted in the Report, these include multi-benefit conservation easements held by The Nature Conservancy (Soap Lake Properties), Santa Clara Valley Open Space Authority (Pajaro River Agricultural Preserve), and CDFW. Directly adjacent to the Ranch is the Pajaro River Mitigation Bank, held by Wildlands, Inc.

According to the Report, conservation areas were identified primarily using the California Protected Areas Database (CPAD) and the California Conservation Easement Database (CCED), and local conservation agencies and organizations (e.g., The Nature Conservancy) were contacted to obtain any additional parcels not yet recorded in CCED. SBALT’s Soap Lake Ranch ACE has been on record with CCED since 2018. SBALT submitted a letter to the Authority in September 2019 regarding the Preferred Alternative for the San Jose to Central Valley Wye project extent of the San Jose to Merced Project Section, and received a response from you in October 2019 which recognizes the “ecological, agricultural, and aesthetic” value of SBALT’s Soap Lake Ranch ACE. However, there is no mention of the Ranch in the Report dated April 2020.

We request that the Authority acknowledge the existence and location of SBALT’s Soap Lake Ranch ACE in relation to the four proposed alternatives for HSR and nearby conservation areas. Will the final EIR be revised to include this information?

Table 3.7-22 in the Report lists the impact by number of acres of each HSR alternative to neighboring conservation areas (TNC’s Soap Lake Properties, SCVOSA’s Pajaro River Agricultural Preserve, and Wildlands Inc.’s Pajaro River Conservation Area.) SBALT’s Soap Lake Ranch ACE is

Submission 1700 (Karminder Brown, San Benito Land Trust, June 23, 2020) - Continued

1700-2733	not included in this table. We request that the direct impacts to the Ranch, a permanent agricultural conservation area, be added to Table 3.7-22.	1700-2738	the Ranch. How will changes to the hydrology of the Ranch and impacts to the agriculture and wildlife resources on this conservation property be mitigated by the Authority?
1700-2734	Assuming that the revised Final EIR will include SBALT’s Soap Lake Ranch ACE among the listed conservation areas within the RSA, we ask the following questions: 1) With regard to <i>BIO-MM#84: Provide Compensatory Mitigation for Impacts on Conservation Easements</i> , will SBALT be eligible to receive compensatory mitigation to offset impacts on Soap Lake Ranch ACE at a ratio of 2:1 (protected:affected), as well as compensation for any penalties incurred by SBALT resulting from the termination of a conservation easement or the permanent loss of a conservation area?	1700-2739	<u>Significance of Soap Lake Floodplain and Cumulative Impacts:</u> SBALT’s Soap Lake Ranch ACE is part of a network of interconnected conservation properties that extend throughout the Soap Lake Floodplain in northern San Benito County and southern Santa Clara County. Significant amounts of public funds have already been invested to protect these areas and support productive agriculture, functional floodplains, wildlife connectivity, and climate resilience.
1700-2735	2) With regard to <i>Impact BIO#51: Permanent Conversion or Degradation of Conservation Areas</i> , will compensatory habitat be provided to replace the permanent loss of habitat within SBALT’s Soap Lake Ranch ACE commensurate with the land cover type and ecological function of the lands lost?		Preservation of the Soap Lake floodplain is recommended by the Pajaro River Watershed Flood Prevention Authority as a preferred alternative for flood control in the Pajaro River watershed. The Report notes that because of the large area that drains into Soap Lake, developments that alter flows of any tributary of Soap Lake could result in cumulative impacts.
1700-2736	<u>Biological Resources</u> As noted in the Report, San Felipe Lake at Soap Lake Ranch is an important stopover location for wintering migratory waterfowl including native birds protected under the Migratory Bird Treaty Act (MBTA) and California Fish and Game Code Section 3503, as well as species and groups of regional or international conservation concern (e.g., waterfowl, shorebirds, roosting bats). The landowners have observed for generations that waterfowl entering San Felipe Lake use Tequisquita Slough as a migratory route each year. How will the grounded section of track crossing Tequisquita Slough and the realignment of Tequisquita Slough impact the migratory birds which use the Slough and its mature riparian vegetation for food and cover?		However, the Authority has failed to thoroughly consider the cumulative impacts on resources (including wildlife and agricultural lands of prime and statewide importance) of two reasonably foreseeable projects that are planned within the RSA or will have impacts within the RSA. Specifically, the New SR 152 Alignment (also known as the Highway 25 “Trade Corridor”) and the Pacheco Reservoir Expansion Project. While these projects are noted in section 3.19 and appendices, little consideration is given in the Report as to how these two projects will add to the cumulative impacts when combined with HSR in the Soap Lake Floodplain. It is our understanding that all four proposed alternatives for the New SR 152 Alignment would transect the greater Soap Lake Floodplain, causing impacts to hydrology, water quality, wildlife movement, and agricultural lands of Prime and Statewide Importance. Alignment 1 would transect HSR in the heart of the floodplain. In the Report (Appendix 3.19A) it is noted that the Pacheco Reservoir Expansion Project is expected to have potential significant, unavoidable impacts to hydrology and water resources, geology, soils, and seismicity, also within the RSA for HSR.
1700-2737	<u>Hydrology</u> The San Benito County Water District’s Groundwater Sustainability Plan was not available for review at the time the Report was prepared. At this time, many chapters of the Plan are available at https://www.sbcwd.com/gsp-development/ . Will the Authority review the available draft sections of San Benito County Water District’s Groundwater Sustainability Plan and include findings in the Final EIR?	1700-2740	We therefore, ask the Authority to consider more fully the cumulative impacts on resources of these two specific and reasonably foreseeable projects on the Soap Lake Floodplain and the Conservation Areas within the floodplain, including SBALT’s Soap Lake Ranch ACE.
1700-2738	Section 3.8 of the Report notes that the construction of bridges, culverts, viaducts, and maintenance facilities would permanently affect the Soap Lake floodplain, and that the construction period would span several years. Waterbodies that would be permanently affected by at least one of the alternatives in this area include Tequisquita Slough and associated sag ponds, marsh and seasonal wetlands. All of these affected waterbodies are in the immediate vicinity of SBALT’s Soap Lake Ranch ACE, and the only grounded portion of track is planned to cross the Tequisquita Slough through a sag pond near the easement boundary of		Section 3.19.54 of the Report discusses impacts to Conservation Areas of construction of cumulative projects in the RSA that would result in the removal or degradation of natural land cover on parcels that are protected or managed specifically or that have been designated as targets for the conservation of biological or aquatic resources. Again, SBALT’s Soap Lake Ranch ACE is not included in the list of conservation areas the project would cross. SBALT requests that the Ranch be added to this list of conservation areas that will be impacted by cumulative projects in the RSA.

Submission 1700 (Karminder Brown, San Benito Land Trust, June 23, 2020) - Continued

1700-2741 | **Other Omissions and errors in the Report**
Table 3.7-3 Soil Associations of the San Jose to Central Valley Wye Project Extent Soil Association does not identify any soils in the northern San Benito County portion of the project extant. Why were San Benito County lands not included in the Soil Associations Table?

1700-2742 | Section 3.14.13 includes the statement *The Santa Clara Valley extends from the southern part of San Francisco Bay to Hollister in Santa Clara County*. The City of Hollister is the County seat for San Benito County.

1700-2743 | **Preference for Alternative 4**
SBALT seeks the HSR alternative that will have the highest likelihood of preserving public and private investments in the natural infrastructure of the Soap Lake Floodplain and in our local agricultural economy. Because Alternative 4 would result in the least amount of permanent conversion of Important Farmland to nonagricultural use, as well as fewer impacts to other resources within the Morgan Hill and Gilroy Subsection, we strongly prefer Alternative 4. Finally, SBALT opposes Alternative 3, as it would transect Soap Lake Ranch ACE, causing irreparable damage to the valuable ecological and agricultural resources on the property.

We thank you for your time and for providing SBALT the opportunity to comment.

Sincerely,



Dan Dungy
President

Response to Submission 1700 (Karminder Brown, San Benito Land Trust, June 23, 2020)

1700-2732

The comment states that the Draft EIR/EIS incorrectly concludes that there are no agricultural conservation easements in the RSA. The comment further notes that the Draft EIR/EIS omits discussion of the San Benito Agricultural Land Trust's Soap Lake Ranch Agricultural Conservation Easement, Pajaro River Agricultural Preserve (Santa Clara Valley Open Space Authority), Pajaro River Mitigation Bank (Wildlands, Inc.), and other agricultural conservation easements. To address this comment, statements that there are no agricultural conservation easements in the RSA were removed from Section 3.14.1, Introduction, and from Section 3.14.1.1, Definition of Terminology, in the Final EIR/EIS. New text describing methods used to describe and analyze impacts on agricultural conservation easements was added to Section 3.14.4, Methods for Evaluating Impacts, of the Final EIR/EIS. New text describing the agricultural conservation easements present in the RSA was added to Section 3.14.5, Affected Environment, of the Final EIR/EIS in a new subsection entitled Agricultural Conservation Easement Contract Farmlands. A discussion of agricultural conservation easement impacts was added to Section 3.14.6.2, Important Farmland and Williamson Act and Agricultural Conservation Easement Contract Lands, and Impact AG#8 of the Final EIR/EIS. Impact AG#8 was revised to account not only for Williamson Act Farmland but also agricultural conservation easements.

With respect to agricultural conservation easements, the Draft EIR/EIS initially reported there would be no impact; this has been revised for the Final EIR/EIS. Based on the revised analysis in the Final EIR/EIS, the impact would be less than significant. Table 3.14-13 in the Final EIR/EIS was revised to reflect the changed content of Impact AG#8.

1700-2733

The Authority has revised Tables 3.7-11 and 3.7-22 in the Final EIR/EIS to include the Soap Lake Ranch Easement. This parcel was considered in the Draft EIR/EIS under a different name (i.e., Soap Lake Properties) based on information available to the Authority at the time the Draft EIR/EIS was prepared, but has been corrected to the correct name and easement holder in the Final EIR/EIS.

1700-2734

The Authority has revised Tables 3.7-11 and 3.7-22 in the Final EIR/EIS to include the Soap Lake Ranch Easement. This parcel was considered in the Draft EIR/EIS under a different name (i.e., Soap Lake Properties) based on information available to the Authority at the time the Draft EIR/EIS was prepared, but has been corrected to the correct name and easement holder in the Final EIR/EIS. Table 3.7-22, which describes impacts on conservation easements, has been corrected in the Final EIR/EIS to clarify the acres of the Soap Lake Ranch Easement that would be affected by the project. The commenter is correct that BIO-MM#84 addresses this impact and that mitigation would include compensation to replace the permanent loss of conservation lands at a ratio of 2:1 (protected:affected). Additionally, BIO-MM#84 does require the Authority to compensate affected organizations for any penalties incurred from the termination of a conservation easement.

1700-2735

The Authority has revised Tables 3.7-11 and 3.7-22 in the Final EIR/EIS to include the Soap Lake Ranch Easement. This parcel was considered in the Draft EIR/EIS under a different name (i.e., Soap Lake Properties) based on information available to the Authority at the time the Draft EIR/EIS was prepared, but has been corrected to the correct name and easement holder in the Final EIR/EIS. Table 3.7-22, which describes impacts on conservation easements, has been corrected in the Final EIR/EIS to clarify the acres of the Soap Lake Ranch Easement that would be affected by the project. The commenter is correct that BIO-MM#84 addresses this impact and that mitigation would include compensation to replace the permanent loss of conservation lands at a ratio of 2:1 (protected:affected). Additionally, BIO-MM#84 does require the Authority to compensate affected organizations for any penalties incurred from the termination of a conservation easement.

1700-2736

Impacts on migratory waterfowl in Tequisquita Slough would include habitat loss and impairment (Impact BIO#34). This is identified as a significant impact requiring mitigation in Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS. Mitigation for impacts on waterfowl habitat would be achieved through multiple mitigation measures, most notably BIO-MM#58.

Response to Submission 1700 (Karminder Brown, San Benito Land Trust, June 23, 2020) - Continued

1700-2737

The Draft North San Benito County Groundwater Sustainability Plan was reviewed and discussed in Impact HYD#10. The Authority has added this reference to Table 3.8-3 in the Final EIR/EIS for quicker reference.

1700-2738

Please refer to Volume 3, Preliminary Plans for Project Design Record, for detailed information on how the project traverses through the area near San Benito Agricultural Land Trust's Soap Lake Ranch. Alternatives 1, 2, and 4 share the same alignment through this area, while Alternative 3 is located slightly to the north, a portion of which is located within the Soap Lake Ranch. Due to concerns for seismic stability crossing the fault zone in this area, each alternative would require crossing Tequisquita Slough on an embankment profile. To compensate for changes in hydrology and floodplain hydraulics in the slough, an approximately 1.3-acre basin would be excavated to convey flows around the proposed embankment under Alternatives 1, 2, and 4, with Alternative 3 using the same strategy by requiring a larger 3.0-acre basin. Pacheco Creek and some nearby wetlands would be crossed by an aerial viaduct structure that would not alter hydrology, but several nearby wetlands would be crossed by an embankment. All embankments in the Soap Lake floodplain would be equipped with equalizer culverts spaced 100 feet apart to maintain existing flood flow patterns. As stated in Impact HYD#2, the drainage design goal of the project is to maintain existing drainage patterns to the extent feasible. This would be accomplished by providing facilities for sources of concentrated flow to pass through or around the project. Considering these project features, the project would not substantially alter the hydrology of the San Benito Agricultural Land Trust's Soap Lake Ranch, and therefore mitigation is not required under CEQA.

The Pajaro River Watershed Flood Prevention Authority also commented on the agricultural resources within the Soap Lake Ranch conservation easement. The Authority would acquire parcels or portions of parcels necessary to construct the project. The Authority understands that some of the parcels that would be acquired to construct the railbed and associated infrastructure may contain existing conservation easements that were established to preserve the floodwater storage capacity of the Soap Lake floodplain. However, construction of the project would require the acquisition of these parcels, some of which may contain conservation easements owned by the Pajaro River Watershed Flood Prevention Authority, and developing them into a transportation corridor. During development of the preliminary design that is presented in Volume 3 of the Draft EIR/EIS, the Authority performed extensive hydraulic modeling of the Soap Lake floodplain to identify potential impacts and incorporate features into the project to avoid or minimize those impacts. Accordingly, the project has been designed to preserve the functioning of the Soap Lake floodplain and avoid substantial permanent impacts on floodplain hydraulics assuming that all the lands within the permanent HSR

Response to Submission 1700 (Karminder Brown, San Benito Land Trust, June 23, 2020) - Continued

1700-2738

right-of-way in the Soap Lake floodplain would be converted into a transportation corridor.

However, some of the parcels specifically mentioned in the comment contain Important Farmland; these parcels are 013-01-0-0320 SAN BENITO COUNTY, 013-01-0-0210 SAN BENITO COUNTY, 013-02-0-0170 SAN BENITO COUNTY, 013-02-0-0210 SAN BENITO COUNTY, 013-02-0-0100 SAN BENITO COUNTY, 84140010 SANTA CLARA COUNTY, 84140011 SANTA CLARA COUNTY, and 84126032 SANTA CLARA COUNTY. Any conversion of Important Farmland would be accounted for through Impact AG#2 and Impact AG#3. Any impacts related to conversion of Important Farmland would be mitigated through AG-MM#1. This mitigation requires the Authority to purchase agricultural conservation easements from willing sellers within the same agricultural regions as the impacts occur. Mitigation would be at a minimum ratio of 1:1 for direct conversion and at a minimum ratio of 0.5:1 for indirect conversion as a result of creation of remnant or severed parcels. Although the replacement conservation easements would be located within the same agricultural region, there is no guarantee that they would be located within the Soap Lake floodplain to prohibit future development of the floodplain. Please refer to Section 3.14.6, Environmental Consequences, and Section 3.14.7, Mitigation Measures, respectively, for more information on impacts and mitigation proposed for Important Farmland.

1700-2739

The Authority disagrees with the commenter's assertion that the Draft EIR/EIS failed to consider the cumulative impacts on wildlife resources from the New SR 152 Alignment and the Pacheco Reservoir Expansion Project. The New SR 152 Alignment project was specifically listed and considered in Appendix 3.19-B of the Draft EIR/EIS, and the Pacheco Reservoir Expansion Project was specifically listed and considered in Appendix 3.19-A of the Draft EIR/EIS. Both reasonably foreseeable projects were specifically discussed in Section 3.19.6.6 of the Draft EIR/EIS related to cumulative impacts on the Santa Clara Valley Habitat Plan, which is a plan to conserve wildlife and wildlife habitat in the Santa Clara Valley. The analysis in this section concludes "Due to the HSR project effects, combined with potential effects of future projects, such as the Pacheco Reservoir expansion and the new SR 152 alignment from SR 156 to U.S. 101, there would be cumulatively significant impacts on the SCVHP." Draft EIS Section 3.19.6.7 Hydrology and Water Resources, discusses the Soap Lake floodplain under Surface Water Hydrology and Floodplains. The analysis concludes that under DECA the HSR project would not result in cumulatively considerable contributions to construction or operating impacts on floodplains including Soap Lake, therefore CEQA does not require mitigation. Section 3.9.6.13 of the Draft EIR/EIS also considers the alignment of SR 152 and concludes that the project alternatives, in combination with other projects in the cumulative RSA, would result in a significant cumulative impact to agricultural farmland by permanently converting large areas of agricultural farmland to nonagricultural uses. The Authority believes that the analysis considered all reasonably foreseeable projects, including the specific two projects mentioned by the commenter.

1700-2740

Thank you for your comment. As a result of further coordination with SCVOSA, the Authority has added this easement to Section 3.7, Biological and Aquatic Resources, and Section 3.14, Agricultural Farmland, of the Final EIR/EIS. This information has also been added to the list of conservation easements in Section 3.19, Cumulative Impacts, of the Final EIR/EIS.

1700-2741

Soils occurring in San Benito County were inadvertently omitted from Table 3.7-3 in the Draft EIR/EIS. This has been corrected in the Final EIR/EIS. This change does not affect the conclusions or findings of the EIR/EIS.

Response to Submission 1700 (Karminder Brown, San Benito Land Trust, June 23, 2020) - Continued

1700-2742

The comment notes that the Draft EIR/EIS incorrectly stated that the Santa Clara Valley extends to Hollister in Santa Clara County because Hollister is in San Benito County. To address this comment, the text was changed in Section 3.14.5.1, Regional Setting, of the Final EIR/EIS to say that the Santa Clara Valley extends to south of Gilroy.

1700-2743

Refer to Standard Response SJM-Response-GEN-1: Opposition and Comments on the Merits of the Project.

The comment states a preference for Alternative 4 and opposes Alternative 3.

Submission 1753 (KAREN LATTIN, San Jose D2 Leadership Council, San Jose CWG Members, June 23, 2020)

South San Jose High Speed Rail Community Working Group District 2 Leadership Council

California High Speed Rail Authority
June 22, 2020
Page 2

June 22, 2020

1753-3183

California High Speed Rail Authority
Draft San Jose to Merced Project Section EIR/EIS
100 Paseo de San Antonio, Suite 300
San Jose, California 95113

Subject: **Comments on the Draft Project EIR/EIS
San Jose to Merced Project Section**

Dear CHSRA Board Members and Staff:

Introduction and Background

Thank you for the opportunity to review the April 2020 Draft Project EIR/EIS for the San Jose to Merced Section of the High-Speed Rail (HSR) Project. The South San Jose Community Working Group (CWG) has been working with the California High Speed Rail Authority (CHSRA) on behalf of the thousands of San Jose residents who live and work along the proposed HSR alignment in San Jose's Monterey Corridor. As a way of highlighting the importance of the Monterey Corridor, we note the following:

- Within a 500-foot wide band along the west side of the Corridor, there are more than 2,000 single- family, multi-family, and mobile home residences, many of which are directly adjacent to the UPRR tracks.
- Within a 500-foot wide band along the east side of the Corridor, there are more than 2,400 single- family, multi-family, and mobile home residences, many of which are directly across Monterey Road from the UPRR tracks.
- Assuming an average of 2.5 persons per dwelling unit, there are approximately 11,000 residents living along the Corridor.
- Within 500-feet of the Corridor, noise-sensitive land uses include the above-listed residences, Edenvale Garden Park, Ramac Park, and the Edenvale Library.
- There are hundreds of businesses in the Corridor whose access is directly to/from Monterey Road.
- Within the Corridor, there are three major east-west roadways that intersect with Monterey Road and cross the UPRR tracks at-grade: Chynoweth Avenue, Branham Lane, and Skyway Drive. These roadways carry substantial volumes of traffic and Skyway Drive is an important emergency response route as San Jose Fire Station #18 is located at the northeast corner of Monterey Road/Skyway Drive.

1753-3184

Modified Alternative 4

Our primary comment is that the Draft EIR/EIS is deficient because it fails to include and evaluate a HSR alternative for the Monterey Corridor that would avoid or minimize the environmental impacts that are identified in the Draft EIR/EIS. As described in our March 20, 2019 letter to the CHSRA, a copy of which is attached and is submitted as part of our comments, we believe that a modified version of Alternative 4 should have been studied in the Draft EIR/EIS and we request its inclusion in the Final EIR-EIS. That alternative would consist of a blended system in a trench in the Monterey Corridor. The Draft EIS/EIR identifies significant and unavoidable safety & security and noise & vibration impacts for Alternative 4 in the Monterey Corridor, impacts that we believe would be avoided or lessened by placing the blended system in a trench (with or without the freight track in the trench). Most importantly, placing the blended system in a trench would avoid the identified significant and unavoidable impacts to emergency vehicle response times because grade-separations would be constructed at Skyway Drive, Branham Lane, and Chynoweth Avenue. It would also avoid the traffic impacts associated with at-grade crossings. Without the grade separations, total gate-down time during peak hours would approach 30% (i.e., 20 minutes of every hour), which is unacceptable to the community.

We note the CHSRA staff response of April 23, 2019 to our March 20, 2019 letter in which it is stated that the range of alternatives analysis was completed in 2018 and the focus was on completing the Draft EIR/EIS for the four alternatives that emerged from that analysis. However, after reviewing both Alternatives Analysis and the Supplemental Alternatives Analysis for the San Jose to Merced Section including Table 4 of Appendix 2.1, we did not see an evaluation of the trench option in the Monterey Corridor.

We note that EIR/EIS Alternative 2 places the HSR in a trench between Capitol Expressway and Skyway Drive. If that option is feasible in that segment of the Monterey Corridor, what would be the reason(s) continuing the trench farther south is not feasible? If the answer is increased cost, please be specific as to the amount of the increase and we question why that would equate to infeasibility in the context of the current estimated cost of \$80.3 billion (CHSRA, 2020) to construct Phase 1 of the HSR between San Francisco and Los Angeles. Further, we note that Santa Clara County Measure B, which was passed in 2016, includes \$314 million for Caltrain improvements between San Jose and Gilroy. Those funds could be used to contribute to the total cost of a modified Alternative 4 since the blended system directly benefits Caltrain.

To summarize, in accordance with CEQA Guidelines Section 15126.6, we request that the trench variation of Alternative 4 be evaluated in the Final EIR/EIS because it meets the project objectives while at the same time avoiding or substantially lessening some of the significant environmental impacts of the project.

Submission 1753 (KAREN LATTIN, San Jose D2 Leadership Council, San Jose CWG Members, June 23, 2020) - Continued

California High Speed Rail Authority
June 22, 2020
Page 3

California High Speed Rail Authority
June 22, 2020
Page 4

1753-3185

Alternative 4 with Grade Separations

If an evaluation of a modified version of Alternative 4 that places the blended system in a trench is evaluated and determined to be infeasible, we request evaluation of the following variation of Alternative 4 in the Monterey Corridor: At-Grade Blended System with Grade Separations. Under this variation, the blended system would be constructed at-grade as envisioned in Alternative 4, but with grade separations at Skyway Drive, Branham Lane, and Chynoweth Avenue. The designs for the grade separations could be similar to those shown under Alternative 2 for those three locations or other design options could be studied. In any case, the grade separations would avoid the safety & security and traffic impacts associated with at-grade crossings. Again, the impacts of the at-grade crossings are unacceptable to the community.

1753-3186

Traffic

Pages 3.2-62 to 3.2-64 note that, under NEPA criteria, Alternative 4 will impact five intersections in the Monterey Corridor. Please identify the five intersections and please provide specifics as to how the impacts at those intersections will be mitigated.

1753-3187

Safety and Security

SS-MM-#4, beginning on page 3.11-81, provides no concrete mitigation for the significant impacts of Alternative 4 to emergency vehicle response times. While potential solutions are listed, there are no details provided as to how the measures would mitigate the increase in response times. Also, the proposed monitoring of the situation is only for a near-term period, which does not take into account the full impact of the cumulative increase in the number of trains by year 2040. These deficiencies are a deferral of mitigation that does not comply with CEQA Guidelines Section 15126.4(a). Also, mitigation must be enforceable as required by PRC §21081.6. Please revise SS-MM-#4 to provide the required details.

1753-3188

Noise and Vibration

For the Final EIR/EIS, please provide a table similar to Table 3.4-17 that shows the impacts of the alternatives assuming Quiet Zones are in place.

1753-3189

Will HSR use track ballast containing shredded rubber tires (as does VTA light rail) to reduce vibration impacts?

1753-3190

Comparing Table 3.4-26 to Table 3.4-17, the proposed noise barriers will benefit 905 of Alternative 4's 1,186 severely impacted receptors in the San Jose to Merced segment. That

1753-3190

leaves 281 unbenefited receptors. Why does Table 3.4-26 show the number of residual impacts as zero?

1753-3191

Table 3.4-34 shows that, even with Quiet Zones and noise barriers in place, there would be severe noise impacts at 179 receptors under Alternative 4 in the San Jose to Merced segment. Is there evidence that noise at these 179 receptors cannot be mitigated through acoustical treatment?

1753-3192

Figure 3.4-40 shows ten proposed noise barriers (heights of 8-14 feet) in the Monterey Corridor under Alternative 4. However, Figure 3.4-43 shows only three noise barriers (heights of 8-14 feet) in the Monterey Corridor under Alternative 4 with Quiet Zones in place. Under the Quiet Zone scenario, where noise barriers are no longer proposed, what type/height of barrier (if any) would be constructed along the HSR route?

1753-3193

Cultural Resources

The Monterey Corridor is part of the El Camino Real, which is designated as California Historical Landmark #784. We could not find discussion of this resource in Section 3.17 of the Draft EIR/EIS. Please include this resource in the Final EIR/EIS, along with an evaluation of the project's impacts, if any.

Conclusion

We thank you for your consideration of our comments on the Draft EIR/EIS. We look forward to your responses in the Final EIR/EIS. It is our hope that we can work together with you in achieving our goals and, at the same time, have an improved transportation system. Please contact Karen Lattin at klattin@comcast.net if you have any questions regarding this letter.

Sincerely,

Leaders in the San Jose District 2 Leadership Council, and
Members of the South San Jose High Speed Rail Community Working Group

Submission 1753 (KAREN LATTIN, San Jose D2 Leadership Council, San Jose CWG Members, June 23, 2020) - Continued

California High Speed Rail Authority
 June 22, 2020
 Page 5

Karen Lattin, CWG, D2 Leadership Council, Los Paseos Neighborhood	Greg Peck, CWG, D2 Leadership Council, Los Paseos Neighborhood	Amy Georgiades, CWG, D2 Leadership Council, Los Paseos Neighborhood	Norma Callender, D2 Leadership Council, Santa Teresa Foothills Neighborhood Association
Brian Gurney, CWG, Tulare Hill HOA	Alan Chan, Los Paseos Neighborhood	Barbara Canup, Los Paseos Neighborhood	Russ Failing, President-Oak Grove NA
Manuel Souza, Hayes Neighborhood	Judy Purrington, Friends of Edenvale Library	Perry Henry, CCNA	Mila Healy, Cottle Lean Neighborhood
Sharad Gupta, D2 Leadership Council, Palmia Neighborhood	Marie Arnold, D2 Leadership Council, Blossom Valley NA	Yazmin Rios, Edenvale Great Oaks NA (EGOPIC)	Janet Walde, D2 Leadership Council
Elvera Faria, D2 Leadership Council, Cottle/Lean Neighborhood	Herb Bowen, Los Paseos Neighborhood	Jon Reinke, Santa Teresa Foothills Neighborhood Association	John Hesler, VP Santa Teresa Foothills Neighborhood Association
Ram Iyer, Station 121	Carole Holcomb, Cottle Lean Neighborhood	James Patterson, Vice President-Oak Grove NA & CWG	Patricia Carlin, CWG, Metcalf Neighborhood
Dave Wilkins, D2 Resident	Lalbabu Prasad, Hayes NA	Jennie Han, D2 Resident	Darryl Ospring D2 Leadership Council

California High Speed Rail Authority
 June 22, 2020
 Page 6

Attachment: March 20, 2019 Letter to Brian Kelly

cc: Mayor Sam Liccardo & San Jose City Council
 Santa Clara County Board of Supervisors
 Nuria Fernandez & Board Members, Santa Clara Valley Transportation Authority
 Jim Hartnett & Board Members, Peninsula Corridor Joint Powers Board
 Assemblyman Ash Kalra
 Assemblyman Kansen Chu
 Assemblyman Mark Stone
 Senator Jim Beall
 Senator Bill Monning
 John Ristow, Director, San Jose Department of Transportation

Submission 1753 (KAREN LATTIN, San Jose D2 Leadership Council, San Jose CWG Members, June 23, 2020) - Continued

*District 2 Members of the San Jose High-Speed Rail Community Working Group
District 2 Neighborhood Leadership Council*

Brian P. Kelly & CAHSR Board
March 19, 2019
Page 2

March 20, 2019

Mr. Brian P. Kelly, Chief Executive Officer and Board of Directors
California High Speed Rail Authority
770 L Street, Suite 620
Sacramento, CA 95814

Subject: Request for High Speed Train Alternatives to be Evaluated for the Monterey Corridor in San Jose

Dear Mr. Kelly and CAHSRA Board Members,

The District 2 Members of the San Jose HSR Community Working Group (CWG) have been working with the California High Speed Rail Authority (CHSRA) on behalf of the thousands of San Jose residents who live and work along the proposed High-Speed Rail (HSR) alignment in San Jose's Monterey Corridor. It is our understanding that the CHSRA is scheduled to identify a Preferred Alternative (PA) in September 2019, followed by the preparation of an EIS/EIR for the San Jose to Merced Segment, which includes the Monterey Corridor. The purpose of this letter is to request the study of a modified blended trench alternative that we believe will result in an HSR design that avoids or minimizes the adverse effects of the HSR on our community to the greatest extent feasible.

Significance of the Monterey Corridor

The Monterey Corridor area of concern in San Jose extends for a distance of approximately 7.9 miles between Capitol Expressway on the north and Bailey Avenue on the south. It includes Monterey Road, a major four- to six-lane arterial and the UPRR tracks that are utilized by Caltrain, Amtrak, and freight trains. Unless constructed in a manner that will minimize effects, the proposed construction of the HSR in the Monterey Corridor will result in unacceptable significant short- and long-term impacts to those who live and work along the Monterey Corridor. As a way of highlighting the importance of the Monterey Corridor, we note the following:

- Within a 500-foot wide band along the west side of the Corridor, there are more than 2,000 single-family, multi-family, and mobile home residences, many of which are directly adjacent to the UPRR tracks.
- Within a 500-foot wide band along the east side of the Corridor, there are more than 2,400 single-family, multi-family, and mobile home residences, many of which are directly across Monterey Road from the UPRR tracks.
- Assuming an average of 2.5 persons per dwelling unit, there are approximately 11,000 residents living along the Corridor.
- Within 500-feet of the Corridor, noise-sensitive land uses include the above-listed residences, Edenvale Garden Park, Ramac Park, and the Edenvale Library.
- There are hundreds of businesses in the Corridor whose access is directly to/from Monterey Road.
- Within the Corridor, there are three major east-west roadways that intersect with Monterey Road and cross the UPRR tracks at-grade: Chynoweth Avenue, Branham Lane, and Skyway Drive. These

roadways carry substantial volumes of traffic and Skyway Drive is an important emergency response route as San Jose Fire Station #18 is located at the northeast corner of Monterey Road/Skyway Drive.

- There is a large group of black walnut trees that line Monterey Road from San Jose to Gilroy that are designated Heritage Trees. The group of trees, known as Keesling's Black Walnut Shade Trees, is listed in the Santa Clara County Heritage Resource Inventory (approved by the Board of Supervisors 4/20/82) and the California Historical Resources Directory as a State Point of Interest (approved by the State Historical Resources Commission 7/02/85). A plaque marking this historic resource is located adjacent to the UPRR tracks 0.16-mile north of Skyway Drive.
- The Monterey Corridor is part of the El Camino Real, which is designated as California Historical Landmark #784.

Issues of Importance

In view of the above-listed substantial community and environmental resources that are present along the HSR alignment in the Monterey Corridor, we are focusing solutions that will achieve the following key goals to the greatest extent feasible:

- Avoid vehicular, pedestrian and bicycle safety, traffic operation, and emergency response impacts by grade separating Skyway Drive, Branham Lane, and Chynoweth Avenue from the HSR/Caltrain.
- Minimize noise & vibration impacts, both during construction and during the operational phase.
- Minimize right-of-way impacts, especially those that will require the acquisition of residences and/or businesses.
- Maintain access between Monterey Road and local businesses.
- Minimize disruption during construction by avoiding night-time work, requiring the use of low-emission construction equipment, and avoiding prolonged roadway closures/detours.
- Minimizing visual impacts, especially those associated with any elevated facilities.
- Preserving the historic Keesling Trees where feasible.

HSR Alternatives

We understand fully that there are trade-offs on a large project and that there is no such thing as a project with no effects. However, we believe that it is feasible to build an HSR project in the Monterey Corridor that achieves the objectives we listed above.

Similar to what is planned from the San Francisco to San Jose Segment, it is our understanding that a blended HSR/Caltrain system is being considered, which would allow the electrification of Caltrain to expand from south of the Tamien Station to Gilroy. The blended system would substantially reduce the footprint of the project (as compared to separate systems) and would allow for diesel-powered Caltrain engines to be replaced with electric trains, both of which we support.

To further reduce impacts, we request that one of the alternatives studied in the EIS/EIR be one where the HSR/Caltrain tracks are depressed in a trench along the Monterey Corridor between Capitol Expressway and Metcalf Road. This proposed alternative would consist of 3 tracks, with an existing freight track relocated at-grade to the east side of the UPRR right-of-way (i.e., away from the residences) as a first stage. This would

Submission 1753 (KAREN LATTIN, San Jose D2 Leadership Council, San Jose CWG Members, June 23, 2020) - Continued

Brian P. Kelly & CAHSR Board
 March 19, 2019
 Page 3

Brian P. Kelly & CAHSR Board
 March 19, 2019
 Page 4

allow for the existing freight, Amtrak, and Caltrain service to continue uninterrupted, which we understand is mandatory. Once this occurs, construction of the 2-track HSR/Caltrain facility would take place in a trench, including retaining walls, in the vacant westerly portion of the UPRR right-of-way.

The advantages of this alternative would be substantial and would include the following:

- Most important, by depressing the HSR/Caltrain tracks, there would be no future at-grade crossings of Skyway Drive, Branham Lane, and Chynoweth Avenue by HSR/Caltrain, which would avoid the traffic, vehicular, pedestrian and bicycle safety, and emergency response impacts of an at-grade design. The only remaining at-grade crossing would be for the occasional freight trains and twice daily Amtrak trains.
- The noise and visual impacts of this design would be much less than an at-grade or elevated system.
- By only depressing the two HSR/Caltrain tracks, we assume that construction would be quicker and less costly than if all three tracks were depressed. Please let us know if this assumption is accurate.

If it is determined that this proposed alternative is not feasible for Capitol to Metcalf, we would respectfully request that it be considered for a shorter segment that would include the intersections of Skyway, Branham and Chynoweth to avoid the significant impacts not having grade separations at these intersections would create.

While we understand that an elevated design alternative, whereby the system is constructed on a viaduct, may have certain advantages, we believe that its visual and aesthetic aspects would be significant and unmitigable, as well as be incompatible with the surrounding uses and the corridor's designation as a California Historical Landmark. While such a design may be acceptable for an industrial or rural setting, it is not desirable for a corridor that is predominantly bordered by residences, especially when there are other feasible options. To this point, we note the permanent adverse visual effects from where BART is elevated on a viaduct through residential areas in various East Bay cities.

Conclusion

We thank you for your consideration of the requests stated in this letter. It is our hope that we can work together with you in achieving our goals and, at the same time, have an improved transportation system. Please contact Karen Lattin at klblattin@comcast.net if you have any questions regarding this letter.

Sincerely,

District 2 Members of the San Jose High-Speed Rail Community Working Group and Leaders in the San Jose District 2 Neighborhood Leadership Council (D2 NLC)

<u>Karen Lattin</u> CWG D2 NLC Los Paseos Neighborhood	<u>Greg Peck</u> CWG D2 NLC Los Paseos Neighborhood	<u>Amy Georgiades</u> CWG D2 NLC Los Paseos Neighborhood	<u>Patricia Carlin</u> CWG Metcalf Neighborhood	<u>Brian Gurney</u> CWG Tulare Hill HOA
<u>James Patterson</u> CWG Member-at-Large- Oak Grove NA	<u>Manuel Souza</u> CWG Hayes Neighborhood	<u>Barbara Canup</u> Los Paseos Neighborhood	<u>Alan Chan</u> Los Paseos Neighborhood	<u>Russ Failing</u> President- Oak Grove NA
<u>Judy Purrington</u> Friends of Edenvale Library	<u>Perry Henry</u> CCNA	<u>Mila Heally</u> Cottle Lean Neighborhood	<u>Dave Wilkins</u> D2 Resident	<u>Rose Combs</u> D2 Resident
<u>Marie Arnold</u> D2 NLC D2 Resident	<u>Yazmin Rios</u> Edenvale Great Oaks NA (EGOPIC)	<u>Jon Reinke</u> Santa Teresa Foothills Neighborhood Association	<u>John Hesler</u> Santa Teresa Foothills Neighborhood Association	<u>Elvera Faria</u> D2 NLC Cottle/Lean Neighborhood
<u>Herb Bowen</u> Los Paseos Neighborhood	<u>Norma Callender</u> D2 NLC	<u>Janet Walde</u> D2 NLC	<u>Lalbabu Prasad</u> Hayes NA	<u>Jerry Lewis</u> Hayes Neighborhood
<u>Janet Lewis</u> Hayes Neighborhood	<u>Carole Holcomb</u> D2 NLC			

Cc: Boris Lipkin, Northern CA Regional Director, CAHSRA
 Morgan Galli, Interim Northern California Regional Stakeholder Manager, CAHSRA
 Mayor Sam Liccardo & San Jose City Council
 Santa Clara County Board of Supervisors
 John Ristow, Acting Director, San Jose Department of Transportation
 Board of Directors, Peninsula Corridor Joint Powers Board

Senator Jim Beall
 Senator Bill Monning

Assemblyman Ash Kalra
 Assemblyman Mark Stone
 Board of Directors, Santa Clara Valley Transportation Authority

Response to Submission 1753 (KAREN LATTIN, San Jose D2 Leadership Council, San Jose CWG Members, June 23, 2020)

1753-3183

Refer to Standard Response SJM-Response-ALT-1: Alternatives Selection and Evaluation Process, SJM-Response-ALT-2: Project-Specific Alternatives Considerations.

The comment states that the Draft EIR/EIS is deficient because it fails to include and evaluate an HSR alternative for the Monterey Corridor that includes a trench. Project alternatives through the Monterey Corridor vary in respect to design and environmental impacts. Alternatives 1 and 3 would be located within the median of Monterey Road on a viaduct. Alternative 2 would be located east of and adjacent to UPRR and includes grade separations along the Monterey Corridor. Alternative 4 would operate on a blended system on existing Caltrain tracks. The impacts of these alternatives vary by resource and are described by subsection in the relevant resource sections. The comment requests that a modified version of Alternative 4 should be studied in the Draft EIR/EIS. Chapter 2, Alternatives, of the Draft EIR/EIS described alternatives that were considered and rejected from further consideration. These included a cut-and-cover tunnel along Monterey Road, which was rejected due to prohibitive cost (approximately twice the cost of median viaduct option) and groundwater hydrology and supply effects. The Authority will continue to engage jurisdictions and stakeholders during the design, construction and operation of the project.

1753-3184

Refer to Standard Response SJM-Response-ALT-1: Alternatives Selection and Evaluation Process, SJM-Response-ALT-2: Project-Specific Alternatives Considerations.

The comment relates to evaluation of a trench option in the Monterey Corridor. Chapter 2, Alternatives, of the Draft EIR/EIS described alternatives that were considered and rejected from further consideration. These included a cut-and-cover tunnel along Monterey Road, which was rejected due to prohibitive cost (approximately twice the cost of median viaduct option) and groundwater hydrology and supply effects. In the EIR/EIS, the extent and locations of trenches are defined as any section of track requiring excavation of greater than 5 feet. The trench between Capitol Expressway and Skyway Drive in Alternative 2 is required for the track to safely clear underneath the Capitol Expressway overpass after passing over UPRR to the north. The inclusion of a trench at this location does not reflect the feasibility of constructing a trench farther south.

1753-3185

Refer to Standard Response SJM-Response-ALT-1: Alternatives Selection and Evaluation Process, SJM-Response-ALT-2: Project-Specific Alternatives Considerations, SJM-Response-GS-1: Requests for Grade Separations.

The comment requests evaluation of a variant on Alternative 4 that includes an at-grade blended system with grade separations.

Response to Submission 1753 (KAREN LATTIN, San Jose D2 Leadership Council, San Jose CWG Members, June 23, 2020) - Continued

1753-3186

Refer to Standard Response SJM-Response-TR-1: Site-Specific Mitigation for Traffic Impacts.

The comment stated that the Draft EIR/EIS should identify five intersections in the Monterey corridor with impacts under Alternative 4 and provide specifics regarding mitigation. Please refer to Section 3.2.6.2, Roadways, Freeways, and Intersections (Vehicle Circulation), of the Draft EIR/EIS for specifics regarding these findings. The intersections affected by the project under Alternative 4 within the Monterey corridor are: Monterey Road/Skyway Drive(signalized), Monterey Road/Branham Lane (signalized), Monterey Road/Chynoweth Avenue-Roeder Road (signalized), Saddlebrooke Drive/Branham Lane(unsignalized), and Roeder Road/Azucar Avenue-Vera Lane (unsignalized). Please refer to Table 3.2-23 in Section 3.2, Transportation, of the EIR/EIS for additional information;

In response to comments, the Authority conducted further analysis and developed site-specific mitigation measures for consideration that could reduce some of the identified adverse traffic effects identified in the EIR/EIS.

1753-3187

Refer to Standard Response SJM-Response-SS-2: Emergency Vehicle Response Times.

1753-3188

Please refer to Tables 3.4-28 through 3.4-31 in Section 3.4, Noise and Vibration, of the Draft EIR/EIS, which provide summaries of noise impacts for the four project alternatives without mitigation, with noise barriers, and with a combination of quiet zones and noise barriers.

1753-3189

Vibration impacts would be mitigated with NV-MM#8, which discusses some potential mitigation options. Further studies during the subsequent engineering phases of the project would determine specific vibration mitigation measures. The vibration analysis assumed all tracks were ballast and tie construction with concrete ties, except in tunnels where concrete slab track would be used.

1753-3190

The Number of Residual Impacts (Severe/ Moderate) column in Table 3.4-26 in Section 3.4, Noise and Vibration, of the Draft EIR/EIS summarizes the residual noise impacts that would remain directly behind each noise barrier. The total residual noise impacts in each subsection without mitigation, with noise barriers, and with a combination of quiet zones and noise barriers under Alternative 4 are summarized in Table 3.4-31.

1753-3191

The remaining 179 severe noise impacts in Table 3.4-34 under Alternative 4 are impacts that could not be mitigated using only a combination of quiet zones and noise barriers. Remaining severe noise impacts would need to be mitigated through other means listed in NV-MM#3, NV-MM#4, NV-MM#5, NV-MM#6, and NV-MM#7. Two of these other mitigation options are to install building sound insulation or acquire noise easements.

1753-3192

The noise mitigation analysis has been conducted for two scenarios: (1) with noise barriers and (2) with a combination of quiet zones and noise barriers. The noise mitigation analysis first looks at the possibility of mitigating noise impacts through the use of only noise barriers. As a further step, the noise mitigation analysis also looks at mitigating noise impacts through a combination of quiet zones and noise barriers. With quiet zones in place, there would be less noise impact from the project, and therefore fewer noise barriers would be needed to mitigate remaining noise impacts. There are fewer noise barriers shown in Figure 3.4-43 than in Figure 3.4-40 because Figure 3.4-43 assumes that quiet zones are in place before looking at what noise barriers may be needed.

1753-3193

The El Camino Real California State Historic Landmark was determined to not be an historical resource in the APE, as concurred by SHPO. See HASR Section 7.4.1, Roads and Highways, for a discussion of the landmark. As such, the landmark does not require impacts analysis in the EIR/EIS.

Submission 1664 (Connie Ludewig, San Martin Neighborhood Alliance (SMNA), June 23, 2020)



“Together We Make A Difference”

P.O. Box 886 San Martin, CA 95046
info@smneighbor.org • www.smneighbor.org

June 23, 2020

Mr. Ricci Graham

Information Officer

California High-Speed Rail Authority

100 Paseo de San Antonio Suite 300 San Jose, CA 95113

RE: San Jose Merced Draft EIR/EIS Public Comments

Dear Mr. Ricci Graham,

The San Martin Neighborhood Alliance (SMNA), is a not for profit organization, who represents unincorporated San Martin. Our rural residential community located between Morgan Hill and Gilroy will be negatively impacted by High Speed Rail. Californians voted for Prop 1-A for HSR to connect from San Francisco/San Jose to the Central Valley, with the route through Altamont Pass; the present plans are not anything near what residents voted for, nor what was promised. Further, voters were promised that HSR would never require subsidies for operation for a project that is NOT funded. The EIR/EIS as outlined, will destroy the lives, and livelihood, of thousands in South Santa Clara County.

We oppose the EIR/EIS, as the findings do not consider numerous human impacts created by the alternatives 2 and 4. The trains will run through the center of our historic district of San Martin. San Martinians, with 7,200+ residents, are concerned about this project and the many negative impacts to property values, and water quality (the majority of residents

and farmers rely on solely upon wells for residential and agriculture water). Paramount concerns are the resulting HSR noise and vibration, and the delay of nearly an hour for these trains to pass through our communities. We have a small county airport in San Martin, a County Roads headquarters, many small one owner businesses, ranches and farms. The hardworking people stand to lose lifetimes of family farms, small business, and our heritage; some families have 100+ years of history in San Martin.

The issues with ANY of the alternative routes are many, but building HSR down alternate #4, along Monterey Road corridor, poses many negative impacts, compromising 'open space' and Ag reserves through the South County, through an environmentally protected Coyote Valley; one of the last green open areas in the County. This open space is inhabited by wildlife that travels from the East Diablo Foothills to the Western Santa Cruz Mountain Foothills. It is also an especially important watershed and flood control plain. It does not matter that the result could be an elevated train track as the construction would decimate and destroy this delicate habitat! The result would divide this valley and destroy protected agricultural lands.

We respectfully ask that you research and provide resolutions to the following impacts:

- HSR has ignored the compounding impacts to San Martin, especially with closing/alternating roadways to reroute traffic via Colony Ave (a rural residential 2-lane country road)
- There are no updates regarding upgrades to the immediate surrounding areas of San Martin downtown area
- Please be specific about several projects on Monterey Road that were approved based on certain mitigations to handle increase in traffic
- Street closures, diverting traffic to Colony Avenue, causes numerous traffic flow concerns in San Martin and surrounding areas
- Our comments further address Alternatives 2 and 4, with the tracks running through the center of our charming community, and nearby San Martin Gwinn School
- The impact and delays for emergency vehicles, as well as the public, of the 'at grade' crossings at Middle, San Martin, Church, and Masten Avenues, and the potential safety concerns with pedestrians trying to cross the tracks at these locations and elsewhere along the 'at grade' tracks

Sound: The noise and vibration from these trains—running as often as every 3 minutes during peak commute times—will mean that structures within several hundred feet from the tracks will be significantly impacted by high noise levels and vibrations. **Considering the proximity to the school, this will adversely impact the education of hundreds of children,** as well as routine and daily traffic attempting to cross from East to West of Monterey Road and the Railway obstacles. The result will be a severe and irreversible diminishing of our ability to maintain the quality of life.

1664-2428

1664-2429

1664-2429

1664-2430

1664-2431

1664-2432

1664-2433

1664-2434

1664-2435

1664-2436

1664-2437

Submission 1664 (Connie Ludewig, San Martin Neighborhood Alliance (SMNA), June 23, 2020) - Continued

1664-2438 | The CHSRA position in the EIR/EIS sites Federal, State and possibly County regulations that permit alternatives (2 and 4) to run through the center of our community with up to 16 HSR trains per hour at peak commuting times. **In addition, Caltrain will be running 4 commuter trains (likely to increase since HSR will not have a station in San Martin, nor Morgan Hill) with additional freight trains using the same right of way daily. This means that at full buildout during peak commute times up to 16 trains per hour will run on the tracks. This means that trains could be traveling through our community approximately every 3 minutes.** Amtrak trains also run through the center of our community with up to 4 trains per day.

What the EIR/EIS have not considered, are the numerous negative human and financial impacts created by these alternatives – for San Martin. Alternative 2 impacts everyday farming, preventing equipment from being transferred from various farms, and will place the tracks through the center of downtown San Martin. Alternative 4 will erase the charm, but primarily the history and heritage of families who have resided here for decades.

1664-2439 | **Sound:** The noise and vibration from these trains—will mean that structures within several hundred feet from the tracks will be significantly impacted by high noise levels and vibrations. This impact will make it virtually impossible for our businesses in this direct vicinity to maintain the quality of their businesses; the result will be a severe and irreversible diminishing of their ability to serve our community according to our mission and to raise funds needed to keep the site open and operational.

1664-2440 | **Alternative 2 makes this statement:** “The project would not cause a substantial adverse change in the significance of the resource because construction of the HSR embankment would not materially impair characteristics that qualify it for listing in the CRHR.” This does not address the environmental issue of sound that would eliminate the serene quality of life. Alternative 4 states that, “The project would not cause a substantial adverse change in the significance of the resource because project activities would not materially impair characteristics that qualify it for listing in the CRHR.” However, the reality is that the heart of our community will be torn apart, demolished, eliminating not only local serving businesses “the present”, but also our past of local serving business, education, and residential and agricultural history.

1664-2441 | **Vibrations:** Vibrations will be an ongoing concern for the long-term effects on historical buildings that require constant preservation and maintenance work. From comments shared by many who have experienced vibrations, they can be considerably more of a concern than what is presented by the CHSRA.

Environmental Impacts:

1664-2442 |

- The impact of the near constant noise of trains during peak commute hours is significantly underrated and will render the site useless for education and recreation activities as required in the deed to the site. Even during non-peak commute times, the disruption to programs and events will be significant

1664-2443 |

1664-2444 |

- The impact of long-term vibrations is underrated and leads to concerns about increased preservation and maintenance costs
- The view of the HSR corridor, even well designed from the CHSRA perspective, will be unsightly from the historical perspective.

We sincerely appreciated CSHA’s careful consideration of these comments and request your response to concerns we have raised. Should you have questions, please contact us at info@sanmartinneighbor.org.

Respectfully,

Mr. Stephen McHenry,

SMNA President

info@sanmartinneighbor.org.

CC: Mr. Mike Wasserman, Santa Clara County Supervisor, District 1

Ms. Zoe Lofgren, U.S. Congresswoman, District 19

Mr. Bill Monning, California Senator, District 17

Mr. Robert Rivas, California Assembly Member, District 30

Response to Submission 1664 (Connie Ludewig, San Martin Neighborhood Alliance (SMNA), June 23, 2020)

1664-2428

Refer to Standard Response SJM-Response-GEN-1: Opposition and Comments on the Merits of the Project.

1664-2429

Refer to Standard Response SJM-Response-GEN-1: Opposition and Comments on the Merits of the Project.

The comment's opposition to Alternatives 2 and 4 and concern about negative impacts on San Martin are noted. Please refer to Chapter 8, Preferred Alternative, which summarizes the environmental impacts of each alternative and documents the rationale for selecting Alternative 4 as the Preferred Alternative.

1664-2430

Refer to Standard Response SJM-Response-BIO-1: Wildlife Connectivity in Coyote Valley and Pacheco Pass, SJM-Response-GEN-1: Opposition and Comments on the Merits of the Project.

The comment expresses concern over many negative impacts of Alternative 4 down Monterey Road. Impacts on watersheds and flood control plains, as well as biological habitat, have been analyzed in the applicable resource topic sections of the Draft EIR/EIS.

1664-2431

The comment noted that the Draft EIR/EIS should evaluate traffic impacts within the community of San Martin, including the effects of closing roadways to reroute traffic on Colony Avenue. Please refer to Impact TR#3 and Impact TR#4 in Section 3.2, Transportation, of the Draft EIR/EIS for a discussion of the analysis of the effects of roadway closures and alterations within the Project Section and the community of San Martin. As detailed in Table 3.2-14 in Section 3.2 of the Draft EIR/EIS, Alternative 2 would include a number of roadway closures and alterations within San Martin. The effects of these closures on the rerouting of traffic is evaluated and described within the technical LOS analysis summarized in Impacts TR#3 and TR#4. Intersections along Colony Avenue were not found to experience substantial adverse effects under NEPA related to LOS under Alternative 2 or the other project alternatives.

Response to Submission 1664 (Connie Ludewig, San Martin Neighborhood Alliance (SMNA), June 23, 2020) - Continued

1664-2432

Please refer to Section 2.6.2.2, Summary of Design Features, of the Draft EIR/EIS for a description of the project elements that would be constructed under each project alternative within San Martin. With respect to mitigation proposed to address project impacts, Section 3.12, Socioeconomics and Communities, of the Draft EIR/EIS concludes that there would be no significant impacts associated with temporary or permanent disruptions in San Martin; therefore, no community-specific mitigation or other enhancements are proposed within San Martin. All project alternatives would follow the existing transportation corridor through the community of San Martin, and there would be no physical division of an established community. Commercial uses in San Martin are primarily west of the alignment, with rural residential uses concentrated east of the alignment. While construction of the project would temporarily change existing circulation and access patterns to San Martin neighborhoods, businesses, and community and public facilities, continued access to these areas would be maintained during construction through application of the CTP. Existing circulation and access patterns to San Martin neighborhoods, businesses, and community and public facilities would be maintained by viaducts under Alternatives 1 and 3 or grade separations under Alternative 2.

Mitigation measures identified for transportation, air quality, noise and vibration, and aesthetics and visual quality would help to reduce indirect impacts on community cohesion in San Martin. Refer to Section 3.2, Transportation; Section 3.3, Air Quality and Greenhouse Gases; Section 3.4, Noise and Vibration; and Section 3.15, Parks, Recreation, and Open Space, for full descriptions of these mitigation measures.

1664-2433

Refer to Standard Response SJM-Response-TR-1: Site-Specific Mitigation for Traffic Impacts.

In response to comments, the Authority conducted further analysis and developed site-specific mitigation measures for consideration that could reduce identified adverse traffic effects identified in the EIR/EIS. The site-specific mitigation measures include improvements at locations on Monterey Road. Refer to Section 3.2.7, Mitigation Measures, of the Final EIR/EIS for details regarding the specific measures proposed.

1664-2434

The comment noted that the Draft EIR/EIS should evaluate traffic impacts within the community of San Martin, including the effects of closing roadways to reroute traffic on Colony Avenue. Please refer to Impact TR#3 and Impact TR#4 in Section 3.2, Transportation, of the Draft EIR/EIS for a discussion of the analysis of the effects of roadway closures and alterations within the Project Section and the community of San Martin. As detailed in Table 3.2-14 in Section 3.2 of the Draft EIR/EIS, Alternative 2 would include a number of roadway closures and alterations within San Martin. The effects of these closures on the rerouting of traffic is evaluated and described within the technical LOS analysis summarized in Impacts TR#3 and TR#4. Intersections along Colony Avenue were not found to experience substantial adverse NEPA effects related to LOS under Alternative 2 or the other project alternatives.

1664-2435

Refer to Standard Response SJM-Response-GEN-1: Opposition and Comments on the Merits of the Project.

The comment's opposition to Alternatives 2 and 4 and concern about negative impacts on San Martin are noted. Please refer to Chapter 8, Preferred Alternative, which summarizes the environmental impacts of each alternative and documents the rationale for selecting Alternative 4 as the Preferred Alternative.

1664-2436

Refer to Standard Response SJM-Response-SS-1: At-Grade Crossing Safety, SJM-Response-SS-2: Emergency Vehicle Response Times.

The Draft EIR/EIS does not identify a significant impact related to at-grade crossings for Alternative 4. Therefore, the Draft EIR/EIS does not identify a need for mitigation for safety impacts while noting that alternative funding arrangements may be made available that might support other grade-separation projects.

Response to Submission 1664 (Connie Ludewig, San Martin Neighborhood Alliance (SMNA), June 23, 2020) - Continued

1664-2437

Refer to Standard Response SJM-Response-GEN-1: Opposition and Comments on the Merits of the Project.

As shown in Tables 5-10 through 5-13 in Appendix 3.4-A, Noise and Vibration Technical Report (located in Volume 2, Technical Appendices, of the Draft EIR/EIS), there would be no noise impacts to schools from Tennant Avenue to Leavesley Road under any alternative. Tables 5-28 through 5-31 in Appendix 3.4-A show that there would be no vibration impacts on schools. Impacts on community cohesion and quality of life are addressed in Impact SOCIO#1 in Section 3.12, Socioeconomics and Communities, in the Draft EIR/EIS and have been determined to be less than significant.

1664-2438

The comment expresses concern about the number of trains operating through the San Martin and Morgan Hill communities, including Caltrain, Amtrak, and freight operations and opposes Alternatives 2 and 4. Impacts, including socioeconomic and community impacts, from operation of the project alternatives have been analyzed and disclosed in the various resource topic sections of the Draft EIR/EIS. The comment's opposition to Alternatives 2 and 4 and concern about negative impacts on San Martin are noted. Please refer to Chapter 8, Preferred Alternative, which summarizes the environmental impacts of each alternative and documents the rationale for selecting Alternative 4 as the Preferred Alternative.

1664-2439

Refer to Standard Response SJM-Response-GEN-1: Opposition and Comments on the Merits of the Project.

Please refer to Section 3.4, Noise and Vibration, of the Draft EIR/EIS for information regarding noise and vibration impacts and mitigation measures to avoid or reduce significant impacts. This section discusses the methodology and criteria used to identify noise and vibration impacts. Section 3.4 and Appendix 3.4-A, Noise and Vibration Technical Report (located in Volume 2, Technical Appendices, of the Draft EIR/EIS), include information about the noise and vibration analyses. The analyses account for the magnitude of noise and vibration from all train passbys as well as the schedule of operations for all trains during a typical day/night.

1664-2440

Refer to Standard Response SJM-Response-GEN-1: Opposition and Comments on the Merits of the Project.

The comment is noted. For more information regarding the noise analysis results, please refer to Appendix 3.4-A, Noise and Vibration Technical Report (located in Volume 2, Technical Appendices, of the Draft EIR/EIS), Tables 5-10 through 5-13. These tables include detailed noise impact assessment results for all project alternatives. Additionally, Appendix 3.4-C, Noise Impact Locations (located in Volume 2, Technical Appendices, of the Final EIR/EIS), provides more detailed maps that show the location of the predicted noise impact locations.

1664-2441

With respect to Impact NV#10, the Final EIR/EIS finds that the impact would be significant and unavoidable for all alternatives, which is the correct determination based on the effects analysis and evidence presented. While the HSR project would result in significant and unavoidable impacts from intermittent permanent exposure of sensitive receptors to vibration from operations for all alternatives, there would be no damage to any buildings under any alternative from project operations because the vibration levels generated by train operations would not approach building damage thresholds.

Response to Submission 1664 (Connie Ludewig, San Martin Neighborhood Alliance (SMNA), June 23, 2020) - Continued

1664-2442

The comment is noted. Please refer to San Martin-specific information in the Morgan Hill and Gilroy Subsection in Tables 5-10 through 5-13 in Appendix 3.4-A, Noise and Vibration Technical Report (located in Volume 2, Technical Appendices, of the Draft EIR/EIS). Refer also to the new, more detailed maps include in Appendix 3.4-C, Noise Impact Locations (located in Volume 2, Technical Appendices), in the Final EIR/EIS.

1664-2443

Please refer to the response to submission SJM-1664, comment 2441.

1664-2444

"Historical perspective" is not used in the analysis of aesthetic and visual quality impacts. Impacts to historic resources are assessed in Section 3.17, Cultural Resources, of the Draft EIR/EIS. The analysis of aesthetic and visual quality impacts isare based on how the visual character of the elements fits within the existing visual character and how it would be perceived by defined viewer groupsusers. Please refer to Table 3.16-1 in Section 3.16, Aesthetics and Visual Quality, of the Draft EIR/EIS, which lists the viewer groups used in the aesthetic and visual quality analysis.

Submission 1681 (Shani Kleinhaus, Santa Clara Valley Audubon Society, June 23, 2020)



June 23, 2020

Northern California Regional Office
California High-Speed Rail Authority
100 Paseo De San Antonio, Suite 300
San Jose, CA 95113
san.jose_merced@hsr.ca.gov

Re: **San Jose to Merced Project Section: Draft EIR/EIS Comment**

Santa Clara Valley Audubon Society submits the following comments on the Draft Environmental Impact Report/ Environmental Impact Statement (EIR/EIS) for the San Jose to Merced Project Section of the California High-Speed Rail Project (HSR) (Project). SCVAS was founded in 1926, and is one of the largest National Audubon Society chapters in California. SCVAS' mission is to promote the enjoyment, understanding, and protection of birds and other wildlife by engaging people of all ages in birding, education, and conservation. We are greatly concerned with the project as proposed and believe that its impacts on our biological resources will damage ecosystems and biological resources in our region beyond repair.

1681-2493

Chapter 1: Project Purpose, Need, and Objectives

The California Assembly has unanimously passed HR-97. This action by California legislators indicates a change in State priorities and reflects a changing need for transportation infrastructure and a shift in focus from connecting the Bay Area to the Central Valley to provide transportation solutions in population centers. HR-97 also shows loss of trust in HSR Authority's ability to deliver a viable and beneficial project, as stated by Assembly Speaker of the House, Anthony Rendon (D) who ended the Assembly floor 6-11-2020 discussion and approval of HR-97 warning the Authority to "slow down and consult with the Assembly and the people of California."

In light of HR-97 and the current pandemic, please discuss in the EIR how the project may achieve the following objective:

"Develop a practical and economically viable transportation system that can be implemented in phases by 2030, and generate revenues in excess of operations and maintenance costs."

While a Project does not have to achieve all of its objectives, this specific objective goes to the core of the voters intent in 2008 when they supported Proposition 1A Safe, Reliable High-Speed Passenger Train Bond Act and is thus, the most important to achieve.

1681-2494

Population growth in the Bay Area has slowed (1) even prior to the pandemic (2), and the Population and Employment projections used to justify the need and viability of HSR are no longer valid. Furthermore, the pandemic clearly demonstrated that a large proportion of our workforce can telecommute and no longer need to travel to their workplace. The technology to support telecommuting is evolving rapidly, and is already providing an alternative to HRS that is less costly, both in dollars and in environmental impacts.

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1681-2494

We recognize that it is difficult, in the development of documents of this scope and magnitude, to keep up to date with changing circumstances. However, when population trends morph and a paradigm shift occurs - as it has as a result of the pandemic - a re-evaluation of assumptions is critically needed. We believe that the need for the project may have dissipated. In other words, it seems that HSR has missed the train.

A telecommuting alternative to HSR should be fully analyzed, as it minimizes or avoids most if not all of the Project's significant impacts.

1681-2495

Section 2.7.1 Travel Demand and Ridership Forecasts

Potential occurrences of pandemics can no longer be considered a speculation. Please discuss the impact of potential pandemics on Travel Demand and Ridership, and the resilience of the economic forecast and the HSR Business Plan to the possibility of reduced ridership of several months duration as pandemics unfold.

1681-2496

Section 3.7 Biological and Aquatic Resources

Section 3.7.2.2 State; Bird Protections

In December 2018, the California Department of Fish and Wildlife (CDFW) and California Attorney General Xavier Becerra jointly issued an advisory (3) to affirm that California law continues to provide robust protections for birds, including a prohibition on incidental take of migratory birds, notwithstanding the reinterpretation of the Migratory Bird Treaty Act (MBTA) by the U.S. Department of the Interior (DOI). In addition, AB-454 Migratory birds: California Migratory Bird Protection Act (4) secured protections for migratory birds in California. Please add the advisory and AB-454 to the discussion of bird protections.

1681-2497

Section 3.7.5.2 Impact Avoidance and Minimization Features (IAMFs)

There is no law that mandates implementation of all parts of a proposed project. This is why CEQA requires Mitigation Measures. As part of the Project, the proposed IAMFs are not legally required to be implemented, and can later be abandoned or modified with no further review. Please incorporate all the proposed IAMFs as mandatory Mitigation Measures.

1681-2498

Some of the IAMFs defer studies and mitigation measures.

IAMF #5 proposes to develop a future biological resources management plan (BRMP) to address permitting and also "an array of other requirements relevant to protection of sensitive biological resources (Page 3.7-65)". Mitigation measures should not be deferred. In this case, a BRMP should be offered as part of the EIR process for the public to review. It should also include specific criteria for each

1681-2499

In addition to the information listed under BIO-IAMF #5, the BRMP must include adequate pre-construction bird nest survey timeframes (e.g. no more than 14 days), protections and avoidance measures for native tree species, measures to reduce the risk of wildfires caused by construction activities and by sparks during operation of the trains and associated infrastructure, avoidance of serpentine habitat, and additional criteria specific to each impacted habitat and species as well as animal movement linkages. If future agency requirements impose changes, then such changes can be incorporated into the BRMP.

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Submission 1681 (Shani Kleinhaus, Santa Clara Valley Audubon Society, June 23, 2020) - Continued

1681-2500

Section 3.7.7.2 Special-Status Species

The "No Project Impacts" assumes that population growth in the regional RSA will continue pre-2019 trends and result in various direct and indirect impacts on biological and aquatic resources.

- This assumption is not justified given the slowing trend in population growth in the Bay area.
- This assumption should be re-examined in light of the effects of the current and future pandemics. Communication channels are rapidly evolving to provide an alternative to travel for millions of Californians. Telecommute and remote work is becoming widely accepted and it is likely that the amount of vehicle miles traveled will continue to decrease.
- The assertion that HSR will reduce the need for other types of infrastructure is not supported by fact.
- In south Santa Clara County (where almost all the impacts of this section of HSR on special-status species are expected to occur) the impacts of growth on these species are addressed by the Santa Clara County Habitat Conservation Plan/Natural Communities Conservation Plan (Habitat Plan). In addition, land acquisitions by the Habitat Agency combined with land holdings and purchases by other entities (such as the Nature Conservancy, the Open Space Authority, Peninsula Open Space Trust and others) are providing protections and enhancing habitat for terrestrial and aquatic species in this regional RSA.
- The attempt to claim that the no-project alternative is not better for Special Status Species than any of the alternatives is ludicrous. As recognized (yet systematically underestimated) in the DEIR, the project will have significant direct and indirect impacts on special status and other species. For 4 species, over 900 acres of Critical Habitat will be permanently impacted, plus over two hundred acres will be temporarily impacted (Table 3.7-14 Impacts on Critical Habitat by Project Alternative). Clearly, the Project's net impact will be increased pressure on critically endangered species that are on its path, need to cross the rail infrastructure, or are dependent on drainages and water features that may be blocked or modified by the Project.

It is preposterous and speculative to conclude that in absence of HSR, future infrastructure improvements such as highway expansions will cause more habitat loss, fragmentation, and degradation than the harm that HSR will impose due to its habitat loss, fragmentation, and degradation. This statement is not supported by fact.

1681-2501

The analysis of the No Project Impacts regarding Special-Status Species (and ALL Biological Resources) is deeply flawed and should be re-examined with consideration of 1) the mitigation of growth that is currently offered through the Habitat Plan and other entities, and 2) with contemporary changes to employment models and improved communication platforms and infrastructure that facilitate telecommuting and flexible work hours.

1681-2502

Special Status Bird Species

The project will result in significant impacts due to permanent Conversion or Degradation of Habitat and Direct Mortality or Disturbance. Almost every migratory bird species in California could be impacted. Special status species that could suffer population declines due to the project include Short-Eared Owl, Grasshopper Sparrow, Mountain plover, Western snowy plover, Purple Martin, Olive-Sided Flycatcher, Least Bell's Vireo, Yellow Warbler, Yellow-Breasted Chat, Tricolored Blackbird, Yellow-Headed Blackbird, Loggerhead Shrike, Burrowing owl, Sandhill Crane, Golden Eagle, Bald Eagle, Swainson's Hawk, and other raptors. Non-listed bird species will also be impacted, including waterfowl and shorebirds, and grassland species. Even with IAMFs and mitigation measures, the project will contribute to rangewide, statewide and for some of these species, global declines of these special status species.

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1681-2503

Impact BIO#48: Mortality Resulting from Train Strike during Operations

Bird collisions with man-made structures, including buildings, powerlines, wind turbines and other electric infrastructure have been shown to have a significant impact on migratory birds populations. Raptor mortality is also associated with electrocution events. Bird collisions with high-speed trains have occurred in many areas, including cases where birds roosting on elevated tracks were not able to move away in time (5). Please analyze and develop mitigation to avert the risk to birds that perch or roost on the tracks.

1681-2504

BIO-IAMF#12: Design the Project to be Bird Safe should be turned into a mitigation measure based in part on "Reducing Avian Collisions with Power Lines: State of the Art in 2012 (APLIC 2012)" and more recent information about bird collisions with man made structures.

- Configuring lines to reduce vertical spread of lines and/or decreasing the span length should be required and mandatory, not as stated "if such options are feasible"
- Use of guywires should be avoided.
- Transmission lines across canyons or on ridgelines should be prohibited, with no disclaimers such as "to the extent feasible".

1681-2505

In addition, bird collisions with buildings are recognized widely as one of the primary causes of bird mortality in all habitats, including urban areas. Large expanses of glass, especially when lit at night, are exceptionally hazardous (6). Please study and adopt strong Bird Safe Design Standards for all Train Stations, including Diridon and Gilroy, and refer to the guidelines promoted by the American Bird Conservancy (7).

1681-2506

Impact BIO#12: Permanent Conversion or Degradation of Habitat for and Direct Mortality of Blunt-Nosed Leopard Lizard is proposed to be mitigated by BIO-MM#38: Conduct Surveys for Blunt-Nosed Leopard Lizard, BIO-MM#39: Implement Avoidance Measures for Blunt-Nosed Leopard Lizard and BIO-MM#40: Provide Compensatory Mitigation for Impacts on Blunt-Nosed Leopard Lizard Habitat.

The Blunt-nosed leopard lizard is a fully protected species under California law. The classification of "fully protected" is the State's effort to identify and provide additional protection to those species that are faced with possible extinction. Fully protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take except for collecting these species for necessary scientific research. Therefore all impact must be avoided.

1681-2507

BIO-MM#39 indicates pre-construction surveys for Blunt-nosed leopard lizard with a stipulation 'to the extent feasible' ("*During the non-active season for blunt-nosed leopard lizards (October 16–April 14), to the extent feasible, ground-disturbing activities would not occur in areas where blunt-nosed leopard lizards or sign of the species have been observed and that contain burrows suitable for blunt-nosed leopard lizards. If ground-disturbing activities are scheduled during the non-active season, suitable burrows identified during the surveys would be avoided through establishment of 50-foot no-work buffers. The Project Biologist may reduce the size of the no-work buffers if information indicates that the extent of the underground portion of burrows is less than 50 feet.*")

This mitigation should be revised to clearly require that the entire suitable habitat in the project area will be covered by protocol level surveys well before any construction activity takes place.

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Submission 1681 (Shani Kleinhaus, Santa Clara Valley Audubon Society, June 23, 2020) - Continued

1681-2508 | Furthermore, because the home range of the lizards are large, and the period they spend above ground so limited in duration, seeing a lizard leave the work area, or waiting until for 30 days to elapse with no blunt-nosed leopard lizard observations within the work area to resume work, are likely to result in take and should not be allowed. The lizards may simply be estivating.

1681-2509 | There is no scientific basis for the proposed 50-ft buffer of BIO-MM#39. The Panoche Valley Solar Farm EIR concluded that a 22-acre buffer around each point location for the Blunt-nosed leopard lizard was required, and the implementation of this buffer eventually changed the project delineation. For this reason, a survey for Blunt-nosed leopard lizard should be conducted PRIOR to alternative route delineations. Please provide biologically relevant mitigation, including a minimum of 22-acre buffer for all burrows. In addition, BIO-MM#40 is inadequate: the DEIR must identify occupied Compensatory Mitigation land of similar characteristics of flat terrain that the lizards require to persist.

1681-2510 | Proposing that a future Restoration and Revegetation Plan (BIO-MM#1) and a future Compensatory Mitigation Plan (BIO-MM#10) will help mitigate the impacts to the lizard must show that these mitigation measures indeed offer specific benefits to this species.

1681-2511 | The EIR is flawed because it does not identify Compensatory Mitigation sites or other specified "compensatory mitigation" measures that are appropriate for this species, and because it provides a biologically irrelevant 50-ft avoidance Buffer. The mitigation for Blunt-Nosed Leopard Lizard is unacceptably flawed and inadequate to fully mitigate the Project's impacts on this federal and State endangered species and its habitat.

1681-2512 | **BIO-MM#10: Prepare and Implement a Compensatory Mitigation Plan for Species and Species Habitat**
This plan defers mitigation to an uncertain future. With so many impacted species and so many different habitats and ecosystems, a clear list of mitigation criteria for each species is critically needed. Without clear, species-specific criteria, compensatory mitigation could cause more harm than good, and is inadequate by CEQA.

Thank you for the opportunity to provide comment



Shani Kleinhaus, Ph.D.
Environmental Advocate

References

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Response to Submission 1681 (Shani Kleinhaus, Santa Clara Valley Audubon Society, June 23, 2020)

1681-2493

Refer to Standard Response SJM-Response-GEN-1: Opposition and Comments on the Merits of the Project.

The objective noted in the comment is one of the CEQA project objectives of the HSR project. As described in Section 1.2.3, CEQA Project Objectives of the High-Speed Rail System in California and in the San Jose to Merced Project Section Area, of the Draft EIR/EIS, while these CEQA project objectives are not directly incorporated into the Purpose and Need under NEPA, an alternative's ability to achieve these CEQA project objectives will be considered in evaluating the reasonableness of an alternative under NEPA. Alternative 4 was selected as the Preferred Alternative based on a balanced consideration of the environmental information presented in this Draft EIR/EIS in the context of project Purpose and Need; project objectives; the CEQA, NEPA, and Section 404(b)(1) requirements; local and regional land use plans; community preferences; and costs.

1681-2494

Refer to Standard Response SJM-Response-GEN-1: Opposition and Comments on the Merits of the Project.

Despite drastically lower intercity transportation ridership during the current pandemic, the Authority does not anticipate that COVID-19 will significantly impact HSR ridership in the long term.

1681-2495

Refer to Standard Response SJM-Response-GEN-1: Opposition and Comments on the Merits of the Project.

The comment requests a discussion of the impacts of the pandemic on travel demand and ridership. Despite drastically lower intercity transportation during the current pandemic, the Authority does not anticipate that COVID-19 will significantly affect HSR ridership in the long term. There will still be a need for the HSR system in California post-COVID-19. Impacts of potential pandemics would be speculative and therefore not the appropriate basis for modelling long-term travel demand and ridership or assessing impacts of the project.

1681-2496

Refer to Standard Response SJM-Response-GEN-1: Opposition and Comments on the Merits of the Project.

A discussion of the recent California Migratory Bird Protection Act and associated Attorney General's advisory has been added to Section 3.7.2.2, State, of the Final EIR/EIS. The Authority notes that protections for bird species and their nests are already addressed under numerous mitigation measures in the Draft EIR/EIS as required under already existing state and federal laws and regulations. See mitigation measures BIO-MM#43 through BIO-MM#58, which address avoidance, minimization, and mitigation for impacts to birds. Consequently, impacts and mitigation for migratory birds are already addressed and this recent Act does not change the conclusions or findings of the EIR/EIS relative to migratory birds.

1681-2497

CEQA requires an accurate description of a proposed project. The Authority has included the IAMFs as part of the proposed project and thus they are part of the proposed project. Indeed, under numerous impact discussions, the IAMFs are referenced repeatedly where they would avoid or minimize the potential impacts of the project. If the project is changed or modified (including the IAMFs) in the future, the Authority would comply with NEPA and CEQA regarding the criteria for additional environmental review of any proposed changes, as applicable.

1681-2498

BIO-IAMF#5 is required at the time the project is implemented because it is part of the proposed project. BIO-IAMF#5 is also not deferred as suggested by the commenter because it is not a new measure itself; it is simply a compilation of all other measures, meant to ensure clear implementation of all mitigation measures, not just those required under CEQA/NEPA but also those required under other state or federal permits or authorizations (i.e., Section 2081 ITP from the State, or reasonable and prudent measures from a Section 7 Biological Opinion).

Response to Submission 1681 (Shani Kleinhaus, Santa Clara Valley Audubon Society, June 23, 2020) - Continued

1681-2499

As described in Appendix 2-E, Project Impact Avoidance and Minimization Features, in the Draft EIR/EIS, BIO-IAMF#5, the BRMP is intended to be a compilation of all the biological resources avoidance and minimization measures applicable to the project. Furthermore, as noted in the IAMF, the BRMP is intended to service as a comprehensive document that includes all applicable measures. In essence, the BRMP does not present new requirements; it presents a plan for how all required measures will be tracked and implemented. Regarding the specific measures listed by the commenter, bird nesting surveys, protections and measures for native trees, avoidance and minimization of impacts at sensitive habitats, and a variety of other species specific avoidance and minimization measures are found in the Draft EIR/EIS and would be included in the BRMP. The Authority agrees that additional or different measures required by regulatory agencies would also be included as requirements in the BRMP.

1681-2500

Refer to Standard Response SJM-Response-ALT-1: Alternatives Selection and Evaluation Process, SJM-Response-ALT-2: Project-Specific Alternatives Considerations.

Section 3.12.5.1 in Section 3.12, Socioeconomics and Communities, discusses population and households from a regional perspective and by cities and communities. The baseline data assesses growth between 2000 and 2014 and is used to project future growth. Post-pandemic conditions are not possible to predict for this level of analysis. The commenter also asserts that the projections of greater habitat loss under the no project alternatives versus the HSR action alternatives is unfounded. The Authority disagrees and the Draft EIR/EIS demonstrates that under the no project scenario, growth would continue to occur with resulting impacts on special-status species.

1681-2501

The Authority disagrees with commenter's assertion that the analysis of the No Project impacts, which is based on the existing conditions, is flawed. Comment is noted and does not raise any issue with any of the conclusions of the Draft EIR/EIS.

1681-2502

Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS includes BIO-MM#43 to mitigate for potential impacts on special-status bird species and birds protected under the MBTA. Section 3.7 also includes species-specific measures to avoid and minimize impacts on mountain plover and sandhill crane (BIO-MM#44), burrowing owl (BIO-MM#45, BIO-MM#46, and BIO-MM#47), golden eagle and bald eagle (BIO-MM#48, BIO-MM#49, and BIO-MM#50), California condor (BIO-MM#51), special-status raptors (BIO-MM#52), Swainson's hawk (BIO-MM#55), tricolored blackbird (BIO-MM#56 and BIO-MM#57), and sandhill crane (BIO-MM#58). With implementation of the mitigation measures, the impacts to special-status birds is less than significant.

1681-2503

Commenter describes a variety of operational impacts on birds. Risks associated with train strike, electrocution, and related concerns (e.g., birds striking power lines) are addressed in Impacts BIO#48 (train strike) and BIO#49 (power line strike). These impacts would be minimized with the implementation of BIO-IAMF#12, which addresses bird safe project designs specifically with respect to electrocution and strikes with power lines within important bird areas. Even with implementation of the IAMF, the CEQA conclusion for these impacts is significant before mitigation. Mitigation measure BIO-MM#83 would help to prevent train collisions with scavenging birds by monitoring and removing carrion from the tracks. Mitigation measure BIO-MM#80 would also help to prevent train collisions by requiring an enclosure and noise walls, which would prevent birds from flying into the path of oncoming trains in important bird areas. After mitigation, these impacts are less than significant. The comment is noted.

1681-2504

As described in Impact BIO#49 and BIO-IAMF#12 in Section 3.7, Biological and Aquatic Resources, project design would be in accordance with APLIC (2006, 2012, as cited in Section 3.7 of the Draft EIR/EIS) guidelines to avoid electrocution and minimize bird strike at power lines. Commenter provides no evidence to support revising BIO-IAMF#12.

Response to Submission 1681 (Shani Kleinhaus, Santa Clara Valley Audubon Society, June 23, 2020) - Continued

1681-2505

The project includes BIO-IAMF#12. This IAMF requires the project components to be designed using the Suggested Practices for Raptor Protection on Power Lines: The State of the Art in 2006 (APLIC 2006, as cited in Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS) and Reducing Avian Collisions with Power Lines: State of the Art in 2012 (APLIC 2012, as cited in Section 3.7 of the Draft EIR/EIS). The Authority appreciates the suggestion for additional design measures to further minimize potential collisions with buildings and has revised BIO-IAMF#12 in the Final EIR/EIS to include consideration of the design guidelines for buildings, including stations. Together, these requirements will ensure the project is designed to help to avoid impacts on avian species.

1681-2506

BIO-MM#38 will identify the location(s) of occupied blunt-nosed leopard lizard habitat in work areas prior to any ground disturbance and BIO-MM#39 includes avoidance measures that were designed to avoid blunt-nosed leopard lizard injury and mortality. BIO-MM#40 will mitigate for impacts on potentially suitable habitat, not for take of the species because take will be avoided.

1681-2507

BIO-MM#39 includes measures that were designed to avoid blunt-nosed leopard lizard injury and mortality. The Authority believes these are sufficient to protect the species, and no changes have been made to the mitigation measure.

1681-2508

The commenter notes that due to the specific biology and ecology of blunt-nosed leopard lizards, they may be below ground, and missed during surveys, allowing work to resume. The Authority notes that surveys proposed under BIO-MM#39 require 12 survey days over the course of a 30-60 day period, with at least one survey session conducted over 4 consecutive days. The Authority believes that this intensive survey effort would be more than sufficient to account for the variability in the biology and ecology of the blunt-nosed leopard lizard, allowing the Authority to identify whether they are present or absent, and to avoid take if they are present.

1681-2509

The Authority disagrees with the commenter and notes that a 50-foot buffer of active burrows would prevent take of blunt-nosed leopard lizards. The 22-acre buffer referenced by the commenter is not a feasible mitigation measure, and is not necessary to prevent impacts on active blunt-nosed leopard lizard burrows. The Authority has designed BIO-MM#38 and BIO-MM#39 to survey for and protect blunt-nosed leopard lizard against take, while still allowing the project to proceed. This would be accomplished through the use of protocol-level presence/absence surveys and establishment of no-work buffers until blunt-nosed leopard lizards have left the area. The measures require extensive surveys conducted for at least 12 days over a 30-60 day period. Together, the Authority believes these measures are appropriate and protective of blunt-nosed leopard lizards. Mitigation implemented under BIO-MM#40 would require the Authority to offset the permanent and temporary loss of potentially suitable habitat for blunt-nosed leopard lizard. The Authority also notes that additional mitigation could be required under necessary authorizations under FESA.

1681-2510

BIO-MM#40 in the Draft EIR/EIS requires the Authority to compensate specifically for impacts on blunt-nosed lizard habitat. As noted in the mitigation measure, the mitigation would be consistent and implemented according to an overall compensatory mitigation plan, outlined in BIO-MM#10. BIO-MM#10 requires the purchase of mitigation approved by the agencies, as well as habitat restoration or enhancement that might be necessary, specific success criteria that would be considered, and management actions and adaptive management actions that would be implemented to ensure the mitigation is sufficient to offset impacts on the habitat.

Response to Submission 1681 (Shani Kleinhaus, Santa Clara Valley Audubon Society, June 23, 2020) - Continued

1681-2511

BIO-MM#40 in the Draft EIR/EIS requires the Authority to compensate specifically for impacts on blunt-nosed lizard habitat. As noted in the mitigation measure, the mitigation would be consistent and implemented according to an overall compensatory mitigation plan, outlined in BIO-MM#10. BIO-MM#10 requires the purchase of mitigation approved by the agencies, as well as habitat restoration or enhancement that might be necessary, specific success criteria that would be considered, and management actions and adaptive management actions that would be implemented to ensure the mitigation is sufficient to offset impacts on the habitat. Regarding the 50-foot avoidance measure, the Authority notes that this requirement is part of BIO-MM#39 and is not part of a compensatory mitigation package. The Authority has incorporated this requirement in BIO-MM#39 to ensure that take of this fully protected species is avoided.

1681-2512

BIO-MM#10 and other associated mitigation measures outline a clear requirement and process for compensatory mitigation including performance standards to ensure the effectiveness of mitigation, and species-specific mitigation measures provide additional detail on compensatory mitigation. The Authority has already prepared a pCMP, available on the Authority's website, which assesses the feasibility of implementing compensatory mitigation for the project. The Authority disagrees with the commenter's assertion that the mitigation is deferred.

Submission 1721 (Bill Rankin, Save Our Trails: Connecting Santa Clara County Communities, June 23, 2020)

San Jose - Merced - RECORD #1721 DETAIL

Status : Unread
Record Date : 6/24/2020
Submission Date : 6/23/2020
Interest As : Business and/or Organization
First Name : Bill
Last Name : Rankin

Stakeholder Comments/Issues :

To whom it may concern,
Save Our Trails: Connecting Santa Clara County Communities is a California Not-for-Profit Corporation whose mission is "To promote trails in Santa Clara County for the benefit and enjoyment of all."

1721-2901

We note that the Draft EIR/EIS did not mention that Three Creeks Trail crosses the ROW just south of Tamien Station. Three Creeks Trail is a vital east/west connection in San Jose's trail system and will form the southern connection for a future loop trail around the San Jose downtown. There are maps attached below.
A bicycle/pedestrian bridge will be needed to cross the RR tracks south of Tamien in order for Three Creeks Trail to connect east to the Coyote Creek Trail as well as the connection to the neighborhoods along Almaden Expressway.
Thank you,
Bill Rankin President, Save Our Trails

- 3CrksTrail poster.jpg989.8kB
- City Loop Trail-H_resize.jpg5.5MB

Response to Submission 1721 (Bill Rankin, Save Our Trails: Connecting Santa Clara County Communities, June 23, 2020)

1721-2901

Section 3.15, Parks, Recreation, and Open Space, of the Final EIR/EIS has been updated to reflect the current status of Three Creeks Trail. A bicycle/pedestrian bridge across the railroad tracks south of Tamien would be required with or without this project.

Submission 1307 (Jim Goddard, Sharks Sports and Entertainment, May 21, 2020)

San Jose - Merced - RECORD #1307 DETAIL	
Status :	Action Pending
Record Date :	5/27/2020
Submission Date :	5/21/2020
Interest As :	Business and/or Organization
First Name :	Lucy
Last Name :	Lofrumento
Attachments :	Letter to Request Extension of EIR comment Period for HSR (5-21-20) (10581308xD701E).pdf (194 kb)

Stakeholder Comments/Issues :

Dear Mr. Yip,

Jim Goddard of Sharks Sports & Entertainment has asked that we forward this letter to you, requesting a 30-day extension of the public comment period for the San Jose to Merced Project Section Draft EIR/EIS.

Please confirm your receipt of this email.

Thanks very much for your consideration,
Lucy

[LMA_final-01]

Lucy Lofrumento
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May 21, 2020

Via US Mail & Email

Yosef Yip
 Northern California Outreach Representative
 California High-Speed Rail
 California High-Speed Rail Authority
 100 Paseo de San Antonio, Suite 300, San Jose, CA 95113
yosef.yip@hsr.ca.gov

RE: Request for Extension of Public Comment Period for San Jose to Merced Project Section Draft Environmental Impact Report/Environmental Impact Statement

Dear Mr. Yip,

Sharks Sports & Entertainment LLC (SSE), the parent company of San Jose Arena Management, LLC, requests that the California High-Speed Rail Authority (Authority) grant an extension of 30 days for the public comment period for the Authority's San Jose to Merced Project Section Draft Environmental Impact Report/Environmental Impact Statement (Draft EIR/EIS). The Draft EIR/EIS was first made available for public comment on April 24, 2020. The Authority selected a 45-day review and comment period (the shortest period allowed for this type of project), which will end on June 8, 2020. We are asking that the ending date be extended to July 8, 2020.

1307-93

1307-94

SSE appreciates the opportunities that the Authority's San Jose to Merced Section of High-Speed Rail (HSR) Project creates for the regional transit center environs. However, we have long been concerned that the HSR Project could significantly harm the successful ongoing operations of the City-owned SAP Center at San Jose (the Arena) to the extreme detriment of SSE and its customers (as well as nearby businesses and residents) if the Project is not properly implemented and mitigated. Indeed, SSE submitted scoping comments for the HSR San Francisco to San Jose Project Section EIS on March 31, 2016, as well as other letters and correspondence to the Authority related to the potential alignments north of the Diridon Station, west of the Arena.

1307-95

Until SSE had a chance to begin to review the Draft EIR/EIS, it was not clear how much time would be needed to prepare comments on the 15 chapters and 70 technical appendices of the document. The Draft ER/EIS is particularly difficult to review because it considers both National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) standards and legal requirements. In addition, while a preferred alternative has been identified, three other alternatives are also presented that are equally evaluated under NEPA, rendering the

Submission 1307 (Jim Goddard, Sharks Sports and Entertainment, May 21, 2020) - Continued

Yosef Yip
California High-Speed Rail Authority
May 21, 2020
Page 2

1307-95 | document extraordinarily complex. Based on the complexity of the Project, we believe the current comment period is far too short to generate considered community, legal and technical comments on this vitally important document.

1307-96 | The document is also extremely lengthy – at least 1,000 pages long in total. Therefore, the Draft EIR/EIS is in excess of NEPA regulations 40 C.F.R. § 1502.7, which mandate that “The text of final environmental impact statements...shall normally be less than 150 pages and for proposals of unusual scope or complexity shall normally be less than 300 pages.” CEQA regulation, 14 Cal. Code Regs. § 15141 is similar: “The text of draft EIRs should normally be less than 150 pages and for proposals of unusual scope or complexity should normally be less than 300 pages.” The Draft EIR/EIS far exceeds both those standards.

1307-97 | We recognize that 14 Cal. Code Regs. § 15105(a) states that “The public review period for a draft EIR shall not be less than 30 days nor should it be longer than 60 days except in unusual circumstances...” and that we are asking for a total comment period of 75 days. However, there is no question that the Covid-19 pandemic has created unusual circumstances. In fact, all of the public and stakeholder meetings for the Project have been or are being conducted virtually. Hard copies of the document are not available at public locations and must be mailed. Based on the Covid-19 pandemic and the unusual scope, complexity and length of the Draft EIR/EIS, we believe that additional time (beyond the typical 60 days) is warranted so that the public, stakeholders, and decision-makers have adequate time to prepare informed comments.

Should you have any questions about our request for a 30-day extension, please feel free to contact me. Given the shortness of time before the current comment deadline, we would appreciate your response as soon as possible.

Sincerely,



Jim Goddard
Executive Vice President, SSE
JGoddard@sapcenter.com

Cc:
Lucy Lofrumento, LMA Law LAL@LMALLP.com
Nanci Klein, San Jose Office of Economic Development Nanci.Klein@sanjoseca.gov
Cameron Day, San Jose City Attorney's Office, Cameron.Day@sanjoseca.gov
Rosalyann Hughey, San Jose Director of PBCE, Rosalyann.Hughey@sanjoseca.gov

Response to Submission 1307 (Jim Goddard, Sharks Sports and Entertainment, May 21, 2020)

1307-93

Refer to Standard Response SJM-Response-OUT-1: Public Outreach.

The Draft EIR/EIS was originally made available for review and comment for a 45-day public. In response to agency and stakeholder requests and in consideration of limitations caused by the novel coronavirus (COVID-19) pandemic, the Authority extended the comment period by 15 days.

1307-94

During refinement of the alternatives evaluated in the Draft EIR/EIS, comments expressing concern about ongoing operations of the SAP Center were considered. As noted in Section 3.2, Transportation, of the Draft EIR/EIS, 52 parking spaces at the SAP Center parking lot would be permanently removed under Alternative 4, all of which would be replaced on a 1:1 basis. All other temporarily or permanently removed parking spaces in the Diridon vicinity due to the project would also be replaced on a 1:1 basis.

As explained in Section 3.2., the Authority identified the amount of parking in the greater Diridon/SAP Center vicinity based on a parking inventory, identified the parking demand resultant from the HSR project, assess the impact of planned BART and Caltrain service expansions on reducing parking demand in the greater Diridon/SAP Center vicinity, considered the BART project displacement of parking, and assessed the history of large downtown arenas in the last two decades and their ability to successfully support event patronage with diversified modes of access including extensive use of transit to offset sometimes limited immediately adjacent parking availability. Based on this information and analysis, the EIR/EIS concludes that the future parking demands can be met overall. The final EIR/EIS was also updated with assessment of cumulative impacts, taking into account the Google Downtown West project. The Authority has worked in the past and continues to work with the City of San Jose in regards to planning for the greater Diridon area. The Authority will continue to work with the SAP Center and the City of San Jose to minimize impacts on center operations.

1307-95

Refer to Standard Response SJM-Response-OUT-1: Public Outreach.

1307-96

The purpose of an EIR/EIS is to disclose information to decision makers and the public. This project section document covers 90 miles and analyzes the impacts of four action alternatives to 18 resource topics plus cumulative impacts. While the NEPA and CEQA regulations do provide guidelines regarding length of environmental documents, the regulations include the word “normally,” and the page limits are not mandatory. The page limits should be followed to the extent practicable. The complexity of this project and large project area warranted additional material be provided.

1307-97

Refer to Standard Response SJM-Response-OUT-1: Public Outreach.

Submission 1638 (Edward Saum, Shasta / Hanchett Park Neighborhood Association, June 23, 2020)



June 23, 2020

VIA EMAIL [san_jose_merced@hsr.ca.gov]

Attn: Draft San Jose to Merced Project Section EIR / EIS
100 Paseo de San Antonio, Suite 300
San Jose, CA 95113

RE: Draft San Jose to Merced Project Section Environmental Impact Report / Environmental Impact Statement

To Whom It May Concern:

I am writing to you as the Vice President and Director for Planning and Land Use of the Shasta / Hanchett Park Neighborhood Association (S/HPNA), on behalf of the Neighborhood Association (NA), with our comments and concerns regarding the Draft Environmental Impact Report / Environmental Impact Statement (EIR / EIS). The group was founded in 1984 to protect the interests of our historic and beloved community. Over the years, we have worked with the City of San Jose, developers, builders, and our neighbors to create a balanced neighborhood. Because of our involvement, we boast one of the most successful communities in the City of San Jose. S/HPNA represents 4,500 households in neighborhoods immediately west of San Jose Diridon Station, and along the west of the current Caltrain corridor from Park Avenue in the south, to West Taylor Street in the north.

Since the initial meetings for the San Jose Visual Design Guidelines for High Speed Rail, S/HPNA Board members and residents have been intimately involved in the planning stages of High-Speed Rail's infrastructure, operational parameters, and project mitigations. Therefore, it is with substantial concern that we are writing to you regarding the Draft San Jose to Merced Project Section EIR / EIS.

Our comments and concerns include, but are not limited to, the following:

- **Diridon Integrated Station Concept (DISC) and City of San Jose City Station Area Advisory Group (SAAG)** – The efforts of the City of San Jose's SAAG should be incorporated into any plans HSR develops for Diridon Station. The City of San Jose, HSR, BART, Google, and the Caltrain Joint Powers Board must all work together to avoid a series of incoherent, poorly functioning connections at Diridon Station. The clear conflicts between the proposed DISC and CHSRA's graphics and alignment diagrams raise substantial concerns, as the two are mutually exclusive. The DISC envisions a raised platform, to increase access and traffic flow of all forms to, through, and beyond the station. The EIR proposes an at-grade design, addressing none of the last mile, access, or traffic issues already faced by Diridon Station. The EIR / EIS must address how to incorporate the current design parameters for the DISC, in order to create a true intermodal hub. CHSRA must commit to the inevitable supplementary environmental work that will be required to make the DISC program a functional reality. Instead, HSR would complete its EIR before the DISC program would even begin its environmental clearance. CHSRA's EIR assesses alternatives for the HSR project in isolation, but not the broader issues and solutions that will be required to provide a functional multimodal station at Diridon. Therefore, we propose that any construction between Diridon Station and Tamien Station should only proceed after the DISC design has been environmentally cleared.

1638-898

- **Impacts of At-Grade Alignment South of Diridon Station** – The proposed at-grade alternative through Downtown and Willow Glen will have significant impacts upon the neighborhoods, traffic arteries, and community facilities adjacent to the proposed alignment. The taking of some or all of Fuller Park, in a City where many neighborhoods already suffer from a deficiency of park lands, is directly at-odds with the stated desire to have High-Speed Rail be an asset to the cities that it serves, rather than as a physical and economic barrier. The area immediately adjacent to Auzerais Avenue, just north of I-280, is experiencing a massive expansion in the number of housing units under construction. The traffic congestion already caused by the current at-grade crossing will increase by an order of magnitude if High-Speed Rail comes through there as part of the at-grade alignment. CHSRA should embrace the need to fully grade-separate train and vehicular / pedestrian traffic throughout the twenty-one (21) miles of HSR that is within the city limits of San Jose.

1638-899

- **A Lack of Community Outreach** – The Draft EIR / EIS is the result of nearly ten years of hearings, public meetings, and community working groups. To push forward the Draft EIR / EIS during a global pandemic, when direct, meaningful community engagement is patently impossible, does a disservice to all of the community members who invested thousands of man hours in the creation of a dynamic, truly community-serving high speed rail service. Even allowing for the extended public comment period (for which we are grateful), and the subsequent ten months to revise the Draft EIR / EIS, the HSR process is more than a year ahead of schedule. Rather than forcing through a Draft document when those with the most insight to offer are possibly facing unprecedented financial and health challenges, why not delay the process until such time that authentic community outreach can be made to all concerned citizens? The project deserves no less than that.

1638-897

1638-900

Bringing a transportation service like High-Speed Rail to San Jose is something that can be of great benefit to us all. However, citing that benefit as a reason to approve unassailed an alignment and set of environmental impacts that do not correspond to untold hours of previous community involvement is, if you will excuse the transportation idiom, putting the cart before the horse. The scope and vision for High-Speed Rail cannot be compromised for the sake of expedience.

Respectfully submitted,

Edward Saum
Vice President & Director for Planning & Land Use
Shasta/Hanchett Park Neighborhood Association

Response to Submission 1638 (Edward Saum, Shasta / Hanchett Park Neighborhood Association, June 23, 2020)

1638-897

Refer to Standard Response SJM-Response-GEN-2: Consideration of Diridon Integrated Station Concept and the Google Development at the San Jose Diridon Station.

The comment noted the DISC process in San Jose.

1638-898

Refer to Standard Response SJM-Response-GS-1: Requests for Grade Separations.

The comment noted significant impacts in downtown San Jose and Willow Glen. Please refer to Chapter 7, Other CEQA/NEPA Considerations, for information about significant impacts. Please refer to Impact SOCIO#1 for information about the disruption to Gardner and Willow Glen with construction of the I-280 overcrossing for Alternatives 1, 2, and 3; Alternative 4 would be less disruptive. Please refer to Figures 6, 7, 8, and 9 of Appendix 3.2-A, Transportation Data on Roadways, Freeways, and Intersections, for information about traffic conditions. One out of four intersections in Gardner would be affected (not a significant impact) in the AM peak hour and a different intersection would be affected (not a significant impact) in the PM peak hour. The comment noted acquisition of some or all of Fuller Park. Please refer to Table 3.15-5; 0.1 acre of 1.14-acre Fuller Park would be affected temporarily for construction. Please refer to Table 3.15-7; 0.03 acre of 1.14-acre Fuller Park (2.6 percent) would be permanently acquired for a train control site. The site is currently used for a Caltrain train control site. The comment noted a need for grade separations.

1638-899

Thank you for your comment. As noted, the process has included many hours of public involvement. The Draft EIR/EIS was ready to publish on April 24, 2020 without the foresight of how the pandemic would affect reviewers. The Authority adhered to regulations and followed the required process as well as extended the comment period and made extensive efforts to connect with the public in an authentic way during the comment period, which ended up being over two times longer than required by CEQA and NEPA guidelines. Community open houses were held in a virtual forum on May 11, May 14, and May 18, 2020 and the virtual public hearing was held on May 27, 2020. Putting the process on hold would have jeopardized the schedule and federal funding.

1638-900

As described in Draft EIR/EIS Chapter 8, Preferred Alternative, the Authority identified the Preferred Alternative by considering environmental, economic, technical, and other factors and by balancing the adverse and beneficial impacts of the project on the community and natural environment. As discussed in Chapter 9, the Draft EIR/EIS provides details regarding the Authority's commitment to community involvement, and each section within Chapter 3, Affected Environment, Environmental Consequences, and Mitigation Measures, provides an analysis of the environmental impacts, both beneficial and adverse.

Submission 1693 (Gary Patton, Sierra Club, Loma Prieta Chapter, June 23, 2020)

Gary A. Patton, Attorney At Law
Post Office Box 1038, Santa Cruz, California 95061
Telephone: 831-332-8546 / Email: gapatton@mac.com

June 23, 2020

California High-Speed Rail Authority
Attention: Draft San Jose to Merced Project Section EIR/EIS
100 Paseo de San Antonio, Suite 300
San Jose, CA 95113

[Sent By Email To: san.jose_merced@hsr.ca.gov]

RE: Comment on Draft San Jose to Merced Project Section EIR/EIS

To The California High-Speed Rail Authority:

This letter is to submit comments on the Draft San Jose to Merced Project Section EIR/EIS on behalf of the Loma Prieta Chapter of the Sierra Club. We urge the Authority to undertake a more comprehensive alternatives analysis, looking at the proposed High-Speed Rail project as a whole, as both the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) require, and we further urge the Authority otherwise to comply with the requirements of both CEQA and NEPA, as discussed herein.

Introduction

The Sierra Club is aware of many comments submitted by other parties, pointing out the very significant adverse environmental and other impacts that would flow from the construction of the San Jose to Merced Project Section of the state's proposed High-Speed Rail project.

1693-2539

Green Foothills, for instance, has noted in its comments that the potential impacts to wildlife in the Coyote Valley would be extremely significant, since the current proposal, including all of the alternatives identified in the Draft EIR/EIS, would very likely result in the extreme disruption of wildlife movement across the proposed rail corridor, causing negative impacts to habitat and to planned wildlife crossings that would provide essential habitat continuity between the Santa Cruz Mountains and the Diablo Range.

Some wildlife, like mountain lions, face severe threats to their survival due to habitat loss from increased development and because of barriers to migration. The high speed rail alignment through Coyote Valley and up through Pacheco Pass would put animals like mountain lions, coyotes, tule elk, deer, and others at increased risk.

1693-2540

Green Foothills additionally notes the impacts to farmland and new threats of sprawl from the potential east-of-Gilroy station and maintenance facility proposed in the County's Agricultural Resource Area, pointing out that a new station and maintenance facility in this area will consume over two hundred acres of farmland as well as limiting wildlife movement.

1693-2541

Santa Clara County established the Agricultural Resource Area to indicate where it will focus farmland conservation as part of its strategy for climate resilience and to support a robust local agricultural economy and food system. As Green Foothills argues, the east-of-Gilroy station and maintenance facility being considered would be a significant blow to that effort and would make surrounding farmland very vulnerable to development. These lands must be permanently protected from development to ensure the long-term sustainability and health of the region and to mitigate the negative impacts from future sprawl development and from climate change, and any approval of the currently proposed routing impacting the Agricultural Resource Area must contain mitigation measures that will ensure the protection of the threatened farmlands from future development that could be generated by the project. In short, if the final project selection puts lands in the Agricultural Resource Area at risk, then significant funding to purchase permanent agricultural protection easements is a necessary mitigation measure and should be identified as such in the Final EIR/EIS.

1693-2542

Other commentators have noted the cultural values that the Authority's preferred project alternative, Alternative 4, puts in jeopardy. We note that Congress Member Zoe Lofgren, for instance, has joined others in submitting comments outlining the threat that the proposed project poses to a United States Historic Landmark located in Morgan Hill, Villa Mira Monte (VMM). As Congress Member Lofgren says, "VMM is the site of the founder of the City of Morgan Hill's home, built in the 1880's. The property is used for education, cultural, fundraising, and private events, and is maintained by funds raised by these events. Alternative 4 would have tracks built adjacent to the eastern boundary of VMM, potentially compromising the site's historical integrity and disrupting the events held there."

1693-2543

Swanee Edwards, a longtime resident of the area in which the project would be constructed, submitted an individual comment that noted that the largest reservoir in Santa Clara County is currently being drained because of the possibility that in a serious earthquake (6.5 or greater) the dam creating the reservoir could fail, causing massive property losses and likely loss of life. Ms. Edwards believes that the Authority has not properly considered earthquake concerns in proposing the project that would connect San Jose to Merced through Pacheco Pass.

The Loma Prieta Chapter of the Sierra Club shares the concerns identified above, which are illustrative of the many comments made by other parties. The proposal

Submission 1693 (Gary Patton, Sierra Club, Loma Prieta Chapter, June 23, 2020) - Continued

evaluated in the Draft EIR/EIS would have many damaging impacts, many if not most of which could not be adequately mitigated.

1693-2544

Main Comment

While endorsing the environmental and other objections to the proposed project made by others, and mentioned briefly above, we wish to raise what we consider to be a more fundamental issue: the failure of the current environmental review process to comply with and carry out the mandates of both CEQA and NEPA with respect to the need for a consideration of “alternatives” to the proposed project. Both these environmental laws require that before carrying out a project that might have a significant adverse environmental impact, a state agency, like the Authority, must study meaningful alternatives that could reduce or eliminate the kinds of negative environmental impacts just mentioned.

Because of the way the Authority has chosen to carry out its environmental review of the state’s proposed High-Speed Rail project, such an adequate analysis of alternatives has not, in fact, occurred. The Authority has never properly evaluated the whole project in an integrated way that would allow a meaningful and legally-adequate consideration of alternatives, as the Authority makes a final determination of exactly where and how to construct the rail connections that comprise the project.

The overall “project” that the Authority is seeking to carry out is described in the introduction to the San Jose to Merced Project Section Draft Environmental Impact Report/Environmental Impact Statement as “a system that will provide a reliable high-speed electric-powered rail system that links the major metropolitan areas of the state and that delivers predictable and consistent travel times.” The project, in other words, is a *statewide* project and is emphatically not a concatenation of various smaller “segments” that can be considered independently, or as “independent projects.”

Perhaps an even better, more specific description of the statewide project that the Authority is charged with carrying out is found in the text of Proposition 1A, a statewide bond measure adopted by the voters in 2008 [Streets and Highways Code §2704.04(a)]:

It is the intent of the Legislature by enacting this chapter and of the people of California by approving the bond measure pursuant to this chapter to initiate the construction of a high-speed train system that connects the San Francisco Transbay Terminal to Los Angeles Union Station and Anaheim, and links the state’s major populations centers, including Sacramento, the San Francisco Bay Area, the Central Valley, Los Angeles, the Inland Empire, Orange County, and San Diego....

Again, it is clear that the state’s “project” is the overall system outlined in Proposition 1A, and the Authority has designated as “Phase 1” a system that will connect the San Francisco Transbay Terminal to the Los Angeles basin via the

3

1693-2544

Central Valley. The “Fact Sheet” on Page 1 of the Draft EIR/EIS outlines how the Authority has carried out its environmental review on this overall (and Phase 1) statewide project:

The California High-Speed Rail Authority (Authority) certified a Statewide Program Environmental Impact Report / Environmental Impact Statement (EIR/EIS) (Tier 1) in November 2005 as the first phase of a tiered environmental review process for the proposed California high-speed rail (HSR) system planned to provide a reliable, high-speed, electric-powered rail system that links the major metropolitan areas of the state and that delivers predictable and consistent travel times ...

A second program-level (Tier 1) EIR/EIS was completed in 2008 focusing on the connection between the Bay Area and Central Valley; the Authority revised this document under California Environmental Quality Act (CEQA) and completed in 2012. Based on the Program EIR/EISs, the Authority selected preferred corridors and station locations to advance for further study.

The Authority has prepared a project-level (Tier 2) EIR/EIS that further examines the California High-Speed Rail (HSR) San Jose to Merced Project Section as part of the larger, 800-mile HSR system planned throughout California. The HSR system will connect 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 HSR 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 at up to 220 miles per hour (mph) over a dedicated track alignment.

The San Jose to Merced Project Section would provide HSR service between San Jose Diridon Station in downtown San Jose and a station in downtown Merced, with a Gilroy station either in downtown Gilroy or east of Gilroy. The Project Section would allow trains in the San Francisco Bay Area to transition smoothly via the Central Valley Wye to and from the Central Valley.

Not explicitly mentioned is the Authority’s plan to prepare and consider another EIR/EIS for a segment of the statewide system that would connect San Jose to San Francisco. Despite the failure to mention this segment in the current document, such a separate, “segmented” analysis of environmental impacts on the Peninsula is, in fact, contemplated.

There is a fundamental problem with this approach of “segmenting” a statewide project into discrete elements, so that the “alternatives” considered in the environmental documents for the various “segments” eliminate the possibility of considering alternatives to the overall routing choice that might propose routing

4

Submission 1693 (Gary Patton, Sierra Club, Loma Prieta Chapter, June 23, 2020) - Continued

1693-2544

differing from the routings examined and discussed in the various “segmented” EIR/EIS documents. As appears from the above description, by taking this “segmented” approach to an analysis of a statewide project, the Authority has “piecemealed” its consideration of possible alternatives. By chopping up the integrated, statewide project into discrete “segments,” neither the Authority nor the public is able to evaluate possible alternatives in an intellectually or legally defensible way.

1693-2545

The “first tier” of the environmental review process carried out by the Authority was completed fifteen years ago, in 2005. That EIR/EIS did not consider the entire statewide project. In fact, a crucial piece of the analysis was left out; namely, the connection between the Central Valley and the Bay Area. In order to correct that failure of the environmental review process, the Authority then prepared and considered what it is calling a “second program-level (Tier 1) EIR/EIS, focusing on the connection between the Bay Area and Central Valley.” While prepared in 2008, that so-called “second program-level” EIR/EIS was not actually certified until 2012, because of litigation that successfully challenged the adequacy of that document. Ultimately, as the Authority tells us in the “Fact Sheet” for this EIR/EIS, the Authority modified this “second program-level” EIR/EIS, and then “selected preferred corridors and station locations to advance for further study.”

Here is the problem. It is now clear, from the current Draft EIR/EIS for the San Jose to Merced Segment, as currently proposed, that the so-called “Altamont Pass” routing alternative (rejected in that “second program-level EIR/EIS”) has not been accurately or adequately compared to the “Pacheco Pass” routing that is built-in to the segment currently being considered.

Because the “project” is the statewide system, it is not legally or even intellectually defensible to “segment” the overall project in such a way that the various possible alternatives cannot be compared, so that the decision makers and the public actually understand the environmental impacts of the different options. CEQA specifically requires that an EIR describe a reasonable range of alternatives that could feasibly attain most of the basic objectives of the project while avoiding or substantially lessening any of its significant effects, CEQA Guidelines §15126.6(a) and (f). An EIR’s discussion of alternatives must “contain analysis sufficient to allow informed decision making,” *Laurel Heights Improvement Association v. Regents of the University of California* (1988), 47 Cal.3d 376, 404. Because of the way that the environmental analysis of the project has been “piecemealed,” by virtue of the “segmentation” of the project pursued by the Authority, the current EIR/EIS is legally inadequate.

In order to comply with the requirements of CEQA and NEPA, the Final EIR/EIS must not just discuss the four alternatives found in the current document – all of which are relatively minor variations on a single basic routing proposal. To be adequate, the Final EIR/EIS must properly compare the environmental impacts of the currently proposed, “Pacheco Pass” routing with a genuine and distinctly

1693-2545

different alternative, the “Altamont Pass” routing. Using the “Altamont Pass” routing, which is feasible, the Final EIR/EIS must consider whether or not that alternative routing would, in fact, be an alternative that could significantly reduce environmental impacts identified in the current Draft EIR/EIS. The Loma Prieta Chapter of the Sierra Club strongly believes that this alternative would have significantly fewer adverse environmental impacts.

1693-2546

It must also be noted that just as it is not proper to consider the San Jose to Merced segment as it if were a “stand alone” project, instead of it being part of a unified statewide project, any analysis of the San Jose to Merced segment that eliminates consideration of the impacts that would occur in the “next” segment, the segment of the system from San Jose to San Francisco, will also not provide a proper evaluation of the impacts considered in the EIR/EIS for this segment.

1693-2547

Both the “Pacheco Pass” and the “Altamont Pass” alignments are viable “alternatives” within the context of the statewide project. CEQA and NEPA mandate that they be properly compared and evaluated. That means that the detailed impacts now identified with the Pacheco Pass alternative, in the current EIR/EIS, must be evaluated with respect to an alternative that would reduce or eliminate them; namely, the “Altamont Pass” alternative. Similarly, the impact of these two fundamental alternatives cannot be properly assessed until their different impacts on the San Jose to San Francisco segment are concurrently assessed.

1693-2548

CEQA forbids the “piecemeal” review of the significant environmental impacts of a project, *Paulek v. Department of Water Resources* (App. 4 Dist. 2014) 179 Cal.Rptr.3d 775, 231 Cal.App.4th 35. *Paulek* also holds that whether a project has received improper piecemeal environmental review is a question of law to be reviewed independently. We urge the Authority to do the full alternatives analysis required, and not try to claim that “we already did that,” when the actual analysis carried out earlier was incommensurate with the level of detail that is now available with respect to the impacts of the “Pacheco Pass” alignment.

1693-2549

There is one more important issue related to the need for the Authority to do a robust alternatives analysis in the Final EIR/EIS: cost. The cost projected for the construction of the “Pacheco Pass” alternative is huge. The other major alternative, the “Altamont Pass” route, is likely to cost very significantly less – but, of course, an alternative analysis would be designed precisely to determine whether that is true, or not, and to what extent. The point is, an apples to apples alternatives analysis is required.

1693-2550

Why is cost relevant? In order for the statewide high-speed rail project actually to be constructed, thus bringing anticipated environmental and transportation benefits to the state, the project must actually be feasible, both in terms of engineering and cost. Both of those elements are problematic, with respect to the proposed “Pacheco Pass” routing, and so it is important to see if there is an alternative that could actually produce a project that could be successful, and

Submission 1693 (Gary Patton, Sierra Club, Loma Prieta Chapter, June 23, 2020) - Continued

1693-2550

that would have fewer adverse environmental impacts. That analysis is not being undertaken in the current Draft EIR/EIS, and it needs to be. To say that “price is no object” is to say that the actual achievement of the statewide project isn’t relevant. Obviously, it is. An article published in the *Manteca Bulletin* in January of 2018 is still relevant today, and makes the point very well:

Manteca Bulletin

DENNIS WYATT

Updated: Jan 18, 2018, 10:30 PM

<https://www.mantecabulletin.com/opinion/local-columns/pacheco-pass-may-turn-high-speed-rail-into-jerrys-folly/>

Twenty-seven miles east of Hollister in the heart of earthquake country is where California High Speed Rail could meet its Waterloo.

It is where a problematic 13.5-mile tunnel starts that skirts the northern edge of San Luis Reservoir and drills into a geological mixture of sandstone riddled with weak shale known as the Franciscan Complex. It was the result of the Pacific Plate slipping under the North American Plate to push what is now known as the Diablo Range skyward.

In spots the tunnel will need to run 1,000 feet deep. This is where the high speed rail authority wants to construct the country’s longest and most complex transportation tunnel.

The cost of crossing beneath Pacheco Pass was never fully vetted before the high speed rail authority made what in retrospect is looking more and more like a fatal decision to not go over the somewhat lower Altamont Pass instead.

The rail authority pegged the cost of building the 54-mile segment from Chowchilla to Gilroy at \$5.6 billion. Some of the world’s foremost tunnel experts contend the tunnel alone is likely to run between at least \$5.5 billion and \$14 billion. There is little doubt the segment’s cost has been grossly underestimated.

This week brought yet another confession from the high speed rail folks that they once again underestimated the cost of the initial 119-mile segment from Madera to Bakersfield that was pegged at \$7.8 billion in 2016. Cost overruns have pushed the price tag to \$10.6 billion.

The problem is private sector investors want to see if the San Francisco to Southern San Joaquin Valley is profitable first before they will consider putting up a single dime. The rail authority has only \$21 billion to get the starter system in place.

There is a now a very good chance emerging that the rail project will run out of funding and therefore political steam before getting the critical starter system in place. If that happens, Jerry Brown’s dream of high speed rail being his legacy project will come true but not in the way he envisioned. It could become the most expensive white elephant in the

7

1693-2550

annals of California history serving as the definition of “boondoggle” for generations to come.

There is a way to prevent the high speed rail project from collapsing under the weight of Peter Pan cost estimates and give it a fighting chance to secure private sector funding to help complete the Los Angeles connection and see the day where it would be extended to San Diego and Sacramento. Instead of heading to the Bay Area via Pacheco Pass they should go to San Jose first via the Altamont Pass.

It’s already been looked at and was viable but wasn’t considered the preferred option due to targeted travel times. But if the goal is to get a starter service up and running that makes sense why not change horses? At the moment you wouldn’t be doing it in mid-stream but rather before they are committed to forging a stream that is beginning to look more and more as the event that will succeed in taking the high speed rail project under.

With it’s never ending cost overruns fueled by grossly underestimating costs and assuming no pushback from lawsuits and such the project has about as much credibility as ISIS would have in the role of a peacekeeper. It is getting absurd not to see high speed rail as a project that is on a course to bring it near the end of the tracks.

The rail authority could easily modify the ACE forward plan and bring high speed rail up the Union Pacific Corridor from Merced to Manteca and then go down the 120 Bypass median and connect with “straightened” out ACE route over the Altamont Pass into San Jose where it could connect with Caltrain. Even better with plans advancing to try and extend a BART line from where it now ends in Pleasanton in the median of Interstate 580 to connect with an ACE station. BART would connect directly from a high speed rail station on the ACE line in Pleasanton with the Trans Bay Transit station. High speed rail then would continue onto San Jose that is not only larger than San Francisco but is in the heart of the region driving Bay Area growth. It is really laughable that people pushing a vision such as high speed rail can’t see where the future lies in the Bay Area. While San Francisco has seen respectable growth in high tech areas it is nothing compared to the Silicon Valley and its future.

San Jose is clearly emerging as the business hub of the Bay Area. And while San Francisco won’t likely ever slip so much that it will become an afterthought, it is not situated like Los Angeles where it has the potential of being a three-dimensional high speed rail hub. Trains could eventually go north and south out of Los Angeles as well as eastward into the Inland Empire and even to Las Vegas and beyond to build a much healthier potential passenger base.

San Jose service can head north and south as well as east into the Bay Area’s equivalent of the Inland Empire — the Northern San Joaquin Valley.

8

Submission 1693 (Gary Patton, Sierra Club, Loma Prieta Chapter, June 23, 2020) - Continued

1693-2551

The cost of the “Pacheco Pass” construction is almost certainly much greater today than in 2018. To be able accurately to gauge the possible adverse impacts of the statewide project, and the feasibility of the statewide project, the Authority must insist, as both CEQA and NEPA require, an alternatives analysis that compares the various feasible options, so that the Authority, and the public, which certainly includes the Governor and the State Legislature, have an opportunity to see what project configuration will best achieve state goals while minimizing or avoiding adverse impacts on the environment.

Conclusion

1693-2552

The Loma Prieta Chapter of the Sierra Club urges the Authority to comply with both CEQA and NEPA, and to analyze the proposed statewide project as a statewide project, not as a series of artificially separated “segments.” In connection with a proper analysis of the project as a *statewide* project, the Authority must study reasonably available alternatives to the project presented in the current Draft EIR/EIS. That means, as a practical matter, that the Final EIR/EIS must undertake a detailed analysis of the “Altamont Pass” alternative and take into account impacts to be expected not only in the San Jose to Merced “segment” but in the San Jose to San Francisco “segment,” too.

Thank you for taking seriously our very strongly held view that the current environmental document is both intellectually and legally deficient.

Yours truly,



Gary A. Patton, Attorney
Sierra Club, Loma Prieta Chapter

cc: Green Foothills
Swanee Edwards
Manteca Bulletin
Congress Member Zoe Lofgren
Other Interested Persons

Response to Submission 1693 (Gary Patton, Sierra Club, Loma Prieta Chapter, June 23, 2020)

1693-2539

Commenter is referred to Draft EIR/EIS Section 3.7, Biological and Aquatic Resources, Impact BIO#43 for assessment of impacts on wildlife movement, including mountain lion passage through Coyote Valley and in the Pacheco Pass area. Please also refer to Impact BIO#44 for assessment of potential noise impacts on mountain lion movement in that area. Both impacts are significant, and mitigation is required, as specified in mitigation measures BIO-MM#76 through BIO-MM#81.

1693-2540

Refer to Standard Response SJM-Response-ALT-3: Rejection of Alternative 3.

The Authority evaluated Alternative 3 but selected Alternative 4 as the Preferred Alternative. As summarized in Chapter 8, Preferred Alternative, of the Draft EIR/EIS, Alternative 3 includes a station in the less-developed east Gilroy area, would permanently convert the most agricultural farmland, and would have higher impacts on biological and aquatic resources than the Preferred Alternative.

1693-2541

Refer to Standard Response SJM-Response-ALT-3: Rejection of Alternative 3.

The comment suggests that a mitigation measure should be included to protect farmland within the Santa Clara County Agricultural Resource Area that would be affected by construction of the Project Section (including, specifically, Alternative 3 and the east-of-Gilroy station). As the Draft EIR/EIS explains, construction of the Project Section would result in a significant and unavoidable impact under CEQA for Impacts AG#2 and AG#3 relating to permanent conversion of Important Farmland to nonagricultural use, even with the application of mitigation, including AG-MM#1.

Accordingly, the Authority has carefully reviewed the commenter's suggested mitigation measure and has determined that it is largely similar in effectiveness to mitigation that is already proposed in the Draft EIR/EIS, specifically AG-MM#1. AG-MM#1 would mitigate for any impacts on Important Farmland, whether or not it lies within a County's designation of an "agricultural resource area." The Department of Conservation administers the FMMP, which defines Important Farmland to comprise several categories of farmland, described in more detail in the Draft EIR/EIS in Section 3.14.1.1, Definition of Terminology. The FMMP describes Important Farmland as agricultural land that has a combination of soil quality, location, growing season, and moisture supply needed to produce crops. Specific criteria differ for each of the FMMP-defined Important Farmland categories. Consistent with NEPA and CEQA requirements, the analysis in Section 3.14, Agricultural Farmland, of the Draft EIR/EIS focuses on impacts on Important Farmland and, accordingly, lays the foundation for calculating mitigation based on impacts on Important Farmland. AG-MM#1 includes Authority funding for the California Farmland Conservancy Program's work to identify suitable agricultural land for mitigation of impacts and to fund the purchase of agricultural conservation easements from willing sellers. Moreover, the commenter's suggested mitigation measure is not necessarily reasonable or feasible, because the County's Agricultural Resource Area appears to be overinclusive, insofar as it includes developed land and other nonagricultural lands. Of course, the County's Agricultural Resource Area does also include Important Farmland as designated by the Department of Conservation, but that Important Farmland is covered under AG-MM#1. Any mitigation in addition to the established ratios specified in AG-MM#1 (1:1 for direct impacts and 0.5:1 for indirect impacts) would duplicate the purchase of agricultural conservation easements already

Response to Submission 1693 (Gary Patton, Sierra Club, Loma Prieta Chapter, June 23, 2020) - Continued

1693-2541

provided for.

To address this comment and better clarify the difference between direct and indirect mitigation ratios, the text for AG-MM#1 was revised in the Final EIR/EIS to indicate mitigation ratios for direct and indirect impacts.

In addition, the comment states that the East of Gilroy Alternative (Alternative 3), would cause substantial impacts on agricultural land. This is accurate and identified throughout numerous sections and chapters in the Draft EIR/EIS, most succinctly in Table 8-1 of Chapter 8, Preferred Alternative.

1693-2542

With respect to Alternative 4's impact on Villa Mira Monte, the Final EIR/EIS finds that the impact would be less than significant, which is the correct determination based on the effects analysis and evidence presented. Villa Mira Monte's historic setting has already experienced considerable change, such that the OCS poles would not materially impair the characteristics that qualify the resource for historic register listing. Furthermore, Chapter 4, Section 4(f)/6(f) Evaluation, specifies that additional project features will apply to Villa Mira Monte as related to potential aesthetic and noise/vibration impacts, including adoption of design standards (AVQ-IAMF#1) and design review process to guide the development of non-station area structures (AVQ-IAMF#2). Mitigation measures calling for noise barriers (NV-MM#1) and visual screening will also apply (AVQ-MM#3, AVQ-MM#4, and AVQ-MM#6). As a result, a loss of revenue and subsequent neglect of Villa Mira Monte are not foreseeable consequences of HSR operation.

1693-2543

Comment noted. The Resource Study Area for dam failure inundation is defined as a 50-mile radius on either side of the project alternatives' footprints. Please refer to Section 5.4.4.1, Earthquake-Induced Flooding Existing Conditions, of the Geology, Soils, and Seismicity Technical Report (Volume 2, Technical Appendices, of the Draft EIR/EIS), which notes that "[t]he Pacheco Pass Subsection would be affected by a dam failure of Pacheco Pass Lake, B.F. Sisk Dam (San Luis Reservoir), or O'Neill Dam. Data or mapping for inundation caused by dam failure at Pacheco Pass Lake is not available. However, the reservoir is located approximately 5 miles upstream of the alignment within the relatively narrow Casa De Fruta valley, indicating that inundation of the alignment could occur in the event of a dam failure at Pacheco Pass Lake."

Additionally, please refer to Draft EIR/EIS Section 3.9, Geology, Soils, Seismicity and Paleontological Resources, Impact GEO#10: "The earthquake-induced flooding impacts would be addressed with conventional construction safety measures. The design-build contractor would prepare a CMP that would include features to reduce the potential for earthquake-induced flood hazards to cause personal injury, loss of life, and property damage during construction (GEO-IAMF#1). This may include evacuation plans as well as earthquake response training for workers. Conforming to guidelines specified by relevant transportation such as AREMA, FHWA, and Caltrans and building agencies and codes would require contractors to account for drainage patterns and topography during design and construction and thus be able to establish safe evacuation areas for construction workers (GEO-IAMF#10). Implementation of project features and actions before and during construction would avoid increasing exposure of people or structures to potential loss of life, injuries, or destruction beyond what they are exposed to currently in the area's environment due to earthquake-induced flooding."

Response to Submission 1693 (Gary Patton, Sierra Club, Loma Prieta Chapter, June 23, 2020) - Continued

1693-2544

Refer to Standard Response SJM-Response-ALT-1: Alternatives Selection and Evaluation Process.

Section 1.1.4.1, The San Jose to Central Valley Wye Project Extent, of the Draft EIR/EIS explains that the analysis in the Draft EIR/EIS is focused on evaluating the San Jose to Central Valley Wye Project Extent, which is also called the "project" or "project extent". The project extent spans from Scott Boulevard in Santa Clara to Carlucci Road in Merced County. The project extent analyzed in this Draft EIR/EIS is part of the larger San Jose to Merced Project Section, which is a segment of the statewide HSR system. Section 1.1.4.1 also explains that this analysis overlaps with the southern portion of the San Francisco to San Jose Project Section starting in Santa Clara at Scott Boulevard, just north of Diridon Station, and ending at West Alma Avenue in San Jose. The San Francisco to San Jose Project Section is also identified as one of the Tier 2 EIR/EISs in Section 1.1.3.5, Project-Level Environmental Reviews, of the Draft EIR/EIS.

Both NEPA and CEQA encourage tiering of environmental documents. The Authority has used a tiered environmental review process to support tiered decisions for the HSR system. Tiering of environmental documents means addressing a broad program in "Tier 1" environmental documents, then analyzing the details of individual projects within the larger program in subsequent project-specific or "Tier 2" environmental documents. The Authority and the Federal Railroad Administration prepared two Tier 1 documents for the statewide HSR system. Program or first-tier EIR/EISs are deliberately focused on the "big picture" impacts of proposed actions and the broad policy choices related to such actions. To avoid repetition and to help focus the document on issues ripe for decision, a lead agency may tier its environmental documents so that later Program or second-tier EIR/EISs incorporate and build upon the analysis and decisions made at the Program level. A first-tier EIR/EIS may therefore be limited to the analytical information necessary for an informed decision on the broad policy issues presented, with detailed analysis of potential impacts of a more specific, site-specific decision to follow when a second-tier EIR/EIS is prepared. In a project-level EIR/EIS that follows a program EIR/EIS (or, put another way, a second-tier EIR following a first-tier EIR/EIS), tiering has the effect of focusing the analysis on a narrower geographic area and the more specifically defined project.

1693-2544

The San Jose to Merced Project Section EIR/EIS properly tiers by: being consistent with the broad policy decisions previously reached about the system; explaining the relationship between the first tier and the second tier (Program EIR/EISs and project-level EIR/EIS); utilizing the Program EIR/EISs for background information and to inform the second-tier analysis, making the Program EIR/EISs available to the public; and by focusing on and analyzing the impacts of implementing a specifically defined high-speed train project between San Jose and Merced.

The 800-mile statewide HSR system was divided into eight project sections after the Authority and FRA selected alignment corridors and station locations for most of the statewide HSR system after the program-level EIR/EIS was completed. Each Project Section contains logical termini, which permits each Project Section to be evaluated independently under both federal and state law and not "piecemealed," as the commenter incorrectly asserts. The law recognizes the impracticality of evaluating, at a project-specific level, the entire 800-mile HSR system, and explicitly sanctions the Authority's discretion to define its project as it has.

Response to Submission 1693 (Gary Patton, Sierra Club, Loma Prieta Chapter, June 23, 2020) - Continued

1693-2545

Refer to Standard Response SJM-Response-ALT-1: Alternatives Selection and Evaluation Process, SJM-Response-ALT-2: Project-Specific Alternatives Considerations.

The comment expresses concern with the Authority's environmental review process and expresses concern that alternatives were not appropriately analyzed. Changes to the full statewide HSR system subsequent to the approval of the 2005 Program EIR/EIS have been addressed in additional program- and project-level EIR/EISs. The full statewide system is not required to be analyzed in each document, as this has cumulatively been addressed through the Tier 1 documents. The San Jose to Merced EIR/EIS contains "analysis sufficient to allow informed decision making" (Laurel Heights Improvement Association v. Regents of the University of California (1988), 47 Cal.3d 376, 404) of a reasonable range of alternatives, but does not duplicate the analysis provided in previous Tier 1 documents. Connections between the Bay Area and the Central Valley through the Altamont Pass and Pacheco Pass were evaluated by Authority and FRA in the 2008 San Francisco Bay Area to Central Valley High-Speed Train Program Final EIR/EIS (Authority and FRA 2008, as cited in Chapter 1, Project Purpose, Need, and Objectives, of the Draft EIR/EIS) and by the Authority in the 2012 Bay Area to Central Valley High-Speed Train Partially Revised Final Program EIR (Authority 2012b, as cited in Chapter 2, Alternatives, of the Draft EIR/EIS). The Tier 1 environmental review process resulted in the Authority's decision to select the Pacheco Pass routing for further study. The Authority has elected to break up the statewide system into smaller segments for environmental review, each with independent utility, including the San Jose to Merced Project Section. There is no piecemealing problem where, as here, the project can be implemented independently. (Banning Ranch Conservancy v. City of Newport Beach (2012) 211 Cal.App.4th 1209.)

1693-2546

The Authority has elected to break up the statewide system into smaller segments for environmental review, each with independent utility, including the San Jose to Merced Project Section. There is no 'piecemealing' problem where, as here, the project can be implemented independently. (Banning Ranch Conservancy v. City of Newport Beach (2012) 211 Cal.App.4th 1209.) See also comment SJM-1693-2544. The sections that bookend the project, including the San Francisco to San Jose Project Section to the west, as well as the Central Valley Wye and Merced to Fresno Project Section to the east, are included as transportation projects in Appendix 3.19-B, Cumulative Transportation Projects List (located in Volume 2, Technical Appendices, of the Draft EIR/EIS). These projects are analyzed in Draft EIR/EIS Section 3.19, Cumulative Impacts. Additionally, Draft EIR/EIS Section 1.1.4.1, The San Jose to Central Valley Wye Project Extent, explains that this analysis of the San Jose to Central Valley Wye project extent overlaps with the southern portion of the San Francisco to San Jose Project Section starting in Santa Clara at Scott Boulevard, just north of Diridon Station, and ending at West Alma Avenue in San Jose. This portion of the alignment is termed the San Jose Diridon Station Approach, and any impacts associated with this portion are included in both second-tier EIR/EISs.

Response to Submission 1693 (Gary Patton, Sierra Club, Loma Prieta Chapter, June 23, 2020) - Continued

1693-2547

The comment requests evaluation of an Altamont Pass alignment relative to the Pacheco Pass alignment. The Tier 1 decisions established the broad framework for the HSR system that serves as the foundation for the Tier 2 environmental review of individual projects. In other words, the Authority relies on the high-level geographic routing decisions made in the Tier 1 process and does not need to revisit those prior decisions when it advances to the Tier 2 environmental review process. Based on the Tier 1 process, the corridor advanced for Tier 2 study between the Bay Area and the Central Valley was the Pacheco Pass corridor. Accordingly, for purposes of the San Jose to Merced Project Section Draft EIR/EIS, the Authority operated within its discretion to focus its range of alternatives to those alternatives within the Pacheco Pass corridor, to the exclusion of any Altamont Pass alternatives. The San Jose to Merced Project Section EIR/EIS contains “analysis sufficient to allow informed decision making,” (Laurel Heights Improvement Association v. Regents of the University of California (1988), 47 Cal.3d 376, 404) of a reasonable range of alternatives, but does not duplicate the analysis provided in previous Tier 1 documents. Please see submission SJM-1693, comment 2546 for an explanation of how the neighboring San Francisco to San Jose Project Section is addressed.

1693-2548

Please refer to the response to submission SJM-1693, comment 2544. Both NEPA and CEQA encourage tiering of environmental documents.

1693-2549

The comment requests evaluation of the costs of an Altamont Pass alignment relative to the Pacheco Pass alignment. The Tier 1 decisions established the broad framework for the HSR system that serves as the foundation for the Tier 2 environmental review of individual projects. In other words, the Authority relies on the high-level geographic routing decisions made in the Tier 1 process and does not need to revisit those prior decisions when it advances to the Tier 2 environmental review process. Based on the Tier 1 process, the corridor advanced for Tier 2 study between the Bay Area and the Central Valley was the Pacheco Pass corridor. Accordingly, for purposes of the San Jose to Merced Project Section Draft EIR/EIS, the Authority operated within its discretion to focus its range of alternatives to those alternatives within the Pacheco Pass corridor, to the exclusion of any Altamont Pass alternatives. The San Jose to Merced Project Section EIR/EIS contains “analysis sufficient to allow informed decision making,” (Laurel Heights Improvement Association v. Regents of the University of California (1988), 47 Cal.3d 376, 404) of a reasonable range of alternatives, but does not duplicate the analysis provided in previous Tier 1 documents. Please refer also to the responses for submission SJM-1693, comments 2544 and 2545.

1693-2550

The comment requests consideration of a variety of other alternatives, including the Altamont Pass alignment. Please also refer to responses to submission SJM-1693, comments 2544 and 2547 for an explanation of why the alternatives analyzed in the San Jose to Merced Project Section Draft EIR/EIS focus on the Pacheco Pass. The San Jose to Merced Project Section EIR/EIS contains “analysis sufficient to allow informed decision making,” (Laurel Heights Improvement Association v. Regents of the University of California (1988), 47 Cal.3d 376, 404) of a reasonable range of alternatives, but does not duplicate the analysis provided in previous Tier 1 documents. Concerns regarding costs of HSR project sections other than San Jose to Merced are noted. The Preferred Alternative is the lowest cost alternative among the four project alternatives analyzed in this EIR/EIS (Chapter 8, Preferred Alternative, Table 8-2).

Response to Submission 1693 (Gary Patton, Sierra Club, Loma Prieta Chapter, June 23, 2020) - Continued

1693-2551

The comment requests additional alternatives analysis to compare various feasible options. The comment requests evaluation of an Altamont Pass alignment relative to the Pacheco Pass alignment. Please see submission SJM-1693, comment 2547 for a discussion of why the San Jose to Merced Project Section Draft EIR/EIS focuses its analysis of alternatives on the Pacheco Pass. The San Jose to Merced EIR/EIS contains “analysis sufficient to allow informed decision making,” (Laurel Heights Improvement Association v. Regents of the University of California (1988), 47Cal.3d 376, 404) of a reasonable range of alternatives, but does not duplicate the analysis provided in previous Tier 1 documents.

1693-2552

Please refer to the response to submission SJM-1693, comments 2544, 2545 and 2546. The Draft EIR/EIS is compliant with both NEPA and CEQA. Please also see the response to submission SJM-1693-2547 for a discussion of why the San Jose to Merced Draft EIR/EIS appropriately focuses its analysis of alternatives on the Pacheco Pass. Impacts associated with the San Jose to San Francisco "segment" are provided in the San Francisco to San Jose Project Section Draft EIR/EIS, which was published on July 10, 2020 (Authority 2020c).

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020)



June 23, 2020

Via Hand Delivery and Electronic Mail: san_jose_mcrccd@hsr.ca.gov

California High-Speed Rail Authority
Northern California Regional Office
100 Paseo de San Antonio, Suite 300
San Jose, CA 95113
Attn: San Jose to Merced Project Section: Draft EIR/EIS

Via Hand Delivery and Electronic Mail: yosef.yip@hsr.ca.gov

Yosef Yip
Northern California Outreach Representative
California High-Speed Rail Authority
100 Paseo de San Antonio, Suite 300
San Jose, CA 95113

RE: Sharks Sports & Entertainment LLC Comments Regarding San Jose to Merced Project Section Draft Environmental Impact Report/Environmental Impact Statement

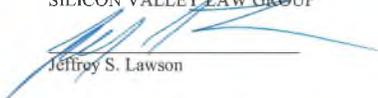
Dear Mr. Yip and Environmental Planners:

On behalf of our client Sharks Sports & Entertainment LLC please find attached their comment letter regarding the Draft Environmental Impact Report/Environmental Impact Statement, dated April 2020 for the California High-Speed Rail Authority, San Jose to Merced Project Section.

Your attention to this matter is appreciated.

Respectfully Submitted,

SILICON VALLEY LAW GROUP



Jeffrey S. Lawson

Attachments: SSE Comments on HSR Draft EIR/EIS

Sharks Sports & Entertainment
Comments to Draft EIR/EIS
June 8, 2020
Page 2 of 2

cc via email: Jim Goddard, Executive Vice President, Government Affairs
Lucy Lofrumento, LMA Law
Nanci Klein, City of San Jose Office of Economic Development
Cameron Day, San Jose City Attorney's Office
Rosalynn Hughey, San Jose Director of Planning, Building and Code Enforcement

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued



June 23, 2020

California High-Speed Rail Authority
Northern California Regional Office
100 Paseo de San Antonio, Suite 300
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Yosef Yip
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San Jose, CA 95113
yosef.yip@hsr.ca.gov

RE: Sharks Sports & Entertainment LLC Comments Regarding San Jose to Merced Project Section Draft Environmental Impact Report/Environmental Impact Statement

Dear Mr. Yip and Environmental Planners:

1748-3039

Sharks Sports & Entertainment LLC (SSE) submits the following comment letter regarding the Draft Environmental Impact Report/Environmental Impact Statement, dated April 2020 (Draft EIR/EIS) for the California High-Speed Rail Authority (Authority), San Jose to Merced Project Section. SSE supports High-Speed Rail (HSR) to San Jose and the downtown area. Nevertheless, our review indicates that as currently presented, the Draft EIR/EIS does not contain the necessary evaluation of certain significant impacts and does not offer adequate mitigation measures. It is our sincere hope that by drawing attention to these issues now, the Draft EIR/EIS can be revised and the project will be constructed without unnecessary detriment to the Diridon Station area and the wider Downtown San Jose.

Background:

SSE is the parent company of San Jose Arena Management, LLC, which manages the SAP Center (the Arena), an 18,000-seat regional multipurpose event center located adjacent to the planned Diridon Station.

525 W. Santa Clara St., San Jose, CA 95113 / 408-287-7070 / fax 408-999-5797 / sapcenter.com

Sharks Sports & Entertainment Comment Letter
Draft EIR/EIS San Jose to Merced Project Section
June 23, 2020
Page 2 of 38

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

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

1748-3040

Automobile transport is the primary means of transportation in the South Bay. In fact, the 2040 San Jose General Plan predicts that 20 years from now, 60% of all trips will still be by automobile. After approximately 20 years of light rail operation, the use of light rail to attend Arena events is trivial - typically averaging less than 2% of patrons for regular games and far less for special events. Similarly, travel by Caltrain for Arena events is minimal - estimated to be less than 5% of patrons for regular games and far less for special events.

Past predictions of mass transit use for Arena events have been grossly overestimated. There is no evidence in the record that HSR would do any better. The "study" providing the basis of the parking analysis, which cannot be found in the Draft EIR/EIS or the appendices, appears to be the same document VTA relied upon for the Phase II BART Extension to San Jose. This study is not a parking demand study at all, but rather a survey of existing and future parking in the area. It does not support speculation that HSR riders will not require parking at Diridon Station. For the foreseeable future, access to the Diridon Station area and the Arena will remain automobile dependent, and the Draft EIR/EIS must recognize that reality. Providing adequate parking, therefore, is required for any reasonable planning horizon.

1748-3041

SSE has been one of downtown's biggest investors for more than two decades, and will continue to support efforts to advance the city center's smart growth, so long as the success of the SAP Center is not impeded. SSE cannot stand by as another transit proposal for the Diridon Station area with an inadequate parking analysis severely wounds the Arena's ability to remain downtown's primary economic engine.

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

Sharks Sports & Entertainment Comment Letter
Draft EIR/EIS San Jose to Merced Project Section
June 23, 2020
Page 3 of 38

Sharks Sports & Entertainment Comment Letter
Draft EIR/EIS San Jose to Merced Project Section
June 23, 2020
Page 4 of 38

Prior Planning Review:

1748-3042

SSE has actively participated in nearly every environmental or planning process affecting the Diridon Station area over the last twenty-five years, including the Diridon Station Area Plan, the BART Phase II Extension to San Jose and Caltrain Electrification projects, and the more recent Station Area Advisory Group and Diridon Integrated Station Concept projects. SSE has participated in the scoping and planning processes for the HSR project since at least 2009, submitting multiple comment letters related to the alignment alternatives and potential impacts to SAP Center parking lots, both permanently and during construction. These comments included a memorandum prepared by Wenck Associates (December 2010) that specifically requested that the “West” alignment be chosen for the project between San Jose and San Francisco, north of SAP Center. An additional letter was prepared by SSE related to travel access and increased traffic volumes, and permanent and construction-related impacts on special transportation functions, pedestrian safety.

SSE has also prepared letters to the Diridon Station Joint Policy Advisory Board describing potential impacts to SAP Center and attendance related the “Santa Clara Position” of the Diridon Station Integrated Concept (DISC). Impacts would include circulation, station orientation, parking, ingress and egress, and loss of revenue. In short, SSE has been incredibly involved in all aspects of development in and around the SAP Center.

We do not believe that any of the transit projects coming to Diridon Station, including HSR and BART, have analyzed the parking demand generated by each project in accordance with any standards used by the traffic engineering profession. Parking demand has not been studied using the scientific integrity standard required by NEPA. No scientific, industry standard parking analyses have been completed. Instead, the Draft EIR/EIS relies on “extensive information on available parking provided by Caltrain, City of San Jose (Park San Jose), the SAP Center, and private vendors and the increasing use of web-based and mobile applications (including real-time applications)” (page 3 2-71) to determine that HSR’s parking demand for additional parking can be met by existing parking facilities, especially in light of the increase in transit planned for San Jose Diridon Station. However, this information cannot be found in the Draft EIR/EIS. Furthermore, SSE has not participated in the preparation of any parking demand and/or availability studies.

1748-3043

The above-referenced provision of the Draft EIR/EIS seems to state that, because parking that would be removed as a part of the project is being replaced at a 1:1 ratio (no new parking), the Arena’s parking needs will be met. The discussion relies on existing parking facilities and an offset of parking demand caused by planned increases in transit services to meet the Arena’s parking needs. It cannot come as a surprise to the Authority that BART is not providing ANY parking at Diridon Station despite studies showing that BART will generate a demand for at least 2,262 parking spaces (2004 Final EIR and 2007 Supplemental Final EIR for the BART

1748-3043

Extension to Diridon Station) Further, the Draft EIR/EIS does not take into account any of the parking to be lost as a result of future development in the DSAP area. As described in our detailed comments below, our review of the existing plans shows a reduction of parking availability of at least 1,771 parking spaces within 1/3-mile of SAP Center – in the Diridon Station area south of W Santa Clara Street alone – not including those spaces lost to the north. In addition, the Authority’s parking inventory (which was actually prepared by Kimley-Horn & Associates for the VTA’s BART extension project) seems to include the Arena’s existing 1,422 space parking lot, which cannot count as off-site parking to meet the City’s obligations under the AMA, as described below. This information confirms that the Diridon Station area will be short at least 5,455 parking spaces even without HSR!

1748-3044

The Draft EIR/EIS wholly fails to identify, evaluate, propose mitigation for, or otherwise address the issues raised previously by SSE related to parking. In particular, the Draft EIR/EIS does not include an actual parking availability study, nor does it analyze parking availability after the removal of large swaths of parking as a result of planned development. As explained in Guideline § 15125 Environmental Setting “[T]he purpose of this requirement [to accurately describe the environmental setting] is to give the public and decision makers the most accurate and understandable picture practically possible of the project’s likely near-term and long-term impacts.” In this case the future impact of the loss of at least 5,445 spaces due to currently projected development, plus the additional demand generated by HSR, BART and the other known projects the most accurate setting would be on project buildout. “Where existing conditions change or fluctuate over time, **and where necessary to provide the most accurate picture practically possible of the project’s impacts**, a lead agency may define existing conditions by referencing historic conditions, **or conditions expected when the project becomes operational**, or both, that are supported with substantial evidence.” (Id.) (Emphasis added.) In this case, the only way to understand the parking catastrophe being created is to describe the baseline expected when the project becomes operational.

1748-3045

Apropos to the point that the Draft EIR/EIS does not meet the legal standard for studying and disclosing these important environmental impacts, other environmental planning documents in the Diridon Station area have taken the transportation and parking issues into consideration, including the 2004 Final Environmental Impact Report (EIR) for the San Jose Water Land Company Planned Development Rezoning; the 2005 Downtown Strategy 2000 Final Program EIR; the 2011 Envision San Jose 2040 General Plan Final Program EIR; the 2015 Envision San Jose 2040 General Plan Supplemental EIR; the 2014 Diridon Station Area Plan EIR; the 2015 Final EIR for Caltrain’s Peninsula Corridor Electrification Project; and a host of others.

1748-3046

A transportation and parking evaluation is something the City of San Jose would require in an EIR for any other large project in the Diridon Station area. The City has, on multiple occasions, recognized the need to consider and mitigate adverse impacts on the Arena caused by any major projects in the Diridon Station area, particularly impacts related to parking and transportation.

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

Sharks Sports & Entertainment Comment Letter
 Draft EIR/EIS San Jose to Merced Project Section
 June 23, 2020
 Page 5 of 38

1748-3046

This expressly includes transit projects. In a memo dated June 6, 2014 (a copy of which is attached as **EXHIBIT A**), City staff recommended the following approach, which was accepted by the City Council upon approval of the Diridon Station Area Plan:

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

1748-3047

The AMA and Baseline Conditions:

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

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

1. “Since its opening some two decades ago as the home of the San Jose Sharks, the San Jose Arena has consistently ranked among the 10 busiest indoor facilities for non-sporting entertainment events. Preserving the extraordinary success of Downtown’s “anchor tenant” appears paramount and is reflected in the Land Use Plan. Although densities will increase, and parking ratios will drop over time, it is imperative that Diridon’s development occurs in a coordinated fashion with its transportation

Sharks Sports & Entertainment Comment Letter
 Draft EIR/EIS San Jose to Merced Project Section
 June 23, 2020
 Page 6 of 38

1748-3047

infrastructure to ensure adequate parking supply for the San Jose Arena and avoid traffic problems in each phase of development.” (Page 2-3)

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

Unfortunately, the Draft EIR/EIS for the HSR San Jose to Merced project completely ignores one of the primary objectives of the DSAP. The permanent need for adequate parking, and for continued excellent access to and from the Arena in accordance with the AMA, is a baseline condition of the approved DSAP land use plan that must be preserved. However, the Draft EIR/EIS fails to identify or evaluate the adverse impacts the HSR project will have on transportation and parking within the Diridon Station area.

1748-3048

Economic Consequences:

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

1748-3049

NEPA Legal Background:

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

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

Sharks Sports & Entertainment Comment Letter
Draft EIR/EIS San Jose to Merced Project Section
June 23, 2020
Page 7 of 38

1748-3049

An EIS must identify and provide a full and fair discussion of all significant environmental impacts caused by the proposed action/project 42 U S C A §4332; 40 CFR §1502 1 EISs shall not serve as a means of justifying decisions already made 40 CFR §1502 2(g) The EIS shall describe the environment of the area 40 CFR §1502 15 The EIS shall also describe all direct and indirect effects and their significance 40 CFR §1502 16 Such analysis must include the urban environment 40 CFR §1502 16(g) An EIS shall identify the means to mitigate adverse environmental impacts 40 CFR §1502 16(h) Agencies must insure professional and scientific integrity in the discussions and analysis in an EIS They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement An agency may place discussion of methodology in an appendix 40 CFR §1502 24 “Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA ” 40 C F R § 1500 1(b) At a minimum, the agency must support its conclusions with studies it deems reliable and must “ explain the conclusions it has drawn from its chosen methodology, and the reasons it considered the underlying evidence to be reliable ’ ” Northern Plains Resource v Surface Transp Bd , 668 F 3d 1067, 1075 (9th Cir 2011)

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

The United States Supreme Court has recently been uncompromising in requiring agencies to provide a thorough “reasoned explanation” for their decisions This requirement applies to NEPA through the Administrative Procedures Act (APA) The requirements of the APA promote agency accountability to the public In the cases of *Homeland Security v Regents of the University of California* 2020 U S LEXIS 3254 (2020) (DACA Case) and *Department of Commerce v. New York*, 139 S Ct 2551, 2575-76 (2019) (Census Case) the Supreme Court explained that under the APA agencies may not rely on conclusory statements (DACA Case at 18) Also a court may evaluate whether there has been an error in judgment by the agency (Id at 19) as part of evaluating whether the agency has met the reasoned explanation requirement Indeed, the court requires a cogent explanation of every element of the decision including technical matters In this Draft EIR/EIS parking has been evaluated differently than it has been in other Diridon Station area projects over the last several decades, and the Diridon Station area neighborhood and businesses have relied on the prior scientifically valid parking studies and mitigations The unexplained change in methodology to an unscientific constrained analysis that does not evaluate parking availability does not meet the reasoned explanation requirement (Id at 40-42) The Draft EIR/EIS must present information regarding the community’s reliance on previous scientifically valid parking studies (i.e., studies that examined parking availability), and must also explain the changes from the previous methodology on which the community relied As the court said, when an agency is not “writing on a blank slate” an agency must determine the

Sharks Sports & Entertainment Comment Letter
Draft EIR/EIS San Jose to Merced Project Section
June 23, 2020
Page 8 of 38

1748-3049

community’s reliance interests, determine if they are significant, and weigh any such interests against competing policy concerns (Id at 45) This was not done in the Draft EIR/EIS

1748-3050

The impact of traffic and parking is a NEPA impact NEPA covers the human environment including quality of urban life 40 CFR §1502 16(g) “[O]mission of a reasonably complete discussion of possible mitigation measures would undermine the ‘action forcing’ function of NEPA Without such a discussion, neither the agency nor other interested groups and individuals can properly evaluate the severity of the adverse effects ” *Robertson v. Methow Valley Citizens Council*, 490 U S 332, 352, 371 (1989) Here, providing adequate parking is a mitigation measure A number of cases have held an EIS inadequate because it did not adequately discuss mitigation measures, or because it did not contain mitigation measures that should have been discussed. *NEPA Law and Litig* § 10:44 (2016)

Mitigation measures must meet the NEPA scientific integrity standard of 40 CFR §1502 24, and be presented in sufficient detail to ensure that environmental consequences have been fairly evaluated See *S. Fork Band Council of W. Shoshone of Nev. v. U.S. Dep’t of the Interior*, 588 F 3d 718, 727 (9th Cir 2009) A perfunctory description of mitigating measures is inconsistent with the “hard look” an EIS is required to render under NEPA “Mitigation must ‘be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated ’ ” *Carmel-By-the-Sea v. U.S. Dep’t of Transp* , 123 F 3d 1142, 1154 (9th Cir 1997) There should be an estimate of how effective the mitigation measures would be if adopted, or a reasoned explanation as to why such an estimate is not possible

Further, the Eastern District in *Sierra Club v Eubanks*, 335 F Supp 2d at 1079 makes clear that agency staff cannot simply assert their opinions as fact and be compliant with NEPA The Eubanks Court held:

Even though agency decisions are entitled to deference, NEPA does not allow Defendants to rely on its own opinions and conclusions without providing hard data and analysis for both the public and court to review ... see also *Marble Mountain Audubon Society v Rice*, 914 F 2d 179, 182 (9th Cir 1990) (agencies cannot make conclusory statement in an environmental impact statement ‘without any apparent study or supporting documentation’) NEPA specifically requires Defendants to objectively evaluate and disclose credible scientific evidence that contradicts its proposed course of action 40 C F R Section 1502 9(b) ” (Id) (See *Center for Biological Diversity v U S Forest Service*, 349 F 3d 1157, 1169 (9th Cir 2003)) [Final EIS violates NEPA by failing to disclose and discuss responsible opposing scientific viewpoints in the final statement itself in violation of NEPA and the implementing regulations] (Id) (Emphasis added)

Mitigation cannot be so general that it would be impossible to determine where, how, and when they would be used and how effective they would be *Neighbors of Cuddy Mountain*, 137 F 3d at 1381 There needs to be clear commitments and performance expectations that are measurable CEQA Memo dated January 4, 2011 “*Appropriate Use of Mitigation Monitoring and Clarifying the Appropriate use of Mitigated Findings of No Significant Impact*” p 8

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

Sharks Sports & Entertainment Comment Letter
 Draft EIR/EIS San Jose to Merced Project Section
 June 23, 2020
 Page 9 of 38

1748-3050

SSE's traffic engineer, Jim Benshoof of Wenck Associates, reviewed the "parking study" prepared for the BART Phase II Silicon Valley Extension to San Jose Final SEIS/SEIR, in order to determine whether the transportation and parking impacts were accurately and professionally identified and evaluated (See Wenck Associates Report dated April 2, 2018 and attached as **EXHIBIT B**). The HSR San Jose to Merced Draft EIR/EIS is relying on the same faulty parking survey, which is actually just an inventory, and is not a study that meets industry standards for a scientific technical analysis ("*San Jose Diridon Station Area Parking Study*" as described in VTA and FTA 2018: pages 5-104-5-107)." Moreover, such inventory cannot be found in the Draft EIR/EIS, even though information from the inventory (which was prepared by Kimley-Horn & Associates in 2017) is used to make the argument that plenty of parking is available in the Diridon Station area. However, that conclusion is incorrect, as we demonstrate in the comments contained in this letter.

Page 3 2-25 (Section 3 2 5 3) states the following:

"VTA conducted a San Jose Diridon Station area parking survey in 2017 to validate the number of available parking spaces in the station vicinity (VTA and FTA 2018: pages 5-104-5-107). The parking survey concluded that currently there are approximately 14,450 publicly available parking spaces within 0.5 mile of San Jose Diridon Station: 2,605 on-street and 11,845 off-street spaces on both private and public property. Within 0.33 mile of the station, there are a total of approximately 4,145 parking spaces available to the public: 1,045 on-street and 3,100 off-street spaces. Figure 3 2-4a through Figure 3 2-4d shows these parking space locations. The BART Phase II extension will permanently displace 715 of these parking spaces, leaving a total of 3,430 spaces within 0.33 mile and 13,695 spaces within 0.5 mile of San Jose Diridon Station."

Therefore, because the same unscientific inventory (which does not evaluate parking availability or demand) was utilized for the HSR Draft EIR/EIS, the comments from Mr. Benshoof on the BART EIS/EIR also pertain to the proposed project and should be responded to by the Authority. Our particular comments related to the transportation section of the Draft EIR/EIS and "Parking Study" are as follows:

1748-3051

1. The HSR Draft EIR/EIS fails to adequately describe and address construction-related impacts and mitigation measures for the Diridon Station area. Although the HSR Draft EIR/EIS indicates that major impacts would occur during construction of all four options, the magnitude of such impacts is unexplained, and the differences in impacts among the alternatives are not presented in sufficient detail to allow them to be fairly evaluated. Page 3 2-51: Alternative 4 would require 15 permanent road closures and the relocation or modification of 39 roadways, yet, the specifics of these closures and modifications are not adequately described.

In fact, Table 3 2-14 (Permanent Roadway Closures and Changes by Subsection and Alternative) only lists a few of the 15 closures and 39 roadway modifications, including West Taylor Street grade separation, Cahill extend to Otterson and convert to transit only lanes, rebuild existing underpasses on Bird and Delmas Avenues, quad gates at Auzerais

Sharks Sports & Entertainment Comment Letter
 Draft EIR/EIS San Jose to Merced Project Section
 June 23, 2020
 Page 10 of 38

1748-3051

Avenue, W Virginia Street, and Fuller Avenue. If construction-related impacts to roadways cannot be more clearly defined, environmental review at specific locations has not occurred. This is in violation of CEQA.

1748-3052

The "project-level" analysis also does not describe in detail the potential impacts both in the long-term and during construction of the quad gates anticipated throughout the Diridon Station area as a result of implementation of the at-grade Alternative 4. More specifics about how these quad gates would operate during events, both in the long-term and potentially during construction, at SAP Center must be evaluated for impacts to both vehicular and pedestrian traffic.

1748-3053

Moreover, the vague assurances of future mitigation in the HSR Draft EIR/EIS lack detail or measurable objectives and thus do not meet the NEPA standard requiring sufficient detail to ensure that environmental consequences have been fairly evaluated. This is especially true for an environmental document that is intended to be project-specific. Construction could actually occur without any additional information being provided. This is in violation of CEQA.

1748-3054

2. Despite statements in the Draft EIR/EIS that some HSR riders using the Diridon Station would drive to the station and need to find a parking space, the Draft EIR/EIS states that no parking spaces would be provided at the Diridon Station for HSR users until potentially 2040. Beyond causing difficulties for HSR users and impacts on nearby parking facilities and neighborhoods, this intention to provide no HSR parking for riders at the Diridon Station is illogical and unsupported in the parking "study" prepared by Kimley-Horn & Associates in 2017 for the VTA's BART extension project, then relied on for the HSR project ("*San Jose Diridon Station Area Parking Study*" as described in VTA and FTA 2018: pages 5-104-5-107).

As explained above, this "study" cannot be found in the HSR Draft EIR/EIS, yet information contained in it is used to make a case that additional parking in the Diridon Station area is not required. An inventory that merely counts spaces does not consider the actual availability of those spaces. There is no scientific quantitative analysis regarding the parking needs for transit users and SAP Center. Parking demand needs to be calculated so that the amount of available parking can be compared to see if it meets demand. If it does not, indirect environmental impacts related to noise, air quality, greenhouse gas emissions, and safety will occur. Both CEQA and NEPA require that adequate, current information be included in environmental documents such that the public and decision makers can constructively participate in the environmental process and make informed decisions. This is not possible when vital information is not provided or easily accessed.

1748-3055

3. The Draft EIR/EIS fails to adequately identify or mitigate parking impacts that would occur during construction at Diridon Station. The Draft EIR/EIS states that up to 715 parking spaces in the Diridon area would be permanently displaced by the BART Phase II project and that this is an "indirect impact." If BART is removing parking and not

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

Sharks Sports & Entertainment Comment Letter
 Draft EIR/EIS San Jose to Merced Project Section
 June 23, 2020
 Page 11 of 38

Sharks Sports & Entertainment Comment Letter
 Draft EIR/EIS San Jose to Merced Project Section
 June 23, 2020
 Page 12 of 38

1748-3055

replacing it and the Authority is not providing additional parking for HSR riders until potentially 2040 (and perhaps not even then), the station area will be woefully under-parked. **No analysis** is presented for the indirect impact caused by this loss and lack of parking, including impacts to pedestrian and bicyclist safety as vehicles circle the area, recklessly at times, looking for parking that will not exist.

1748-3056

4. The Draft EIR/EIS incorrectly states that a “parking study” completed by the City (not the Authority) for completely different purposes will mitigate parking impacts during construction of the HSR Project. This “parking study” is actually an inventory that was prepared by traffic consultants, Kimley-Horn & Associates, for the VTA’s BART Phase II extension project. The purpose of the “parking study” was not to analyze HSR or BART construction impacts or to mitigate those impacts. Furthermore, the agencies participating in that “study” did not commit to any budgets, allocation of costs, funding, construction schedules, or any other actions that would be needed in order to implement any recommendations from such study or to achieve any parking solution. Any mitigation resulting from such “parking study” is completely speculative. Accordingly, the “parking study” (i.e., the inventory) may not be relied on as mitigation in the Draft EIR/EIS. In addition, any inference that SAP Center participated in that study is incorrect and misleading.

1748-3057

5. Mitigation proposed in the Draft EIR/EIS in response to identified construction-related transportation impacts does not meet NEPA or CEQA standards. The impacts of the project include 15 street closures and 39 roadway modifications with little detail as to their extent, locations, or durations, especially during events at SAP Center. Page 3.2-75 (CEQA Conclusion) states the following:

“Construction work on stations, MOWF, platform, PG&E upgrades, and track alignment would result in construction traffic, including heavy truck traffic delivering and removing materials and heavy construction equipment moving onto the construction site. Use of heavy equipment and delivery or removal of materials by trucks have the potential to add to traffic congestion, especially if movements occur during morning or evening peak periods. Construction traffic would also result from construction worker trips. Worker vehicles entering and leaving the job sites at the beginning and end of shifts have the potential to increase delays on roadways and at intersections. Construction traffic would lead to interference with local vehicle circulation and operational hazards.”

Mitigation measures for these impacts are not described in the section. Instead, the reader is required to sort through the appendices of the document to find the required and important measures to reduce or avoid impacts. All of the measures simply defer the mitigation to plans and actions to be completed by “The Contractor.” Off-street parking areas are not identified for construction-related vehicles (TR-IAMF#3). There are no measures to ensure that pedestrian and bicycle access is maintained or how accessibility will be provided (TR-IAMF#4, #5, and #12). Construction hours are not consistent with City of San Jose standards (TR-IAMF#6). Truck haul routes are not identified (TR-

1748-3057

IAMF#7). Mechanisms to prevent roadway construction activities from reducing roadway capacity during special events presumably to occur at SAP Center are not identified (TR-IAMF#8).

These measures fail to provide sufficient specificity to meet Federal or State requirements. The measures provide just a general description of steps that will presumably be taken, which fall far short of requirements specified in the Federal Transit Administration document dated August 2016 that “the environmental document clearly identifies the impact(s) to be mitigated and carefully specifies any relied-upon mitigation ‘in terms of measurable performance standards or expected results, so as to establish clear performance expectations.’” Furthermore, this is but one of several examples of where the Draft EIR/EIS has impermissibly deferred “myriad studies, surveys and mitigation plans” in violation of NEPA which requires discussion of “mitigation of likely impacts at the outset.” *S. Fork Band*, 588 F.3d at 727.

CEQA (Section 15126.4) requires that mitigation measures must be feasible and fully enforceable and include the adoption of specific performance measures to ensure that mitigation can reduce or avoid impacts. Further, the mitigation must identify “the type(s) of potential action(s) that can feasibly achieve that performance standard and that will be considered, analyzed, and potentially incorporated in the mitigation measure.” The IAMFs included in the Draft EIR/EIS do not meet this standard. If the project were more developed, which a project of this magnitude should and can be, mitigation would be more specific in compliance with CEQA.

1748-3058

6. Page 3.2-105 states the following:

“Project construction would temporarily displace parking in certain areas within the construction footprint, including at and adjacent to the San Jose Diridon Station (all alternatives) and the Downtown Gilroy Station (Alternatives 1, 2, and 4), including parking used for special events at the SAP Center. Project features would minimize temporary effects on parking through identification of employee parking locations (TR-IAMF#2), off-street parking for construction-related vehicles (TR-IAMF#3), and replacement on a 1:1 basis for temporary displacement of special event parking at the SAP Center (TR-IAMF #8).” Again, these vague measures to be deferred to after project design, do not meet the requirements of NEPA or CEQA.”

Further project operations would permanently displace parking at and adjacent to the San Jose Diridon Station (all alternatives), the SAP Center (all alternatives), and the Downtown Gilroy Station (Alternatives 1, 2, and 4), but the project includes construction of replacement parking on a 1:1 basis, which only replaces parking lost as a result of construction. There is no evidence that increased parking demands caused by HSR riders at the San Jose Diridon Station (all alternatives) would be available in existing parking facilities. The project certainly does not include any parking facilities and there is no analysis to demonstrate that there are offsetting effects associated with increased transit service at the station such that parking demands of station users and SAP Center patrons would be met without secondary environmental or socioeconomic effects.

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

Sharks Sports & Entertainment Comment Letter
 Draft EIR/EIS San Jose to Merced Project Section
 June 23, 2020
 Page 13 of 38

1748-3059

Baseline

As previously described, CEQA Section 15125(a) states:

“An EIR must include a description of the physical environmental conditions in the vicinity of the project. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. The description of the environmental setting shall be no longer than is necessary to provide an understanding of the significant effects of the proposed project and its alternatives. The purpose of this requirement is to give the public and decision makers the most accurate and understandable picture practically possible of the project’s likely near-term and long-term impacts.”

Further, background conditions (existing conditions plus projects that are approved but not yet built) are evaluated as part of and are integral to the evaluation of traffic impacts.

Section 2.6.1.2, *Planned Land Use of the Draft EIR/EIS*, inaccurately describes the existing conditions and thus, the foundation of the project description and evaluation of environmental impacts is flawed. The section states that “Planned projects in the Diridon Station Approach and Monterey Corridor Subsections in San Jose include “an outdoor performing arts pavilion”, “a proposed professional baseball stadium with a maximum seating capacity of 36,000 in the Diridon Station area”, a 240-acre Google downtown campus, and “an underground parking garage proposed for under the historic San Jose Waterworks east of San Jose Diridon Station on West Santa Clara Street”

We know of no outdoor performing arts pavilion in the area. The baseball stadium was the subject of a lengthy court case with Major League Baseball, which the City lost and the stadium is no longer proposed. The Google project is 80 acres, not the entire area encompassed by DSAP, which is closer to 240 acres. We know of no underground parking garage proposed under the historic building on West Santa Clara Street. The description of the existing condition is factually wrong. Moreover, the mistakes are major and known to be untrue. None of the characteristics/descriptions of these projects to be considered part of the “existing condition” or “baseline” under CEQA are accurate and therefore, cause any comparison of the impacts of the proposed project to these conditions to be in violation of CEQA.

The above are important distinctions, primarily because any parking that would be associated with these developments are not available for any shared parking arrangements that the evaluation of parking impacts for the project may have presumed. It would not have been difficult to contact the City of San Jose to get an up-to-date list of existing, proposed, and background projects. Especially since the preparation of a stable project description and the parking and traffic evaluations are dependent on this information and must be correct for legally defensible environmental review.

1748-3060

Table 2-5, *Planned Transportation Improvements* lists a project as “Diridon Area parking and multimodal improvements”, with the type of project being listed as “Parking and transit improvements”. We are not sure what this is – especially since the Phase II BART Extension to San Jose project does not include ANY parking for Diridon Station. We trust HSR is not relying

Sharks Sports & Entertainment Comment Letter
 Draft EIR/EIS San Jose to Merced Project Section
 June 23, 2020
 Page 14 of 38

1748-3060

on parking that is not proposed and in fact, displaces existing parking both in the long-term and during construction. Further, a true parking study was not completed for the BART project (it was actually just an inventory). The HSR project also relies on this same inventory, which does not include an unconstrained parking study with actual scientific modeling.

1748-3061

Project Description

The Draft EIR/EIS violates CEQA due to its unstable project description. Given all the variables for the San Jose to Merced Section, especially through the DSAP area, specific project-level components must be presented in the Draft EIR/EIS. For example, Alternative 1 is an aerial version from Diridon to the first tunnel at the Pacheco Pass. Alternative 2 is an embankment and at grade version from Diridon Station through Morgan Hill and Gilroy. Alternative 3 is another aerial version into the Morgan Hill and Gilroy Subsection. Alternative 4 (the Preferred Alternative and the project presumably under CEQA review) is primarily at grade from Diridon to Gilroy, using a blended system with Caltrain. All alternatives have alternatives within them including a Diridon Station Variant for faster trains, potential locations and configurations for the Gilroy Station, and three alternatives for the Gilroy Maintenance of Way Facility and the Maintenance of Way Siding near the transition to the Central Valley Wye.

Alternative 4, the Preferred Project and project evaluated under CEQA, is not adequately described and many details are deferred to the future in violation of CEQA. First, the project is not providing additional parking for HSR passengers at its opening in 2029 - only spaces that will require removal (226) between Cahill and Montgomery will be replaced 1:1, but nothing additional.

The project description states (page 2-82) the following:

“Existing parking spaces (226) at Cahill Street would be displaced and replaced 1:1 with new parking areas at Cahill and Park Streets and at Stockton and Alameda Streets.

HSR parking demand of 1,050 spaces in 2040 would be met by commercially available parking downtown as well as at the Mineta San Jose International Airport, approximately three miles from the station. The Authority has provided a Station Area Planning grant to the City of San Jose to advance the implementation of the Diridon Station Area Plan adopted by the San Jose City Council. Through this effort, the City would address short-term parking needs during HSR and BART Phase II construction and would also address plans for transitioning the parking needed during construction to the highest and best use after construction. Another Station Area Planning grant to the VTA would fund a San Jose Diridon Station Facilities Master Plan. This grant would be used to develop a parking program to manage parking demand and supply over time to reflect changes in ridership and park-and-ride mode share. These two studies would provide input into a multimodal access plan for the station that would be developed prior to final station design and construction.”

This discussion is clearly in violation of CEQA and NEPA – neither of which allow a lead agency to kick the can down the road relying on future planning exercises to be completed by the City and VTA to determine parking demand and mitigation. Again, the Draft EIR/EIS is a

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

Sharks Sports & Entertainment Comment Letter
 Draft EIR/EIS San Jose to Merced Project Section
 June 23, 2020
 Page 15 of 38

Sharks Sports & Entertainment Comment Letter
 Draft EIR/EIS San Jose to Merced Project Section
 June 23, 2020
 Page 16 of 38

1748-3061

project-level document and these issues need to be resolved and disclosed prior to “final design and construction” This tactic defers disclosure of parking impacts under NEPA and indirect impacts related to a lack of parking under CEQA Further, there is no study to support the statement that HSR’s parking demand of 1,050 spaces in 2040 would be met by commercially available parking downtown and at the Airport There will be no recourse for residents and businesses should specific measures fail to be implemented during construction because by the time the lack of mitigation becomes apparent (10 or more years from now) the time to sue for redress will have passed 5 U S C Section 704 and 706; 28 U S C § 2401(a), 23 U S C §139(1) (FTA Notice of Limitation on Claims, FTA 037045-046)

1748-3062

The FTA guidance documents are clear that spillover parking is an environmental impact Environmental documentation for transit projects should identify anticipated parking impacts and provide ways to avoid, minimize and mitigate any adverse effects on nearby residential or business communities (“Transportation Impacts” published by the FTA Office of Planning & Environment March 16, 2016, <https://www.transit.dot.gov/regulations-and-guidance/environmental-programs/transportation-impacts-0>) (Emphasis added) The project does not supply any new parking to meet project demands; therefore, spillover parking will occur

1748-3063

Does the recently completed update to the Mineta San Jose International Airport’s Master Plan envision and provide parking for HSR riders in 2040? Does the environmental review for the Airport Master Plan include this parking? Where would these riders board/disembark in the Diridon Station area? How might shuttles to and from the airport affect traffic, circulation (pedestrian and vehicle), and transit in the vicinity of Diridon Station? We cannot find answers to these vital questions in either the project description or the evaluation of transportation impacts

1748-3064

Many projects in the DSAP area and downtown are proclaiming to be able to utilize “under-utilized and “commercially available” parking downtown; however, a scientific, industry-standard analysis has not been completed to prove this to be true Further, the Transportation Section of the document (page 3 2-71) states under “Indirect Environmental Effects Related to the Diridon Station and SAP Center”:

“As previously described, the project would replace all permanently displaced parking with nearby replacement parking facilities on a 1:1 basis The project’s demand for additional parking can be met by existing parking facilities, especially in light of the increased transit service planned for San Jose Diridon Station The SAP Center’s parking demand can similarly be met through the combination of existing parking facilities, the replacement parking facilities provided by the project, and the offsetting effect on parking demand caused by planned increases in transit services Thus, no new additional remote parking facilities would be required to meet these demands

While parking demands can be met, because of the BART Phase II Extension permanent displacement of 715 spaces near the San Jose Diridon Station and the potential for some HSR riders to use spaces near the station, it is possible that some station users and SAP Center patrons would need to use more distant parking spaces The extensive information

1748-3064

on available parking provided by Caltrain, City of San Jose (Park San Jose), the SAP Center, and private vendors and the increasing use of web-based and mobile applications (including real-time applications) means that most station users and SAP Center patrons would be able to readily locate parking without extensive circling Furthermore, parking information would be advanced through integrated planning by the City of San Jose, VTA, the Authority, and other partners as development in the station area advances, such that information available by the time HSR is operational would be superior to that currently available While there may some minor increases in local travel due to the use of slightly more remote lots, this local travel is expected to be more than offset by the overall reduction in parking demand resulting from increased transit service”

To reiterate, there is no parking demand study prepared to industry standards found in the Draft EIR/EIS and the referenced “extensive information on available parking” cannot be found in the document The Draft EIR/EIS states that the parking “survey” completed by the “City of San Jose (*San Jose Diridon Station Parking Study as described in VTA and FTA 2018: pages 5-104 – 5-107*)” was used for the parking analysis However, we believe the “study” used, which cannot be found in the document, was the parking inventory prepared by Kimley-Horn & Associates in 2017 for VTA’s BART extension project The reference “(Authority 2016b)” is in many sections that refer to a parking study, but it too cannot be found in the document Therefore, it is very confusing for the public and decision makers to understand what was actually used for the analysis of parking impacts in the DSAP area A scientific parking demand study prepared to industry standards was not prepared for the HSR project, and instead faulty information from a previous inventory was utilized, in violation of CEQA and NEPA

1748-3065

The Project Description is not well defined and is not stable as required by CEQA *County of Inyo v. City of Los Angeles* (1977) 71 Cal App 3d 185 (An accurate, stable, finite project description is an essential element of an informative and legally sufficient EIR) To further support the lack of information in the project description, none of the graphics are clear enough nor do they provide enough detail to determine the proposed alignment north of Diridon Station

The Alternative 4 discussion simply states that “The blended at-grade alignment would continue along MT2 and MT3 to enter new dedicated HSR platforms at grade at the center of San Jose Diridon Station (Figure 2-65)” The figure referenced does not provide enough detail to determine whether land north of the station and west of SAP Center (the Center’s parking lots) is required for the HSR alignment Figure 2-64 is described as showing the project’s alternative alignments, yet the detail of this graphic is extremely insufficient for this purpose

1748-3066

Page 2-117, which describes the *Alignment and Ancillary Features of Alternative 4* does not include any information regarding the removal of parking spaces in SAP Center Parking Lots A, B, and C (Table 3 2-15 *Displacement of Parking Adjacent to San Jose Diridon Station*) to the tune of 81 spaces during construction and 52 spaces permanently This is only evident to the reader in the Transportation section of the document on page 3 2-66 (Table 3 2-15) This information must be included in the project description

1748-3067

In our Memorandum to the California High Speed Rail Authority (December 2010), we stated our preference for the “West Alignment Option” because it would not intrude at all onto the SAP

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

1748-3067 | Sharks Sports & Entertainment Comment Letter
 Draft EIR/EIS San Jose to Merced Project Section
 June 23, 2020
 Page 17 of 38

Center property resulting in the loss of parking both in the long-term and during construction. It appears that Alternative 4, the preferred alternative of the proposed project, will result in the loss of SAP Center parking and we continue to be concerned over this taking. In addition, it is not apparent whether replacement parking will be provided or where it will be located. The construction-related impacts of this replacement parking are also not described.

1748-3068 | Because the project description is confusing, inconsistent, and incomplete for the purposes of environmental review under both CEQA and NEPA, it is difficult to know what is actually proposed. Figure 2-65, *Conceptual San Jose Diridon At-Grade Station Plan (Alternative 4)* depicts the project's "environmental footprint" and appears to show the new tracks within the existing right-of-way north of Diridon Station, along the eastern side of the existing railroad right-of-way, west of the SAP Center. However, page 175 of Appendix 3.1-A appears to show some area designated as "Temporary Construction Easement" within the SAP Center's parking area (Assessor Parcel Number [APN] 259-28-044).

Table 3.2-15 also includes other troubling information not included in the project description. The notes in the table for the SAP Center Lots A, B, and C location states the following:

"Temporarily displaced spaces would be replaced by off-site remote parking and shuttles for special events (TR-IAMF#8). Permanent displacement for Alternatives 1, 2, and 3 includes all existing spaces in footprint. Since the alignment would be an aerial structure over the parking lot, the actual displacement would be less than shown. Permanently displaced spaces would be replaced with a new parking structure on the northern part of the existing lot."

None of this information is in the project description and SSE takes exception to this. It is unrealistic to assume that parking will be available off-site. Where would temporary off-site locations be provided? How would shuttles be coordinated and where would they drop off patrons and potentially, employees of SAP Center? How would shuttles and vehicle driving patrons be affected by roadway closures and modifications during construction? Where would this northern parking lot be located? If it is included in the project, its construction must be included in the evaluation of impacts.

The project description does not include any information regarding any of these details nor are construction staging locations, lengths of street closures or modifications, detours, street circulation changes or any other pertinent construction-related information included. This is in violation of CEQA and NEPA.

1748-3069 | Impact Avoidance and Minimization Features (IAMF)

Section 2.6 2-3, *HSR Project Impact Avoidance and Minimization Features* states the following:

"The Authority has committed to implementing impact avoidance and minimization features (IAMF) consistent with the Statewide Program EIR/EIS (Authority and FRA 2005), the Bay Area to Central Valley Program EIR/EIS (Authority and FRA 2008), and the Partially Revised Final Program EIR (Authority 2012b). The Authority would implement these features during project design and construction, as relevant to the

Sharks Sports & Entertainment Comment Letter
 Draft EIR/EIS San Jose to Merced Project Section
 June 23, 2020
 Page 18 of 38

1748-3069 | project, to avoid or reduce impacts. These features are considered to be part of the project and are included as applicable in each of the alternatives for purposes of the environmental impact analysis."

These IAMFs, if part of the project, should have been included in the text of the alternatives (project description) section. In fact, they are only listed with no context or details and the reader is relegated to finding them in a faraway appendix (2-E). In addition, the IAMFs are not included in sufficient detail in Chapter 3 where impacts and mitigation measures must be included.

1748-3070 | There is no commitment that these measures will actually be included in the project and there is no evidence that they are incorporated into the Project Section design and construction to avoid or minimize environmental or community impacts. Statements such as the Authority and the FRA "pledge" to integrate programmatic IAMFs into the HSR project are fundamentally suspect. Who will hold them accountable? "Programmatic" measures are not project-specific measures needed to actually construct the project. The section includes no "shalls" or "wills" and is completely nonbinding.

1748-3071 | The mere fact that the IAMFs are included in the Mitigation Monitoring and Enforcement Plans, rather than included in the graphics for and descriptions of each alternative, proves they are only to be tracked after construction – not included IN the project. IAMFs should not require tracking, identification of the party responsible for tracking, or clarification of implementation timing. Mitigation measures require such actions.

1748-3072 | In addition, the description of each measure does not detail the means, feasibility, and effectiveness of the measure in avoiding or minimizing impacts, or the environmental benefits of implementing the measure. In fact, only one of the IAMFs even mentions "Special Events" (TR-IAMF#8) and only states that the contractor is supposed "to prevent roadway construction activities from reducing roadway capacity during major athletic events or other special events that substantially (10 percent or more) increase traffic on roadways affect[ed] by project construction. Mechanisms include the presence of police officers directing traffic, special-event parking, use of within-the-curb parking, or shoulder lanes for through-traffic and traffic cones.

How will the 10 percent be determined? Will SAP Center staff be alerted in advance of such an event? How can "special-event parking" and "use of within-the-curb parking" be mechanisms to reduce construction impacts on roadways, and where will that occur? There are no shoulders on Santa Clara Street, the main arterial to SAP Center.

1748-3073 | TR-IAMF#2: *Construction Transportation Plan*, does not address any impacts to SAP Center on event days, including pedestrian safety. Further, TR-IAMF#4: *Off-Street Parking for Construction-Related Vehicles* does not identify where adequate off-street parking for construction vehicles will occur and may include remote parking during construction. Where? Where will shuttles drop workers off and at what times? Will this affect transit and access to SAP Center and the Diridon Station area in general?

1748-3074 | In conclusion, the Draft EIR/EIS is intended to be a project-level document and provide environmental review for construction impacts. The lack of information in Appendix 2-E and

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

Sharks Sports & Entertainment Comment Letter
 Draft EIR/EIS San Jose to Merced Project Section
 June 23, 2020
 Page 19 of 38

1748-3074

the fact that none of the IAMFs are actually included in the alternatives (project description) section of the document or in the individual impact sections, is in violation of CEQA and NEPA which require an analysis of whether all measures included in the project will actually reduce impacts (efficacy) and whether the measures are feasible.

1748-3075

Property Acquisition

The property acquisition map on page 175 of Appendix 3.1-A also shows a piece of property within the northeastern portion of SAP Center’s parking lot that would be acquired for “Other Right-of Way” purposes. This parcel is APN 259-28-031. It is unclear what this parcel would be used for and for how long. The parcel is not as large as it appears on the map. Therefore, it is not known if this acquisition would also result in the loss of SAP Center parking that must be replaced.

The Arena’s parking is being severely threatened by new transit projects and surrounding developments in the Diridon area. Adequate parking is critical to SAP Center’s business goodwill, customer satisfaction, event attendance, and safety of our patrons. As previously stated, the use of any of the SAP Center’s parking areas for temporary or permanent easements would result in the loss of parking that is essential for the economic vitality of the Center – and Downtown.

1748-3076

Transportation Section of Draft EIR/EIS

This section describes the State statute that determined that the adequacy of parking for a project is not a significant impact under CEQA. We must point out that while this may be true, indirect impacts associated with a lack of parking, including air quality and impacts to pedestrian and bicycle safety as a result of transit riders circling neighborhood streets, continue to be considered significant impacts. The lack of a technical parking demand study to determine such impacts is a fatal flaw of sections of the Draft EIR/EIS that declare that indirect impacts were sufficiently analyzed.

NEPA requires the analysis of potential parking impacts and development of mitigation measures where necessary to overcome negative impacts. Inexplicably, the Draft EIR/EIS presents **no analysis** of the increased parking demand caused by HSR and the cumulative impact of BART riders using the Diridon Station (in addition to the loss of permanent spaces due to BART), where those motorists would park, and whether there are sufficient spaces available to accommodate HSR parkers. **No analysis** is presented regarding indirect impacts in the Diridon and downtown areas caused by HSR parkers, including vehicle emissions, congestion, and safety. Both NEPA and CEQA require “hard data and analysis” of these indirect impacts and specific, project-level mitigation measures.

Our specific comments on the Section 3.2 Transportation of the Draft EIR/EIS are as follows:

1748-3077

1. Section 3.2.3 Consistency with Plans and Laws

While the Authority may not have to comply with local transportation regulations, this section continues to state that the IAMFs are incorporated into all project alternatives to ensure consistency with local transportation goals. However, the IAMFs actually are not included at all

Sharks Sports & Entertainment Comment Letter
 Draft EIR/EIS San Jose to Merced Project Section
 June 23, 2020
 Page 20 of 38

1748-3077

in this section or the project description of the Draft EIR/EIS. There is no analysis to show that they are effective or feasible; therefore, the statement that they are incorporated into all alternatives constitutes deferral of mitigation until after the project is designed and, in some cases, constructed. Such deferral violates CEQA.

1748-3078

2. Section 3.2.2.2 State, Senate Bill 743 and CEQA Guidelines Section 15064.3

This section states the following:

“SB 743, codified in Public Resources Code Section 21099, created a shift in transportation impact analysis under CEQA from a focus on automobile delay as measured by LOS and similar metrics toward a focus on reducing VMT and GHG emissions.”

Cal Pub Res Code § 21099 does not exempt the project’s parking impacts’ from CEQA review. It exempts parking analysis for “a residential, mixed-use residential, or employment center project on an infill site within a transit priority area,” otherwise parking is studied. This project is not residential, mixed-use residential, or an employment center. Thus, even7 the limited exemption in CEQA, which is irrelevant in to the NEPA EIS is unavailing.

1748-3079

3. Section 3.2.4.2 Impact Avoidance and Minimization Features “(IAMFs)

As previously mentioned, the IAMFs are described as “project features” and are “included as applicable in each of the alternatives for purposes of the environmental analysis”; however, there is no performance criteria found in the Draft EIR/EIS to substantiate whether the measures would avoid or reduce environmental impacts. Further, this section refers to Section 3.10.6, Environmental Consequences for a narrative of how the IAMFs “are applicable and, where appropriate, effective at avoiding or minimizing potential impacts to less than significant under CEQA.

Section 3.10.6 is actually the Environmental Consequences section for Hazardous Materials and Waste. It is believed that the reader should have been referred to Section 3.2.6 ; however, clarification is required, as discussed later in the comments below.

1748-3080

4. Section 3.2.4.3 Methods for Impact Analysis

Travel Demand Forecasts and Calculation of Vehicle Miles Travelled

This section states the following:

“Analysts developed ridership forecasts for the HSR system using the latest version of the statewide California High-Speed Rail Ridership and Revenue Model in California High-Speed Rail Ridership and Revenue Model, Business Plan Model Version 3 (Authority 2016c). The model incorporates socioeconomic growth assumptions (population, housing, and employment forecasts) consistent with the California Statewide Travel Demand Model and adjusts them for the 2029 and 2040 forecast years. The statewide conventional passenger rail and urban transit networks are consistent with current and planned routes in the 2013 California State Rail Plan (Caltrans 2013) and plans for individual regional rail operators. The Authority provided station mode of access forecasts (Authority 2016b). Analysts estimated the vehicle trip forecasts through

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

Sharks Sports & Entertainment Comment Letter
 Draft EIR/EIS San Jose to Merced Project Section
 June 23, 2020
 Page 21 of 38

1748-3080

the analysis of comparable systems, the local context at each HSR station, existing conditions and constraints, planned land uses, transportation facilities and services, vehicle parking availability, and the mode-of-access forecasts.

These important models, forecasts, and plans cannot be found in the Draft EIR/EIS. The Transportation Resources Technical Report seems to be based on a document entitled, “*Connecting and Transforming California: 2016 Business Plan* (Business Plan) (Authority 2016b). It is unclear as to whether this “(Authority 2016b)” is the same reference in other sections of the document as previously stated and this document cannot be found in the Draft EIR/EIS or the technical report. How can the public and decision makers be sure that the analysis: 1) was completed; 2) was completed correctly; 3) that impacts were correctly determined; or 4) that adequate mitigation has been identified to reduce impacts to a less than significant level?

1748-3081

The section goes on to state:

“Analysts developed forecasts of vehicles that would travel on the freeways and roads in the RSA using a version of the Santa Clara Valley Transportation Authority (VTA) model developed by VTA staff for the San Mateo City/County Association of Governments (VTA 2017a), and subsequently enhanced to develop ridership forecasts for the Caltrain Peninsula Corridor Electrification Project (PCEP) EIR (Peninsula Corridor Joint Powers Board [PCJPB] 2015). This forecasting tool was identified as the most appropriate for the project because it was used to develop Caltrain ridership forecasts and encompasses all the RSA intersections and freeway segments, as well as San Mateo and San Francisco Counties to the north.

Analysts enhanced the VTA model to include HSR in order to develop vehicle forecasts for this analysis. The socioeconomic datasets used as inputs to prepare the forecasts are based on the *Bay Area Regional Projections* (ABAG 2013). These datasets are accepted by the MTC to reflect regional model consistency for models used by the Congestion Management Agencies and were used to develop the regional travel demand forecasts for *Plan Bay Area 2040*, the current RTP and SCS for the San Francisco Bay Area (Bay Area) (ABAG and MTC 2017). Analysts incorporated HSR into the model by adding a new transit line along the planned alignment, with the four HSR stations in the Bay Area (i.e., San Francisco, Millbrae, San Jose Diridon, and Gilroy) and forecast HSR operating speeds by segment. Analysts then adjusted the model to match the HSR ridership and mode of access forecasts. In addition to incorporating HSR, analysts reviewed planned improvements to 2040 No Project highway and transit networks in the VTA model and found them to be consistent with the MTC’s RTP and the SCS regional model.”

The section later states that “The Authority manually added vehicle trips generated by the HSR station and MOWF alternatives to the 2029 and 2040 No Project traffic volumes based on distribution data derived from the VTA model to estimate the project-related traffic volumes.”

It appears that the Authority is relying on information that may not be related to the Diridon Station area or even Santa Clara County. Further, it must be pointed out that there is no evidence

Sharks Sports & Entertainment Comment Letter
 Draft EIR/EIS San Jose to Merced Project Section
 June 23, 2020
 Page 22 of 38

1748-3081

that the Authority used any of the above “models” for preparation of the Draft EIR/EIS for the San Jose to Merced HSR project, including the traffic report in the Transportation Resources Technical Report.

1748-3082

Table 3.2-3, *Passenger Trip Generation at High-Speed Rail Stations*, depicts a total Daily Passenger Trips at Diridon Station of 14,500 and 30,900 in 2029 and 2040, respectively. The number of parked cars at the station remains constant in both years at 340. Off-site parked cars increase from 750 in 2029 to 2,000 in 2040. “These estimates account for constrained vehicle parking; the provision of on-site parking would not meet total unconstrained project-related demand at all stations.” The discussion depends on this constrained parking situation to influence passengers to access the station area via transit rather than auto. This is a hope – not an analysis, and as stated above, cannot be considered to be based on a technical parking demand analysis.

The difference between an “unconstrained” versus a “constrained” parking study is vitally important to an honest, scientific analysis that provides accurate information to the decision makers and the public. Constraining the parking analysis does not show the parking demand. A constrained study is unscientific and misleading.

1748-3083

In March of 2010, a Technical Memorandum related to Station Area Parking Guidance was prepared for the “High-Speed Train Project” that shows in Table A-1 on page 1 (“Highest Station Boardings and Access Activity, 2035) that there would be a “cumulative parking space demand” of 3,800 parking spaces at the San Jose Station. The project now includes no new parking at all upon opening in 2029 and only (maybe) 1,050 spaces in 2040. Where is the analysis that shows that this parking is no longer needed? As we have stated, the out-of-date parking inventory prepared is inadequate to determine that no new parking will be provided at Diridon Station.

1748-3084

5. Station Passenger Trip General by Mode of Access/Egress

This section states the following related to ridership estimates:

“These estimates account for constrained vehicle parking; the provision of on-site parking would not meet total unconstrained project-related demand at all stations. Constrained vehicle parking could influence passengers to access the station area via transit rather than auto. Unmet needs for parking would be accommodated off site. There would be no rental car facilities located in the project footprint. Like unmet vehicle parking, all rental car facilities would be located off site.

The project does not include the construction of off-site parking facilities for construction or operational purposes. Vehicle trips to existing off-site rental car or parking facilities were assigned to areas where these resources are currently available. Passenger trips associated with satellite parking or rental car facilities were included as shuttle trips at the station level.”

The Draft EIR/EIS contains no technical analysis of parking demand in the Diridon Station area as a result of the project. Further, to be scientifically valid, any type of analysis, modeling, or

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

Sharks Sports & Entertainment Comment Letter
 Draft EIR/EIS San Jose to Merced Project Section
 June 23, 2020
 Page 23 of 38

1748-3084

forecasting must be completed in an unconstrained format such that parking supply is not a limiting factor, as described in the Memorandum attached as **EXHIBIT B**. The parking supply in Downtown and the Diridon Station area is not an unlimited resource that every project can tap into on a whim, without analysis.

1748-3085

The statement that constrained vehicle parking could influence passengers to access the station area via transit rather than auto is a wish with no analysis. A fully unconstrained study can generate parking demand outputs, but not when parking is constrained to zero. More importantly, no parking demand output was included in the Draft EIR/EIS, so there is no disclosure of parking's impacts on the neighboring environment. NEPA requires disclosure of the project's impact on the environment, including those related to spillover parking in the surrounding neighborhoods, which would bear the brunt of the impacts. The safety of pedestrians, bicyclists, and residents as a result of riders illegally parking and circling the residential neighborhoods is an indirect impact not studied or disclosed in the Draft EIR/EIS.

1748-3086

In addition, the above paragraphs appear to be in conflict in that unmet needs for parking would be accommodated off-site, yet we can find no consistent determination of where such parking would be provided, including a "parking structure in the northern portion of the SAP Parking Lot". The next paragraph then states that the project does not include off-site parking for construction or operational purposes. Operational purposes must be defined as when HSR is operational and Diridon Station is expanded to allow access to HSR. Further, TR-IAMF#3: Off-Street Parking for Construction-Related Vehicles, states that "if adequate parking cannot be provided on the construction sites, the Contractor shall designate a remote parking area and arrange for the use a shuttle bus to transfer construction workers to/from the job site." The document must state where this parking will be, where shuttle stops will be accommodated, and whether it will be sufficient for the purposes of the project.

1748-3087

6. Baseline Operations Analysis

This section states:

"Pursuant to CEQA requirements, an EIR must include a description of the existing physical environmental conditions near a project. Those conditions, in turn, "will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant" (CEQA Guidelines § 15125(a)). Accordingly, this document analyzes the impacts from project construction as compared to the existing conditions in 2016."

The Draft EIR/EIS is an environmental document prepared in 2020, not 2016. As stated previously, the baseline for the project is incorrect in violation of CEQA as it includes conditions that are no longer current. While the section goes on to say the analysis uses "a multiple baseline approach", the existing conditions must be current at the time the Notice of Preparation was prepared or at the time environmental analysis is commenced or when the project is operational (CEQA Guidelines Section 15125(a)(1)). Furthermore, because this is a joint CEQA/NEPA analysis the NEPA criteria must also be met.

Sharks Sports & Entertainment Comment Letter
 Draft EIR/EIS San Jose to Merced Project Section
 June 23, 2020
 Page 24 of 38

1748-3088

7. Parking Analysis

This section states:

"The focus of the parking analysis is on the HSR stations and the effects on parking of project construction and operations at and adjacent to the stations as such effects relate to the potential for secondary physical impacts on the environment and socioeconomic conditions. Existing parking was identified by review of aerial photography and public websites."

The Draft EIR/EIS must analyze and identify potential indirect impacts related to a lack of parking, including spillover impacts to the surrounding neighborhood, and NEPA still requires an analysis and a determination of significance. Under NEPA, federal agencies do not use established thresholds but determine the significance of environmental effects based on the context that effects occur within, and the intensity of the effects. In determining an effect's intensity, federal agencies consider "factors" such as public health, characteristics of the geographic area, controversy, uncertain risks, precedent-setting aspects, cumulative effects, effects on cultural resources and endangered species, and violation of environmental protection laws (40 CFR 1508.27). Therefore, parking must be analyzed for the purposes of NEPA and parking impacts must be determined along with impacts to freeways and intersections as stated in Section 3-2.4.4, *Method for Evaluating Impacts under NEPA* of the Draft EIR/EIS.

To have "reviewed aerial photography and public websites" is not analysis of any kind and does not include a determination as to whether the parking is available to HSR riders, SAP Center patrons, or others. It is not an analysis of indirect spillover impacts to the surrounding neighborhoods or the SAP Center and is in violation of CEQA and NEPA.

1748-3089

8. Section 3.2.5.3, San Jose Diridon Station and SAP Center Parking

This section describes the vision for the Diridon Station area per the Diridon Station Area Plan (DSAP). It then includes the results of a San Jose Diridon Station area parking survey prepared in 2017 by Kimley-Horn & Associates for the VTA's BART extension to San Jose project. As discussed above, what VTA prepared was only an inventory with no parking demand analysis. It did not consider actual availability of spaces and was not scientifically valid. It was not a current study with an analysis of impacts.

The inventory was not prepared by qualified experts, is not based on any criteria followed by the traffic engineering profession, and does not provide any meaningful data on which a parking analysis could be based. The survey implies there is an astonishing 14,450 parking spaces available for BART riders to use in the Diridon area. The Authority seems to be relying on this inaccurate information related to the BART extension for its own parking "analysis" to justify their "no parking at Diridon decision".

The section includes maps (Figure 3-2-4a through Figure 3-2-d) that show 11,845 off-street spaces within 1/2-mile of the station and 3,100 off-street spaces within 1/3-mile of the station. The figures also appear to show an amazing 2,605 on-street parking spaces within 1/2-mile of the station and 1,045 on-street spaces within 1/3-mile of the station. This information is then relied

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

Sharks Sports & Entertainment Comment Letter
 Draft EIR/EIS San Jose to Merced Project Section
 June 23, 2020
 Page 25 of 38

1748-3089

upon to incorrectly state that there is plenty of available parking in the Diridon Station area, yet the actual document is not included in the Draft EIR/EIS.

The attached graphic (attached as **EXHIBIT C**), which was prepared in concert with SSE’s traffic and parking experts, Jim Benshoof (Wenck Associates) and Michelle Wendler (Watry Design), depicts a much different story. **EXHIBIT C** identifies 1,771 parking spaces within 1/3-mile that will be lost in the area south of the Arena alone, due to future construction. Alarming, many of these parking lots are shown as available parking on the Draft EIR/EIS figures. Taking into account the parking demand for BART that is not being met and the fact that existing SAP Center parking cannot be considered “available parking”, we estimate that 5,455 parking spaces will be lost due future development and the parking grab that has been going on for some time in the Diridon Station area and Downtown San Jose.

When comparing **EXHIBIT C** to the figures in the Draft EIR/EIS, the discrepancies must be accounted for in a technical parking demand study. Again, using an out-of-date inventory to justify not providing any parking is not an analysis under NEPA and does not provide an analysis of the potential for spillover parking in surrounding neighborhoods under CEQA.

1748-3090

Ridership modeling was used by the Authority to estimate what changes parking has on ridership on the entire HSR line. It does not look at how many HSR riders will drive to Diridon and is not consistent with High Speed Rail’s own projections in March 2010. Moreover, it does not consider that BART and HSR riders will arrive early and take parking from existing businesses that need it. It just shows they are on the train. There are heavily utilized parking lots in the Diridon Station area and downtown San Jose. It is foreseeable that BART and HSR riders will drive into the station area and fill up Caltrain parking, Sharks parking, Marriott parking, and parking for the restaurants, bars, and businesses from Market street to Race Street. The Draft EIR/EIS partially concedes this obvious fact. But saying that HSR riders could access “several downtown parking garages” is not a study. Rather, it is an admission that the Authority knows there are foreseeable spillover impacts that have not been adequately identified in violation of CEQA.

1748-3091

9. Section 3.2.6.2, Roadways, Freeways, and Intersections (Vehicle Circulation)

In response to the information presented in this section of the Draft EIR/EIS, we submit a memo prepared by Jim Benshoof at Wenck Associates, dated May 21, 2020, that describes many issues within the Diridon Station area related to vehicle circulation (attached as **EXHIBIT D**). As stated in the memo, there are numerous transportation issues associated with proposed developments in the Diridon Station area. The City is preparing the Diridon Integrated Station Concept (DISC) with its partners and the memo was in response to a draft that was circulated in April 2020; however, many of the issues also apply to the HSR project. Particularly, the fact that SAP Center will be significantly affected by ongoing traffic circulation and parking issues.

This section includes Project Impacts. The first are Temporary Congestion/Delay Consequences on Major Roadways, Freeways, and Intersections from Temporary Road Closures, Relocations, and Modifications (Impact TR#1:) and Construction Vehicles (TR#2). The section states the following:

Sharks Sports & Entertainment Comment Letter
 Draft EIR/EIS San Jose to Merced Project Section
 June 23, 2020
 Page 26 of 38

1748-3091

“Construction of station, platform, and track and track alignment structures would require temporary construction easements (TCE), which would require the temporary closures of parking areas or roadway travel lanes, and the construction of overcrossings and interchanges. These activities would increase traffic congestion on roadways, freeways, and intersections because of lane or street closures, diversions in traffic from temporary detours, and other temporary disruptions to traffic.”

However, mitigation is deferred to another time as stated below:

“Exact locations of temporary closures, changes, and disruptions would be determined and minimized during the development of a construction transportation plan (CTP).”

Again, the Draft EIR/EIS is claiming to be a “project-level” environmental document which allows construction without further review or analysis. These locations must be disclosed such that surrounding neighborhoods and businesses, including the SAP Center, are able to evaluate potential impacts in advance of project and CTP approval by the Authority. Without knowing locations, how can impacts be adequately described and mitigated? Impacts related to construction vehicle traffic is also deferred and it is stated that the CTP to be prepared in the future will mitigate for those impacts as well.

1748-3092

Further confusion is also provided by the following statement related to construction traffic:

“This temporary effect during construction would not adversely affect travel for the public, as the only vehicles that would be meaningfully delayed would be project-related construction traffic. Nevertheless, to facilitate efficient ingress and egress, project-related construction traffic should be directed to occur outside of peak periods to the extent possible, consistent with TR-IAMF#7.”

How can construction traffic occur outside the peak hours in the mornings and evenings? These are prime times for when construction begins and ends. If streets are closed for days on end, adding construction-worker traffic (for which there may not be any parking) would only exacerbate an intolerable situation, especially after 6 pm on event nights at SAP Center. Further, TR-IAMF#7 is not included in the section, nor evaluated for efficacy and feasibility.

1748-3093

The Draft EIR/EIS conclusion for these impacts states that auto delay is not a CEQA impact; however, impacts related to safety to vehicles, transit, pedestrians, and bicyclists are indirect impacts that must be presented and analyzed. This section does not include such an analysis.

On page, 3 2-46, Alternative 4 is described as including “a substantial widening” of the existing I-280 overcrossing resulting in temporary highway lane closures and width reductions, reduced speed limits, temporary on- and off-ramp closures, detours, and temporary freeway closures. Some weekends, full closure would be required. We see no discussion in the Draft EIR/EIS of how these construction-related impacts will impact SAP Center access on event days.

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

Sharks Sports & Entertainment Comment Letter
 Draft EIR/EIS San Jose to Merced Project Section
 June 23, 2020
 Page 27 of 38

1748-3094

10. Impact TR#3: Permanent Delay/Congestion Consequences on Freeways and Roadways from Permanent Road Closures and Relocations

SSE’s comments related to Impacts TR#1 and TR#2, above, continue to be pertinent to Impact TR#3. See previous comments related to the installation of quad gates, 15 permanent road closures, relocation of 39 roadways, and the conversion of Cahill Street to transit only lanes (Table 3.2-14)

Page 3.2-59 includes the following:

“Alternative 4 would be built as a blended system with two electrified tracks for HSR and Caltrain and a separate non-electrified track for freight and other passenger services. The alternative would construct pick-up and drop-off spaces throughout the San Jose Diridon Station area that would differ from the other alternatives and it would not include the extension of Cahill Road through to Park Avenue.

Where would these pick-up and drop-off spaces be located? They are not shown on Figure 2-65, the Alternative 4 conceptual plan for Diridon Station.

Page 3.2-60 includes the following:

“In the San Jose Diridon Station Approach Subsection, the permanent closures and modifications to the roadway network would result in some shifting of traffic, but there would be no changes to the capacity of modified roadways.”

We see no analysis that shows that the shifting of traffic would not change capacity of modified or existing roadways.

1748-3095

11. Operations Impacts: Page 3.2-61 states that in 2029, the project would generate approximately 400 peak hour vehicle trips at San Jose Diridon Station and in 2040, 1,100 peak hour trips. Parking is not provided by the project for these trips in 2029 and it is not conclusive that any will be provided in 2040. These determinations were made without a technical parking demand analysis in violation of NEPA.

1748-3096

12. Page 3.2-62 includes the following:

“Although there are fewer affected intersections under Alternative 4 in the SJ Diridon Station Approach Subsection, there would be more substantial effects at the at-grade crossings and on Autumn Boulevard and Montgomery Street in the station area from additional gate down time at the at-grade crossings and the absence of the Cahill Street extension to Park Avenue.”

Additional information related to quad gates and roadway closures must be provided and analyzed.

Sharks Sports & Entertainment Comment Letter
 Draft EIR/EIS San Jose to Merced Project Section
 June 23, 2020
 Page 28 of 38

1748-3097

13. Section 3.2.6.3 Parking

This section is divided into temporary construction impacts (Impact TR#8) and permanent effects related to parking (Impact TR#9). Impacts are further defined as “Temporary Effects during Construction adjacent to San Jose Diridon Station and SAP Center”.

Page 3.2-64 states that Alternative 4 would affect up to 397 publicly available parking spaces. In addition, the following is stated:

“These totals include parking within the temporary construction footprint. At any one time, some of this parking may be available for station or special event uses, but the analysis conservatively assumes that temporary loss of these spaces may occur at the same time. Construction of the San Jose Diridon Station and approaches and related parking displacement could take 2 to 2.5 years.”

The section goes on to state that the temporary loss of 397 parking spaces adjacent to San Jose Diridon Station would affect 3 percent of the approximately 13,695 total publicly available parking spaces within 0.5 mile of the station, and 12 percent of 3,390 total publicly available parking spaces within 0.33 mile of the station. This count apparently takes into account the temporary loss of 755 spaces during BART Phase II construction (Footnote number 10).

The section also states that the amount of parking still available for use under Alternative 4 (2,993 spaces) would not meet the parking obligations specified in the Arena Management Agreement between the SAP Center and the City of San Jose (3,175 spaces). However, the section states “All alternatives would leave sufficient parking outside construction areas (11,612 spaces under Alternatives 1, 2, and 3; 13,298 spaces under Alternative 4) to meet agreement requirements relative to the ½-mile radius requirements (6,175 spaces),” taking into account the loss of 715 spaces permanently displaced by the BART Phase II Extension project (Footnote number 11).

As stated previously, the discussion of parking impacts in the Draft EIR/EIS is based on a parking survey – not an analysis – that is not included in the Draft EIR/EIS. As shown in **EXHIBIT C**, the amount of publicly available parking within 1/3- and 1/2-miles of the SAP Center is inaccurate and many of these spaces are not available. Future construction of BART, the Google project and others, would significantly further reduce parking in advance of the HSR construction horizon years. In addition, parking for construction workers is not identified. This is a serious flaw of the analysis under NEPA and will result in significant indirect CEQA impacts, including dangerous spillover effects in proximity to the SAP Center and surrounding neighborhoods.

1748-3098

Per TR-IAMF#8, which is not included in the section, it is stated that:

“Project construction contractors would identify adequate off-street parking using existing remote parking areas or vacant land to replace any temporary displacement of parking utilized for special events at the SAP Center on a 1:1 basis during construction. Contractors would arrange for shuttle vehicles between the remote parking areas and the SAP Center for any remote parking areas that are more than 0.5 mile from the SAP

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

Sharks Sports & Entertainment Comment Letter
 Draft EIR/EIS San Jose to Merced Project Section
 June 23, 2020
 Page 29 of 38

1748-3098

Center Contractors would also work with the SAP Center to provide advance and real-time information about parking availability for special events during times in which construction displaces existing available special event parking.”

As shown on **EXHIBIT C**, adequate parking during and after construction is not provided in the Diridon Station area or Downtown and there certainly is no vacant land available for parking. Again, the lack of accurate information related to parking demand or supply does not allow for an adequate assessment of impacts or whether mitigation will be successful.

1748-3099

14. Page 3 2-68 includes the following:

“The feasibility of providing replacement off-street parking spaces during construction per TR-IAMF#8 is supported by the *San Jose Diridon Station Area Parking Study* (as described in VTA and FTA 2018: pages 5-104–5-107) and additional research by the Authority. The parking study was prepared by the City of San Jose in collaboration with VTA, Caltrain, the Authority, and Sharks Sports and Entertainment to identify interim parking solutions to help address effects during construction of various improvements. Available land in the area was evaluated for use for interim parking during 2018–2025. The study identified four possible sites that could accommodate more than 1,400 total parking spaces that met the goals and needs of interim parking for stakeholders. These sites are all within 0.5 mile from San Jose Diridon Station and at the intersections of Montgomery Street and West St John Street, Montgomery Street and San Fernando Street, and Montgomery Street and Park Avenue (two lots) Of these parking spaces, 525 are within 0.33 mile In addition to the lots identified in the parking study, as described in Section 3.2 5.3, there are additional parking areas within 0.5 mile that will not be affected by construction that can also provide additional special event parking opportunities. Also, as noted in Section 3.2 5.4, an additional 4,798 public parking spaces (open 24 hours) as well as private parking areas between 0.5 mile and 1 mile of the San Jose Diridon Station would be available in downtown San Jose as well as additional parking areas beyond 1 mile of the station that could be utilized with remote parking shuttles. Based on this evidence, there are sufficient opportunities for off-street parking in the San Jose Diridon Station and SAP Center area to offset temporarily displaced parking spaces for special events.

In addition, San Jose Diridon Station is an existing multimodal transportation center in San Jose’s downtown urban core. It is served by several transit modes including VTA’s light rail and express and local bus service, ACE, Amtrak, Capitol Corridor, and regional bus lines to Alameda and Santa Cruz Counties. This station is well connected to the City’s and County’s regional bicycle network and is well-served with pedestrian facilities Consequently, many multimodal options are available for SAP Center customers and transit riders to access the station during construction.”

To reiterate, the “parking study” referred to was only an inventory and did not include any analysis and SSE certainly did not participate in the preparation of a parking demand study BART construction and the future Downtown West (Google project) will result in the loss of most of the existing parking in the Diridon Station area and shown on Figures 3.2-4a and 3.2-4b

Sharks Sports & Entertainment Comment Letter
 Draft EIR/EIS San Jose to Merced Project Section
 June 23, 2020
 Page 30 of 38

1748-3099

of the Draft EIR/EIS. Therefore, the information related to an inventory is not current and the analysis of the availability of spaces identified has not been completed when it must be as part of a scientific analysis.

1748-3100

The HSR decision not to study unconstrained parking demand and to rely on a survey prepared by the City or VTA is incomprehensible in light of the SSE Scoping Letter, SSE’s previous letters, the discussion of the issue in every other environmental document relating to the Diridon Station area, the recent litigation over parking shortfalls, etc. It is apparent that if the Draft EIR/EIS had studied parking demand with “scientific integrity,” that study would show extremely significant adverse parking and transportation impacts that require mitigation. Yet the Draft EIR/EIS does not identify, evaluate, or suggest ways to mitigate these construction-related parking impacts that were previously studied and known to HSR.

1748-3101

15. Permanent Effects during Operations, page 3.2-69 See previous comments related to the permanent displacement of up to 247 spaces (Alternatives 1, 2, and 3) or 52 (Alternative 4) parking spaces in the SAP Center’s parking lots and the replacement of this parking at a 1:1 ratio “in a new parking structure on the north side of SAP Center Lots A, B, and C.”

1748-3102

16. Increased Parking Demand, page 3.2-69 generally states that the project will have a 2040 demand for 1,060 parking spaces “(beyond current existing demand)” and these spaces can be accommodated in existing parking lots within 1/3-, 1/2-, and 1-mile from the station, including Mineta San Jose International Airport. As we explained above, this is not accurate or based on a scientific parking demand study. The section goes on to state that “the Authority would rely on commercially available parking to meet HSR parking demand, provided and priced in accordance to local conditions.” However, there is not enough parking available in the project area, as shown on **EXHIBIT C**.

1748-3103

The section also states the following:

“The SAP Center (capacity of approximately 17,500) is similar to the Oakland Coliseum/Oracle Arena (capacity of approximately 19,600), which is adjacent to the Coliseum BART Station (although the walk to the SAP Center is shorter, with the San Jose Diridon Station being directly across the street). There are approximately 170 events at the SAP Center each year and 200 events at the Oakland Coliseum/Oracle Arena. In 2016, of tickets sold for Oakland Coliseum/Oracle Arena events, 20 to 30 percent of patrons accessed the event from the Coliseum BART station.

The final supplemental EIS/EIR for the BART Phase II Extension (*VTA and FTA 2018: pages 5-104–5-107*) proposed a more conservative estimate of 10 percent of patrons (1,750) accessing SAP Center events by BART. Assuming a vehicle occupancy of 2.5 persons per vehicle for SAP patrons, a 10 percent BART mode share would reduce parking demand by 700 spaces, which would nearly offset the loss of 715 spaces caused by the BART Phase II Extension. In addition to new BART service, the PCEP would also increase peak hour capacity of the San Jose Diridon Station by 20 percent over existing conditions, increasing transit rider access to the SAP Center and resulting in additional offset of parking demand. With the SAP Center served in the future by BART,

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

Sharks Sports & Entertainment Comment Letter
Draft EIR/EIS San Jose to Merced Project Section
June 23, 2020
Page 31 of 38

1748-3103

electrified Caltrain, VTA light rail, rapid bus, and intercity bus service, a 10 percent transit mode share is considered highly conservative, and a 20 to 30 percent transit mode share can be anticipated.

A 20 to 30 percent mode shift would reduce parking demand by 1,400 to 2,100 cars per event (assuming 2.5 persons per vehicle) (Footnote 13). Assuming a 20 percent increase in transit share, the transit increase would offset demand for 1,400 parking spaces, leaving a net increased demand of 375 parking spaces (increase demand due to permanent loss of 715 parking spaces due to BART and 1,060 spaces of demand due to HSR riders minus the offset of 1,400 parking spaces). This net demand of 375 parking spaces would affect 11 percent of the approximately 3,430 remaining publicly available parking spaces within 0.33 mile of Diridon Station and 3 percent of the approximately 13,735 parking spaces within 0.5 mile (Footnote 14). As noted in Section 3.2.5.3, San Jose Diridon Station and SAP Center Parking, there are an additional 4,798 public parking spaces between 0.5 and 1 mile from the San Jose Diridon Station, as well as private parking lots and additional parking opportunities more than 1 mile from the station, including at the San Jose International Airport. Assuming a 30 percent increase in transit share, the transit increase would offset demand for 2,100 parking spaces, which would more than offset the loss of 715 spaces due to BART and the 1,060 parking space demand for HSR riders. In any case, there would be adequate remaining parking in the general proximity of the SAP Center for SAP Center patrons.

The decision to not provide park-and-ride facilities for HSR service at San Jose Diridon Station is consistent with the Envision: San Jose 2040 General Plan, Commercial Downtown Land Use Plan Policies and Transportation Policies (adopted November 2011). The Commercial Downtown Land Use Policies state that “all development within this designation should enhance the ‘complete community’ in downtown, support pedestrian and bicycle circulation, and increase transit ridership. The Downtown Urban Design Policies speak to the urban, pedestrian-oriented nature of this area. As such, uses that serve the automobile should be carefully controlled in accordance with the Downtown Land Use Policies.”

Footnotes to above: 13 “The assumption of 2.5 passengers/vehicle for SAP patrons is based on a factor of 2.41 passengers/vehicle from a study of passengers/vehicle for the Oakland Coliseum (Authority 2019b) that was rounded up to 2.5. No data were located for passengers/vehicle for the SAP Center. 14. These calculations take into account the permanent loss of 715 spaces due to the BART extension.”

As stated throughout these comments, the above is not based in fact and is not substantiated in any sections of the Draft EIR/EIS. There is no analysis of HSR parking demand, including an unconstrained parking demand. Cumulative parking impacts, based on scientific analysis of the project with the future BART project, is not provided. The information regarding SAP Center and comparisons to another sporting event facility is simply anecdotal at best and has no validity. A scientific, data-driven parking demand analysis must be completed and included in the Draft EIR/EIS. The discussion in the Draft EIR/EIS purports without evidence that parking is

Sharks Sports & Entertainment Comment Letter
Draft EIR/EIS San Jose to Merced Project Section
June 23, 2020
Page 32 of 38

1748-3103

available in the project area and downtown that can be used by HSR riders. We direct you again to **EXHIBIT C** which easily refutes this claim.

1748-3104

The Authority’s decision to not provide any parking within the Diridon Station area is not consistent with San Jose’s General Plan. As previously stated, the General Plan predicts that more than 20 years from now, 60% of all trips will still be by automobile. In fact, Land use policy LU-3.5 would apply to the Diridon Station area and is as follows; “Balance the need for parking to support a thriving Downtown with the need to minimize the impacts of parking upon a vibrant pedestrian and transit oriented urban environment. Provide for the needs of bicyclists and pedestrians, including adequate bicycle parking areas and design measures to promote bicyclist and pedestrian safety.”

It does not say eliminate parking, and no fair reading would interpret it to mean HSR should impose its generated park and ride vehicles downtown without any provision for their parking. That is not “balance.” No fair reading of this section can say that total elimination of a project’s parking is called for. Even in 2040 single occupant cars are projected to make up 40% of the commuter mode share.

1748-3105

17. Page 3.2-70 includes the following:

“San Jose’s Transportation Goals, Policies, and Actions aim to establish circulation policies that increase bicycle, pedestrian, and transit travel, while reducing motor vehicle trips, to increase the City’s share of travel by alternative transportation modes. The policy of Goal TR-1.3, Balanced Transportation System, is to “increase substantially the proportion of commute travel using modes other than the single-occupant vehicle. The 2040 commute mode split target for San Jose residents and workers are presented in Table TR-1”, which displays the goal for Drive alone as no more than 40 percent and Transit as at least 20 percent (City of San Jose 2018). San Jose Diridon Station is intended to be in alignment with the City’s mode shift goal.”

We contend that the above is an inaccurate portrayal. There is no information in the Draft EIR/EIS that points to any study showing South Bay residents will no longer rely on automobiles to access public transit. Hoping and dreaming that people will cease to use automobiles to access transit stations is not scientific study. In complete contradiction to the Authority’s argument that the General Plan supports the removal of parking at Diridon, previous traffic analyses completed since at least 2008 show that 77.8% of people commuted to and from San Jose in single-occupant vehicles. The General Plan’s “goal” for 2040 is still 40% drive alone mode share for commuters, and that does not include the approximately 10% who carpool and will also need parking. See previous comment.

1748-3106

The page also states the following:

“The Authority initiated the San Jose Diridon Station Intermodal Working Group to coordinate the planning, design, and delivery of concurrent and interrelated transportation infrastructure projects: HSR, BART Phase II, and PCEP. The Authority has funded two grants to prepare the station area for HSR operations, including the development of strategies to address the supply, demand, and management of parking in the station area

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

Sharks Sports & Entertainment Comment Letter
 Draft EIR/EIS San Jose to Merced Project Section
 June 23, 2020
 Page 33 of 38

Sharks Sports & Entertainment Comment Letter
 Draft EIR/EIS San Jose to Merced Project Section
 June 23, 2020
 Page 34 of 38

1748-3106

The grant to the City of San Jose funded an evaluation of short-term and long-term parking needs during construction and operation of both HSR and BART Phase II, and is supporting several site-specific parking studies in the San Jose Diridon Station area to develop a Parking Program for the Diridon Station Area Plan. The grant to VTA is to prepare a San Jose Diridon Station Facilities Master Plan to address both station and station area facilities, criteria for replacing any parking displaced for new station facilities, and a program to manage the evolution of parking demand and supply over time to reflect changes in ridership and park-and-ride mode share. The City of San Jose and VTA studies will inform a multimodal access plan, which will be developed prior to design and construction of the station. This plan will be developed in coordination with local agencies and will include a parking strategy that will inform the final location, amount, and phasing of parking.

While it is good for the Authority to help fund planning activities in the DSAP area, the parking analyses, upon which both direct and indirect impacts are determined, should have been done before the Draft EIR/EIS was released, so that the planning studies could be included in the document. As explained above, deferring these studies is in violation of NEPA and CEQA.

1748-3107

18. The following is stated on page 3.2-71:

“The San Jose Diridon Station is well served by existing multimodal options that are planned to improve with the Caltrain electrification and BART extension projects, which would increase transit options for SAP customers and transit riders to access the station HSR service would only add to the many multimodal options available to travelers with the San Jose Diridon Station as their intended destination. In view of these characteristics, the project’s increased parking demand is not expected to result in insufficient parking for either the San Jose Diridon Station or the SAP Center or to result in the construction of additional remote parking facilities.”

It is true that the future Diridon Station will include transit options for SAP Center customers and the general public. However, as we have stated previously in these comments, our customers primarily drive to events, with light rail use only averaging 2% and Caltrain, less than 5%. While Arena patrons may not use HSR to access SAP Center, HSR riders will utilize parking that the City is required to be provided per the AMA. Remote parking facilities, including the use of Airport parking and some mythical garage north of SAP Center are described as part of the project in the Draft EIR/EIS; therefore, the final sentence in the above paragraph is untrue and not supported by any scientific study.

1748-3108

19. Indirect Environmental Effects Related to the Diridon Station and SAP Center

This section states that “the project’s demand for additional parking can be met by existing parking facilities, especially in light of the increased transit service planned for San Jose Diridon Station. The SAP Center’s parking demand can similarly be met through the combination of existing parking facilities, the replacement parking facilities provided by the project, and the offsetting effect on parking demand caused by planned increases in transit services. Thus, no new additional remote parking facilities would be required to meet these demands.” Again, we

1748-3108

couldn’t disagree more as shown in **EXHIBIT C**. There is no information to show this is the case, and SSE did not participate in the preparation of a parking demand and/or availability study. Future integrated planning by the City, VTA, and others does not address the issue. Deferring these “studies” is in violation of CEQA and NEPA.

1748-3109

The section concludes with the statement:

“While there may some minor increases in local travel due to the use of slightly more remote lots, this local travel is expected to be more than offset by the overall reduction in parking demand resulting from increased transit service.”

Potential secondary environmental effects of the use of slightly more remote parking facilities are then summarized and described as “minor increases” in vehicles circling the Diridon area contributing to traffic congestion. This section seems to say that demand for parking will decrease because of the increase in transit options and that providing parking in “remote locations” is the cause of the impacts. The impact is caused by transit riders coming to the station in search of unavailable parking and circling repeatedly throughout the neighborhoods. There is no scientific discussion of how this circling will affect surrounding neighborhoods in terms of pedestrian and bicyclist safety, and businesses due to negative land use and economic impacts, traffic safety, and interference with other downtown/Diridon area future development plans, etc. These are serious omissions and must be analyzed and corrected.

1748-3110

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

1748-3111

As shown at other existing transit stations in the Bay Area, the lack of parking results in transit riders having to drive around looking for other spaces or forego transit and continue their commute by automobile. By arbitrarily assuming that only a few people will park and ride at the BART/HSR/Caltrain/Amtrak Diridon station, the Draft EIR/EIS is making an impermissible agency pre-judgement. By not identifying and evaluating with scientific integrity the increased parking demand on the surrounding environment, the Authority is irreversibly and irretrievably committing itself to a plan of action that is dependent upon the NEPA environmental analysis producing a certain assumed outcome. This is contrary to the law, which requires that the agency only commit to a project alternative after it has completed its environmental analysis – which of course is supposed to involve an objective, good faith inquiry into the environmental consequences of the agency’s proposed action *Forest Guardians v U. S. Fish & Wildlife*, 611 F.3rd 692, 714 (2010).

1748-3112

As support for SSE’s observation that BART has repeatedly failed to adequately plan for parking needs at its stations, SSE is attaching a collection of articles obtained from the internet (attached

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

Sharks Sports & Entertainment Comment Letter
 Draft EIR/EIS San Jose to Merced Project Section
 June 23, 2020
 Page 35 of 38

Sharks Sports & Entertainment Comment Letter
 Draft EIR/EIS San Jose to Merced Project Section
 June 23, 2020
 Page 36 of 38

1748-3112

as **EXHIBIT E**), documenting the negative impacts lack of parking has on BART ridership, on the neighborhoods where BART stations are located, and on local businesses. Particularly instructive is the article about Stoneridge Mall having to chain up its parking lots because BART riders were taking it over. Another article discusses the extremely high fire danger when cars are parked illegally over tall, dry grass on the side of the road. These are just a few examples of what happens when transit fails to provide adequate parking to meet the demand caused by its projects – the burden is shifted to innocent parties. These articles also document the burdens on businesses and infrastructure when the lead agency fails to adequately disclose and mitigate its construction impacts.

1748-3113

20. The HSR riders’ occupancy of spaces in the Diridon area will be a hardship to SAP Center’s employees and customers. For some events, SSE may have well over 400 employees who need to park within walking distance, many of whom arrive early in the day to start work and many others who arrive mid-day but leave late at night. In addition, some events occur during weekday daytime hours. HSR and BART riders who leave their cars parked into the early evening will deprive SSE customers of needed parking for evening events. All of these factors should be studied in the Draft EIR/EIS.

1748-3114

21. The Draft EIR/EIS does not meet CEQA requirements for a project level environmental review. The Draft EIR/EIS indicates in the Introduction section that it tiers off of several prior studies, and provides clearance for the San Jose to Merced Section project. This Draft EIR/EIS does not provide “project-specific” analysis under NEPA or CEQA, given that there are several decisions still to be made later about major project components, which could dramatically change the long-term and short-term environmental impacts to nearby land uses. Some of the main examples of this are:

1748-3115

A. Construction Staging Areas:

i. According to the Draft EIR/EIS, no decisions have been made at this time regarding what types of construction activities will occur at each of the construction sites and where staging will occur. These decisions are deferred to the future.

1748-3116

ii. The Draft EIR/EIS does not provide “project-specific” analysis under NEPA or CEQA, given that it has not been determined which construction activities will occur at the different construction staging areas. Our understanding of HSR construction is that there are often very different activities (and resulting noises, waste streams, truck trip lengths, etc.) that would occur at both the lines and station, for example. The Draft EIR/EIS does not analyze the specifics of the environmental impacts (such as noise levels, air quality and greenhouse gas emissions), of such equipment or activity at each staging site. The Draft EIR/EIS also does not identify specific noise mitigation measures for the various equipment which would be used along the lines or at the station, or the reduction and attenuation expected to be received from such measures. Therefore, the residents and businesses nearby cannot accurately understand the potential impacts to them resulting from project construction.

1748-3117

B. Transportation Impacts during Construction:

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

1748-3118

ii. One important ingredient of an EIS is the discussion of steps that can be taken to mitigate adverse environmental consequences. The requirement that an EIS contain a detailed discussion of possible mitigation measures flows both from the language of the Act and, more expressly, from CEQA’s implementing regulations. Implicit in NEPA’s demand that an agency prepare a detailed statement on “any adverse environmental effects which cannot be avoided should the proposal be implemented,” 42 U.S.C. § 4332(C)(ii), is an understanding that the EIS will discuss the extent to which adverse effects can be avoided. See D. Mandelker, NEPA Law and Litigation § 10:38 (1984). More generally, omission of a reasonably complete discussion of possible mitigation measures would undermine the “action-forcing” function of NEPA. Without such a discussion, neither the Authority nor other interested groups and individuals can properly evaluate the severity of the adverse effects (Robertson at 352-3) (Emphasis added).

1748-3119

iii. Coordination alone is not adequate mitigation. This applies to NEPA and CEQA. While Appendix G of the CEQA Guidelines does not specifically mention event centers, Question X Land Use and Planning (a) asks: “Would the project physically divide an established community?” One and a half years of lane closures, lost parking, and disruptive construction activity

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

Sharks Sports & Entertainment Comment Letter
Draft EIR/EIS San Jose to Merced Project Section
June 23, 2020
Page 37 of 38

Sharks Sports & Entertainment Comment Letter
Draft EIR/EIS San Jose to Merced Project Section
June 23, 2020
Page 38 of 38

1748-3119

immediately adjacent to long-established businesses (including the SAP Center) and residents, could significantly impact the viability of these businesses and would constitute physically dividing an established community. This impact is erroneously not identified, analyzed or mitigated in the Draft EIR/EIS.

1748-3120

- iv. The Draft EIR/EIS states that there will be lane closures (and impliedly sidewalk closures) on many streets in the DSAP area, yet specific details are not provided on Figure 2-65 or anywhere else. Therefore: (1) The document does not accurately identify the potential adverse impacts; and (2) The Arena will suffer significant adverse impacts if any portion of any sidewalks are inaccessible to pedestrians or if the vehicular capacity of the surrounding streets is diminished. As to the first issue, the Draft EIR/EIS is deficient on its face due to the inconsistency. As to the second issue, SSE is strongly opposed to any intrusion onto Santa Clara, Montgomery, and Autumn Streets by the HSR construction.

1748-3121

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

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

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

The four alternatives included in the Draft EIR/EIS do not address the potential to reduce or avoid significant impacts of the HSR Project. There is no real discussion of other potential Alternatives that could reduce the significant impacts identified (particularly the transportation disruption and noise impacts). The courts have held that a major function of an EIR is “to ensure that all reasonable alternatives are thoroughly assessed by the responsible official (or board).” (*Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 197)

There is no discussion of “Alternatives Considered but Rejected”. There is also no discussion of alternative locations for the track alignments that would not impact SAP Center parking, and no explanation of how this has been explored previously.

1748-3122

Conclusion:

SSE supports HSR to San Jose. However, the Draft EIR/EIS must include suitable analysis based on fact, not assumption, as well as definitive, enforceable mitigation of the significant adverse environmental impacts identified by SSE. It is SSE’s belief, grounded in long experience, that such mitigation will result in a San Jose to Merced Section Project that is better for HSR, the Authority, SSE, and for the entire City and State.

Respectfully Submitted,
Sharks Sports & Entertainment LLC

Jim Goddard
Executive Vice President, Government Affairs

- Exhibits
- A: City of San Jose Staff Memorandum dated June 6, 2014
 - B: Wenck Associates Report dated April 2, 2018, with attachments
 - C: Graphic Depicting Parking Spaces to be Lost within 1/3 Mile
 - D: Wenck Associates Memorandum dated May 21, 2020, with attachments
 - E: Articles re Parking Problems at BART Stations

Cc:
Lucy Lofrumento, LMA Law
Nanci Klein, City of San Jose Office of Economic Development
Cameron Day, San Jose City Attorney’s Office
Rosalynn Hughey, San Jose Director of Planning, Building and Code Enforcement

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued



COUNCIL AGENDA: 6/10/14
ITEM: 10.2

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Hans F. Larsen
Harry Freitas
Kim Walesh

SUBJECT: DIRIDON STATION AREA PLAN

DATE: June 6, 2014

Approved

Date 6/6/14

COUNCIL DISTRICT: 3 & 6

SUPPLEMENTAL

REASON FOR SUPPLEMENTAL MEMO

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

RECOMMENDATION

Conduct a Public Hearing to consider taking the following actions:

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

Exhibit A to Comment Letter
Page 1 of 5

EXHIBIT A
City of San Jose Staff Memorandum
dated June 6, 2014
(highlighting added)

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

HONORABLE MAYOR AND CITY COUNCIL
June 6, 2014
Subject: Diridon Station Area Plan
Page 4

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

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

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

Coordination with San Jose Arena Management

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

A summary of the items addressed is provided below:

- Staff recommends "approval" of the 10-Year Horizon Analysis rather than "acceptance"
- Staff is recommending the addition of a new parking policy (to be numbered Parking Policy 9) in the Diridon Station Area Plan's Implementation Strategy Report to provide that the City will include shared parking as a condition of development for non-residential development that would result in the loss of substantial existing public parking, if necessary to mitigate the loss of parking. The shared parking condition would

Exhibit A to Comment Letter
Page 2 of 5

HONORABLE MAYOR AND CITY COUNCIL
June 6, 2014
Subject: Diridon Station Area Plan
Page 5

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

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

- Staff recommends making certain text edits to the Diridon Station Area Plan, the Implementation Strategy Report, and the 10-Year Horizon Analysis as requested by San Jose Arena Management. Attachment A itemizes all the recommended changes to the Plan documents, including a change related to the interpretation of design guidelines.
- Staff has made refinements in this staff report to further specify coordination of future private development and major transit projects, particularly as they relate to parking analysis and the need to maintain compliance with the City-Arena Mgmt Agreement.

The recommended approach is described below:

- *Development Proposal Referrals* – Refer to Arena Management development proposals on parcels within approximately one-third of a mile of the Diridon Station that have off-street public parking facilities, and are in excess of 25,000 square feet. Referrals will include the cover letter, plan set, and other relevant materials the applicant provides as part of the project submittal. Referrals will also include notification of preliminary review applications, initial studies, and EIR's. Staff will provide comments received in a timely manner from Arena Management to the applicant and consider them in formulating initial comments the City may provide on the proposed project.
- *Future Project Parking Analysis* – Require development proposals on parcels within the central and northern zone of the Diridon Station Area Plan that have off-street public parking facilities, and are in excess of 100,000 square feet of commercial space or in excess of 50,000 square feet of stand alone retail/restaurant projects, to conduct a parking analysis for the project; and to similarly request the same of development proposals within approximately one-third of a mile of the Diridon Station. These projects would be required to analyze and identify the projected parking demand, demand management strategies, and the supply to be provided by

Exhibit A to Comment Letter
Page 3 of 5

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

HONORABLE MAYOR AND CITY COUNCIL,
 June 6, 2014
 Subject: Diridon Station Area Plan
 Page 6

ATTACHMENT A

MINOR TEXT EDITS TO DIRIDON PLAN DOCUMENTS

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

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

Specific Land Use on the East Side of Stockton Avenue

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

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

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

Exhibit A to Comment Letter
 Page 4 of 5

DIRIDON STATION AREA PLAN DRAFT PREFERRED PLAN DATED APRIL 2014

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

TEN YEAR HORIZON ANALYSIS DATED APRIL 2014

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

IMPLEMENTATION STRATEGY REPORT DATED APRIL 2014

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

Exhibit A to Comment Letter
 Page 5 of 5

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

**ASSESSMENT OF FINAL SEIS/SEIR FOR BART
SILICON VALLEY PHASE II EXTENSION PROJECT
FEBRUARY 2018**

**EVALUATION OF PARKING IMPACTS AT
BART DIRIDON STATION**

EXHIBIT B

Wenck Associates Report dated
April 2, 2018, with attachments

**Prepared for:
Sharks Sports and Entertainment/
SAP Center at San Jose**

**Prepared by:
Wenck Associates, Inc.
James A. Benshoof, Principal Investigator**

April 2, 2018

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

TABLE OF CONTENTS

	<u>Page</u>
A. PURPOSE AND BACKGROUND	1
B. FINAL SEIS/SEIR FAILS TO ADEQUATELY IDENTIFY AND MITIGATE PARKING IMPACTS DURING CONSTRUCTION OF DIRIDON STATION	2
C. FINAL SEIS/SEIR FAILS TO ADEQUATELY IDENTIFY AND MITIGATE PARKING IMPACTS UPON COMPLETION OF BART PROJECT	7
D. PROBABLE NEGATIVE PARKING IMPACTS ON SAP CENTER FOLLOWING COMPLETION OF BART PROJECT	14

LIST OF FIGURES

	<u>Page</u>
1. Mistakes Regarding Off-Site Parking Spaces SAP Customers are Allowed to Use During BART Construction	3
2. Parking Spaces Available for SAP Center Lost During Eight Year Construction Period for BART Diridon Station	6
3. Parking Spaces Available for SAP Center Lost Upon Completion of BART Project	16

LIST OF TABLES

1. Characteristics of an Urban Station and Diridon Station Characteristics	9
2. Characteristics of a Balanced Intermodal Station and Diridon Station Characteristics	10

ATTACHMENTS

- A. Resume for James A. Benshoof
- B. VTA memo regarding System Ridership Analysis for Caltrain Peninsula Corridor Electrification Project, January 30, 2014
- C. BART Station Access Typology Definitions
- D. Federal Transit Administration, "Documentation of Mitigation Commitments," August 2016

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

A. PURPOSE AND BACKGROUND

This document was prepared by the firm of Wenck Associates, Inc., with James A. Benshoof as the principal investigator. A copy of Mr. Benshoof's resume is provided as **Attachment A**. The purpose has been to assess whether the Final SEIS/SEIR for the BART Silicon Valley Phase II Extension Project, dated February 2018, adequately responds to traffic and parking related comments about the Draft SEIS/SEIR submitted by Sharks Sports and Entertainment/SAP Center at San Jose. In particular, this assessment focuses on comments expressed in a memorandum from Jim Benshoof of Wenck Associates, Inc. dated March 2, 2017. This memorandum was attached as Exhibit C to the comment letter dated March 6, 2017, that the Silicon Valley Law Group (SVLG) submitted on behalf of Sharks Sports & Entertainment LLC.

The memo dated March 2, 2017, addressed one item in the Draft SEIS/SEIR which was incomplete and five additional major transportation issues for which the Draft SEIS/SEIR failed to consider significant and relevant factors, failed to identify potential significant adverse impacts, or presented a conclusion that runs counter to all evidence that is before the Federal Transit Administration (FTA) and the Santa Clara Valley Transportation Authority (VTA).

From review of the projected traffic and parking impacts presented in the Final SEIS/SEIR, including responses to comments expressed in the March 2, 2017, memorandum, numerous instances have been identified where the Final FEIS/SEIR fails to adequately identify or mitigate negative impacts the BART Project would cause in the vicinity of SAP Center. The parking assertions presented in the Final SEIS/SEIR are not based on data obtained in accordance with sound scientific methodology and are seriously inaccurate and misleading.

This report focuses on two especially severe negative impacts the BART Project will cause:

- Undisclosed and unmitigated negative impacts on parking in the vicinity of SAP Center during construction of the BART Diridon Station
- Undisclosed and unmitigated negative impacts on parking in the vicinity of SAP Center upon completion of the BART Project

This report first addresses the misleading and incorrect statements in the Final SEIS/SEIR regarding negative parking impacts of the BART Diridon Station. Such statements are a direct result of the failure to apply accepted traffic engineering methodology in the Final SEIS/SEIR. This report also points out that the earlier parking studies by the FTA and VTA in prior environmental assessments of the proposed BART Diridon Station were based on actual data and valid applications of the VTA's travel demand model. The conclusions presented in the prior environmental documents are completely opposite from conclusions in the Final SEIS/SEIR, which includes no valid studies and presents conclusions unsupported by any facts or evidence in the record.

The last section of this report presents an independent assessment to identify the probable negative parking impacts that would be experienced in the vicinity of SAP Center upon completion of the BART Project. This independent assessment uses standard industry data and methodology, but is not designed to replace the requirement for a complete and professionally sound parking impact study.

B. FINAL SEIS/SEIR FAILS TO ADEQUATELY IDENTIFY AND MITIGATE PARKING IMPACTS DURING CONSTRUCTION OF DIRIDON STATION

The Final SEIS/SEIR addresses parking impacts during construction in Master Response 2, Diridon Station Short-Term Parking, which is presented on pages 2-8 through 2-12. This Master Response raises several points in an attempt to dismiss comments in the Wenck memo dated March 2, 2017, regarding the Draft SEIS/SEIR that negative parking impacts would occur during construction of the Diridon Station. Several responses provided in Master Response 2 are seriously misleading, and others simply are wrong. For the reasons cited below, it has been concluded that no valid evidence is presented to support conclusions in the Final SEIS/SEIR that no adverse parking impacts will occur during construction of the BART Diridon Station. Rather, multiple facts support the conclusion that SAP Center will suffer severe negative parking impacts during this BART construction project, and that the Final SEIS/SEIR does not adequately disclose or discuss these adverse impacts.

Page 2-9 under Master Response 2 states that 755 existing parking spaces will be eliminated for the entire eight year period when the Diridon Station is being constructed. Reasons why statements in the Final SEIS/SEIR of no significant adverse impacts after mitigation are misleading or wrong and why this loss of parking will cause especially severe negative impacts for SAP Center are presented next.

- a) Page 2-9 refers to a parking survey that was performed in July/August 2017 to validate the number of available parking spaces in the vicinity of Diridon Station. In an attempt to dismiss negative impacts caused by the loss of 755 spaces, page 2-10 states that such loss of 755 spaces constitutes only 5.2 percent of the 14,450 total publically available spaces within 0.5 mile of the Diridon Station. These statements are seriously misleading. They are purportedly based upon a review of aerial photos and a field review on July 13, 2017¹. A mere review of aerial photos and a field review of the number of spaces does not meet accepted industry standards for a parking impact study. Therefore, conclusions based on this incomplete data and analysis are not credible. Three serious flaws with survey data shown in Figure 5-J in the Final SEIS/SEIR are shown in **Figure 1**:
 - 1) It erroneously shows the 715 off-street spaces eliminated during construction as publicly available.
 - 2) It includes two parking garages that do not allow parking by SAP Center customers.
 - 3) It includes 1,422 on-site spaces for SAP Center, which do not count towards the City's obligations to provide off-site parking.

A fundamental flaw with the parking supply data shown in Figure 5-J is that the results are an inventory of striped parking spaces, not spaces that truly are available at any point in time. The results do not account for spaces that are reserved for particular users and do not account for spaces that are occupied by other parkers.

A related serious mistake also is exhibited in Figure 5-H in the Final SEIS/SEIR, which purportedly shows that 2,605 on-street parking spaces are available within ½ mile of the Diridon Station. The actual number of available public parking spaces is far less than shown in this figure, because the 1/2 mile area encompasses six residential parking permit areas established by the City of San Jose – Autumn/Montgomery, Cahill Park, Delmas Park, Garden/Alameda, Parkside, and St. Leo's. For streets in these areas, no general public parking is allowed; a motorist must display a residential parking permit in order to be allowed to park.

¹ The aerial photos and field review are not included in the technical appendices of the Final SEIS/SEIR.

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

Figure 1
Mistakes Regarding Off-Site Parking Spaces SAP Center Customers are Allowed to Use During BART Construction

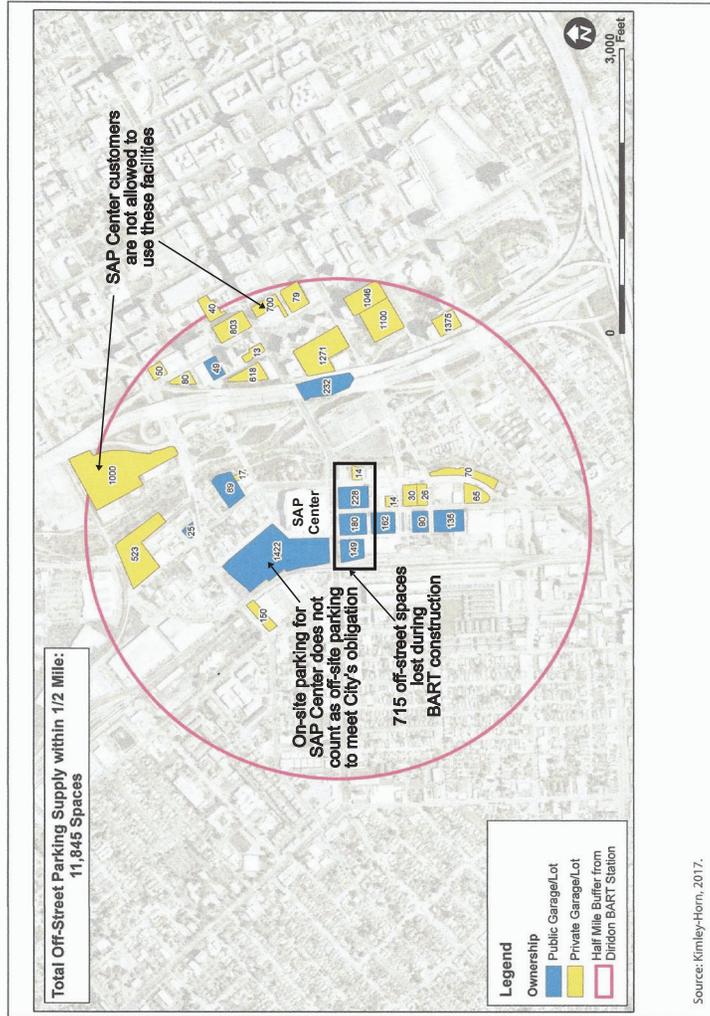


Figure 5-J
Diridon Station Area Off-Street Parking Supply within a Half-Mile Radius
 VTA's BART Silicon Valley—Phase II Extension Project

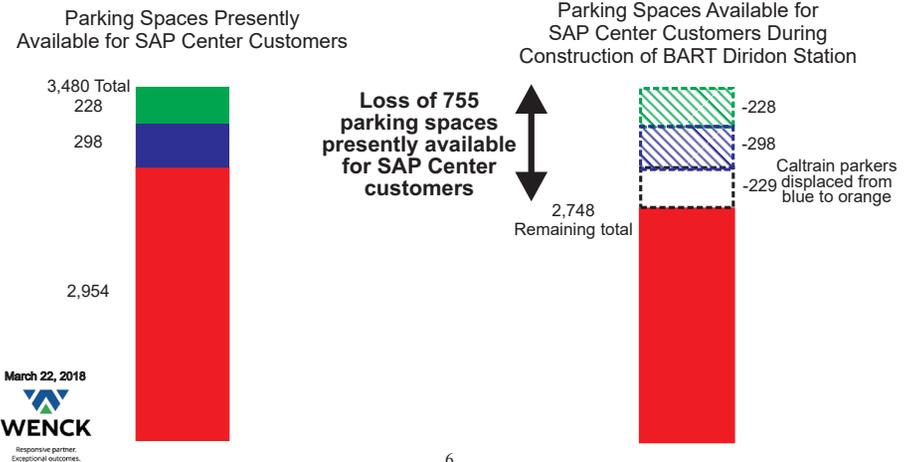
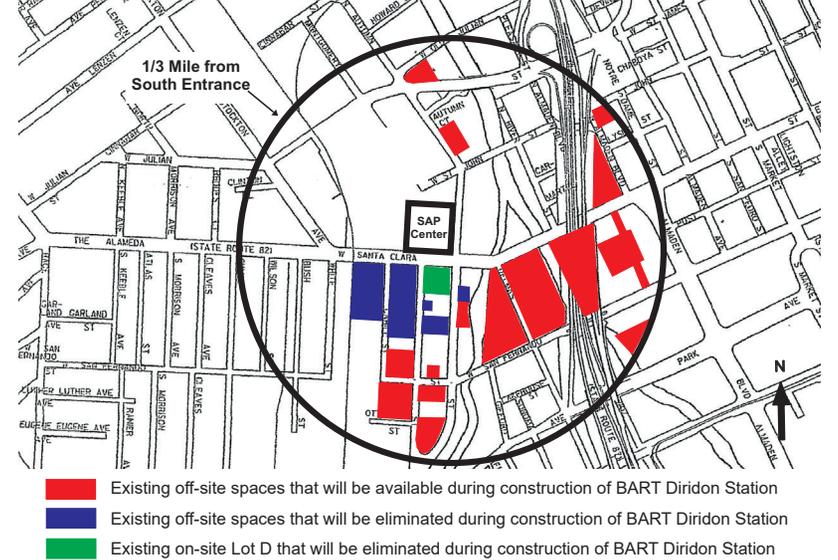
- Beyond this huge mistake in Figure 5-H, another factor that would reduce the number of available on-street parking spaces is restricted time limits that are posted for some of the spaces. For example, spaces along The Alameda are posted with a time limit that prohibits SAP Center customers and transit users from parking in these spaces. All of the above factors, occupancy of spaces, reserved spaces, spaces that are restricted to particular users, residential parking permit areas, posted time limits, etc. are critical for completion of valid parking impact studies. The failure of the Final SEIS/SEIR to account for these factors results in invalid and unusable conclusions. The consequence of this oversight is that off-street and on-street parking spaces truly "available" during weekday daytime hours, on weeknights, and on weekends are significantly less than cited in Master Response 2.
- b) Page 2-10 states that the amount of parking still available for SAP Center would exceed the parking obligations specified in the Arena Management Agreement. This statement is false; in actuality the loss of 755 spaces during construction will cause a default in the City's obligation to provide off-site parking for SAP Center. At present, the City is obligated to provide at least 3,175 parking spaces to be available for SAP Center customers within 1/3 mile of the south entrance for SAP Center. The Agreement defines available spaces as spaces that SAP Center customers are allowed to use and that are not occupied by other users at 6:30 p.m. on a typical weeknight. Surveys performed by SSE and the City have confirmed that 3,252 spaces presently are available, a surplus of only 77 spaces. The BART Diridon Station includes elimination of existing on-site Lot D, which has 228 spaces. The Agreement specifies that the City's obligation for off-site parking within 1/3 mile increases to 3,403 spaces to offset for that loss of on-site parking. Beyond Lot D, construction of the BART Diridon Station will eliminate 527 other off-street and on-street spaces (755 - 228). Of these spaces, 298 are spaces presently available for SAP Center customers, and 229 are occupied at 6:30 p.m. by existing transit users who park-and-ride. Since these transit users likely will seek other nearby parking, the future number of spaces available for SAP Center customers will decline by the total of 527 spaces. Thus, the number of spaces available for SAP Center customers during construction of the BART Diridon Station will decline to 2,725 (3,252 - 527), which is 678 spaces below the City's obligation to provide 3,403 spaces. This is a significant impact, which is not disclosed in the Final SEIS/SEIR.
 - c) Page 2-11 presents an updated mitigation measure, entitled TRA-CONST-D, which states that "VTA will provide 450 temporary replacement off-street parking spaces during construction to mitigate for parking impacts caused by the BART Extension construction." This mitigation measure does not satisfactorily resolve the negative impacts caused by the loss of 755 parking spaces for multiple reasons. First, this measure will replace only 450 (60%) of the 755 spaces lost. Second, this measure falsely relies upon parking sites identified through the San Jose Diridon Station Area Parking Study for fulfilling these 450 spaces. That study was not intended solely to provide spaces to replace spaces lost during the BART construction. Rather, the purpose of that study was to identify potential solutions to a likely parking shortage caused by multiple public and private construction projects within the Diridon Station Area expected to occur between 2017 and 2025. Third, this mitigation measure includes no commitment by the VTA to pay for the cost of property acquisition or construction of these temporary replacement spaces, so the proposed mitigation is illusory.
 - d) Another serious flaw with the mitigation measure TRA-CONST-D referenced in above point c) is that no consideration is given to the parking demand created by construction workers or provisions to accommodate that demand. This is a serious deficiency in the Final SEIS/SEIR, because the total parking impact during construction consists of the sum of parking spaces lost plus the increased parking demand caused by construction workers.

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

To overcome the above deficiencies in Master Response 2 and its inability to mitigate negative impacts caused by the loss of 755 parking spaces during the BART construction, an independent analysis has been completed regarding the impacts that would be caused by loss of parking for SAP Center during construction of the BART Diridon Station using generally accepted parking availability methodology. The results are shown in **Figure 2**. This figure shows three types of parking spaces within 1/3 mile of SAP Center that have been used for customer parking. The left bar chart shows that those parking facilities, together with a few on-street spaces, presently provide a total of 3,480 spaces available for SAP Center customers (3,252 off-site spaces plus 228 spaces in on-site Lot D). The right bar chart show that the available spaces will decline to 2,725 spaces (a loss of 755 spaces). This loss, which would be exacerbated if construction workers park in the 1/3 mile ring, will have severe negative consequences for SAP Center.

Figure 2
Parking Spaces Available for SAP Center Lost During
Eight Year Construction Period for BART Diridon Station

Note: In Agreement with City, available spaces are defined as spaces that SAP Center customers are allowed to use and that are not occupied by other parkers at 6:30 p.m. on a typical weeknight



Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

C. FINAL SEIS/SEIR FAILS TO ADEQUATELY IDENTIFY AND MITIGATE PARKING IMPACTS UPON COMPLETION OF BART PROJECT

The Final SEIS/SEIR addresses parking impacts upon completion of the BART Project in Master Response 3, Diridon Station Long-Term Parking, which is presented on pages 2-13 through 2-20. This Master Response raises several points in an attempt to dismiss comments made in the Wenck memo dated March 2, 2017, regarding the Draft SEIS/SEIR that negative parking impacts would occur upon completion of the BART Project. Several responses provided in Master Response 3 are seriously misleading, and others simply are wrong. For the reasons cited below, it has been concluded that no valid evidence is presented to support conclusions in the Final SEIS/SEIR that no adverse parking impacts will occur upon completion of the BART Project. Rather, multiple facts support the conclusion that SAP Center will suffer severe negative parking impacts upon completion of the BART Project, and that the Final SEIS/SEIR does not adequately disclose or discuss these adverse impacts.

Page 2-13 under Master Response 3 states that the BART Project will cause a permanent loss of 715 off-street parking spaces near the Diridon Station, and that none of these spaces will be replaced. Further, page 2-14 states that no parking will be provided for BART customers at the Diridon Station. Justification for no parking for BART customers and no replacement parking then is provided in the following two sections:

- Parking Demand at Diridon Station
- Impacts on Existing Parking

Severe deficiencies in these two sections are presented next, followed by an independent assessment of significant negative long-term parking impacts that completion of the BART Project will cause for SAP Center.

C1. SEVERE DEFICIENCIES IN MASTER RESPONSE 3 REGARDING PARKING DEMAND AT DIRIDON STATION (pages 2-14 through 2-17)

- a) In an attempt to justify no parking for BART customers at the Diridon Station, page 2-14 refers to Table 3-16 in the Final SEIS/SEIR and states that “access to the Diridon Station would be almost entirely (91 percent) by walk/bicycle, heavy and light rail transit, and bus. The remaining 9 percent would be by auto kiss-and-ride, which does not require parking.” This statement is extremely misleading, because the cited arrival mode outcomes were forced by VTA’s policy decision not to provide any parking for BART customers. With that input, VTA’s travel demand model automatically would show no park-and-ride arrivals. In addition, the quoted statement is not supported by any transit study or evidence in the record and is in direct contrast to previously conducted transit studies. Indeed, there is no study of any kind or any evidence in the record to support this complete about-face regarding the likelihood of BART commuters driving to the Diridon Station to park-and-ride.
- b) The following statement is provided on the top of page 2-15: “The 2010 FEIS, Table 3-15, Mode of Access by SVRTP Alternative Station, assumed 44 percent of the Diridon Station BART riders would access the station by auto park-and-ride.” The word, assumed, in the preceding sentence is not correct and presents a misleading representation regarding the basis for the 44 percent park-and-ride projection. The actual sentence that introduces Table 3-15 in the 2010 FEIS is: “Table 3-15 presents projected mode of access at stations on the average weekday.” As indicated, that table was produced through an application of the VTA’s travel demand model that allowed for BART parking at the Diridon Station, not the forced outcome in the Final SEIS/SEIR caused by VTA’s policy decision not to provide BART parking at this station. There is no physical change in the Diridon Station area since

2010 identified in the Final SEIS/SEIR or Master Reponse 3 that invalidates the travel demand model applied for the 2010 FEIS.

- c) In addition to being inconsistent with the 44% park-and-ride projection in the 2010 FEIS, statements in the Final SEIS/SEIR that no BART parking will be needed at the Diridon Station conflict with a VTA memo dated January 30, 2014 (**Attachment B**), which shows that 42% of the Caltrain boardings in 2013 were park-and-ride, that 845 park-and-ride spaces would be needed by 2020, and that 912 park-and-ride spaces would be needed by 2040. The data and analyses in this memo are far more probative and consistent with standard engineering practices in evaluating commuter behavior than the unsupported assertions in the Final SEIS/SEIR or Master Response 3.
- d) Page 2-15 includes several statements and a table, which assert that the Diridon Station will not have parking, because it is an urban station, per BART’s Station Access Typology Definitions. The table is the same as Table 3-B, which is presented on pages 3-84 and 3-83 in the Final SEIS/SEIR. The VTA made several mistakes and mischaracterizations in these tables, as shown in **Table 1**. The first two columns of this table are the same as the table in the Final SEIS/SEIR. The third column presents our professional opinion regarding how the Diridon Station relates to the characteristics in column one. Two end results are: a) that Table 3-B presents misleading and incorrect information for multiple criteria and b) that the Diridon Station clearly fails to meet the overall requirements for an urban station. Instead of being classified as an urban station, **Table 2** clearly shows that the Diridon Station should be classified as a balanced intermodal station per BART’s station typology definitions (**Attachment C**). By definition, this category of station provides BART parking.
- e) Page 2-16 begins with text and a table, which assert that ridership at the Alum Rock and Santa Clara stations would decline if 500 parking spaces were provided at the Diridon Station. This outcome defies common sense, because the Diridon Station will serve different users than the other two stations. Further, this explanation is insufficient to justify the VTA’s policy decision not to provide any parking at the Diridon Station, without performing an objective and professionally sound parking impact analysis.
- f) Page 2-17 refers to Table 3-18 in the Final SEIS/SEIR and asserts that the Diridon Station will not need parking, because it will function more as a destination station. This is the only “evidence” the Final SEIS/SEIR presents in the record to support its assertion. However, the VTA’s conclusion that the Diridon Station will function more as a destination station is not supported by the information presented in Table 3-18. This table simply presents comparative travel times for selected origin-destination pairs. Though several pairs represent trips to downtown San Jose, the table does not present any pairs with downtown San Jose as the origin and the destination being Milpitas, Union City, Fremont, Pleasanton, etc. This selective data does not present an accurate picture of travel patterns for persons using the BART Diridon Station.

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

**TABLE 1
CHARACTERISTICS OF AN URBAN STATION AND DIRIDON STATION CHARACTERISTICS**

Characteristics of an Urban Station as presented in Table 3-B in Final SEIS/SEIR	Diridon Station Characteristics as presented in Table 3-B in Final SEIS/SEIR	Comments regarding Diridon Station Characteristics
Combined walk, bike, and transit access of greater than 75%	Non-auto access is 91% and greater than 75% threshold needed to be considered an "Urban" station (per Table 3-16)	The 91% value presented in Table 3-B is not based on any analysis, but rather was forced by VTA's policy decision not to provide any parking at the Diridon Station. Without any parking provided, no park-and-ride mode share could occur. A VTA memo dated January 30, 2014, states that the following mode shares were experienced in 2013: 4% walk, 42% park-and-ride, 8% kiss-and-ride, and 46% transit. The 50% total for walk and transit is far below the 75% threshold to qualify for an urban station. Table 3-15 in the 2010 FEIS projected the following mode shares: 10% walk/bike, 12% bus, 10% LRT, 15% commuter rail, 44% park-and-ride, and 9% kiss-and ride. The 47% total for walk/bike, bus, LRT, and commuter rail is far below the 75% threshold value.
Drive alone rates of 5% or less	Drive alone percentage is 1% and meets the 5% or less threshold needed to be considered an "urban" station (per Table 3-16)	The statement provided in Table 3-B is not correct due to the VTA's policy decision and data presented above.
No BART-managed parking	No BART-managed parking is provided	The cited characteristic is not valid, because it simply restates the VTA's policy decision, without any parking demand analysis, not to provide any parking at the Diridon Station.
Almost all auto access is from drop-off activity	Only auto access is 9% kiss-and-ride (per Table 3-16 in the SEIS/SEIR)	The statement in Table 3-B is not valid for the reasons stated above.
Highway access is not convenient	SR-87 and I-280 are nearby, but they are heavily congested during the AM and PM peak commute periods	The statement in Table 3-B is correct regarding the close proximity of SR-87 and I-280, but is incorrect in stating that those two highways are "heavily congested." The Metropolitan Transportation Commission published a list of the 50 most congested regional highway locations in 2016. SR-87 near the Diridon area is not listed as congested for either the AM or PM peak periods. I-280 is listed as congested in the southbound direction during the PM peak period, but is not listed as congested in either direction during the AM peak period. Based on these facts and the nearby availability of multiple access points on SR-87 and I-280, highway access for the Diridon Station is convenient.
Station can be found in a downtown or neighborhood business district	Station is located in Downtown San Jose	The statement in Table 3-B is only superficially correct. Though officially classified as within the downtown area, the Diridon area is separated from the downtown core by SR-87 and is near extensive Caltrain and SAP Center parking.
Station may be underground or otherwise has a limited spatial footprint	Station is underground	The statement in Table 3-B is correct.
Station is well-served by many types of transit service that stop on adjacent streets	Existing transit service includes commuter rail, intercity passenger rail, light rail, express bus, and local/limited bus transit operators. These include Caltrain, ACE, and Amtrak heavy rail service. This station also has access to VTA's light rail system. Bus service includes California Shuttle Bus, Amtrak Bus, Monterey-Salinas Transit, Santa Cruz Metro, SMART, and VTA's Alum Rock Bus Rapid Transit service and many local VTA bus lines	The statement in Table 3-B is partially correct. It omits the fact that this station presently serves many park-and-ride users for Caltrain.

**TABLE 2
CHARACTERISTICS OF A BALANCED INTERMODAL STATION AND DIRIDON STATION CHARACTERISTICS**

Characteristics of a Balanced Intermodal Station per BART's Typology Definitions	Characteristics of Diridon Station
Well-served by transit, though there is also parking provided by BART and in some cases other/private operators	Well served by multiple transit modes. In addition to potential parking provided by BART, shared use parking likely will be available in several other nearby parking facilities.
Station typically found on an urban or suburban grid network	Located on the edge of downtown San Jose, with an established grid of local roadways and regional highways.
Walking and drive alone/carpool rates of approximately 25%-40%	In 2013, the following mode shares were experienced: 4% walk, 42% park-and-ride, and 8% kiss-and-ride. Table 3-15 in the 2010 FEIS projected the following mode shares: 10% walk/bike, 44% park-and-ride, and 9% kiss-and ride.
Medium –to-large transit terminal is provided onsite, serving primarily corridor and local transit	The Diridon Station is planned to be a large transit terminal, serving multiple regional corridors and local routes.

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

Traffic volume data collected by the California Department of Transportation (Caltrans) shows that the total traffic volume along I-680 and I-880 north of San Jose during both the a.m. and p.m. peak periods is practically the same in the northbound and southbound directions. Thus, contrary to assertions presented on page 2-17, current traffic volumes on I-680 and I-880 north of San Jose confirm that the Diridon Station will serve as an origin for persons traveling to the north, as well as a destination for trips from the north. Not applying available reliable information, such as Caltrans materials, and instead presenting selective assumptions regarding travel patterns for users of the BART Diridon Station lacks scientific integrity.

- g) The FTA requires that: "Environmental documentation for transit projects should identify anticipated parking impacts and provide ways to avoid, minimize, and mitigate any adverse effects on nearby residential or business communities."² The Final SEIS/SEIR ignores the fact that the Diridon Station area has more convenient access than either the Santa Clara or Alum Rock Stations and has multiple parking facilities for Caltrain users, local businesses and SAP Center that will remain upon completion of the BART project. BART commuters will be drawn to these available parking spaces and will prevent parking by existing users. Unlike suburban stations, where shopping centers have been forced to chain off their parking lots to keep out the early morning BART commuters, Caltrain, local office buildings, and hotels will be unable to take this "chaining off" step, because many of their users require early morning access. Thus, motorists driving to the BART Diridon Station will cause adverse impacts throughout the Diridon Station area. This adverse impact has not been disclosed or mitigated in accordance with FTA guidance.

C2. SEVERE DEFICIENCIES IN MASTER RESPONSE 3 REGARDING IMPACTS ON EXISTING PARKING (pages 2-17 through 2-19)

- a) Master response 3 states on page 2-17 that approximately 715 existing off-street parking spaces near the Diridon Station will be permanently eliminated by the BART project. These spaces presently are used by Caltrain and other transit users during weekday daytime hours and by SAP Center customers on weekday evenings and weekends. This page next refers to Section 3.5.2.12 in the Final SEIS/SEIR, "Impact BART Extension TRA-8: Parking," to explain why this permanent loss of 715 spaces would not cause adverse impacts. This material, which is presented on pages 3-86 and 3-87 in the Final SEIS/SEIR, has serious flaws, which cause the conclusion of no adverse impacts to be invalid:

- 1) Page 3-87 refers to a survey conducted by the VTA, which shows that there are about 14,450 publicly available spaces within 0.5 mile of the Diridon Station. This survey is misleading and fails to account for multiple factors described in section B.a) of this report that are necessary for a valid parking impact study. The actual publicly available spaces are far less than cited on page 3-87, and, thus, the conclusion presented in the Final SEIS/SEIR of no adverse parking impacts is invalid.

² <https://www.transit.dot.gov/regulations-and-guidance/environmental-programs/transportation-impacts-0>

- 2) Page 3-87 refers to the Diridon Transportation Facilities Master Plan, completed in December 2017 and the San Jose Diridon Integrated Station Concept Plan, for which work will begin soon, as sources to establish parking solutions. Such vague references to other studies do not meet the requirements for mitigation measures established by the Federal Transit Administration in the following document: "Documentation of Mitigation Commitments," Office of Planning and Environment, August 2016 (**Attachment D**). Item 4.2 in this document includes the following statement, which the Final SEIS/SEIR fails to meet: "the environmental document clearly identifies the impact(s) to be mitigated and carefully specifies any relied-upon mitigation 'in terms of measurable performance standards or expected results, so as to establish clear performance expectations.'"
- 3) Referring to the San Jose Diridon Integrated Station Concept Plan, page 3-87 includes the following statements: "As part of the Diridon Station planning efforts, VTA and its partners are planning for the long-term multi-modal access needs, including parking, for all of the transit modes. Specific plans regarding the number of spaces or locations of parking will be determined during the preparation of the Integrated Station Concept Plan in 2018." These statements are very misleading and premature, because the scope of work and products produced through the Diridon Integrated Station Concept Planning Project have not yet been prepared or approved by the VTA. This current lack of certainty regarding outcomes from this study was confirmed at a meeting on March 8, 2018, by Bill Ekern, Diridon Project Manager for the City of San Jose.

- b) The bottom of page 2-17 asserts that instead of using some of the 715 spaces eliminated, SAP Center customers could park at the Alum Rock or Santa Clara Station and then ride BART to the Diridon Station. This notion that a customer who wants to drive to SAP Center would drive to one of the other two stations and then ride BART is ludicrous, due to the extensive inconvenience caused, particularly since driving access is worse to those locations than the convenient driving to the Diridon Station area. Our belief, based on 27 years of experience in addressing traffic and parking issues for SAP Center, is that if customers are unable to find parking at SAP Center, many of them would stop coming to events at SAP Center. Unlike commuters who, when faced with transportation adversity, will continue to persevere to travel to their place of employment, customer trips to event centers are discretionary. Many such customers will not tolerate poor access and, if they encounter such problems, they will take their business to other venues. Accordingly, the loss of 715 parking spaces will be a severe negative impact on SAP Center.
- c) The first paragraph on page 2-18 asserts that customer parking for SAP Center would not be negatively impacted due to the loss of 715 parking spaces, because a significant portion of SAP Center customers would use BART, instead of driving to SAP Center. A statement is made that approximately 20 percent of patrons attending events at the Oakland Coliseum use BART. Based on that experience, statements then are made regarding the reduced parking demand at SAP Center if 20 percent of their customers use BART, or with a "much more conservative estimate that only 10 percent" would use BART. Those projections for SAP Center are grossly overstated, largely because the relationship between BART and the Oakland Coliseum is very different from the relationship between

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

BART and SAP Center. The Oakland Coliseum is located in the core of the BART system, with excellent service in multiple directions. By comparison, SAP Center will be served by a second from the end of the line station, basically with service only to and from the northeast. Further, analysis of Sharks season ticket holders has revealed that only 31 percent come from the area served by the BART route to the northeast. Another relevant point is that only about five percent of the current SAP Center customers use Caltrain service. Thus, an optimistic projection of the reduction in SAP Center parking demand due to BART can be made as follows:

- 1) Total number of SAP Center customers coming from the northeast along the BART corridor – $17,500 \times 0.31 = 5,425$
- 2) Accounting for customers coming from near the Santa Clara BART station, the total number of customers who could consider BART would be 6,000
- 3) With 10 percent of those customers using BART, the number of SAP customers using BART would be 600
- 4) With an average 2.5 persons per car, the 600 persons arriving by BART would reduce SAP Center parking demand by 240 spaces.

This 240 space reduction in parking demand is far less than the 715 spaces removed. Thus, even if 600 SAP Center customers use BART, the 715 spaces permanently removed still would result in a net loss of 475 spaces that SAP Center customers presently use. That would be a serious negative impact for SAP Center.

- d) The remainder of pages 2-18 and 2-19 address transit services at other stadia and arenas and unit cost statistics for trips to SAP Center by BART, as compared to by automobile. To a large extent, statements made on these pages are irrelevant to potential impacts on SAP Center due to the permanent loss of 715 spaces. Beyond that, one statistic presented is simply wrong. Under a reference to US Bank Stadium in Minneapolis, the statement is made that of the 70,000 person capacity: "The environmental documentation estimated that 31,010 attendees would arrive with Lightrail and Commuter Rail by 2030." In fact, for a typical Minnesota Vikings football game with 70,000 attendees, about 10,400 persons use the two light rail routes that stop at the stadium³ (any commuter rail passengers are included in the 10,400 value). Thus, the value of 31,010 attendees presented on page 2-19 is overstated by three times.

³ Telephone conversation with Metro Transit on March 12, 2018

D. PROBABLE NEGATIVE PARKING IMPACTS ON SAP CENTER FOLLOWING COMPLETION OF BART PROJECT

The analyses presented on preceding pages confirm that the Final SEIS/SEIR does not provide a valid assessment of parking impacts on SAP Center due to either parking demand by BART users of the Diridon Station or by impacts caused by the permanent loss of 715 existing parking spaces near the Diridon Station. To rectify that severe inadequacy of the Final SEIS/SEIR, an independent assessment has been completed to estimate impacts that actually would occur to SAP Center. Though this independent assessment uses standard industry data and methodologies, it is not designed to replace the requirement for a complete and professionally sound parking impact study.

First, it is important to estimate the impacts caused by BART parking demand. The 2010 BART FEIS projected that BART parking demand at the Diridon Station would be 1,610 vehicles in the opening year and 2,585 vehicles in 2030. With assumed aggressive reductions in park-and-ride mode share, the 2014 Diridon Station Area Plan indicated that BART parking demand in 2030 would be 260 to 520 vehicles. Considering these two professionally appropriate sources, a conservatively low projection is that BART parking demand at the Diridon Station would be 1,000 vehicles at year of opening.

Parking impacts on SAP Center are best measured in terms of changes in the number of parking spaces available for SAP Center customers. From the beginning, SAP Center has been well served by four priority levels for available customer parking: 1) on-site surface spaces, 2) highly convenient off-site surface spaces within 1,200 feet of the south entrance, 3) off-site spaces between 1,200 feet and 1/3 mile, and 4) off-site spaces between 1/3 and 1/2 mile. In all above instances, available parking means spaces that SAP Center customers are allowed to use spaces that are not occupied by other parkers at 6:30 p.m. on a typical weeknight. At present, the numbers of spaces available for SAP Center customers are 1,650 on-site, 1,552 off-site within 1,200 feet, 1,700 spaces between 1,200 feet and 1/3 mile, and 5,260 between 1/3 and 1/2 mile. Summing the second and third preceding values, a total of 3,252 off-site parking spaces presently are available within 1/3 mile.

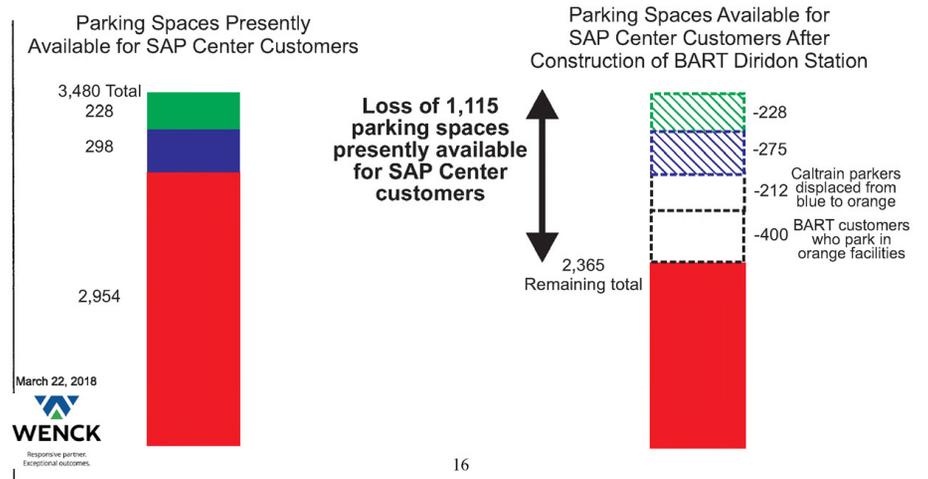
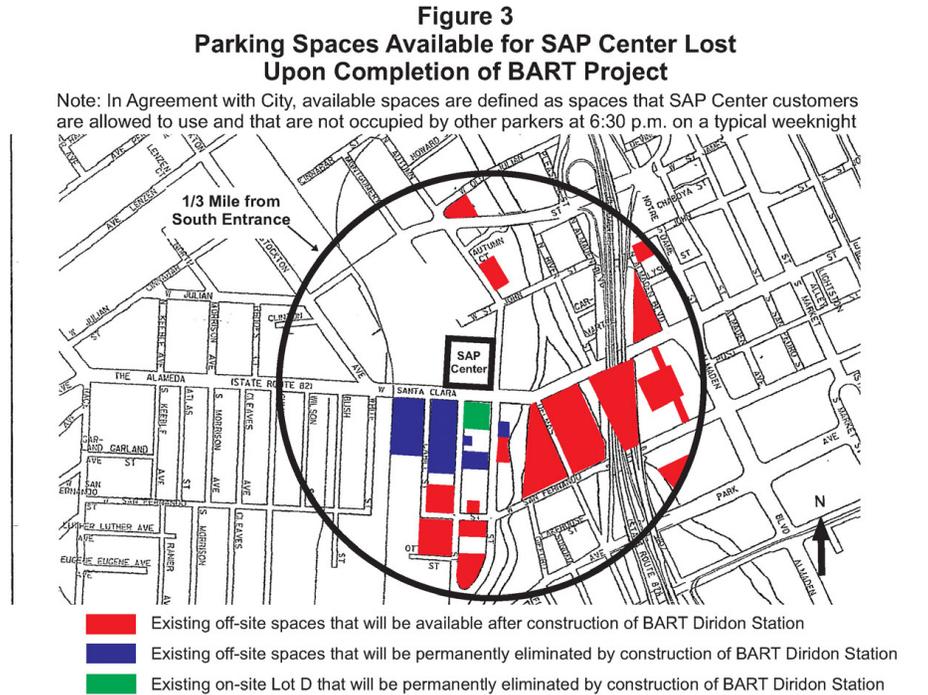
Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

The top portion of **Figure 3** shows three types of parking that presently are available for SAP Center customers within 1/3 mile of the south entrance: existing off-site spaces that will continue to be available after completion of the BART Project, existing off-site spaces that will be permanently removed by the BART Project, and on-site Lot D that will be permanently removed by the BART Project. The left bar chart shows that a total of 3,480 spaces presently are available through the combination of off-site spaces and on-site Lot D. The right bar chart shows that 1,115 of these 3,480 available spaces will be lost due to the BART Project. The four components contributing to this loss are shown on the bar chart and are described as follows:

- Loss of 228 available spaces from on-site Lot D.
- Loss of 275 spaces presently available for SAP Center customers in the blue off-site lots that will be permanently removed. This loss is slightly less than the 298 spaces presently available, because on-street spaces in the blue area will be restored upon completion of the BART Project.
- Loss of 212 available spaces due to Caltrain parkers who will be displaced from the blue area to parking facilities in the orange area. These are Caltrain parkers who still are parked at 6:30 p.m. on a typical weeknight.
- Loss of 400 available spaces due to BART customers who will park in facilities in the orange area. Based on occupancy surveys of parking by Caltrain customers, this value of 400 is the estimated portion of the 1,000 BART parkers who still will be parked at 6:30 p.m.

This loss of 1,115 parking spaces presently available for SAP Center customers (over 30 percent of existing available spaces) would have devastating effects.

In addition to the above negative impacts on SAP Center, the right bar chart in Figure 3 shows that orange parking areas would be subject to "spillover" of over 600 Caltrain and BART customers. This is the combined parking demand of Caltrain and BART at 6:30 p.m. The peak combined demand during weekday daytime hours would be much higher. This "spillover" parking would cause substantial parking pressure on these facilities and needs for them to take enforcement measures to preserve their parking for the intended users. No evidence is presented in the Final SEIS/SEIR regarding effects of the BART Project on these facilities or mitigation measures to avoid significant negative impacts.



Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

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James A. Benshoof, Registered Traffic Engineer in State of California
Special Consultant in Transportation

MEMORANDUM

AREAS OF EXPERTISE:

Over 45 years experience in completing a wide variety of traffic engineering and transportation planning projects.

EDUCATION:

University of Newcastle Upon Tyne, England, M.S.
Traffic Engineering, 1969

Northwestern University, M.S.
Transportation Engineering, 1968

University of Minnesota, B.S.
Civil Engineering, 1966

REGISTRATION:

Professional Traffic Engineer – CA (TR 2289)

PROFESSIONAL MEMBERSHIPS:

Institute of Transportation Engineers

PROFESSIONAL EXPERIENCE

2006 – Present
Wenck Associates, Inc.
Principal until May 2009; Consultant after May 2009

1982-2006
Benshoof & Associates, Inc.
President

1981-1982
Strgar-Roscoe, Inc.
Principal

1980-1981
Westwood Planning & Engineering Company
Vice President

1971-1980
BRW, Inc.
Project Manager and Associate

1969-1971
Alan M. Voorhees and Associates, Inc.
Traffic Engineer

TO: Stacy Cocke, Caltrain JPB

FROM: George Naylor, Santa Clara VTA

DATE: January 30, 2014

SUBJECT: Caltrain Peninsula Corridor Electrification Project – System Ridership Analysis

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

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

1.0 Introduction

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

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

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

The following corrections were implemented to improve the validation results:

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

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

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

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

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

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

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

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

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

*Compared to passenger intercept survey completed in June 2013.

5.0 Year 2020 and 2040 Forecast Results

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

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

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

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

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

Station	Existing Caltrain Lot Capacity	A		B		C		E		G		I	
		Observed PNR Spaces Occupied	2013 Modeled PNR Spaces	2020 No Project Modeled PNR Spaces	2020 Project Modeled PNR Spaces	2020 Project Modeled PNR Spaces	2040 No Project Modeled PNR Spaces	2040 Project Modeled PNR Spaces					
SF	0	0	543	896	776	1,231	1,075						
22nd *	0	0	745	1,126	1,055	1,620	1,410						
Bayshore	38	5	24	83	90	105	149						
SSF	75	40	123	162	167	232	222						
San Bruno	171	36	42	54	43	75	49						
Millbrae	175	133	517	660	639	949	1,644						
Broadway	137	0	0	0	4	0	3						
Burlingame	58	21	145	173	170	211	224						
San Mateo	40	9	476	554	470	702	761						
Hayward Park	213	5	77	83	235	135	172						
Hillsdale	518	445	983	1,189	1,057	1,567	1,610						
Belmont	375	79	167	197	207	260	262						
San Carlos	212	72	352	416	409	521	528						
Redwood City	557	259	465	533	549	722	755						
Atherton	0	0	0	0	286	0	42						
Menlo Park	155	53	275	333	363	455	465						
Palo Alto	389	383	366	385	330	510	498						
Cal Avenue	185	65	191	233	211	307	282						
San Antonio	199	65	109	131	140	191	217						
Mountain View	340	325	605	760	741	1,078	1,027						
Sunnyvale	439	491	670	867	913	917	985						
Lawrence	122	93	69	94	114	85	118						
Santa Clara	289	319	130	162	166	93	84						
College Park	0	0	0	0	0	0	0						
Diridon	581	593	747	880	845	880	912						
Tamien	275	275	379	432	588	403	367						

Page 18 of 48

BART STATION ACCESS TYPOLOGY DEFINITIONS

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

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

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

1. Purpose

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

2. Applicability/Scope

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

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

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

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

3. Responsibilities

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

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

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

4. Standard Procedures

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

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

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

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

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

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

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

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

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

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

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

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

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

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

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

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

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

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

5. References

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

APPROVAL:



Christopher S. Van Wyk
Director, Office of Environmental Programs

DATE:

8/11/2016

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

EXHIBIT D

Wenck Associates Memorandum
dated May 21, 2020, with attachments

Technical Memo

DIRIDON STATION AREA
STREET NETWORK



To: Jim Goddard, SAP Center at San Jose

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

Date: May 21, 2020

Subject: SAP Center Recommendations for Diridon Station Area Street Network

INTRODUCTION

This Technical Memo provides recommendations concerning certain transportation planning issues that are critical to the continuing success of SAP Center. These issues have arisen in connection with the City's current efforts to amend the Diridon Station Area Plan to accommodate Google's Downtown West project, the new integrated transit station, and other developments in the Diridon Station area. There are numerous transportation issues associated with the proposed developments, but this Memo focuses only on impacts related to potential changes to the street network, including changes shown on various plans posted by the City on its websites, and in particular the slide presentation dated April 3, 2020, entitled "Transportation" and presented by Ramses Madou (the **Transportation Slide Presentation**).

It is widely recognized that the construction of BART, High Speed Rail, Downtown West and other developments will cause severe traffic and parking problems for SAP Center, other downtown businesses and nearby neighborhoods for many years, if not decades. Even following completion of construction, SAP Center and others will be facing ongoing traffic and parking impacts caused by the intensification, such as an increase in traffic volumes on local roadways and an increase in parking demand (without a corresponding increase in parking supply).

Although the City has placed a strong emphasis on pedestrians, bicycles and mass transit to solve transportation issues in the downtown core, this effort seems disproportionate when considering that there has been no meaningful change in the drive-alone commute mode share since at least 2007. (Excerpts from the 2019 General Plan Annual Performance Review are attached as **Exhibit A**.) Studies have shown that automobile access will remain essential for the majority of SAP Center customers for the foreseeable future (including those arriving via ride share services), especially since most of SAP Center's customers live in areas not well-served by transit. Therefore, SAP Center must remain vigilant about reviewing development proposals in order to advise City planners of potential negative

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Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

SAP Center Recommendations for Diridon Station Area Street Network

May 21, 2020



impacts relating to accessibility, traffic capacity, parking, extraordinary traffic management measures, and so forth.

COORDINATION UNDER ARENA MANAGEMENT AGREEMENT

The Arena Management Agreement (AMA) requires close coordination between the City and SAP Center regarding transportation matters that may affect ingress to and egress from the Arena, with the objective of ensuring that appropriate mitigation measures are included to protect the Arena's operations from adverse impacts. Among other things, the City must coordinate "regarding any material changes to the design, configuration or operation of the major streets and intersections in the vicinity of the Arena to the extent that they may have a direct impact on the safe and efficient flow of vehicular, bicycle, and pedestrian traffic to and from the Arena." Prior to undertaking any work, the City must meet with Manager "to discuss Manager's input and suggestions." (AMA Section 21.)

This Memo is intended to be shared with the City as part of such coordination efforts, and includes specific recommendations to help ensure that any changes to the street network will not adversely impact SAP Center's operations.

STREET NETWORK ELEMENTS

When evaluating the street network in terms of efficient ingress and egress for SAP Center event customers, we believe that the following three elements are the most significant:

1. The location and arrangement of street segments between the Arena and freeway ramps in terms of their ability to provide direct, accessible routes for SAP Center customers;
2. The capacity of such street segments to handle the volume of traffic generated by Arena events when combined with peak hour traffic, based primarily on the number of traffic lanes included in each segment; and
3. The width of the traffic lanes in terms of the ability of traffic to flow freely and safely at a reasonable speed.

The Transportation Slide Presentation included information relevant to item 1 above, but not items 2 or 3. Both item 2, number of traffic lanes, and item 3, lane widths, are highly important regarding adequate functioning of the roadway system, and thus those items also are addressed in this Memo.

LANE WIDTHS

Historically, the standard traffic lane width has been 12 feet. Increasingly, in dense urban areas such as the Diridon Station Area, governmental agencies have used 11

SAP Center Recommendations for Diridon Station Area Street Network

May 21, 2020



foot lanes for through traffic and a 10 foot width for turn lanes. For all roadways in the Diridon Station Area, we recommend that all through traffic lanes remain at least 11 or 12 feet wide, and that all turn lanes remain at least 10 to 12 feet wide. Anything less could result in serious safety problems, road congestion, and other traffic issues. If a roadway includes flex lanes, those lanes can be used for parking, drop-off, loading or travel lanes if they are at least 10 feet wide. If narrower than 10 feet, they should not be used for travel lanes.

REVIEW OF ROADWAY SECTIONS

The remaining sections of this Memo describe and review each of the following roadway segments in terms of ingress and egress for SAP Center event customers:

- a) Bird Avenue and Autumn Street between I-280 and Santa Clara Street
- b) Santa Clara Street between Stockton Avenue and Almaden Boulevard
- c) Julian Street between Stockton Avenue and Highway 87
- d) Delmas Avenue between Santa Clara Street and Highway 87
- e) Exit ramp from northbound Highway 87 to Santa Clara Street

The roadways listed in a) through d) are included in this Memorandum because, based on our experience over the years, these locations have shown to be especially important in effectively accommodating traffic ingress and egress for SAP Center events, a conclusion that is reinforced by traffic volume data. The sections discussing these four roadway segments also include the recommended number of traffic lanes necessary to adequately accommodate SAP Center traffic.

The freeway off-ramp listed in e) above is included in this Memo because it is being considered for closure by the City (which would be disastrous for SAP Center).

There are many other roadways, intersections and off-ramps that impact SAP Center, but the above are the ones that merit comment at this time based on the Transportation Slide Presentation.

Several sections in this Memo refer to traffic volumes for SAP Center motorists and total traffic volumes. The source for these volumes is Figure 8a, Background Traffic Volumes, San Jose Ballpark Supplemental EIR, produced by Hexagon Transportation Consultants, Inc. (This Figure is attached as **Exhibit B.**)

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

SAP Center Recommendations for
Diridon Station Area Street Network

May 21, 2020

**A. BIRD AVENUE AND S. AUTUMN STREET BETWEEN I-280 AND SANTA CLARA STREET**

For the purpose of this section, two presumptions, per the City's plans, are 1) that S. Autumn Street will be converted to a two-way roadway between its existing intersection with S. Montgomery Street and Santa Clara Street and 2) that S. Montgomery Street will be converted to a two-way local street, which will extend only between San Fernando and Santa Clara Streets.

During the 6 to 7 pm hour before an SAP Center event, this route from I-280 accommodates about 500 vehicles traveling northbound to the event. During this hour, the total northbound traffic at San Carlos Street typically exceeds 1,100 vehicles. During the exiting peak hour from an SAP Center event, the number of southbound SAP Center vehicles exceeds 500 because a larger portion of the total attendees exit during this peak hour.

In the Transportation Slide Presentation, the Bird Avenue/Autumn Street route is shown to be a City Connector route. According to the City's 2040 General Plan, "These streets typically have four or six traffic lanes and would accommodate moderate to high volumes of through traffic within and beyond the City."

The recommended number of lanes along this route is as follows (which is consistent with existing conditions from I-280 to the existing S. Montgomery/S. Autumn intersection, and also consistent with the City's designation as a City Connector route):

- Bird Avenue between I-280 and San Carlos Street – three through lanes in each direction, with left and right turn lanes and a raised center median
- Bird Avenue between San Carlos Street and Park Avenue – three through southbound lanes, two through northbound lanes, with left and right turn lanes and a raised center median.
- S. Autumn Street between Park Avenue and Santa Clara Street, two through lanes in each direction, with a left turn lane and a raised center median, except that a third southbound lane is needed on the approach to Park Avenue.

B. SANTA CLARA STREET BETWEEN STOCKTON AVENUE AND ALMADEN BOULEVARD

During the 6 to 7 pm hour before an SAP Center event, westbound Santa Clara Street west of Highway 87 accommodates about 850 vehicles traveling to the event. The total westbound volume at this time and location on Santa Clara Street is about 1,500 vehicles. In addition to this heavy use of westbound Santa Clara Street west of Highway 87, eastbound Santa Clara Street also accommodates a

4

SAP Center Recommendations for
Diridon Station Area Street Network

May 21, 2020



significant volume of SAP Center vehicles during the arrival peak period, many of which are destined to parking in the Cahill Lots.

In the Transportation Slide Presentation, Santa Clara Street is shown to be a Grand Boulevard. According to the City's 2040 General Plan, "Grand Boulevards serve as major transportation corridors that connect City neighborhoods. In most cases these are primary routes for VTA light-rail, bus rapid transit (BRT), and standard/community buses, as well as other public transit vehicles... These streets accommodate moderate to high volumes of through traffic within and beyond the city."

SAP Center would not be negatively impacted by the City's designation of Santa Clara Street as a Grand Boulevard. To effectively accommodate both regular traffic and Arena traffic in the 6 to 7 pm hour before events, it is recommended that this street maintain the existing two general traffic lanes in each direction, with left turn lanes and a raised center median. If a dedicated transit lane is considered, it should be in addition to the existing general traffic lanes.

C. JULIAN STREET BETWEEN STOCKTON AVENUE AND HIGHWAY 87

During the 6 to 7 pm hour before an SAP Center event, westbound Julian Street west of Highway 87 accommodates about 400 vehicles traveling to the event. During this hour, the total westbound volume at this location on Julian Street is about 800 vehicles. Eastbound Julian Street between Stockton Avenue and the parking entrance at N. Montgomery Street also accommodates a significant volume of SAP Center vehicles during the arrival peak period. A high volume of SAP Center traffic in the reverse directions also occurs during the peak period at the end of an event.

The City's 2040 General Plan shows Julian Street to be a City Connector between N. Autumn Street and Highway 87 and a Local Connector between N. Autumn Street and Stockton Avenue. The Transportation Slide Presentation does not address the function of Julian Street east of N. Montgomery Street and designates this street as a City Connector between N. Montgomery Street and the railroad tracks. According to the City's 2040 General Plan, a Local Connector is similar to a City Connector, except that it would accommodate lower volumes and generally provide just two traffic lanes.

Though there are some differences between the functional designation for Julian Street in the 2040 General Plan, as compared to the designation shown in the Transportation Slide Presentation, the basic emphasis of both documents designating Julian Street as a City Connector is acceptable for SAP Center. The same designation (as a City Connector) is needed between N. Montgomery Street and Highway 87, given the SAP Center parking access at N. Montgomery Street and the plans to possibly extend Cahill Street north to N. Montgomery Street and then Julian Street. If the City prefers designation of Julian Street as a Local Connector west of N. Montgomery Street, that would also be acceptable for SAP Center.

5

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

SAP Center Recommendations for Diridon Station Area Street Network

May 21, 2020



To adequately accommodate SAP Center event traffic, it is recommended that Julian Street between N. Montgomery Street and Highway 87 provide two through lanes in each direction, with a left turn lane and raised center median. Between Stockton Avenue and N. Montgomery Street, Julian Street should provide one lane in each direction, with a westbound right turn lane provided at Stockton Avenue and eastbound left and right turn lanes provided at N. Montgomery Street. All the above lane recommendations are consistent with the City's functional designations and with existing conditions.

D. DELMAS AVENUE BETWEEN SANTA CLARA STREET AND HIGHWAY 87

Delmas Avenue has served two highly important traffic functions for SAP Center:

- Access to large parking lots on both sides of Delmas Avenue between Santa Clara and San Fernando Streets that have been heavily utilized by SAP Center customers.
- Egress route from SAP Center parking in the Delmas and Diridon areas to a southbound Highway 87 entrance ramp from Delmas Avenue just south of Auzerais Avenue. This high volume exit route is estimated to accommodate at least 750 vehicles in the exiting peak hour, which is the volume of SAP Center vehicles during the arrival peak hour that turn left onto Santa Clara Street from the northbound Highway 87 exit ramp to Santa Clara Street.

The City's 2040 General Plan shows Delmas Avenue as a City Connector between Santa Clara and San Fernando Streets and appears to show this street as a Local Connector between San Fernando Street and Auzerais Avenue. The Transportation Slide Presentation shows Delmas Avenue as a Local Connector between Santa Clara and San Fernando Streets and does not address the functional designation south of San Fernando Street.

SAP Center would not be negatively impacted if the City designates Delmas Avenue as a Local Connector over the full distance between Santa Clara Street and Auzerais Avenue, so long as sufficient traffic lanes are provided to accommodate SAP Center traffic. Specifically, it is recommended that Delmas Avenue incorporate the same number and type of traffic lanes as are presented in the prior Delmas TOD development plans approved by the City, including:

- Two northbound lanes on Delmas Avenue approaching Santa Clara Street
- Two southbound lanes on Delmas Avenue approaching San Fernando Street
- Restriping Delmas Avenue between San Fernando Street and Park Avenue to provide two southbound lanes

6

SAP Center Recommendations for Diridon Station Area Street Network

May 21, 2020



E. EXIT RAMP FROM NORTHBOUND HIGHWAY 87 TO SANTA CLARA STREET

This exit ramp is one of several freeway interchanges that are critical in accommodating SAP Center motorists as they travel from the regional highway system to local streets that serve SAP Center. This particular exit ramp is addressed in this Memo, because the City is considering closing this ramp.

The Hexagon traffic information attached as [Exhibit B](#) to this Memo includes counts of SAP Center traffic during the 6 to 7 pm hour before an event at this exit ramp from northbound Highway 87 to Santa Clara Street, together with counts at the Highway 87 and Julian Street interchange and at the I-280/Bird Avenue interchange. These counts reveal that significantly more SAP Center event traffic uses the Highway 87 exit to Santa Clara Street than either of the other two interchanges:

- Total of 990 SAP Center motorists on the Santa Clara Street exit ramp – 760 turning left to the west on Santa Clara Street and 230 turning right to the east.
- Total of 515 SAP Center motorists on the two exit ramps to Bird Avenue from I-280
- Total of 390 SAP Center motorists on the two exit ramps from Highway 87 to Julian Street

A primary reason for the high counts on the Santa Clara Street exit ramp is that Santa Clara Street is centrally located relative to SAP Center parking both near the Arena and in the downtown area. Given the convenience of this access and its high usage for SAP Center customers, closure of this ramp would have two serious negative consequences:

- Require SAP Center customers to choose and navigate much less convenient routes to access their preferred parking locations.
- Likely cause serious congestion on the remaining entry routes, e.g. Bird Avenue from I-280 and Julian Street from Highway 87.

To avoid these serious negative impacts, it is imperative that the exit ramp from northbound Highway 87 to Santa Clara Street be retained, without change.

7

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

Exhibit A

Excerpts from San Jose 2019 General Plan Annual Performance Review

MAJOR STRATEGY #11 – DESIGN FOR A HEALTHFUL COMMUNITY

The General Plan supports the physical health of community members by promoting walking and bicycling as travel options, encouraging access to healthful foods, and supporting the provision of health care and safety services. Specifically, the Land Use and Transportation Chapter includes a set of balanced, long-range, multi-modal transportation goals and policies that provide for a transportation network that is safe, efficient, and sustainable. One such policy includes reducing the automobile commute mode share to no more than 40% by 2040, with goals to increase various other modes accordingly (see Figure 18).

Figure 18. Commute Mode Split Targets for 2040

COMMUTE TRIPS TO AND FROM SAN JOSE		
MODE	2017	2040 GOAL
Drive Alone	75.4%	No More than 40%
Carpool	11.9%	At least 10%
Transit	5.0%	At least 20%
Bicycle	0.8%	At least 15%
Walk	1.4%	At least 15%
Other means (including work at home)	5.5%	See Note 1

Source: U.S. Census Bureau, 2017 American Community Survey 1-Year Estimates

Note 1: Working at home is not included in the transportation model, so the 2040 Goal shows percentages for only those modes currently included in the model.

In order to measure the proportion of commute travel using modes other than the single-occupant vehicle, data was collected from the ACS for the most recent available data (2013 through 2017) for San José. As shown in Figure 18, there has not been a meaningful change in commute mode shares. Out of the five targets set for commute modes, only the Carpool Target has been met. It should also be noted that 11.7% of San José residents work outside of Santa Clara County.

Figure 19. San José Commute Modes, Workers 16+ Years, 2011-2017

Mode	Year						
	2007-11	2008-12	2009-13	2010-14	2011-15	2012-16	2013-17
Drove alone	78.0%	77.8%	77.5%	77.7%	77.1%	76.3%	75.9%
Carpooled	10.6%	10.8%	11.3%	11.1%	11.3%	11.6%	11.7%
Public transit (excluding taxicab)	3.4%	3.5%	3.5%	3.7%	3.9%	4.1%	4.5%
Walked	2.0%	1.8%	1.7%	1.6%	1.6%	1.6%	1.7%
Bicycle	0.9%	0.9%	0.9%	0.9%	1.0%	0.9%	0.9%
Other means	1.4%	1.3%	1.3%	1.2%	1.2%	0.8%	1.2%
Worked at home	3.7%	4.0%	3.9%	3.9%	3.9%	4%	4.1%
Work outside Santa Clara County	11.2%	11.2%	11.1%	11.1%	11.3%	11.3%	11.7%

Source: United States Census Bureau, American Community Survey, 5-year Estimates, Table S0801

Reflective of development patterns and access to public transit, residents living in Downtown San José use a higher percentage of alternative transportation modes compared to citywide statistics, as shown by the table below.

Figure 20. Commute Modes for Downtown Block Groups, Workers 16+ Years, 2013 - 2016

Means of Transportation	2009-2013	2010-2014	2011-2015	2012-2016	2013-2017
Drove alone	61.7%	60.6%	63.3%	63.1%	63.7%
Carpooled	5.4%	5.7%	3.9%	5.1%	5.8%
Public transportation (excluding taxicab)	15.7%	13.4%	14.8%	15.8%	18.0%
Walked	7.5%	9.2%	7.3%	8%	6.7%
Bicycle	2.1%	2.7%	2.9%	1.9%	1.4%
Taxicab	0.5%	0.5%	0.7%	0.4%	0.3%
Worked at home	4.6%	4.8%	5.0%	4.3%	5.3%
Other means	2.2%	3.2%	2.0%	0.8%	0.3%

Source: American Community Survey, 5-Year Estimates, B08301



Other measures of determining whether San José is achieving a balanced transportation network include WalkScore, BikeScore, and TransitScore. These annual online assessments measure a geographical area's walkability,

bikeability, and access to public transit. According to this year's analysis, San José has a WalkScore of 51 out of 100 (somewhat walkable), a BikeScore of 59 out of 100 (bikeable – some bike infrastructure), and a TransitScore of 41 out of 100 (some transit). The City's WalkScore, TransitScore, and Bike Score stayed the same from the previous year.

The Santa Clara Valley Transportation Authority's (VTA) Next Network project is a redesign of the transit network and is one component of VTA's Transit Ridership Improvement Program. The Transit Ridership Improvement Program is an effort to make public transit faster, more frequent and more useful for Santa Clara County travelers. The Next Network project concerns VTA's transit operations and seeks to 1) better connect VTA transit with the Milpitas and Berryessa BART stations; 2) increase overall system ridership; improve VTA's farebox recovery rate. VTA's implementation of the Next Network project will support the commute mode split targets of the General Plan. The Next Network aims to align with the commencement of BART operations in the South Bay.

Bay Area Bike Share. In 2013, Bay Area Bike Share was introduced as a pilot program for the region. In December 2015, City Council unanimously approved plans to expand San José's bike share program to 1,000 bicycles with 100 parking stations over the next two years. In 2017, Motivate, the bike share operator, reinvented their bike share system with FordGo Bike and replaced existing equipment with new stations and bicycles. In 2017, the City hosted 45 bike share stations. During 2018, the City planned to add 38 more stations to its system for a total of 83 stations. As of August 2019, the City has 72 stations. Complete build-out of the 83 stations is expected in the next 3-6 months. During summer 2018, in

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

Exhibit B

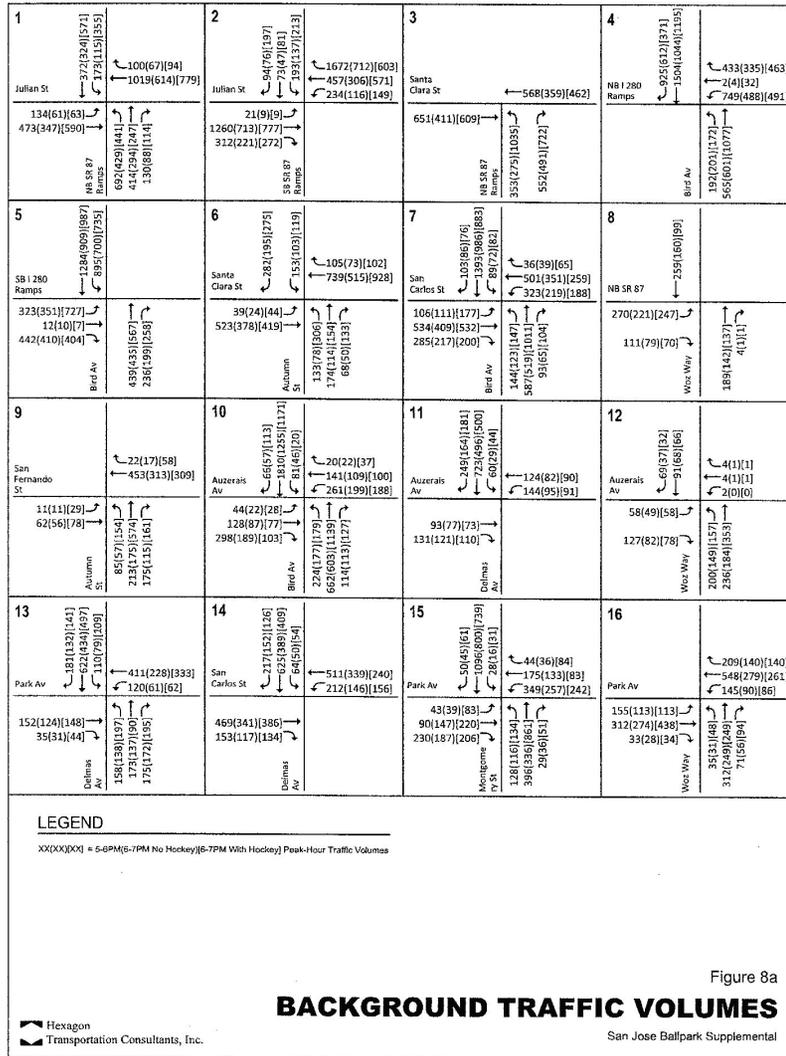


EXHIBIT E
 Articles re Parking Problems
 at BART Stations

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

2/13/2020

A: Main

BART parking — looking for that sweet (\$\$\$) spot**BART**

Agency considers raising prices, aiming to free up spots in crowded lots

‘THERE IS A TIPPING POINT’

By Nico Savidge

nsavidge@bayareanewsgroup.com

How much would you pay to park at your local BART station if you knew you could count on getting a spot?

Or, if you had the choice, how much would that spot have to cost before you'd give it up and walk, carpool or take a bus to the station instead?

Those are some of the questions that could determine how much patrons pay to park at BART in the future, as the transit agency that once surrounded its stations with vast lots of free spaces considers price hikes for a shrinking inventory of spots.

The \$3 fee BART charges for all-day parking at many stations could double at some of the system's most popular lots and garages— or rise by even more— under ideas the agency's



A driver looks for an open space in the parking lot at the Lafayette BART station in 2018.

JOSE CARLOS FAJARDO — STAFF ARCHIVES

BART parking — looking for that sweet (\$\$\$) spot**BART**

board will discuss at the annual retreat this week that serves as a preview of its priorities for the year.

Opponents, as well as many passengers who park and ride, resist the idea of paying more, warning it could lead more people to ditch BART and worsen the area's grinding rush-hour traffic.

“What other options are there?” said Albert Hahn, an accountant who drives to BART because bus service between the station and his home in Alamo is too slow.

Parking spaces are likely to become more scarce as BART swaps some stations' sprawling surface lots for new apartment buildings under a push to build 20,000 units of housing on the agency's property. BART officials stress that they consider each station's parking needs when deciding how many spaces to replace when a new development goes up, but many car-dependent commuters are wary.

2/13/2020

A: Main

“I would probably drive a little more,” said Lisa Winn, a meeting planner who lives in Danville and commutes to work by driving to the Walnut Creek BART station, then riding to work in Oakland. With free parking available at her job, Winn said, she might join the traffic on Highway 24 if BART's lots were too pricey.

“There is a tipping point,” she said.

But supporters argue that BART parking suffers from a rare problem in today's Bay Area: It's too cheap.

By capping weekday parking fees for all but one lot at \$3, there is little incentive for riders not to drive if they have another option — parking at BART is barely more expensive, for instance, than a bus fare. The exception is the West Oakland station, which is one stop away from San Francisco and has parking fees that run \$10.50 per day.

The result is packed lots that fill up well before rush hour at some stations and waitlists tens of thousands of people long for the coveted monthly parking permits that guarantee a space.

Across the entire system, 29% of BART's weekday riders drove or carpoled to their stop in 2015, according to the most recent data that is available. That share is higher in more car-dependent suburbs. More than half of those commuters drove or carpoled to the Dublin/Pleasanton and Orinda stations, where the lots typically fill well before 8 a.m.

“We clearly are not charging enough to have a big impact on demand,” said BART director Rebecca Saltzman, who said she wants to see a more “market-based” parking rate.

Charge more for spots, the thinking goes, and the people who have another way to get to BART would use it. That would in theory free up a space for some other rider who really needs it — say, a parent who lives far from the nearest station and has to drop off kids before catching the train and can't show up before 8 a.m. to secure a spot.

At today's board retreat, agency officials will lay out a couple of scenarios for raising parking rates, though the board won't vote on any of them.

One option includes raising the cap on daily parking fees from \$3 to \$6. There could be similar price increases for single-day and monthly permits and a range of prices based on demand at each station. Drivers might pay \$6 to park at the Dublin/Pleasanton station, for instance, but perhaps \$2 at North Concord/ Martinez, which never fills up. BART estimates such an increase could bring in \$10 million to \$15 million in new revenue.

Or the agency could eliminate the cap entirely, replacing it with a system that allowed for increases every six months with no final limit on how high the price could go. BART forecasts an additional \$12 million to \$17 million annually from that model.

Board members also will consider ideas to lower parking rates when demand is lower, such as on Fridays or during holiday weeks, when lots are less likely to fill. There is no indication the system will start charging for parking during evenings or on weekends, when BART's ridership is way down.

BART spokeswoman Alicia Trost stressed those ideas are not specific proposals but rather “examples to get the discussion going.” BART staff are now studying what impact higher parking costs could have on low-income riders, a first step toward potentially making those increases a reality.

And any price hike proposal is far from guaranteed — it would require approval from two-thirds of the BART board, which could be a high bar considering several directors come from suburbs where riders see few options but their cars for getting to stations.

“Every time you raise fares, every time you raise parking costs, it becomes less affordable,” said Director Debora Allen, who represents four central Contra Costa County stations. Allen added that she would oppose raising parking rates any more than overall cost-of-living increases.

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

2/13/2020

“We could be charging more and opening up some spaces for people who don’t have another choice,” Saltzman said.

Another Walnut Creek rider, Linda Fisher, didn’t like the idea of pricier parking, noting that it comes as BART is also raising fares. But she may be an unwitting poster child for the concept.

Fisher lives less than a mile from the station, saying she drives because it saves her time. She wouldn’t dream of driving to her banking-industry job in downtown San Francisco, with its traffic and astronomical parking costs.

“Even if they increased it \$1 a day, that would be too much” to justify parking at the station, Fisher said. So she’d likely walk to BART or work from home more — freeing up a space in the lot.

Still others at the station said they would keep driving to BART, even if it meant paying more.

A: Main

“Let’s talk about how we’re going to bring riders back — we are not going to do that by raising parking fees and reducing parking,” she said.

The North Berkeley BART station parking lot is full on Tuesday.

ARIC CRABB — STAFF PHOTOGRAPHER

Key \$7 million allocated for new parking garage at Dublin-Pleasanton...

<https://www.pleasantonweekly.com/news/print/2019/07/29/key-7-m...>

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<https://pleasantonweekly.com/news/print/2019/07/29/key-7-million-allocated-for-new-parking-garage-at-dublin-pleasanton-bart-station>

Uploaded: Mon, Jul 29, 2019, 2:50 pm

Key \$7 million allocated for new parking garage at Dublin-Pleasanton BART station

Construction expected to begin next spring, opening scheduled for mid-2021

by Elaine Yang

The effort to construct a new parking garage at the Dublin-Pleasanton BART station took another step forward last week as the Metropolitan Transportation Commission (MTC) announced the Tri-Valley project was among those to share in \$9.3 million in funding from bridge toll revenue.

Based on project cost estimates, the \$7 million allocated from Regional Measure 2 revenue to the Alameda County Transportation Commission (ACTC) represents the final piece of funding needed to build the new parking structure adjacent to the existing BART garage on the Dublin side of the station.

"This a great way to improve the quality of life for a lot of commuters who don't live within walking distance of a BART station or bus stop," Alameda County Supervisor Scott Haggerty, who is also MTC chair, said in a statement.

"Among the ways to reduce congestion on East Bay freeways is to make it more convenient for people to ride transit; and one of the best ways to improve convenience is to solve the chronic parking shortages at so many of our key transit stops," Haggerty said.

The proposed \$34 million, 537-space parking structure aims to provide a needed addition to the parking supply at Dublin-Pleasanton, where the existing BART garage with nearly 3,000 spaces is often filled early on the morning commute. Haggerty joined state and local leaders in devising the plan after BART declined to move forward with building its own second garage at the station.

The project, which held a [ceremonial groundbreaking last October](#), is expected to see onsite construction begin on the new garage next spring, with the opening scheduled for mid-2021.

The \$7 million commitment from MTC supplements \$20 million in state funds awarded to the Livermore-Amador Valley Transit Authority for the project through the Transit and Intercity Rail Capital Program, plus another \$7 million in vehicle registration fee money contributed by the ACTC.

The other \$2.3 million in funding awarded by MTC last week will go to completing a trio of commuter parking lots served by AC Transit's transbay buses through MTC's Bay Bridge Forward initiative. The three commuter parking lots now under construction in the East Bay -- two lots beneath Interstate 880 at High Street and Fruitvale Avenue in Oakland and a third lot adjacent to Interstate 80 at Buchanan Street in Albany -- are scheduled to open by the end of this year.

Regional Measure 2 was approved by Bay Area voters in 2004 and raised tolls by \$1 on each of the region's seven state-owned toll bridges to finance highway and transit improvements in the bridge corridors and along their approaches, as well as to provide operating support for transit services in the bridge corridors.

Thursday, 02/13/2020 Page .A01 Copyright (c)2020 The Mercury News, Edition. Please review new arbitration language here. 2/13/2020

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

BART Eyes \$16M Parking Lot At New Antioch Station To Meet High Demand

October 26, 2018 at 2:51 pm

ANTIOCH (CBS SF) – So many riders are driving to Antioch's new BART station that the station's parking lots cannot meet the demand.

BART officials said the station has been a tremendous success and noted that daily ridership has far exceeded their original forecasts.

On Friday, BART officials announced that they have identified full funding for a proposed \$16.4 million parking lot that will be able to accommodate more than 800 new parking spaces, nearly doubling the parking capacity at the station. The new BART station, which opened in May, has extended BART's yellow line further east from the Pittsburg/Bay Point station. Prior to opening, the station's daily ridership was expected to be 2,270, but it is currently at 3,050 daily riders, according to BART officials.

The proposed lot is on a piece of BART land located just east of the existing parking lots.

BART director Joel Keller, who represents East Contra Costa County said in a statement Friday, "We've made it a priority to ensure that every rider has access to the new service which takes drivers off the congested Highway 4 corridor." Funding sources for the proposed parking lot project include BART, Contra Costa Transportation Authority, the Metropolitan Transportation Commission, and the East Contra Costa Regional Fee and Financing Authority.

BART officials said they plan to bring the project to the BART Board of Directors in late 2018 and that if everything goes as planned, the new parking lot could be open in the fall of 2020.

Until then, riders can also consider utilizing the new BART station's shared use bicycle lockers, which cost 5 cents or less per hour, compared to the daily fee for car parking, which is \$3.

BART extension to Antioch so popular there's no room at the station to park

Phil Matier July 29, 2018 Updated: July 29, 2018 6 a.m.



A new diesel-powered train sits at the Antioch Station during a test run of a new BART extension that runs from the Pittsburg-Bay Point station to Hillcrest Avenue in Antioch, Calif., on Wednesday, May 23, 2018. The new people moving line runs down the middle of Highway 4 for that length

Photo: Carlos Avila Gonzalez / The Chronicle

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

BART's new East Bay extension to Antioch is already rocketing off the charts.

Opened in late May at a cost of \$525 million, the 10-mile link from Pittsburg to Antioch is averaging 3,800 weekday riders — well above the 2,800 BART initially estimated.

“And there likely would be even more riders, but there’s no room in the parking lot,” said BART Board Director **Joel Keller**, whose east Contra Costa County district includes the new station.

The 1,006-slot parking lot, which already is being restriped to allow for more than three dozen extra vehicles, is usually filled by 5:55 a.m.

BART “underestimated the parking,” said Antioch Mayor **Sean Wright**. As a result, riders are parking all day on neighborhood streets.

Now the transit agency is moving to add 700 parking spaces on seven acres it owns adjacent to the station. But if that doesn’t do the trick, it could reopen the long-standing debate among BART directors over whether building more parking is the best way to promote the use of public transit.

NEWS

BART's New Antioch Station Is Very Popular -- and Doesn't Have Enough Parking

By **Dan Brekke**
Published on June 1, 2018



Cars parked on a roadside just outside Antioch's new BART station. (East County Today)

By all accounts, people in eastern Contra Costa County love the brand-new eBART line from Pittsburg-Bay Point to Antioch. In its first week of operation, the service has far exceeded its projected ridership.

But here's something they don't like: The 1,012-space parking lot at the new Antioch station has been filling up in a hurry every weekday. That has led late-comers to try parking just about any old where so they can catch the new train.

This week, "any old where" has included nearby bicycle lanes and roadsides with tall, dry -- and potentially very combustible -- grass.

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

BART held a meeting Friday to discuss short- and long-term steps it can take to provide more space for commuters and how to deal with illegal and potentially dangerous parking.

BART spokeswoman Alicia Trost said that among the questions raised at the meeting are whether it's possible to find under-used parking nearby. Among others who have floated that idea is a local resident who posted a video suggesting using a partially empty shopping mall parking lot.

Trost said BART is also evaluating whether it could build additional parking on unused portions of its Antioch property. Among the factors the agency would need to address is how much parking could be provided, how quickly and at what cost.

In the short term, though, BART is going to do what it can to shut down outlaw parking around the Antioch property.

"We are going to be blocking off the illegal spaces people were discovering this week," Trost said. She added that many of the impromptu roadside parking areas pose a high fire danger.

"People were parking on top of tall, dry grass," she said. "Hot engines can spark a fire, so that is an extreme danger."

Many drivers chose to leave their vehicles in bike lanes around the stations, prompting Antioch police to write dozens of parking citations this week.

Trost said that by putting those areas out of bounds, commuters will be prompted to drive to either the new Pittsburg Center station or the Pittsburg-Bay Point station. She said the Pittsburg Center parking lot, which has 245 stalls, did not fill up during eBART's first week. And she said that Pittsburg-Bay Point had spaces open until after 10 each morning, a situation she called "completely unheard of."

"A lot of people who were driving to Pittsburg-Bay Point are going to Antioch," Trost said. "So the idea is it will smooth out. People are going to figure out if they just cannot get to Antioch early enough" they can try the other stations.

Of the 1,000-plus parking stalls, 225 are set aside for monthly and daily passholders and for those using the Scoop carpool app. There are very long waiting lists to get reserved parking at the station, but Trost says the Scoop option has been very lightly used so far.

So far, the parking woes have not put a dent in eBART ridership. The service was projected to record about 5,600 trips a day -- the total of entries and exits at the Pittsburg Center and Antioch stations. The total trips for eBART for the first three workdays this week ranged as high as 7,441, or 33 percent over the initial projection.

Trost said that the strong first-week ridership on the new line has been matched by a decline at Pittsburg-Bay Point, the old end of the system's Yellow Line.

BART Pauses Planning for Dublin Parking Garage

Posted: Thursday, February 16, 2017 12:00 am

The BART Board of Directors voted to delay a decision on a proposed parking garage at the East Dublin Station. If it were to move forward, the garage would provide an additional 540 parking spaces adjacent to the current parking garage.

The vote was unanimous. Staff has 90 days to return with a report.

Directors decided they wanted to look at other options, such as finding nearby surface lots.

There were also questions about whether or not funding was in place to pay for the garage estimated to cost \$37.1 million. Of that total, \$8.6 million would be needed to pay to design the structure. Directors suggested that before spending the design money, they would like more information on where the \$28.5 million to build the garage would come from.

The proposed six-story garage would replace a current surface parking lot of 118 spots, netting 540 more spaces.

John McPartland, who represents the Tri-Valley on the board, stated, "I really want to build this thing today. Arguments to look at other options are reasonable. I don't think surface parking is there."

He stated, that if the motion to delay the process passes, that doesn't mean the parking structure is dead; it's on pause for 90 days.

Director Nick Josefowitz, who made the motion to pause the process, suggested that more work needs to be done. He said that the agency should reach out to nearby neighbors, such as Oracle, who have parking available, to see if BART could lease some of the available spaces. He said he visited the area during a weekday and found over 1000 spaces that were not occupied.

He and other directors also wanted to look at multi-modal access for cars, buses, and bikes, not just cars. Josefowitz said, "There are real access needs in the Tri-Valley that we are not meeting. We need to strive to do so."

Director Joel Keller said that if BART could achieve the parking goals using less taxpayer money, it has an obligation to do so. Among the options would be surface parking away from the station with a shuttle to take passengers to the station.

Funding for the design portion is expected to come from the Metropolitan Transportation Commission and the Alameda County Transportation Commission.

Exhibit E to Comment Letter
Page 12 of 13

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

BART General Manager Grace Crumican said it was her understanding that the MTC and ACTC would put in a "substantial amount" of money toward the project, but also want to make sure BART is contributing.

During the public hearing, Dublin Councilmember Don Biddle stated there is an immediate demand for parking in Dublin. He noted that statistics show a wait list for parking permits of 3,000 for the eastside station and 3700 for the station on the westside of the city. "If people don't arrive at the stations by 7:30 or 8 a.m. they are out of luck."

Cindy Chin from Assemblywoman Catharine Baker's office read a letter from Baker supporting the project. It echoed comments made by Biddle and others in support of the garage. The letter concluded, "The need is not going away."

BART TO LIVERMORE

The BART board also received an update on the BART extension to Livermore. It was noted that completion of the I-580 express lanes had eliminated the median.

There is \$533 million in funding committed to the Livermore extension. While it would be cheaper to build in the median, there is no median. It will be necessary to widen the freeway 40 to 45 feet to make room for the extension.

It is anticipated that the draft EIR would be released in this spring and a project adopted in late 2017. If the board were to choose a capital intensive project, a federal environmental impact statement would be required. The final impact statement would be expected in 2020. Construction could be completed in 2026.

Capital intensive options include regular BART, a diesel multiple unit or electric multiple unit (similar to eBART), or enhanced bus service. The enhanced bus service would include direct access to the trains, necessitating construction of new infrastructure.

In looking at ridership, the board was told that extending to Isabel means that those from the Central Valley would park there, rather than at Dublin. This would provide slots in Dublin and Pleasanton for those who have been unable to park there.

http://www.independentnews.com/news/bart-pauses-planning-for-dublin-parking-garage/article_2a4e396c-f3c6-11e6-b3b1-bf671d8be3ef.html

Exhibit E to Comment Letter
Page 13 of 13

Pleasanton Working with BART, Stoneridge on Parking Possibilities

Posted: Wednesday, July 1, 2015 12:00 am

By Ron McNicoll, the [Independent](#)

BART and the owner of Stoneridge Mall have been talking separately to Pleasanton staff about the problem that some morning commuters find in trying to find a parking place on the Pleasanton side of the West Dublin-Pleasanton BART station.

BART passengers had been using the Stoneridge Mall lot across from BART when they could not find a parking place in the BART parking structure on Stoneridge Mall Road, the ring road around the mall.

However, in May, commuters found posts and chains blocking the way into all of the driveway lanes going into mall parking. The chains were hooked up every night after store hours; then removed after 9:30 a.m. the next day. More parking becomes available in the BART structure after 10 a.m.

Pleasanton residents communicated with vice-mayor Karla Brown, who forwarded their e-mails to the BART board.

The short-term result was removal of the chain barriers in much of the mall's huge lot.

The city used its leverage. Most of the mall had not gone through design review with the city for the chain modifications. "We told them to cease and desist," said City Manager Nelson Fialho.

Although the chains are gone from much of the mall parking lot, it is still private property. Motorists should be aware that mall security can order cars towed, although they cannot issue citations. BART also cannot issue citations there, since it is private property.

The anchor tenants control the parking next to their stores. The city allowed Nordstrom to continue to chain off the area next to its store, but a long-term solution clearly is needed, said Fialho. The Nordstrom lot is the closest one to the BART station.

The solution will require funding and investment, whoever solves it, added Fialho.

There is some vacant land east of the BART parking structure. It is owned by BART, and was zoned for housing at 15 units per acre. The housing was never built.

BART has given a 99-year lease on the land to Workday, which will use the land for a private parking garage. Fialho said that Workday has been cooperative in taking part in discussions with the city about its leased land.

Exhibit E to Comment Letter
Page 10 of 13

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

The only apparent solution that could be controlled by BART would be to add two more floors to its existing structure to match the height of the garage on the Dublin side of the station, said Fialho.

Also, there may be a win/win solution with the mall if BART could explore permit parking in the mall lot for BART riders. BART could pay for it, or administer it, said Fialho.

Fialho said another possible tool is the park-and-ride lot at Stoneridge and Johnson drives in Pleasanton. It is across the street from the DSRSD waste-water treatment plant. The lot is used now by carpoolers who travel the freeways, but there is potential that Wheels might be able to run a shuttle to BART from there.

Brown is a member of the LAVTA board, which operates Wheels. She said that a study of routes is underway. The idea would be a good subject to add to the study.

Fialho said that in talking to other cities at the end of BART lines, he found that lack of parking is a common problem. Livermore could learn something for its BART extension from the current Pleasanton problem, declared Fialho.

"They need to be mindful of mistakes of the past. Parking needs to be adequate not only for Livermore, but also for the commute shed for the area. Right now East Dublin/Pleasanton is launch point for riders from Modesto and Tracy. The two stations (including West Dublin/Pleasanton) can easily be overrun with demand."

Talks will continue, with the city as a broker with BART, Workday and the mall, said Fialho.

http://www.independentnews.com/news/pleasanton-working-with-bart-stoneridge-on-parking-possibilities/article_338670e6-202e-11e5-922a-bb6e4a32df7.html

Barriers Stop BART Overflow Parkers From Using Stoneridge Lot

Posted: Thursday, April 16, 2015 12:00 am

Stoneridge Mall has begun chaining off its parking lot each night after business hours, and opening it up again after 9:30 a.m. the next day in an effort to better control parking spaces for its customers and employees.

The mall lot is located close to the Pleasanton side of the West Dublin/Pleasanton BART station. Commuters have been using the Stoneridge lot when parking fills up in the BART parking ramp before 10 a.m. Spaces tend to be available after 10 a.m. in the BART structure.

Mall manager Mike Short said in a prepared statement to The Independent that convenient parking is "an amenity we want to preserve for those who are actively doing business at the center. A controlled parking program ensures the best spaces are available for Stoneridge shoppers and employees anytime of the day, any day of the week."

Short said, "There are signs posted indicating Stoneridge Shopping Center is private property. These signs have always been there."

A Pleasanton resident told The Independent that when her daughter, who goes to law school in San Francisco, showed up at BART on the morning of April 6, she found chains across the Stoneridge parking entrances. She drove on to San Francisco, and paid a high parking fee there. Subsequently, the daughter has been getting rides to BART from her mother.

The mother contacted Pleasanton Vice-mayor Karla Brown, who passed the mother's e-mail on to BART, and sent one of her own. Brown said that she, too, has been unable to find parking in the BART lots, and "had to resort to driving to San Francisco in my car."

"I know many other drivers that have been stuck in the same position, and used their car instead of the preferred BART transportation," said Brown.

BART district secretary Kenneth Duron replied to Brown that he will share the e-mails with the board, and ask the BART Office of External Affairs and the Customer Access Department to investigate and respond.

The Independent talked to BART spokesperson Jim Allison on April 10. He said that he was not aware of the situation, but would look into it.

Allison said that BART averages 400,000 riders daily. Parking spaces are provided for fewer than 10 percent of that number.

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

"It's a natural tension. People want to drive to the station. Could we build a space for all, or encourage ride-sharing, cycling, buses, by limiting the amount of parking. It's a debate that goes on at the nine-member BART board, which has members from downtown San Francisco and the suburbs," said Allison.

BART tracks parking usage every six months, and reevaluates it at every station. BART looks at permit spots, and daily fees. There is a \$3 cap at all stations, except West Oakland, where it is \$7.

At the West Dublin station, there are 722 parking spaces inside the Dublin structure, and 468 on the Pleasanton side. The structures are split between daily users and monthly permit holders. It's possible to buy a permit for a specific day for \$6 on-line, said Allison. He said that "guarantees" a parking spot in the rush time up to 10 a.m.

If vehicles are illegally parked in the permit area, BART checks regularly for violators, said Allison.

Comment:

BART Parking

Ann Reichert, Livermore | Posted: Thursday, April 30, 2015 12:00 am

I loved your article about the Stoneridge Mall preventing BART riders from using its parking lot. You can't blame the Mall. It was surprising that it took this long for the barricades to go up.

The situation is entirely BART's fault. You can't have 400,000 riders and only provide parking for less than 10% of those riders and think everything is okay. Jim Allison gives the standard BART answer that he wasn't aware of the problems. Wouldn't that be his job to be aware? BART is never aware of the problems. I guess BART thinks that if you ignore problems they will somehow go away.

http://www.independentnews.com/news/barriers-ston-bart-overflow-parkers-from-using-stoneridge-lot/article_5c4602ba-e42b-11e4-a776-938a45e20d17.html

BART parking spaces filling up quickly

By Kelli Phillips | Bay Area News Group

PUBLISHED: March 25, 2008 at 9:17 am | UPDATED: August 17, 2016 at 4:01 am



A sign is posted at the Pittsburg - Bay Point BART station for additional parking at the North Concord/Martinez BART station on Wednesday, February 27, 2008, in Pittsburg, Calif. BART riders have a hard time finding parking at the stations closest to their homes and find themselves driving to other stations. (Bob Larson/Contra Costa Times)

Jessica Morgan wants to take her mind and her car off the road, but she can't find parking.

The Walnut Creek resident enjoys riding BART to work in San Francisco, but finding an empty space at nearby stations has become increasingly difficult.

"Lately, there are times when I've just given up and got on the freeway," Morgan said. "Once I drove from Walnut Creek to Lafayette and then Orinda, and there wasn't a single parking space."

On week days, more than half of BART's 46,392 parking spaces are filled by 8 a.m., and it jumps to at least 73 percent by 8:45 a.m., according to BART parking data analyzed by MediaNews.

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

Parking is an issue at several stations, and while a few lot expansions are in the works, BART says just building more parking lots and garages is a costly and impractical solution.

With 441 spaces, the West Oakland station is the first to fill on weekdays at 6 a.m., while Concord (2,367 spaces) and San Bruno (1,083 spaces) are the last to reach capacity at

8:45 a.m.

Pleasant Hill, which has the most parking at 3,011 spaces, is full by 8:30 a.m.

The West Dublin station, slated to open in 2009, will add another 1,200 parking spaces along the Dublin-Pleasanton line, and the Richmond, Ashby, Pittsburg-Bay Point and West Oakland stations are negotiating for additional parking over the next several years.

But the cost is significant.

The 1,200-space garage scheduled to open this spring at the Dublin-Pleasanton station carries a \$42 million price tag — or \$28,000 per parking space, BART spokesman Linton Johnson said.

“Having more parking in general will encourage people to live further out, which means they have to drive further back in,” Johnson said.

“It’s really environmental, cost and land planning. It’s not just BART, but there are state-mandated goals to reduce greenhouse gases, and you do that by getting people out of their vehicles,” he said.

Transit-oriented development, such as the transit village in Fruitvale or proposed sites in Pleasant Hill and Walnut Creek, are putting the land around BART stations to better use, Johnson said.

“There are people who say they don’t want to live in a transit village, but there are people who would,” he said. “That frees up a parking spot for those in the suburbs because (transit village residents) don’t have to drive to the station.”

Marci McKillian of Pinole takes public transportation to hiking-club activities around the Bay Area. During a recent trip to the El Cerrito del Norte station, McKillian found parking in a nearby neighborhood.

“I parked 4 1/2 blocks away because all the closer streets were either full or four-hour parking,” she wrote via e-mail. “It was no problem to walk down to the station, but after hiking for almost five miles, another 4 1/2 blocks up El Cerrito hills was a bit much for an 83-year-old.”

The Walnut Creek station’s 2,089 spaces and Lafayette’s

1,509 are taken by 8 a.m., and the 1,406-space lot in Orinda reaches capacity 30 minutes later.

Lots are filling faster each morning, but it’s not deterring patrons. The transit agency saw a ridership increase of 23,000 between this February and last.

“Our parking hasn’t increased that much, but we’re seeing lots and lots of new riders,” Johnson said. “The cost and convenience of commuting drives our ridership, and gas prices are one of the most volatile factors.”

With a gallon of unleaded going for \$3.50 or higher, more people are turning to BART instead of turning the ignition.

BART’s average weekday ridership is about 360,000 people, up from 301,000 three years ago. “Even with this monstrous ridership increase, people are finding other ways to get to BART,” Johnson said.

The transit agency is also encouraging those who can to carpool, walk or bike to nearby stations. BART is installing more than 2,000 electronic bike lockers systemwide, and it’s working with County Connection and AC Transit to better inform riders of the “Bus to BART” option.

“There are only a couple of routes that don’t hit a BART station,” said County Connection spokeswoman Mary Burdick.

The bus agency is working to produce schedules that are more user-friendly to BART riders.

“There’s a perception that our schedules don’t mesh,” Burdick said. “We’re not going to meet every train, but to make (the schedule) more understandable, we’ve added the train (times) our buses are scheduled to meet.”

AC Transit has 14 park-and-ride lots where BART riders can catch a bus to stations in Castro Valley, Fremont, Oakland and Richmond. “Part of our plan is to provide an available service for riders to get to BART,” AC Transit spokesman Clarence Johnson said.

Linton Johnson said BART is trying to devise “all kinds of ways to help those who don’t have to take their car to BART,” but the agency realizes it’s crazy to expect people to just “ditch their cars.”

Some motorists, such as Jonathon Peacock, have found ways around the parking issue, at least for now.

The Pittsburg resident lives 10 minutes from the Pittsburg-Bay Point station, but he doesn’t bother looking for a space because the lot is full by 7:40 a.m. “I don’t leave until about 9 a.m., and parking is long gone by the time I’m looking,” he said.

Instead, Peacock, who takes BART to the Montgomery station in San Francisco, slugs through Highway 4 traffic to the North Concord-Martinez station.

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

The detour adds 15 minutes to his commute, but it guarantees him an empty spot. But, even there, the number of available spaces is shrinking, he says.

"It's getting bad lately," Peacock said. "The lower lot is in three pieces. I was finding a space in the middle of the second portion, but now I find myself parking three-fourths of the way down the third portion. I'm going to have to start leaving earlier."

For those who have to drive, BART does offer a limited number of "single-day parking permits" at 11 stations and "monthly parking permits" at those stations and 21 others.

Monthly permits range from \$30 to \$115.50 per month, while single-day permits go for \$3 to \$6.

On Thursday, monthly permits were sold out at 22 of the 32 stations, including all seven in Contra Costa County, and single-day permits for the Walnut Creek station were sold out through April 2.

These permits guarantee the user a parking space at a specific location before 10 a.m. Monday through Friday.

Some motorists become so frustrated with parking that they risk a ticket by parking illegally. BART's Board of Supervisors voted March 13 to raise fines for permit violations from \$25 to \$40.

"A \$25 fine is a bargain. It's cheaper than paying the bridge toll and trying to park in downtown San Francisco," Linton Johnson said. "We're hoping the higher fines will eliminate some parking poachers."

Reach Kelli Phillips at 925-945-4745 or kphillips@bayareanewsgroup.com.

<http://www.eastbaytimes.com/2008/03/25/bart-parking-spaces-filling-up-quickly/>

If You Can't Park, You Can't Ride / For a BART commuter in the suburbs, every workday morning begins with a race to claim one of the precious spots in the transit system's inadequate parking lots

By [Michael Cabanatuan](#), San Francisco Chronicle

Published 4:00 am, Sunday, January 28, 2001

It's 7:45 a.m. -- witching hour at the BART parking lot in Orinda -- but Lark Hilliard is stuck a mile away in molasses-slow traffic on Moraga Way while the last available spaces are vanishing.

Hilliard, chief financial officer for a San Francisco architectural firm, tries to arrive early enough to find a spot in the BART lot but life sometimes gets in the way. On this rainy morning, for instance, trouble with her daughter's carpool forced Hilliard to shuttle the freshman through stop-and-go traffic to Miramonte High School before fighting her way back to BART.

By the time she arrives just after 8 a.m., there's little hope but Hilliard quickly circles the lot anyway before deciding to try her second option, a city park-and-ride lot a half-mile away across Highway 24 and up a hill. She arrives as the last spaces fill. Finally, around the corner, she finds a space on a steep side street just beyond signs limiting parkers to four hours. From there, it's a brisk 10-minute walk to the BART station.

"If I can't find a space, I end up driving," she said. "And I hate driving to San Francisco."

BART's parking shortage is fast becoming the transit agency's most pressing problem. At all but three of the 29 stations that offer parking, the spaces are gone by 8 a.m. To make matters worse, many communities with BART stations have imposed commuter-hostile parking limits on streets anywhere within walking distance.

With demand for parking growing along with ridership, but money to build lots and garages scarce, BART is slowly moving toward a future in which it will charge for parking for the first time in its 28-year history. Not all parking, perhaps, but some.

A recent survey shows that BART is putting a lot of would-be passengers on the highway because they can't find parking at its stations, and is likely to lose even more if it doesn't deal with the problem.

BART surveyed 602 customers who have ridden BART regularly and parked at the stations since 1998. It found that 17 percent of those riders stay in their cars and drive to their destinations

Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

when BART lots are full. The rest park on neighborhood streets, get rides to BART, try to find spaces at other stations or figure out another way to get to the station. And if the parking shortage worsens, 27 percent said they would stop riding BART.

While BART is poised to begin small-scale experiments with paid reserved parking, satellite lots and commuter shuttles, it has no plans, no intent and no money to do what many commuters want: build big new lots or parking garages at every BART station whose lots fill early each morning.

BART's parking shortage is nearly universal. Most of the 41,666 spaces at the 29 stations with parking fill early each weekday. By 8 a.m., just three stations -- North Concord/Martinez, Richmond and Coliseum -- have empty spaces, according to a recent BART study.

BART stations have small reserves of parking spots they save for "midday" parkers that open at 10 a.m. But desperate commuters who could not find parking spots earlier in the morning often begin circling the lots or lining up outside well before the hour.

Several obstacles -- political, financial and philosophical -- stand in the way of more parking at BART.

Building parking is a pricey proposition, with a surface lot costing about \$10,000 a space and a parking garage about \$20,000 a space. Maintenance and security costs add up to about \$1 a space per year, BART officials estimate.

With government funds for parking lots scarce and BART's board of directors averse to charging for parking, that leaves BART the option of raising fares or coming up with creative solutions, such as joint ventures with private developers.

While BART directors aren't ready to start charging for every space at BART, they are moving toward levying parking fees at new lots or stations but not charging for existing parking, which has always been free.

Sometime next year, BART will test the waters with a reserved parking program at a handful of stations. In return for paying a monthly or weekly fee, a BART user will be guaranteed a parking space close to the station.

In another program, BART and the Contra Costa cities of Orinda and Moraga are considering a shuttle bus service that would pick up patrons at church and park-and-ride lots and take them to and from the Orinda station.

BART is also preparing to see if it can interest developers in either building or leasing new parking garages on BART property -- and charging whatever they want.

Travelers bound for San Francisco International Airport on BART once the extension opens in a little more than a year may also be charged to leave their cars behind. BART officials, fearing fliers could tie up valuable parking spaces for days while they travel, are leaning toward opening

some long-term lots that would charge a fee. The matter of parking charges at airport extension stations has not been determined.

BART Director Dan Richard said the board seems to be headed toward a future in which it will build more parking but charge for it -- along with special parking services including reserved, long-term, perhaps even valet parking -- while existing lots and garages would remain free.

"The new parking is going to have to be provided on a different basis," Richard said.

But that's not enough for some BART directors like Roy Nakadegawa, who argues that people who don't drive to BART are paying higher fares and subsidizing the parking places for those who do. Nakadegawa would like to charge everyone who parks at BART and use the money to maintain parking -- and subsidize better transit to stations.

"The fact is, people will start paying when there is a demand," Nakadegawa said. "Why don't we take the big leap forward and just put in paid parking without putting in any additional parking?"

But Richard, voicing an opinion held by a majority of BART directors, believes it would be a mistake to start charging for parking that has always been free. "I think we'd have a revolt on our hands if we tried to take away something we have already given people," he said.

Joel Keller, a director who represents eastern Contra Costa County, contends commuters from the end-of-the-line Pittsburg/Bay Point station already pay excessive fares and can't afford an added parking charge.

"(Eastern Contra Costa) BART riders pay more for their trip than any other riders in the Bay Area," said Keller. "Any increased cost would be unfair." But Hilliard, whose last-resort parking spot was a couple of weeks later posted with a two-hour limit, says she would gladly pay for a place to leave her car.

"I wouldn't mind paying if I knew I would have a space," she said. "In fact, I'd pay almost anything."

<https://www.sfgate.com/bayarea/article/If-You-Can-t-Park-You-Can-t-Ride-For-a-BART-2958316.php>

Response to Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020)

1748-3039

The Authority appreciates your comments on the Draft EIR/EIS. In subsequent individual comments, Sharks Sports & Entertainment LLC provided specific detailed comments regarding impacts on transportation and parking. Each of these specific comments is addressed below.

1748-3040

As presented in Table 3.2-16 in Section 3.2, Transportation, of the Draft EIR/EIS, planned improvements in transit for Caltrain (through the PCEP), for BART, or with HSR would provide a level of train service that is vastly superior to past and present transit service. The Authority has conducted a ridership evaluation that identifies the likely mode split for HSR ridership. Similarly, the EIR/EIS cites additional ridership evaluation conducted for the BART extension, including VTA assessments of the likely mode split for BART riders. Caltrain is not planning any expansion of parking as part of its expansion of Caltrain service with the PCEP because its ridership evaluations also conclude that the number of people utilizing Caltrain in the future would increasingly be dominated by people using transit to access the San Jose Diridon Station. The EIR/EIS analysis of parking is based in part on the parking inventory and the parking analysis prepared by VTA as part of the Silicon Valley Phase II Extension Project Final Supplemental EIR/EIS (SVSX EIR/EIS; VTA and FTA 2018, as cited in Section 3.2, Transportation, of the Draft EIR/EIS). The parking inventory from VTA presents a reasonable estimate of the number of parking spaces in the vicinity around the San Jose Diridon Station. The Authority disagrees with the assertions made in this comment concerning future modes of access to the San Jose Diridon Station and the SAP Center with planned transit service increases and has provided evidence in the EIR/EIS to support the Authority's conclusions. Refer to Draft EIR/EIS Section 3.2.4.3, Methods for Impact Analysis, for details on the ridership and modal split calculations. For the sake of clarity, references to the prior "parking study" have been changed to a "parking inventory" in the Final EIR/EIS to avoid any confusion.

1748-3041

The Authority appreciates your comments on the Draft EIR/EIS. In subsequent individual comments, Sharks Sports & Entertainment LLC provided specific detailed comments regarding impacts on transportation and parking. Each of these specific comments is addressed below.

1748-3042

This comment describes a history of SSE input on the BART and HSR projects, which requires no response. This comment also asserts the opinion that none of the transit projects have conducted parking demand studies that SSE believed are adequate and that the information relied upon in the EIR/EIS for the HSR project is not provided in the document.

As described in other responses, references to the prior parking study done for the Silicon Valley Phase II Extension Project Final Supplemental EIR/EIS (SVSX EIR/EIS; VTA and FTA 2018, as cited in Section 3.2, Transportation, of the Draft EIR/EIS) have been changed to refer to it as a parking inventory for the sake of clarity, and reference to the participation of SSE in that inventory has been deleted. Section 3.2 of the EIR/EIS presents the parking availability information from the VTA SVSX EIR/EIS parking inventory and other sources, identifies the amount of HSR direct displacement of parking (and the replacement on a 1:1 basis), identifies the HSR parking demand, describes the effect of the BART project on parking, and describes the effect of planned transit service increases on likely future mode splits to access both the San Jose Diridon Station and the SAP Center events. In addition, the EIR/EIS described examples of other downtown arenas (including Sacramento, San Francisco, Detroit, and NBA and NHL arenas) over the last two decades that are benefitting from regional transit service and the use of shared parking to meet event travel demand. This evidence is discussed in the EIR/EIS and supports the conclusions in regarding to parking.

The comment asserts that the parking impact evaluation in the EIR/EIS does not meet NEPA standards. The Authority has assessed the impact based on consideration of the existing conditions (parking supply as based on the parking supply inventory) and the effect of the project during construction (temporary displacement and replacement on a 1:1 basis) and operations (replacement of any directly displaced spaces on a 1:1 basis; assessment of demand due to the project and reduced parking demand effect of planned transit) in the context of the supply in the greater vicinity around San Jose Diridon Station. This is an appropriate analysis to support the conclusions reached in the EIR/EIS for the following reasons:

(1) It addresses the uncertainty of the future environment given information available at the time of the analysis as to what would be approved as future development, infrastructure, and policy for the Diridon Station area with three concurrent projects: Downtown West Mixed-Use Plan (Google Project), the Diridon Station Area Plan (DSAP) update, and the Diridon Integrated Station Concept (DISC). To work around this

Response to Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

1748-3042

issue, the Draft EIR/EIS and the Final EIR/EIS analysis use a demand-side analysis that does not rely on assessing the future supply of parking, parking management, and parking pricing, all of which were uncertain future conditions at the time of the analysis.

The demand-side analysis focuses more holistically on the potential mode shift effects that new and higher capacity transit service would have on the Diridon Station area. By considering mode shift from autos to transit for patrons going to SAP Center events, this effectively shifts the demand for drive and park access to transit access. A reduced demand for drive and park access lowers the amount of parking needed for patrons.

(2) The Authority agrees with BART and VTA on the technical soundness of the VTA's BART to Silicon Valley Phase II Extension Project Final Supplemental EIS/Subsequent EIR (VTA and FTA 2018) analysis. Both the Authority's and VTA's analysis use Bay Area data for BART to estimate future transit mode share for SAP Center patrons. A very conservative 10 percent future transit mode share for SAP Center patrons who shift from driving to transit, as explained in the Draft EIR/EIS, would offset both the loss of parking spaces for the BART Phase II Extension Project and 2040 parking for HSR passengers by reducing SAP Center parking demand. A more reasonable assumption would be a 20 percent mode shift, as discussed in the EIR/EIS.

(3) As part of the State's cap-and-trade program, the Authority is financially participating in funding comprehensive, coordinated investments in BART Phase II and Caltrain electrification to provide early transit service benefits to the region in anticipation of HSR service. When HSR service is initiated, both systems will provide connectivity to HSR service, Diridon Station area, and the SAP Center. The analysis assumes use of early connectivity investment projects to support access to HSR service.

1748-3043

The comment describes that parking may be lost in the future as a result of future development near the San Jose Diridon Station. It appears that the commenter is referring to the proposed Google Project adjacent to the San Jose Diridon Station (which is also referred to as the "Downtown West Mixed Use Plan") and some other development based on the referenced Exhibit C. Since the City of San Jose released the Draft EIR in October 2020 (City of San Jose 2020, as cited in Section 3.19, Cumulative Impacts, of the Final EIR/EIS) after the release of the San Jose to Merced Project Section Draft EIR/EIS in April 2020 and prepared a Final EIR and approved the Google Project in May 2021, there is now information that can be used to clarify potential cumulative impacts related to event parking for the SAP Center. The cumulative analysis in Section 3.19 has been updated in the Final EIR/EIS to take into account the effects of the Google Project. As stated in the updated Section 3.19, according to the final parking requirements associated with the May 25, 2021, approval of the Google Project and an agreement between the City of San Jose, Sharks Sports and Entertainment, and Google/Downtown West, there are approximately 2,850 available parking spaces on property that will be redeveloped as part of the project, and the developer and the City anticipate replacement of that parking and the development of at least 1,150 additional spaces for a total of 4,000 publicly-accessible parking spaces at full buildout, all within one-third mile of the south entrance to the SAP Center. Of those spaces, at least 85 percent (3,400 spaces) would be available for SAP Center event use (City of San Jose 2021a). According to presentation material associated with the May 2021 approval of the Google Downtown West project, the project will result in a net increase of at least 350 parking spaces available for SAP Center event use (City of San Jose 2021b). In addition, Google will implement a Transportation Demand Management (TDM) plan to limit traffic and solo occupant vehicles to a maximum of 35 percent mode share to reduce parking impacts. As noted in the comment, there may be other development east of SR 87 and north of West Julian Street (other than the Google development) that may affect additional existing parking used by SAP patrons.

Since the HSR project would replace all of the parking spaces that it would displace permanently on a 1:1 basis and the HSR project provides another way (in addition to BART, Caltrain, and VTA) to access the SAP Center without using a car, the HSR project would not meaningfully contribute to the cumulative impact on parking availability for the SAP Center. The approved Google Downtown West development would maintain

Response to Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

1748-3043

and increase the available parking spaces for the SAP Center. It is possible that other future development projects may affect parking availability. Regarding resolving other development's effects on parking and the City of San Jose's obligations regarding parking and the SAP Center, that is a matter for the City of San Jose, the SAP Center, and other project developments to resolve.

1748-3044

As described in other responses, references to the prior parking study done for the Silicon Valley Phase II Extension Project Final Supplemental EIR/EIS (SVSX EIR/EIS; VTA and FTA 2018, as cited in Section 3.2, Transportation, of the Draft EIR/EIS) have been changed to refer to it as a parking inventory for the sake of clarity, and reference to the participation of SSE in that inventory has been deleted. The EIR/EIS presents the parking availability information from the VTA SVSX EIR/EIS parking inventory and other sources, identifies the amount of HSR direct displacement of parking (and the replacement on a 1:1 basis), identifies the HSR parking demand, describes the effect of the BART project on parking, and describes the effect of planned transit service increases on likely future mode splits to access both the San Jose Diridon Station and the SAP Center events. In addition, the EIR/EIS described examples of other downtown arenas (including Sacramento, San Francisco, Detroit, and NBA and NHL arenas) over the last two decades that are benefitting from regional transit service and the use of shared parking to meet event travel demand. This evidence is discussed in the EIR/EIS. The comment asserts that the parking impact evaluation in the EIR/EIS does not meet NEPA standards. The assessment does meet NEPA standards because it considers the existing environment and presents evidence to support the analysis of environmental consequences, including a summary of parking supply, the project's direct displacement of parking spaces, the project's parking demand (and how it was calculated), an assessment of the likely effect of planned transit (including real-world examples of other urban arenas with substantial transit services), and conclusions about the effect of the project's parking demand in light of these considerations.

Regarding the asserted loss of parking spaces due to projected development, which presumes the Google Project development (and potentially other development), please see the response to submission SJM-1748, comment 3043. As stated in the response to submission SJM-1748, comment 3043, the cumulative analysis in Section 3.19, Cumulative Impacts, of the Final EIR/EIS has been updated to include potential effects from the Google Project and other nearby development on parking supply.

Response to Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

1748-3045

The comment asserts that the parking impact evaluation in the EIR/EIS does not meet the “legal standard.” Section 3.2, Transportation, of the Draft EIR/EIS explains the methodology for the parking impact evaluation, which is consistent with NEPA requirements. The assessment does meet NEPA standards because it considers the existing environment and presents evidence to support the analysis of environmental consequences, including a summary of parking supply, the project’s direct displacement of parking spaces, the project’s parking demand (and how it was calculated), an assessment of the likely effect of planned transit (including real-world examples of other urban arenas with substantial transit services), and conclusions about the effect of the project’s parking demand in light of these considerations. The approach used by the Authority is the same approach used by VTA in the SVSX EIR/EIS, which was accepted by the Federal Transit Administration as meeting NEPA standards for assessment of parking in and around San Jose Diridon Station. The San Jose to Merced Project Section EIR/EIS has adequately analyzed potential environmental impacts related to parking. This comment does not provide any specific evidence of inadequacy of the analysis.

1748-3046

The Authority, as the lead agency under CEQA and NEPA is responsible for determining the appropriate level of analysis to satisfy the requirements of state and federal law. Response to submission SJM-1748, comment 3042 explains the rationale why the EIR/EIS analysis of parking is considered adequate under NEPA. The San Jose to Merced Project Section EIR/EIS includes an analysis of the parking demand related to the HSR project and an assessment of parking support, describes that the Authority would replace temporarily or permanently displaced parking spaces, and describes that the HSR parking demand would not result in a significant secondary environmental impact when taking into account the existing supply, the amount of HSR project demand, and the planned transit increases and effects on mode share.

1748-3047

The comment describes the City of San Jose’s obligations regarding the AMA and asserts that the EIR/EIS has ignored the requirements of the AMA regarding parking and transportation access to the SAP Center. The AMA is described in Section 3.2.5.3, Transportation, of the Draft EIR/EIS (on page 3.2-29), including the City’s obligation to provide at least 6,350 off-site parking spaces within 0.5 mile of the SAP Center and 3,175 off-site parking spaces within 0.33 mile of the SAP Center. The AMA references the provision of parking spaces. As described in the impact analysis in the EIR/EIS, all displaced parking spaces during construction and operation would be replaced on a 1:1 basis; as such, the project will not result in any reduction in the number of spaces in proximity to the SAP Center and will not affect San Jose’s obligations in terms of providing parking spaces. The parking impact analysis reviews the project’s effect on the provision of those off-site parking spaces during construction and operations. Thus, the EIR/EIS has not ignored the AMA requirements concerning parking. The EIR/EIS also analyzes the project’s parking demand in light of available parking supply and the effects of planned transit that will be available by the time HSR service commences to conclude the project will not result in adverse secondary effects related to parking. The EIR/EIS also analyzes traffic effects and access in the San Jose Diridon Station area during construction and operations. The EIR/EIS discloses existing traffic and access conditions and analyzes the project’s effects on traffic and access conditions throughout Section 3.2, and thus the EIR/EIS is not ignoring potential effects on traffic or transportation access.

Response to Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

1748-3048

Refer to Standard Response SJM-Response-TR-1: Site-Specific Mitigation for Traffic Impacts.

The comment indicates that increased congestion and lack of parking would cause economic damage to the Arena. Regarding parking, please see response to submission SJM-1748, comment 3042.

As described in Section 3.2, Transportation, of the Draft EIR/EIS, traffic delay/congestion is not a CEQA significant impact (per SB 743) but is a NEPA effect. The analysis in Section 3.2 and in Appendix 3.2-A, Transportation Data on Roadways, Freeways, and Intersections (located in Volume 2, Technical Appendices, of the Draft EIR/EIS) indicates the project would result in increased traffic congestion around the San Jose Diridon Station. As discussed in Standard Response SJM-Response-TR-1: Site-Specific Mitigation for Traffic Impacts and in revisions to Section 3.2, site-specific traffic mitigation has been included in the Final EIR/EIS, including some mitigation in the vicinity of the San Jose Diridon Station. Some adverse effects related to traffic will remain after mitigation. Regarding economic effects, as explained on page 3.2-72 in the Draft EIR/EIS, 15 new arenas have been constructed in the past 20 years in downtown areas for NBA and NHL franchises that also hold concerts and other major events (like the SAP Center). These arenas have successfully operated, utilizing a mix of modes of access, even though they are located in downtown areas with significant traffic congestion (such as Golden 1 Center in Sacramento and the Chase Center in San Francisco). In addition, as noted in the Draft EIR/EIS, transit service to the area will expand substantially with the planned Caltrain increase in service and BART extension to San Jose. The ability of such downtown arenas to successfully operate in areas of substantial traffic congestion supports the argument that the HSR project will not impair the vitality of the arena due to any residual traffic effects.

1748-3049

The comment asserts that the parking impact evaluation in the EIR/EIS does not meet NEPA standards. Please see the response to submission SJM-1748, comment 3042, which discusses why the analysis does meet NEPA standards.

1748-3050

The comment asserts that the parking impact evaluation in the EIR/EIS does not meet NEPA standards. However, the approach used by the Authority is the same approach used by VTA in the Silicon Valley Phase II Extension Project Final Supplemental EIR/EIS (SVSX EIR/EIS; VTA and FTA 2018, as cited in Section 3.2, Transportation, of the Draft EIR/EIS). Please see the response to submission SJM-1748, comment 3042, which describes how the EIR/EIS analysis meets NEPA requirements.

The commenter made similar arguments on the SVSX EIR/EIS as are made herein in their legal appeal of the SVSX NEPA document, and the federal district court upheld the adequacy of the SVSX analysis in a 2020 ruling specifically on the alleged NEPA adequacy issues raised in this comment. *Sharks Sports & Entm't LLC v. Fed. Transit Admin.*, No. 18-CV-04060-LHK, 2020 WL 4569467 (N.D. Cal. Aug. 8, 2020). As the federal district court 2020 ruling concerning the SVSX EIR/EIS is specifically regarding the issues raised in relation to the SAP Center itself, it is likely a better measure of NEPA adequacy than other NEPA rulings for dissimilar projects in different locations. Since the EIR/EIS does not find a significant impact related to parking, there is no need to identify mitigation. The project's commitments to replace temporary or permanently displaced parking on a 1:1 basis is clearly identified in the EIR/EIS and would be implemented by the Authority. The location of the permanent replacement parking is shown in the EIR/EIS and supporting exhibits. As described in other responses, references to the prior parking study done for the SVSX EIR/EIS have been changed to refer to it as a parking inventory for the sake of clarity, and reference to the participation of SSE in that inventory has been deleted.

Response to Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

1748-3051

Refer to Standard Response SJM-Response-TR-2: Construction Traffic and Parking Management Details.

Volume 3, Preliminary Engineering for Project Design Record, of the Draft EIR/EIS includes preliminary design, sufficient for environmental analysis. The Draft EIR/EIS includes a conservative environmental footprint to ensure that proposed impacts are analyzed. The Draft EIR/EIS, including Appendix 2-A, Roadway Crossings, Modifications, and Closures (located in Volume 2, Technical Appendices), describes and evaluates all currently known construction-related impacts on roadways within the Project Section in accordance with CEQA guidelines. As detailed in Standard Response SJM-Response-TR-2, the Draft EIR/EIS makes reasonable assumptions and discloses all known construction closures, such as those anticipated on I-280 and Monterey Road. The project IAMFs included in Volume 2, Appendix 2-E, Project Impact Avoidance and Minimization Features, of the Draft EIR/EIS require the contractor to develop and implement plans and actions to minimize or avoid potential construction impacts associated with any additional temporary roadway closures or detours. Please refer to Impact TR#1 in Section 3.2, Transportation of the Draft EIR/EIS for a discussion of the differences in relative impact between the alternatives.

1748-3052

Refer to Standard Response SJM-Response-TR-3: Gate-Down Time Calculation Details.

The comment stated that the Draft EIR/EIS does not describe the potential impacts of the construction and operation of quad gates within the San Jose Diridon Station area under Alternative 4. Quad gates are only proposed at at-grade crossings for Alt. 4. There are no at-grade crossings in close proximity to the SAP Center. The nearest at-grade crossing is at Auzerais Avenue south of the San Jose Diridon Station, which is approximate 0.75 miles from the SAP Center (via the most direct street routes). The EIR/EIS traffic analysis analyzed the effect of increased gate-down time on intersections near the Auzerais Avenue at-grade crossing as well as overall traffic effects around the Diridon Center (see Section 3.2, Transportation, and Appendix 3.2-A, Transportation Data on Roadways, Freeways, and Intersections [located in Volume 2, Technical Appendices], of the Draft EIR/EIS). The comment also requests additional information regarding how the gates would operate during events. Please refer to ImpactS&S#4 in Section 3.11, Safety and Security, of the Draft EIR/EIS for a discussion of the operation of quad gates and the gate crossing technology to be deployed as part of the project. Gate operations during events are anticipated to be the same as during nonevent periods; gates would operate in their normal manner in the presence of a train event. The analysis of Alternative 4 presented in Draft EIR/EIS Section 3.2.6, Environmental Consequences, includes an evaluation of the presence and operation of the proposed gates on transportation conditions within the Project Section. During construction, the quad gates would not be in operation (the existing gates would be present and continue to function).

Response to Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

1748-3053

Refer to Standard Response SJM-Response-TR-1: Site-Specific Mitigation for Traffic Impacts.

In response to comments, the Authority conducted further analysis and developed site-specific mitigation measures for consideration that could reduce identified adverse traffic effects identified in the EIR/EIS. The site-specific mitigation measures that would reduce some, but not all of the project's effects on vehicle delay within the project area. Please refer to Standard Response SJM-Response-TR-1: Site-Specific Mitigation for Traffic Impacts

1748-3054

As stated in other responses, references to the prior parking study done for the Silicon Valley Phase II Extension Project Final Supplemental EIR/EIS (SVSX EIR/EIS; VTA and FTA 2018, as cited in Section 3.2, Transportation, of the Draft EIR/EIS) have been changed to refer to it as a parking inventory for the sake of clarity, and reference to the participation of SSE in that inventory has been deleted.

Please also see the response to submission SJM-1748, comment 3042, which describes how the analysis meets NEPA standards.

At the San Jose Diridon Station, temporarily displaced parking during construction would be replaced during construction. Permanently displaced parking would be replaced by new parking facilities on a 1:1 basis, which would be built before initial HSR operations. As discussed in the Draft EIR/EIS, no new parking is proposed at the San Jose Diridon Station to meet new parking demand due to HSR. The Draft EIR/EIS, Section 2.7, Ridership, does describe that station area parking may be phased in over time in response to project demand but that language applies only to the Gilroy Station, which would have new parking to meet HSR parking demand. This language does not apply to the San Jose Diridon Station, and the Final EIR/EIS has been revised to make this clear and that replacement parking for displaced existing parking will be replaced prior to initial HSR operations.

The EIR/EIS presents the parking availability information from the VTA SVSX EIR/EIS parking inventory and other sources, identifies the amount of HSR direct displacement of parking (and the replacement on a 1:1 basis), identifies the HSR parking demand, describes the effect of the BART project on parking, and describes the effect of planned transit service increases on likely future mode splits to access both the San Jose Diridon Station and the SAP Center events. In addition, the EIR/EIS described examples of other downtown arenas (including Sacramento, San Francisco, Detroit, and NBA and NHL arenas) over the last two decades that are benefitting from regional transit service and the use of shared parking to meet event travel demand. This evidence is discussed in the EIR/EIS. Due to the expected change in mode shift and the amount of existing parking supply, the EIR/EIS concludes that secondary impacts related to parking availability, such as on traffic, air quality, noise, or safety, are not expected.

Response to Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

1748-3055

The EIR/EIS presents the parking availability information from the VTA Silicon Valley Phase II Extension Project Final Supplemental EIR/EIS (SVSX EIR/EIS; VTA and FTA 2018, as cited in Section 3.2, Transportation, of the Draft EIR/EIS) parking inventory and other sources, analyzes temporary effects during construction under Impact TR#8 (starting on page 3.2-64 in the Draft EIR/EIS), and identifies the specific displacement of parking spaces that would occur during HSR construction (see Table 3.2-15 of the Draft EIR/EIS). As described on page 3.2-65 of the Draft EIR/EIS, per TR-IAMF#8, project construction contractors would identify adequate off-street parking using existing remote parking areas or vacant land to replace any temporary displacement of parking utilized for special events at the SAP Center on a 1:1 basis during construction. Contractors would arrange for shuttle vehicles between the remote parking areas and the SAP Center for any remote parking areas that are more than 0.5 mile from the SAP Center. Contractors would also work with the SAP Center to provide advance and real-time information about parking availability for special events during times in which construction displaces existing available special event parking. The Draft EIR/EIS also assessed the feasibility of replacing temporarily displaced parking on page 3.2-68 and found it feasible. Thus, during construction, the project is not expected to reduce overall parking, and no secondary effects related to parking displacement due to the project would occur during construction.

The Draft EIR/EIS does describe that the BART project would result in the loss of 715 spaces. That effect is not due to the HSR project. Because the HSR project will replace any temporarily or permanently displaced spaces on a 1:1 basis, the HSR project would not contribute to the loss of parking spaces resulting from the BART project.

As explained in response to submission SJM-1748, comment 3054, temporarily displaced parking will be replaced on a 1: 1 basis during construction, and permanently displaced parking will be replaced on a 1: 1 basis prior to initial operations.

The comment asserts that there would be increased traffic due to circling the surrounding neighborhoods looking for parking. This is not likely to occur. As described in the EIR/EIS, there are many existing parking lots in the nearby and greater vicinity of the SAP Center. Increasingly, individuals are using smartphone applications to find available parking. Given the ubiquitous ownership of smartphones and applications, circling by transit riders is not likely to be a substantial increase in traffic in and around the San Jose Diridon Station and SAP Center apart from their initial access or egress to the area. The traffic analysis for the EIR/EIS takes into account the different mode splits,

1748-3055

including those that would access San Jose Diridon Station to take HSR via park-and-ride. As a result, the EIR/EIS appropriately analyzes within Impact TR#9 in Section 3.2 the potential for secondary effects due to the use of existing parking facilities by the HSR riders who access via park-and-ride.

1748-3056

As noted in other responses, references to the prior parking study done for the Silicon Valley Phase II Extension Project Final Supplemental EIR/EIS (SVSX EIR/EIS; VTA and FTA 2018, as cited in Section 3.2, Transportation, of the Draft EIR/EIS) have been changed to refer to it as a parking inventory for the sake of clarity, and reference to the participation of SSE in that inventory has been deleted.

The EIR/EIS does not rely on mitigation related to any prior parking study in making conclusions regarding parking impacts.

Response to Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

1748-3057

Refer to Standard Response SJM-Response-TR-2: Construction Traffic and Parking Management Details.

While street closures and roadway modifications are discussed in Section 3.2, Transportation, of the Draft EIR/EIS, Appendix 2-A, Roadway Crossings, Modifications, and Closures (located in Volume 2, Technical Appendices), provides greater detail. The commenter includes a quotation from the Draft EIR/EIS's analysis of Impact TR#2 (from page 3.2-48), related to temporary traffic congestion from construction vehicles. Impact TR#2 describes all known impacts associated with this activity based on reasonable assumptions, such as details regarding how construction trucks would enter SR 152 and the effects of those movements. Within the analysis of Impact TR#2, the Draft EIR/EIS explains the IAMFs that have been incorporated into project design and have been analyzed as part of the project alternatives. The Draft EIR/EIS identifies Impact TR#2 as less than significant as temporary increases in vehicular delay are not considered significant environmental impacts within CEQA.

All IAMFs are set forth in Appendix 2-E, Project Impact Avoidance and Minimization Features (located in Volume 2 of the Final EIR/EIS). The Draft EIR/EIS describes and evaluates the potential types, range, and scope of potential construction impacts that could occur, depending on the ultimate means and methods implemented by the contractor. The project includes IAMFs to guide and put boundaries on the contractor to ensure that there are no additional construction-related impacts of the HSR project beyond what was disclosed in the EIR/EIS. IAMFs are not mitigation for project impacts, they are part of project alternatives.

TR-IAMF#2 calls for the preparation of and compliance with a detailed CTP, for the purpose of minimizing the impact of construction and construction traffic on adjoining and nearby roadways, in close consultation with the local jurisdiction having authority over the site. For the streets around the SAP Center in San Jose, the City of San Jose would be the responsible local jurisdiction that would review the CTP and issue relevant permits for construction that would affect city streets and vehicle, transit, pedestrian, and bicycle movements. The CTP would identify the specific construction haul routes and hours of construction, which would need to be approved by the City of San Jose.

1748-3057

TR-IAMF#12 requires the preparation of a technical memorandum with a stated performance measure of describing how pedestrian and bicycle accessibility would be provided and supported across the corridor, with a priority for safety for pedestrians and bicycles to encourage maximum potential access from nonmotorized modes. Specific strategies are identified such as maintaining or enhancing local access programs such as Safe Routes to School and access for vulnerable populations adjacent to construction areas.

TR-IAMF#8 requires the CTP to provide a mechanism to prevent roadway construction activities from reducing roadway capacity during major athletic events or other special events at the SAP Center that substantially (10 percent or more) increase traffic on roadways affected by project construction. Mechanisms include the presence of police officers directing traffic, special-event parking, use of within-the-curb parking, or shoulder lanes for through-traffic and traffic cones.

Response to Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

1748-3058

Regarding project construction, the Authority is committed to providing replacement parking on a 1:1 basis for parking displaced temporarily. As the comment has acknowledged, there is a lot of activity in the downtown area. The exact location of available parking to be used for the 1:1 replacement is not known presently because the specific dates of construction displacement are not known, but the feasibility of replacing these spaces was assessed in the Draft EIR/EIS (see page 3.2-68) and found to be feasible. The HSR project construction details and subsequent construction scheduling must be completed to know precisely when and where parking may be displaced. When that information is available, TR-IAMF#8 requires the construction contractor to identify and provide that replacement event parking.

Regarding operations impacts, the EIR/EIS presents the parking availability information from the VTA Silicon Valley Phase II Extension Project Final Supplemental EIR/EIS (SVSX EIR/EIS; VTA and FTA 2018, as cited in Section 3.2, Transportation, of the Draft EIR/EIS) parking inventory and other sources, identifies the amount of HSR direct displacement of parking (and the replacement on a 1:1 basis), identifies the HSR parking demand, describes the effect of the BART project on parking, and describes the effect of planned transit service increases on likely future mode splits to access both the San Jose Diridon Station and the SAP Center events. In addition, the EIR/EIS described examples of other downtown arenas (including Sacramento, San Francisco, Detroit, and NBA and NHL arenas) over the last two decades that are benefitting from regional transit service and the use of shared parking to meet event travel demand. This evidence is discussed in the EIR/EIS. Please also see response to submission SJM-1748, comment 3042 concerning NEPA adequacy.

1748-3059

Section 2.6.1.2, Planned Land Use, of the Final EIR/EIS has been revised to delete reference to the outdoor performing arts pavilion, the baseball stadium, a 240-acre Google downtown campus, and an underground parking garage. Although these were mentioned in Section 2.6.1.2 of the Draft EIR/EIS, they were not used as the baseline in the EIR for the analysis of impacts, including for the analysis of parking impacts. This is shown by the lack of mention of any of these developments in Section 3.2, Transportation, of the Draft EIR/EIS. The removal of this language in Section 2.6.1.2 of the Final EIR/EIS thus does not change the analysis in Section 3.2 of the EIR/EIS concerning parking.

1748-3060

Table 2-5, in Chapter 2, Alternatives, of the Final EIR/EIS has been revised to delete the line item "Diridon Area parking and multimodal improvements." As noted in other responses, references to the prior parking study done for the Silicon Valley Phase II Extension Project Final Supplemental EIR/EIS (SVSX EIR/EIS; VTA and FTA 2018, as cited in Section 3.2, Transportation, of the Draft EIR/EIS) have been changed to refer to it as a parking inventory for the sake of clarity, and reference to the participation of SSE in that inventory has been deleted. The EIR/EIS presents the parking availability information from the VTA SVSX EIR/EIS parking inventory and other sources, identifies the amount of HSR direct displacement of parking (and the replacement on a 1:1 basis), identifies the HSR parking demand, describes the effect of the BART project on parking, and describes the effect of planned transit service increases on likely future mode splits to access both the San Jose Diridon Station and the SAP Center events. In addition, the EIR/EIS described examples of other downtown arenas (including Sacramento, San Francisco, Detroit, and NBA and NHL arenas) over the last two decades that are benefitting from regional transit service and the use of shared parking to meet event travel demand. This evidence is discussed in the EIR/EIS. Since the EIR/EIS does not find a significant impact related to parking, there is no need to identify mitigation. The project's commitments to replace temporary or permanently displaced parking on a 1:1 basis is clearly identified in the EIR/EIS and would be implemented by the Authority. The location of the permanent replacement parking is shown in the EIR/EIS and supporting exhibits.

Response to Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

1748-3061

The description of all alternatives is as described in Chapter 2, Alternatives, and associated appendices, and as shown in Volume 3, Preliminary Engineering for Project Design Record. The inclusion of multiple alternatives and variants is as disclosed in the EIR/EIS. Certain design details, including specific details of HSR station design and station access, will be refined during Detailed Design Post-ROD. The Authority will verify that subsequent detailed design work is within the scope of the environmental impacts analyzed and disclosed in the Final EIR/EIS.

Provision of parking to accommodate induced parking demand is not a required component of a project description. The parking impact analysis included in Section 3.2, Transportation, of the Draft EIR/EIS discusses the adequacy of parking for HSR ridership and determined that there would be adequate parking to accommodate the project. Based on the increase in transit available and associated mode shift from driving to transit under multiple scenarios, available public parking spaces near San Jose Diridon Station, and given that BART patrons would use some of these parking spaces, the EIR/EIS concluded that “the project’s increased parking demand is not expected to result in insufficient parking for either the San Jose Diridon Station or the SAP Center or to result in the construction of additional remote parking facilities.” Specifically, as discussed under Impact TR#9 in Section 3.2 of the Draft EIR/EIS, taking into account an expected increase of 20 percent in transit share due to BART and Caltrain extension/increases, the project would only have a net increase in demand of 375 parking spaces (considering HSR parking demand, BART reduction of spaces, and reduced demand due to transit), which would affect 11 percent of the approximately 3,430 remaining publicly available parking spaces within 0.33 mile of San Jose Diridon Station and 3 percent of the approximately 13,735 parking spaces within 0.5 mile. As noted in Section 3.2.5.3, San Jose Diridon Station and SAP Center Parking, of the Draft EIR/EIS, there are an additional 4,798 public parking spaces between 0.5 and 1 mile from the San Jose Diridon Station, as well as private parking lots and additional parking opportunities more than 1 mile from the station, including at the San Jose International Airport. Assuming a 30 percent increase in transit share, the transit increase would offset demand for 2,100 parking spaces, which would more than offset the loss of 715 spaces due to BART and the 1,060 parking space demand for HSR riders. In any case, there would be adequate remaining parking in the general proximity of the SAP Center for SAP Center patrons.

The impact under CEQA would be less than significant for all four project alternatives

1748-3061

because secondary environmental effects on transportation, air quality, noise, safety, or land use related to parking would either not occur or would be less than significant. No mitigation for induced parking demand is required under CEQA for less-than-significant impacts.

The Authority as lead agency has presented substantial evidence to support its impact determinations and application of mitigation. The additional plans in development are noted.

1748-3062

The EIR/EIS presents the parking availability information from the VTA Silicon Valley Phase II Extension Project Final Supplemental EIR/EIS (SVSX EIR/EIS; VTA and FTA 2018, as cited in Section 3.2, Transportation, of the Draft EIR/EIS) parking inventory and other sources, identifies the amount of HSR direct displacement of parking (and the replacement on a 1:1 basis), identifies the HSR parking demand (including so-called “spillover demand,” which refers to demand for parking beyond the HSR provided parking), describes the effect of the BART project on parking, and describes the effect of planned transit service increases on likely future mode splits to access both the San Jose Diridon Station and the SAP Center events. In addition, the EIR/EIS described examples of other downtown arenas (including Sacramento, San Francisco, Detroit, and NBA and NHL arenas) over the last two decades that are benefitting from regional transit service and the use of shared parking to meet event travel demand. This evidence is discussed in the EIR/EIS. Furthermore, the analysis in the San Jose to Merced Project Section EIR/EIS does consider the potential secondary effects relative to safety, air quality, and traffic in Section 3.2 of the Draft EIR/EIS as part of the parking impact analysis.

Response to Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

1748-3063

Section 3.2, Transportation, of the Draft EIR/EIS discusses parking for HSR ridership and is based on a baseline year of 2015. All HSR riders are included in the ridership estimates, including any transferring from Norman Y. Mineta San Jose International Airport, and are therefore factored into parking estimates. Pick-up and drop-off locations are provided in station plans included in Volume 3, Preliminary Engineering for Project Design Record. Traffic and circulation impacts of additional riders travelling to and from Diridon Station are analyzed in Section 3.2.

1748-3064

As stated in other responses (for example, see response to submission SJM-1748, comment 3042), references to the prior parking study done for the Silicon Valley Phase II Extension Project Final Supplemental EIR/EIS (SVSX EIR/EIS; VTA and FTA 2018, as cited in Section 3.2, Transportation, of the Draft EIR/EIS) have been changed to refer to it as a parking inventory for the sake of clarity, and reference to the participation of SSE in that inventory has been deleted. See response to submission SJM-1748, comment 3042 regarding the NEPA adequacy of the EIR/EIS regarding parking. See response to submission SJM-1748, comment 3055 concerning circling for parking and potential secondary effects.

The comment is correct that the EIR/EIS analysis assumes use of commercially available parking at market prices to meet HSR park and ride mode share. As shown by over a decade of research by MTC on best practice parking policy and case studies summarized in the Value Pricing Pilot Parking Project, sharing and pricing parking extend the use and supply of parking resources and influence parking market demand and parking occupancy (MTC n.d.). The federally funded SFMTA evaluation report of the SFpark Pilot Project found that parking pricing and management in a local environment where parking demand is greater than the supply of parking can increase the availability of parking, ease finding a parking space, reduce average parking rates, and reduce GHG and VMT (SFMTA 2014). SFMTA has special event parking regulations and pricing for events at the Oracle Park and the Chase Center to make sure parking spots are available for events and to reduce traffic congestion by discouraging circling for free or cheaper parking near the ballpark and arena. For example, SFMTA parking meters on blocks within walking distance to the two venues operate from 9 a.m. to 10 p.m. Monday to Saturday and from 12 p.m. to 6 p.m. on special event Sundays and special event hours, with meters priced at \$8/hour (SFMTA n.d.). This research and real-world experience support the Authority's assumption that commercially available parking can be priced and managed to meet the Authority's parking needs and SAP Center event parking needs.

Response to Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

1748-3065

The comment states that the project is not defined. The description of all alternatives is as described in Chapter 2, Alternatives, and associated appendices, and as shown in Volume 3, Preliminary Engineering for Project Design Record. The graphics in Chapter 2 are for illustrative purposes. Please refer to Volume 3 of the EIR/EIS for composite plan, profile, and typical sections at Diridon (Sheet TT-D4003, Book 4A), as well as station plans in Book 4C for Alternative 4. As noted in Section 3.2, Transportation, of the Draft EIR/EIS, project operations would permanently displace parking at and adjacent to the San Jose Diridon Station (all alternatives), the SAP Center (all alternatives), and the Downtown Gilroy Station (Alternatives 1, 2, and 4), but the project includes construction of replacement parking on a 1:1 basis, so there would be no permanent reduction of available parking at these locations.

1748-3066

The comment concerns removal of parking spaces in SAP Center parking lots A, B, and C. Details of parking displacement are discussed in Section 3.2, Transportation, of the Final EIR/EIS, specifically in Section 3.2.5.3, Diridon Station and SAP Center Parking. Please refer to Volume 3, Preliminary Engineering for Project Design Record for more detailed drawings of proposed project elements.

1748-3067

The commenter's preference for an alternative from 2010 is noted. Chapter 2, Alternatives, and Appendix 2-I, Alternatives Considered during Alternatives Screening Process, of the Draft EIR/EIS describe the alternatives previously considered and the reasons for either advancing them in the environmental study or dismissing them from further consideration. In 2010, the Authority was considering dedicated grade-separated alignments outside the Caltrain right-of-way. Per SB 1029, the California legislature mandated that between San Francisco and San Jose, the HSR project would be mostly at-grade and within the Caltrain corridor. Per SB 1029, the Authority developed Alternative 4, which is an at-grade alignment mostly within the Caltrain corridor. Any alignment west of the Caltrain right-of-way would displace existing residential and commercial development north and south and adjacent to the San Jose Diridon Station and would result in a greater amount of residential and commercial displacement compared to Alternative 4. Regarding project construction, the Authority is committed to providing replacement parking on a 1:1 basis for parking displaced temporarily. As the comment has acknowledged, there is a lot of activity in the downtown area. The exact location of available parking to be used for the 1:1 replacement is not known presently because the specific dates of construction displacement are not known. HSR project construction details along with subsequent construction scheduling must be completed to determine when parking within the identified footprint would actually be displaced and for how long. When that information is available, TR-IAMF#8 requires the construction contractor to identify and provide that replacement event parking. Regarding the locations of replacement parking for permanent effects on SAP Center parking please see the response to submission SJM-1748, comment 3086.

Response to Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

1748-3068

The comment notes concerns about the project description. Figure 2-65 illustrates the conceptual completed San Jose Diridon At-Grade Station Plan for Alternative 4. Temporary construction easements are not reflected in this graphic. The TCEs shown in Appendix 3.1-A, Parcels within the HSR Project Footprint, are consistent with the TCEs shown in Volume 3, Preliminary Engineering for Project Design Record. Table 2-9 provides a summary of Diridon Station features, including parking.

Section 3.2, Transportation, determined that there would be adequate parking supply to accommodate the project. TR-IAMF#8 is included in Section 2.6.2.3, HSR Project Impact Avoidance and Minimization Features. TR-IAMF#8 is described in detail in Volume 2, Appendix 2-E, Project Impact Avoidance and Minimization Features, of the Draft EIR/EIS. TR-IAMF#8 is therefore part of the project description.

Chapter 2, Alternatives, identifies construction staging locations, lengths of street closures or modifications, detours and street circulations, which are analyzed in Section 3.2. As of publication of the Draft EIR/EIS, station plans are conceptual. Details of shuttle coordination and drop-off and pick-up areas, as well as off-site parking, will be determined during Detailed Design Post-ROD.

Construction staging locations are included in Volume 3 of the EIR/EIS as well as listed in Table 2-17. Roadway closures and modifications are listed in Appendix 2-A, Roadway Crossings, Modifications, and Closures. Temporary and permanent roadway closures are analyzed in Section 3.2. As disclosed, exact locations of temporary closures, changes, and disruptions would be determined and minimized during the development of a CTP.

1748-3069

The comment states that the IAMFs should have been included in the text of the alternatives. Section 2.6.2.3, HSR Project Impact Avoidance and Minimization Features, describes all IAMFs that are included and analyzed as part of the project, which are set forth in more detail in Volume 2, Appendix 2-E, Project Impact Avoidance and Minimization Features. Each resource topic section in Chapter 3 of the Draft EIR/EIS references the applicable IAMFs and describes how they would avoid or minimize impacts when implemented.

1748-3070

The comment states that there is no commitment that the IAMFs will actually be included in the project. IAMFs are project features that have been incorporated into the project to minimize environmental impacts. The project description includes them, and the analysis was conducted with these measures as part of the project. All contract documents will include the requirements of the identified IAMFs. Implementation of IAMFs are tracked by the Authority through planning, design, construction and operation as part of contract compliance. Design-related IAMFs will be incorporated into engineering plans as part of Detailed Design Post-ROD, as described in the Final EIR/EIS.

Although IAMFs are generally consistent across the program, they have been modified, where necessary, to apply to the San Jose to Merced Project Section. Commitments for specific IAMFs to be implemented to avoid and minimize specific environmental impacts are contained in the relevant resource sections in Chapter 3, Affected Environment, Environmental Consequences, and Mitigation Measures.

1748-3071

The comment states that the IAMFs will be only tracked after construction, not included in the project and that inclusion in the MMEP is evidence of this. IAMFs are project features that have been incorporated into the project to minimize environmental impacts. Implementation of IAMFs are tracked by the Authority through planning, design, construction and operation as part of contract compliance. IAMFs are included in the MMEP to facilitate this tracking. Design-related IAMFs will be further incorporated into engineering plans as part of Detailed Design Post-ROD, as described in the Final EIR/EIS. All contract documents will include the requirements of the identified IAMFs.

Response to Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

1748-3072

The comment states that the IAMFs do not detail the means, feasibility, and effectiveness of the measures. IAMFs are project features that have been incorporated into the project to minimize environmental impacts. Construction management plans will be implemented for all construction activities along the alignment. Determination of a substantial increase in traffic on roadways affected by project construction under TR-IAMF#8 would be determined in coordination with the affected jurisdiction when construction plans are finalized. Specific locations for special-event parking would be determined on a site-by-site basis in coordination with the City of San Jose through the construction management plan. The Authority will continue to engage jurisdictions and stakeholders, including the SAP Center, during design, construction, and operation of the project.

1748-3073

Refer to Standard Response SJM-Response-TR-2: Construction Traffic and Parking Management Details.

1748-3074

The comment expresses concern that IAMFs are not included by alternative in the project description Section 2.6.2.3, HSR Project Impact Avoidance and Minimization Features, describes all IAMFs that are included in the project, which are set forth in detail in Volume 2, Appendix 2-E, Project Impact Avoidance and Minimization Features. Each resource section of the Draft EIR/EIS references the applicable IAMFs.

The comment also expresses concern that IAMFs are not included in the individual impact sections. IAMFs are included in impact analyses in Chapter 3, Affected Environment, Environmental Consequences, and Mitigation Measures, for each resource topic section where they are clearly applied to specific alternatives. They are included in the Environmental Consequences and Impact Summary for NEPA Comparison of Alternatives in each Chapter 3 resource section. Full text of each IAMF has not been included in every chapter to minimize the length of the main document. They are not included in Mitigation Measures or CEQA Significance Conclusions because they are part of the project and not mitigation to be applied to significant impacts.

The comment states that the Draft EIR/EIS is intended to be a project-level review. Full text of the IAMFs are included in Appendix 2-E and appropriately applied and referenced throughout the document to satisfy project-level review under CEQA and NEPA.

1748-3075

The parcel in question is APN 259-28-031, identified as Other Right-of-Way in Appendix 3.1-A, Parcels within the HSR Project Footprint, in Volume 2 of the Draft EIR/EIS. This parcel would be acquired in order to implement proposed parking mitigation in the form of a parking structure. In Section 3.2, Transportation, of the Draft EIR/EIS, Impact TR#9 describes the permanent impacts of HSR operations on parking, including at the SAP Center. The discussion concludes that permanently displaced parking spaces at the San Jose Diridon Station and SAP Center area would be replaced on a 1:1 basis to preclude permanent loss of parking spaces for station users or SAP Center patrons. Replacement parking at Diridon Station is a project component described in more detail in Table 2-9 in Chapter 2, Alternatives.

Response to Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

1748-3076

Regarding SB 743, the statute is accurately described on page 3.2-4 of the Draft EIR/EIS because SB 743 states in Chapter 2.7 Section 21099 (b)(3) that the adequacy of parking for a project shall not support a finding of significance.

Please refer to prior responses (including the response to submission SJM-1748, comment 3042) concerning the parking evaluation done in the EIR/EIS. The EIR/EIS does analyze potential indirect effects related to safety, traffic, and air quality under Impact TR#9 in Section 3.2, Transportation. The EIR/EIS also considers the effect of BART in its analysis. The EIR/EIS does not assert that parking is not a NEPA issue. See response to submission SJM-1748, comment 3055 concerning circling for parking and potential secondary effects.

1748-3077

The comment noted that the Draft EIR/EIS should properly reference IAMFs and questions their effectiveness. Please refer to Section 3.2.4.2, Impact Avoidance and Minimization Features, of the Draft EIR/EIS for a discussion of the IAMFs applicable to transportation. Additional details regarding these IAMFs can be found in Appendix 2-E, Project Impact Avoidance and Minimization Features Analysis (located in Volume 2, Technical Appendices, of the Draft EIR/EIS). The IAMFs are included as part of the project and are reflected in the analysis presented in Draft EIR/EIS Section 3.2.6, Environmental Consequences. IAMFs are incorporated into the Project Section design and construction to avoid or minimize environmental or community impacts. The description of each measure details the means and effectiveness of the measure in avoiding or minimizing impacts, as well as the environmental benefits of implementing the measure. The factual basis for their efficacy, feasibility, and implementation is provided. The IAMFs are included in the Mitigation Monitoring and Enforcement Plan to enhance implementation tracking, identify the responsible party, and clarify implementation timing. The inclusion of IAMFs as part of the project does not constitute deferral of mitigation, and it does not represent a violation of CEQA.

1748-3078

California Public Resource Code Section 21099 (b)(3) states the following (emphasis added): “This subdivision does not relieve a public agency of the requirement to analyze a project’s potentially significant transportation impacts related to air quality, noise, safety, or any other impact associated with transportation. The methodology established by these guidelines shall not create a presumption that a project will not result in significant impacts related to air quality, noise, safety, or any other impact associated with transportation. Notwithstanding the foregoing, the adequacy of parking for a project shall not support a finding of significance pursuant to this section.”

The reference to the exemption for residential, mixed-use residential, or employment center regarding parking impacts is a separate part of the PRC Code [PRC 20199 (d)(1)] and thus does not limit the reference in Section 21099 (b)(3) cited above.

1748-3079

The comment noted that the Draft EIR/EIS should properly reference IAMFs and questions their effectiveness. Please refer to Section 3.2.4.2, Impact Avoidance and Minimization Features, of the Draft EIR/EIS for a discussion of the IAMFs applicable to transportation. Additional details regarding these IAMFs can be found in Appendix 2-E, Project Impact Avoidance and Minimization Features Analysis (located in Volume 2, Technical Appendices, of the Draft EIR/EIS). The IAMFs are included as part of the project and are reflected in the analysis presented in Draft EIR/EIS Section 3.2.6, Environmental Consequences. As noted by the comment, there is a typographic error on page 3.2-7 of the Draft EIR/EIS where an incorrect reference to Section 3.10.6 is made, when the correct reference is Section 3.2.6; this has been corrected in the Final EIR/EIS. IAMFs are incorporated into the Project Section design and construction to avoid or minimize environmental or community impacts. The description of each measure details the means and effectiveness of the measure in avoiding or minimizing impacts, as well as the environmental benefits of implementing the measure. The factual basis for their efficacy, feasibility, and implementation is provided. The IAMFs are included in the Mitigation Monitoring and Enforcement Plan to enhance implementation tracking, identify the responsible party, and clarify implementation timing.

Response to Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

1748-3080

The comment asserts that transportation models, forecasts, and plans cannot be found in the Draft EIR/EIS and asks about a reference in the Transportation Technical Report.

It is not required under NEPA or CEQA that every referenced source of information be included in the EIR/EIS itself. Instead, NEPA and CEQA require that the lead agency list those citations and make them available to the public on request. The process for requesting such information from the Authority was detailed in the Notice of Availability for the Draft EIR/EIS. As to the specifics, Chapter 12 of the Draft EIR/EIS, under Section 3.2, Transportation, clearly describes the Authority “2016c” and “Caltrans 2013” references (both with provided hyperlinks), and the “Authority 2016b” reference (available by requesting from the Authority).

The reference “Connecting and Transforming California: 2016 Business Plan” that is referenced in the Transportation Technical Report is more commonly known as the High-Speed Rail 2016 Business Plan. This is the same reference cited in Section 3.2, Transportation (as Authority 2016a) and the citation uses the same title as in the Transportation Technical Report. The references cited in the EIR/EIS are included in Chapter 12, References. The hyperlink to “Connecting and Transforming California: 2016 Business Plan” is provided in Chapter 12, under Section 3.2, Transportation. This link was active at the time of distribution of the EIR/EIS and is still active (as of October 9, 2021), so was available. A simple Google search for that title would readily pull up the cited document as well without the hyperlink.

Please note that the shorthand reference (Authority 2016a, Authority 2016b, for example) is different in different sections or reports because there are many Authority documents cited and the specific letter reference following the year is assigned based on the order in which the citation occurs in the text. Accordingly, the same document will have different shorthand references.

The Transportation Technical Report is a supporting document, but it is not part of the EIR/EIS itself. As such, the citations for the Transportation Technical Report are not listed in Chapter 12 of the EIR/EIS because this section only lists the citations in the EIR/EIS. As described in the Notice of Availability, technical reports are available upon request from the Authority.

1748-3080

The travel demand forecasting and VMT modeling contained within Chapter 3.2 of the Draft and Final EIR/EIS are complete and correct, and Chapter 3.2 thoroughly analyzes impacts and identifies adequate mitigation as applicable. The commenter has not identified any evidence of inadequacy of the forecasting, modeling, or analysis in the Final EIR/EIS.

Response to Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

1748-3081

The comment requested that the Draft EIR/EIS clarify and provide additional information and justification for the travel demand forecasting models used within the transportation assessment. Please refer to Section 3.2.4.3, Methods for Impact Analysis (subsection Travel Demand Forecasts and Calculations of Vehicle Miles Traveled), of the Draft EIR/EIS for a discussion of travel demand models employed within the evaluation. As stated by the comment, information from two different travel demand forecast models was used within the Draft EIR/EIS. Ridership on the HSR system was forecast using the latest version of the statewide California High-Speed Rail Ridership and Revenue Model in California High-Speed Rail Ridership and Revenue Model, Business Plan Model Version 3 (Authority 2016c, as cited in Section 3.2, Transportation, of the Draft EIR/EIS). The model incorporates socioeconomic growth assumptions (population, housing, and employment forecasts) consistent with the California Statewide Travel Demand Model and adjusts them for the 2029 and 2040 forecast years. The statewide conventional passenger rail and urban transit networks are consistent with current and planned routes in the 2013 California State Rail Plan (Caltrans 2013, as cited in Section 3.2 of the Draft EIR/EIS) and plans for individual regional rail operators. As this model is not capable of forecasting peak hour traffic volumes on individual roadways within Santa Clara County, a different forecasting model was employed for that purpose. Analysts developed forecasts of vehicles that would travel on the freeways and roads in the County using the VTA model developed by VTA staff for the San Mateo City/County Association of Governments. This forecasting tool was identified as the most appropriate for the project because it was designed and calibrated for that purpose. The VTA model accurately reflects land use, travel demand, and infrastructure changes within the study area for the Draft EIR/EIS horizon years. VTA staff and analysts modified the Santa Clara County travel demand model to include and reflect the HSR ridership forecasts generated by the California High-Speed Rail Ridership and Revenue Model. Evidence that the models were used in the development of conclusions of the Draft EIR/EIS is provided via summaries of the model assumptions, inputs, scenarios, means/methods, and detailed reporting of the results provided throughout the documentation.

1748-3082

The comment requested that the Draft EIR/EIS provide additional details and explain how station mode of access estimates were developed, particularly relating to the provision of parking. Please refer to Section 3.2.4.3, Methods for Impact Analysis (subsection Travel Demand Forecasts and Calculations of Vehicle Miles Traveled), of the Draft EIR/EIS for a discussion of the project travel demand and mode of access calculations. Overall station-level ridership and mode of access were calculated using the latest version of the statewide California High-Speed Rail Ridership and Revenue Model in California High-Speed Rail Ridership and Revenue Model, Business Plan Model Version 3 (Authority 2016c, as cited in Section 3.2, Transportation, of the Draft EIR/EIS). Station-specific mode of access calculations were informed by the station's context (e.g., amount of parking, level of connecting transit services available, surrounding land uses) and historical mode of access data from other transit stations (stations within the Caltrain, BART, LA Metro, and other systems). Riders choosing to drive and park as part of their San Jose Diridon Station trip would either park at the station proper or within available spaces in downtown garages/lots and walk/shuttle to the station. The mode of access calculations do not depend on constraining parking to shift travel behavior to transit rather than auto; rather, the analysis demonstrates how the unconstrained parking demand is accommodated given a constrained parking supply. A constrained parking analysis restricts the supply of parking, not the demand for parking. The Authority's analysis fully discloses the unconstrained parking demand. Not all the parking demand is accommodated by supply immediately adjacent to the station but in surrounding publicly available parking facilities (please refer to Draft EIR/EIS Figure 3.2-4a in Section 3.2). The Authority's data-based methodology discloses the facts about parking demand and is consistent with best practice environmental science. Existing and new transit services will offset parking demand; however, the analysis is not dependent on that condition to arrive at the conclusion.

Response to Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

1748-3083

Regarding the prior parking inventory being outdated, please see prior responses on this issue (such as responses to submission SJM-1748, comments 3042 and 3044).

Regarding the 2010 assessment of parking space demand, that assessment was not used in the analysis of parking impacts for the 2020 Draft San Jose to Merced Project Section EIR/EIS.

As explained in Section 3.2, Transportation, of the Draft EIR/EIS, the analysis of parking was based on more recent assessments of ridership and mode splits. As explained on page 3.2-69, as shown in Table 3.2-3, the total number of trips related to parked vehicles in 2040 would be 2,340 at the San Jose Diridon Station. Each parking space is associated with 1.66 trips (as some vehicles are parked for multiple days). As shown in Table 3.2-4, the average number of passengers per parked car for the San Jose Diridon Station is 1.33. Consequently, the daily access/egress trips associated with the San Jose Diridon Station would create an additional demand for 1,060 parking spaces (beyond current existing demand).

1748-3084

The comment stated that the Draft EIR/EIS should provide additional details and explain how station mode of access estimates were developed, particularly relating to the provision of parking and rental car facilities. Please refer to Section 3.2.4.3, Methods for Impact Analysis (subsection Travel Demand Forecasts and Calculations of Vehicle Miles Traveled), of the Draft EIR/EIS for a discussion of the project travel demand and mode of access calculations. Overall station-level ridership and mode of access was calculated using the latest version of the statewide California High-Speed Rail Ridership and Revenue Model in California High-Speed Rail Ridership and Revenue Model, Business Plan Model Version 3 (Authority2016c, as cited in Section 3.2, Transportation, of the Draft EIR/EIS). Station-specific mode of access calculations were informed by the station's context (e.g., amount of parking, level of connecting transit services available, surrounding land uses) and historical mode of access data from other transit stations (stations within the Caltrain, BART, LA Metro, and other systems). Riders choosing to drive and park as part of their San Jose Diridon Station trip would either park at the station proper or within available spaces in downtown garages and walk/shuttle to the station. Similarly, riders using a rental car would use off-site facilities and be shuttled to the station, as on-site rental car facilities are not proposed. The mode of access calculations do not depend on constraining parking to shift travel behavior to transit rather than auto; rather, the analysis demonstrates how the unconstrained parking demand is accommodated given a constrained parking supply. A constrained parking analysis restricts the supply of parking, not the demand for parking. The Authority's analysis fully discloses the unconstrained parking demand. Not all the parking demand is accommodated by supply immediately adjacent to the station but in surrounding publicly available parking facilities (please refer to Draft EIR/EIS Figure 3.2-4a in Section 3.2). The Authority's data-based methodology discloses the facts about parking demand and is consistent with best practice environmental science. Existing and new transit services will offset parking demand; however, the analysis is not dependent on that condition to arrive at the conclusion.

Response to Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

1748-3085

The EIR/EIS presents the parking availability information from the VTA Silicon Valley Phase II Extension Project Final Supplemental EIR/EIS (SVSX EIR/EIS; VTA and FTA 2018, as cited in Section 3.2, Transportation, of the Draft EIR/EIS) parking inventory and other sources, identifies the amount of HSR direct displacement of parking (and the replacement on a 1:1 basis), identifies the HSR parking demand, describes the effect of the BART project on parking, and describes the effect of planned transit service increases on likely future mode splits to access both the San Jose Diridon Station and the SAP Center events. Specifically, the EIR/EIS does present the project's parking demand (1,060 spaces) at San Jose Diridon Station on page 3.2-69 of the Draft EIR/EIS. In addition, the EIR/EIS described examples of other downtown arenas (including Sacramento, San Francisco, Detroit, and NBA and NHL arenas) over the last two decades that are benefitting from regional transit service and the use of shared parking to meet event travel demand. The Draft EIR/EIS finds that through the combination of existing parking spaces and the reduction of parking demand with planned Caltrain and BART service, the project's increased parking demand can be met, which would avoid significant secondary environmental effects, as discussed in Impact TR#9 in Section 3.2. This evidence is discussed in the EIR/EIS. See response to submission SJM-1748, comment 3055 concerning circling for parking and potential secondary effects.

1748-3086

Regarding construction, as referenced in TR-IAMF#3, in Section 3.2, Transportation, of the Draft EIR/EIS, there may be the need for off-site parking for either construction workers and/or to replace temporarily displaced parking spaces for others during construction. The specific locations are not known at this time and would be determined as part of construction planning and management.

For operations relative to San Jose Diridon Station, the project includes a new parking structure just east of the San Jose Diridon Station building at Cahill/Crandall Streets, a second structure at Stockton/Alameda west of the railroad right-of-way, and a third site north of the SAP Center, which collectively would provide a 1:1 replacement of permanent parking spaces displaced by the project in proximity to the San Jose Diridon Station and SAP Center. For Alternatives 1, 2, and 3, there would be replacement parking north of the SAP Center, which would consist of new surface parking at the corner of Julian/Montgomery north of Julian Street as shown in design sheet TT-D0153 in Draft EIR/EIS Volume 3, Preliminary Engineering for Project Design Record, Alternative 1, Book 1A for Alternative 1. For Alternative 4, the referenced parking structure in the northern portion of the SAP Parking Lot is a reference to the proposed inclusion of a new parking structure for Alternative 4 just north of the SAP Center in the existing parking lot. The location of this structure is shown in design sheet TT-D4003 in Draft EIR/EIS Volume 3, Alternative 4, Book 4A for Alternative 4.

The permanent parking spaces included in the project are for replacement of existing parking spaces only; they are not intended to be specifically dedicated for HSR riders or HSR employees. HSR riders or employees seeking parking would need to seek parking as a member of the general public. There is no proposed off-site new parking for operations (beyond the new structures proposed in and around San Jose Diridon Station specifically shown on the design drawings) as part of the HSR project. The text in Chapter 2, Alternatives, and Section 3.2 of the Final EIR/EIS has been clarified per this response.

Response to Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

1748-3087

The comment noted that the Draft EIR/EIS should provide additional information and justification regarding the baseline scenarios evaluated in the transportation analyses. Please refer to Draft EIR/EIS Section 3.2.4.3, Methods for Impact Analysis (subsection Baseline Operations Analysis), for a discussion of the document's analysis scenarios. The Draft EIR/EIS evaluates multiple baseline scenarios. First, "Existing Conditions" and "Existing Plus Project" scenarios are evaluated, which assess the impacts of project construction on transportation conditions that prevailed at the time of the issuance of the NOP. The Existing Conditions scenarios are based on data and traffic counts collected in 2016, 2017, and 2018. Counts were collected during clear mid-week days when local schools were in session. A second set of baseline conditions scenarios are evaluated reflecting "Year 2029" and "Year 2029 Plus Project" conditions. These analyses evaluate transportation conditions forecast to prevail in the year 2029, with the operations of the project's first phase. The baseline conditions assessment conducted within the Draft EIR/EIS transportation section was prepared in accordance with CEQA and NEPA guidelines.

1748-3088

The EIR/EIS presents the parking availability information from the VTA Silicon Valley Phase II Extension Project Final Supplemental EIR/EIS (SVSX EIR/EIS; VTA and FTA 2018, as cited in Section 3.2, Transportation, of the Draft EIR/EIS) parking inventory and other sources, identifies the amount of HSR direct displacement of parking (and the replacement on a 1:1 basis), identifies the HSR parking demand, describes the effect of the BART project on parking, and describes the effect of planned transit service increases on likely future mode splits to access both the San Jose Diridon Station and the SAP Center events. In addition, the EIR/EIS described examples of other downtown arenas (including Sacramento, San Francisco, Detroit, and NBA and NHL arenas) over the last two decades that are benefitting from regional transit service and the use of shared parking to meet event travel demand. Also, see the response to submission SJM-1748, comment 3042 concerning NEPA adequacy. This evidence is discussed in the EIR/EIS. Furthermore, the analysis in the San Jose to Merced Project Section EIR/EIS does consider the potential secondary effects relative to safety, air quality, and traffic in Section 3.2 of the Draft EIR/EIS as part of the parking impact analysis, within the analysis of Impact TR#9.

1748-3089

The EIR/EIS presents the parking availability information from the VTA Silicon Valley Phase II Extension Project Final Supplemental EIR/EIS (SVSX EIR/EIS; VTA and FTA 2018, as cited in Section 3.2, Transportation, of the Draft EIR/EIS) parking inventory and other sources, identifies the amount of HSR direct displacement of parking (and the replacement on a 1:1 basis), identifies the HSR parking demand, describes the effect of the BART project on parking, and describes the effect of planned transit service increases on likely future mode splits to access both the San Jose Diridon Station and the SAP Center events. In addition, the EIR/EIS described examples of other downtown arenas (including Sacramento, San Francisco, Detroit, and NBA and NHL arenas) over the last two decades that are benefitting from regional transit service and the use of shared parking to meet event travel demand. This evidence is discussed in the EIR/EIS. Furthermore, the analysis in the San Jose to Merced Project Section EIR/EIS does consider the potential secondary effects relative to safety, air quality, and traffic in Section 3.2 of the Draft EIR/EIS as part of the parking impact analysis, within Impact TR#9.

The commenter does not present any specific evidence that the identification of existing parking supply is incorrect. While the commenter provides an exhibit (Exhibit C) that is titled "Map 2 –Existing Parking within 1/3 mile Available Spaces," a review of that exhibit shows that the "spaces lost" actually contain parking today. For example, Exhibit C shows all parking east of the railroad right-of-way/San Jose Diridon Station east to Los Gatos Creek and some parking areas east of Los Gatos Creek as "spaces lost", whereas a review of Google Earth aerial imagery from September 26, 2020 (which is after the submission of this comment letter), shows that these areas contain parking presently. Thus, Exhibit C does not contradict the EIR/EIS identification of existing parking areas. Instead, as referenced in this comment, Exhibit C shows parking areas that could be displaced by future development, including the Google Project. This exhibit identifies 1,771 spaces that may be lost. The comment also refers to an estimated 5,455 parking spaces that will be lost, but Exhibit C does not identify those spaces, and there is no substantiation in this comment (or in the comment letter overall) what the source is for the 5,455 space estimate, so no further response is provided regarding the 5,455 spaces. Regarding the 1,771 spaces that maybe lost due to other development, that is not an impact of the HSR project over the existing conditions baseline and thus this is not addressed in Section 3.2 of the EIR/EIS. Instead, the impacts of the HSR project, in combination with other future development, is addressed in Section 3.19,

Response to Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

1748-3089

Cumulative Impacts, of the EIR/EIS. As discussed in the response to submission SJM-1748, comment 3043, Section 3.19, Cumulative Impacts, of the EIR/EIS has been updated to take into account the effects of the Google Downtown West project and other potential future development in regards to parking near the SAP Center. As a result, the Final EIR/EIS does take into account potential cumulative effects on parking.

1748-3090

The comment requested that the Draft EIR/EIS provide additional details and explain how station mode of access estimates were developed, particularly relating to the provision of parking. Please refer to Section 3.2.4.3, Methods for Impact Analysis (subsection Travel Demand Forecasts and Calculations of Vehicle Miles Traveled), of the Draft EIR/EIS for a discussion of the project travel demand and mode of access calculations. Overall station-level ridership and mode of access were calculated using the latest version of the statewide California High-Speed Rail Ridership and Revenue Model in California High-Speed Rail Ridership and Revenue Model, Business Plan Model Version 3 (Authority 2016c, as cited in Section 3.2, Transportation, of the Draft EIR/EIS). Station-specific mode of access calculations were informed by the station's context (e.g., amount of parking, level of connecting transit services available, surrounding land uses) and historical mode of access data from other transit stations (stations within the Caltrain, BART, LA Metro, and other systems). Riders choosing to drive and park as part of their San Jose Diridon Station trip would either park at the station proper or within available spaces in downtown garages and walk/shuttle to the station. The analysis presented in the Draft EIR/EIS fully discloses the project's unconstrained parking demand and demonstrates how the unconstrained parking demand is accommodated given a constrained parking supply. Not all the parking demand is accommodated by supply immediately adjacent to the station but in surrounding publicly available parking facilities (please refer to Draft EIR/EIS Figure 3.2-4a in Section 3.2). Project parking demand would be accommodated within these publicly available facilities and is not expected to spill over beyond those locations.

1748-3091

Refer to Standard Response SJM-Response-TR-2: Construction Traffic and Parking Management Details.

The commenter discusses Impacts TR#1 and TR#2, specifically the level of detail provided in the Draft EIR/EIS and suggests that the project is deferring mitigation. Within the discussion of Impacts TR#1 and TR#2, the Draft EIR/EIS explains the IAMFs that have been incorporated into project design and have been analyzed as part of the project alternatives. All IAMFs are set forth in Appendix 2-E, Project Impact Avoidance and Minimization Features (located in Volume 2, Technical Appendices, of the EIR/EIS). The Draft EIR/EIS describes and evaluates the potential types, range, and scope of potential construction impacts that could occur, depending on the ultimate means and methods implemented by the contractor. The project includes IAMFs to guide and put boundaries on the contractor to ensure that there are no additional construction-related impacts of the HSR project beyond what was disclosed in the EIR/EIS. TR-IAMF#8 details the contractor's requirements during all special events within the Project Section, including those occurring at the SAP Center. Volume 3, Preliminary Engineering for Project Design Record, of the Draft EIR/EIS includes preliminary design, sufficient for environmental analysis. The Draft EIR/EIS includes a conservative environmental footprint to ensure that proposed impacts are analyzed. The Draft EIR/EIS, including Appendix 2-A, Roadway Crossings, Modifications, and Closures (located in Volume 2), describes and evaluates all currently known construction-related impacts on roadways within the Project Section, in accordance with CEQA guidelines, associated with any additional temporary roadway closures or detours.

Exhibit D, which was provided by the commenter, contains a technical memo about the Diridon Station Area Street Networks and does not contain any specific comments about the contents of the EIR/EIS for the HSR project. As such, specific responses have not been prepared concerning the contents of Exhibit D. Exhibit D describes transportation and circulation issues concerning Google's Downtown West project, the transit station, and other developments in the Diridon Station area. The Authority has evaluated traffic and circulation conditions in the Diridon Station area including the environs around the SAP Center and taken those into consideration with the evaluation of construction period and operational traffic and circulation effects. Specifically, regarding the potential Google Downtown West project, cumulative effects are discussed in the Final EIR/EIS

Response to Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

1748-3091

Section 3.19, Cumulative Impacts, which was updated to include information from the Google Downtown West Draft EIR, which was completed after release of the Draft EIR/EIS for the HSR project.

1748-3092

Refer to Standard Response SJM-Response-TR-2: Construction Traffic and Parking Management Details.

TR-IAMF #6 details the contractor requirements relative to the hours of material delivery and construction employee arrival and departures. The contractor can control the hours of material deliveries as well as the start and end time of construction shifts. TR-IAMF#8 details the contractor's requirements for preventing construction from reducing roadway capacity during peak hours and special events, including those at the SAP Center. These features are incorporated as part of the project. In addition, the analysis in the San Jose to Merced Project Section EIR/EIS does consider the potential secondary effects relative to safety, air quality, and traffic in Section 3.2, Transportation, of the Draft EIR/EIS as part of the parking impact analysis, within Impact TR#9.

1748-3093

Refer to Standard Response SJM-Response-TR-2: Construction Traffic and Parking Management Details.

Refer to TR-IAMF#8 in Appendix 2-E, Project Impact Avoidance and Minimization Features (located in Volume 2, Technical Appendices, of the EIR/EIS). The contractor is required to provide a mechanism to prevent roadway construction activities from reducing roadway capacity during special events or major athletic events. This would include events at the SAP Center that increase traffic on the local area roadway network.

1748-3094

The comment noted that the Draft EIR/EIS should illustrate the locations of pickup and drop-off at the San Jose Diridon Station; the comment also notes that the Draft EIR/EIS should evaluate the effects of roadway closures and modifications. Please refer to Figure 2-65 in Chapter 2, Alternatives, of the Draft EIR/EIS for the locations of pickup and drop-off at the station. Please refer to Impact TR#3 and Impact TR#4 in Section 3.2, Transportation, of the Draft EIR/EIS for a discussion of the analysis of the effects of roadway closures and alterations within the Project Section. Please refer to Table 3.2-14 in Section 3.2 of the Draft EIR/EIS for a list of the roadway closures and modifications by alternative. The effects of these closures on the rerouting of traffic is evaluated and described within the technical LOS analysis summarized in Impacts TR#3 and TR#4.

Response to Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

1748-3095

The comment requested that the Draft EIR/EIS provide additional details and justification for how San Jose Diridon Station mode of access estimates were developed, particularly relating to the provision of parking and vehicle trips. Please refer to Section 3.2.4.3, Methods for Impact Analysis (subsection Travel Demand Forecasts and Calculations of Vehicle Miles Traveled), of the Draft EIR/EIS for a discussion of the project travel demand and mode of access calculations. Overall station-level ridership and mode of access were calculated using the latest version of the statewide California High-Speed Rail Ridership and Revenue Model in California High-Speed Rail Ridership and Revenue Model, Business Plan Model Version 3 (Authority 2016c, as cited in Section 3.2, Transportation, of the Draft EIR/EIS). Station-specific mode of access calculations were informed by the station's context (e.g., amount of parking, level of connecting transit services available, surrounding land uses) and historical mode of access data from other transit stations (stations within the Caltrain, BART, LA Metro, and other systems). Riders choosing to drive and park as part of their San Jose Diridon Station trip would either park at the station proper or within available spaces in downtown garages and walk/shuttle to the station. The analysis presented in the Draft EIR/EIS fully discloses the project's unconstrained parking demand and demonstrates how the unconstrained parking demand is accommodated given a constrained parking supply. Not all the parking demand is accommodated by supply immediately adjacent to the station but in surrounding publicly available parking facilities (please refer to Draft EIR/EIS Figure 3.2-4a in Section 3.2). Project parking demand would be accommodated within these publicly available facilities and is not expected to spill over beyond those locations. Additional parking demand analysis is not required by NEPA or CEQA, as the mode of access assumptions rely on parking within the Authority's control or publicly available pay-for-use parking.

1748-3096

The comment requested that the Draft EIR/EIS provide additional information related to quad gates and roadway closures. Please refer to Impact TR#7 in Section 3.2, Transportation, of the Draft EIR/EIS for a discussion of the impacts of roadway closures and gate-down time on intersection LOS and vehicular delay. The analysis presented fully reflects the traffic shifts associated with all roadway closures and modifications and delay related to gate-down time. The traffic analysis presented in the Draft EIR/EIS includes the presence and operation of quad gates at all at-grade crossings under Alternative 4. For additional details regarding four-quadrant gates and their associated improvements, please refer to Impact S&S#4 in Section 3.11, Safety and Security, of the Draft EIR/EIS. Please refer to Table 3.2-14 in Section 3.2 of the Draft EIR/EIS for a summary of the roadway closures and modifications analyzed within the Draft EIR/EIS. Additional analysis is not required, as the Draft EIR/EIS reflects all quad gates and roadway closures included as part of the project.

1748-3097

This comment makes multiple comments, all of which are responded to in prior comments. For comments regarding the adequacy of the analysis of available parking, please refer to the response to submission SJM-1748, comments 3043, 3044, 3089, and others. For comments regarding the Google development and the cumulative impact on parking, please refer to the response to submission SJM-1748, comments 3043 and 3089. For comments regarding parking for construction workers, please refer to the response to submission SJM-1748, comment 3086.

1748-3098

For comments regarding the adequacy of the analysis of available parking, please refer to the response to submission SJM-1748, comments 3043, 3044, 3089, and others. For comments regarding parking for construction workers, please refer to the response to submission SJM-1748, comment 3086.

Regarding comments that claim the Google Project will displace parking (per that shown in Exhibit C), please refer to the response to submission SJM-1748, comments 3043 and 3089.

Response to Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

1748-3099

This comment makes multiple comments, all of which are responded to in prior comments. For comments regarding the adequacy of the analysis of available parking, please refer to the response to submission SJM-1748, comments 3042, 3043, 3044, 3089, and others. For comments regarding the Google Project and the cumulative impact on parking, please refer to the response to submission SJM-1748, comments 3043 and 3089.

1748-3100

Please see response to submission SJM-1748, comments 3082 and 3084, regarding the methods used to assess parking demand and the question of “unconstrained” versus “constrained” demand. Regarding mitigation, the project includes replacement of temporary parking during construction on a 1:1 basis and replacement of any permanently displaced parking on a 1:1 basis as part of the project. The project also includes construction management plans and construction traffic plans to manage construction disruption and traffic during construction.

1748-3101

Please see the response to submission SJM-1748, comment 3086 regarding permanent replacement parking locations.

1748-3102

This comment reiterates prior comments regarding the availability of parking, all of which are responded to in prior responses. For comments regarding the adequacy of the analysis of available parking, please refer to the response to submission SJM-1748, comments 3042, 3043, 3044, 3064, 3089, and others. For comments regarding the Google Project and the cumulative impact on parking, please refer to the response to submission SJM-1748, comments 3043 and 3089.

1748-3103

This comment mostly quotes from the EIR/EIS analysis and then repeats the same comments regarding the adequacy of the analysis of available parking, which have been previously responded to. For comments regarding the adequacy of the analysis of available parking, please refer to the response to submission SJM-1748, comments 3042, 3043, 3044, 3089, and others. For comments regarding the Google Project and the cumulative impact on parking, please refer to the response to submission SJM-1748, comments 3043 and 3089. Regarding issues concerning constrained vs. unconstrained parking demand, please see response to submission SJM-1748, comments 3082 and 3084. The references to other arenas’ sporting facilities that have higher transit mode share than SAP Center at present when there is frequent transit service is highly appropriate citation of real-world evidence of what the likely future modes of access would be to the SAP Center in the future with expanded Caltrain, BART, VTA, and HSR service.

1748-3104

The HSR project does not call for the elimination of parking. In fact, the project proposed to replace all temporarily displaced parking and all permanently displaced parking on a 1:1 basis. The analysis in the EIR/EIS describes that some HSR passengers would drive and park to access the San Jose Diridon Station. The EIR/EIS provides an analysis, with supporting evidence, as to why there would be adequate parking for SAP Center event parking even taking into account the demand relative to the HSR project and when considering the increased transit mode share due to the substantial transit improvements due to Caltrain, BART, VTA, and HSR investments in the area. San Jose is changing, and access to the San Jose Diridon Station and SAP Center will also change over time. There are many examples of downtown transit stations without parking, including notably the existing Caltrain 4th and King Terminal and the Salesforce Transit Center in San Francisco.

Response to Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

1748-3105

The comment noted that the Draft EIR/EIS should provide additional details and explain how station mode of access estimates were developed, particularly relating to the City of San Jose's General Plan Goals. Please refer to Section 3.2.4.3, Methods for Impact Analysis (subsection Travel Demand Forecasts and Calculations of Vehicle Miles Traveled), of the Draft EIR/EIS for a discussion of the project travel demand and mode of access calculations. Overall station-level ridership and mode of access were calculated using the latest version of the statewide California High-Speed Rail Ridership and Revenue Model in California High-Speed Rail Ridership and Revenue Model, Business Plan Model Version 3 (Authority 2016c, as cited in Section 3.2, Transportation, of the Draft EIR/EIS). Station-specific mode of access calculations were informed by the station's context (e.g., amount of parking, level of connecting transit services available, surrounding land uses) and historical mode of access data from other transit stations (stations within the Caltrain, BART, LA Metro, and other systems). Riders choosing to drive and park as part of their San Jose Diridon Station trip would either park at the station proper or within available spaces in downtown garages and walk/shuttle to the station. The commute goals referenced by the comment (e.g., 40% drive alone mode share, decreasing reliance on automobiles) and expressed within the City of San Jose's General Plan and associated documents were not used as a technical input into the ridership or mode of access forecasts developed within the Draft EIR/EIS. The Draft EIR/EIS provides a summary of the City of San Jose's General Plan goals and policies related to transportation as background information. As required by CEQA and NEPA, the project's consistency with the applicable goals of relevant jurisdictions is also evaluated and described. However, the modal split-related goals and aspirations of these documents and policies are not used as technical input into the Draft EIR/EIS forecasts of transportation conditions or the project's effects on regional/local travel.

1748-3106

This comment mostly quotes from the EIR/EIS analysis and then repeats the same assertion made in other comments that different analyses of parking should have been done. Please refer to comments regarding the adequacy of the analysis of available parking (see response to submission SJM-1748, comments 3042, 3043, 3089, and others). As explained therein, the Draft EIR/EIS did include an assessment of parking supply (in the form of an existing parking inventory), an assessment of parking demand due to the HSR project, and an assessment of the effect of planned transit expansions by Caltrain and BART, and the Final EIR/EIS includes an assessment of the cumulative effects with the Google Project. Thus, there is no deferral of analysis needed to adequately disclose the effects of the project.

1748-3107

This comment cites current customer transit use and does not take into account the substantial changes in future transit use with the expanded Caltrain service (per the Peninsula Corridor Electrification project, which is in construction), the BART extension to San Jose (which is approved), and the HSR project. While HSR, as an intercity service, may not be used for access by SAP Center patrons as much, there would likely be some patrons who might use HSR to reach San Jose from San Francisco, Millbrae, Gilroy, and the Central Valley.

Regarding the comment of a "mythical" garage north of SAP Center, it is not a myth, it is part of the project as discussed in response to submission SJM-1748, comment 3086.

1748-3108

This comment mostly quotes from the EIR/EIS analysis and then repeats the same comments regarding the adequacy of the analysis of available parking, which have been previously responded to. For comments regarding the adequacy of the analysis of available parking, please refer to the response to submission SJM-1748, comments 3043, 3044, 3089, and others. For comments regarding the Google Project and the cumulative impact on parking, please refer to the response to submission SJM-1748, comments 3043 and 3089.

Response to Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

1748-3109

Regarding circling and the potential for secondary effects, see response to submission SJM-1748, comment 3055.

1748-3110

The EIR/EIS analysis of ridership mode of access is based on professional practice for forecasting mode of access. The methods are described in Section 3.2, Transportation, of the Draft EIR/EIS. The analysis was done to realistically estimate mode of access to support the EIR/EIS analysis of traffic, parking, and other impacts. There is no effort to make an artificial assumption regarding mode of access, and the comment's assertion that there is some "desire" to minimize the number of riders using park-and-ride in order to avoid cost is without merit and without evidence. Regarding the adequacy, please see prior responses to comments on this issue.

1748-3111

The EIR/EIS analysis of ridership mode of access is based on professional practice for forecasting mode of access. The methods are described in Section 3.2, Transportation, of the Draft EIR/EIS. The analysis was done to realistically estimate mode of access to support the EIR/EIS analysis of traffic, parking, and other impacts. Regarding comments on the adequacy of the analysis of available parking, please see response to submission SJM-1748, comment 3089 and others. See response to submission SJM-1748, comment 3055 concerning circling for parking and potential secondary effects.

1748-3112

The referenced articles primarily discuss BART and parking relative to the suburban BART stations in Antioch, North Concord/Martinez, Pleasant Hill, Walnut Creek, Dublin/Pleasanton, and West Dublin/Pleasanton. The setting of these BART stations within suburban communities is very different than the setting of the San Jose Diridon Station at present, since the San Jose Diridon Station is a major intermodal station with multiple train services (Caltrain, ACE, Amtrak, Capitol Corridor, VTA light rail), a bus transit station, and proximity to downtown San Jose. Furthermore, in the future, San Jose Diridon Station will become even more of a transit-rich station with the increase in Caltrain service with the in-construction Peninsula Corridor Electrification Project, the approved BART extension to San Jose, and the addition of HSR. Thus, the comparison between parking issues/impacts of suburban stations with much more limited transit linkages and the future transit-rich condition of the San Jose Diridon Station is not appropriate information by which to consider impacts at/adjacent to San Jose Diridon Station.

1748-3113

SAP Center employees use the existing parking spaces in and around SAP Center at present. The HSR project would replace 1:1 all temporarily and permanently displaced parking spaces in and around San Jose Diridon Station/SAP Center due to the project. It is correct that the portion of HSR riders who choose a park-and-ride mode would contribute to demand for parking in and around San Jose Diridon Station. However, increased transit, particularly through Caltrain and BART, will also provide increased opportunities for SAP Center employees and patrons, as well as HSR riders, to access San Jose Diridon Station or SAP Center via transit, which would offset some of the parking demand.

Response to Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

1748-3114

Both NEPA and CEQA encourage tiering of environmental documents. The Authority has used a tiered environmental review process to support tiered decisions for the HSR system. The Authority and the Federal Railroad Administration prepared two Tier 1 documents for the statewide HSR system. Program or first-tier EIR/EISs are deliberately focused on the "big picture" impacts of proposed actions and the broad policy choices related to such actions. To avoid repetition and to help focus the document on issues ripe for decision, a lead agency may tier its environmental documents so that later Program or second-tier EIR/EISs incorporate and build upon the analysis and decisions made at the Program level. A first-tier EIR/EIS may therefore be limited to the analytical information necessary for an informed decision on the broad policy issues presented, with detailed analysis of potential impacts of a more specific, site-specific decision to follow when a second-tier EIR/EIS is prepared. In a project-level EIR/EIS that follows a program EIR/EIS (or put another way, a second-tier EIR following a first-tier EIR/EIS), tiering has the effect of focusing the analysis on a narrower geographic area and the more specifically defined project.

The San Jose to Merced Project Section EIR/EIS properly tiers by: being consistent with the broad policy decisions previously reached about the system; explaining the relationship between the first tier and the second tier (Program EIR/EISs and project-level EIR/EIS); utilizing the Program EIR/EISs for background information and to inform the second-tier analysis, making the Program EIR/EISs available to the public; and by focusing on and analyzing the impacts of implementing a specifically defined high-speed train project between San Jose and Merced.

This Draft EIR/EIS is based on a preliminary level of design (15%) and provides a conservative assessment of impacts by overstating the geographic area that encompasses the project footprint. More specifics would be determined during final design, but environmental impacts are not expected to change dramatically.

1748-3115

Construction staging locations are included in Volume 3, Preliminary Engineering for Project Design Record, of the EIR/EIS as well as listed in Table 2-17. Detailed construction phasing information is not available at the preliminary engineering phase. The EIR/EIS has made conservative assumptions in the construction impact analysis as appropriate to resource topic sections. In the absence of detailed construction staging, the Authority has likely overstated construction impacts. Detailed construction phasing will be determined during Detailed Design Post-ROD. The final design will be scrutinized by the Authority to ensure consistency with the analysis in the EIR/EIS. In addition, the Authority will continue to engage jurisdictions and stakeholders during the design, construction, and operation of the project.

1748-3116

Section 3.4, Noise and Vibration, of the Draft EIR/EIS does describe the various aspects of construction that would result in noise impacts, such as demolition of existing structures; clearing and grubbing; handling, storing, hauling, excavating, and placing fill; pile driving; and construction of aerial structures, bridges, road modifications, utility upgrades and relocations, HSR electrical systems, and railbeds. The analysis in Draft EIR/EIS Section 3.4 does describe the impact associated with the different activities. Draft EIR/EIS Table 3.4-15 also presents a list of the equipment type expected to be used for each construction activity and its noise level. The Authority has identified mitigation measures that would be implemented to avoid or reduce impacts from noise and vibration generated by project construction and operations. Mitigation measures are not intended to be specific to equipment types but to the impact itself.

Draft EIR/EIS Section 3.3, Air Quality and Greenhouse Gases, also describes relevant construction activities, including earthworks and excavation support; tunnel, bridge, and aerial structure construction; station construction; track work; and railway systems construction. The impact analysis also considered the types of equipment that would be used during construction, such as diesel-fueled off-road equipment and heavy-duty trucks.

Response to Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

1748-3117

Refer to Standard Response SJM-Response-TR-2: Construction Traffic and Parking Management Details.

The comment stated that the Draft EIR/EIS should properly reference IAMFs and questions their effectiveness. Please refer to Section 3.2.4.2, Impact Avoidance and Minimization Features, of the Draft EIR/EIS for a discussion of the IAMFs applicable to transportation. Additional details regarding these IAMFs can be found in Appendix 2-E, Project Impact Avoidance and Minimization Features Analysis (located in Volume 2, Technical Appendices, of the Draft EIR/EIS). The IAMFs are included as part of the project and are reflected in the analysis presented in Draft EIR/EIS Section 3.2.6, Environmental Consequences. IAMFs are incorporated into the Project Section design and construction to avoid or minimize environmental or community impacts. The description of each measure details the means and effectiveness of the measure in avoiding or minimizing impacts, as well as the environmental benefits of implementing the measure. The factual basis for their efficacy, feasibility, and implementation is provided. The Draft EIR/EIS describes and evaluates the potential types, range, and scope of potential construction impacts that could occur, depending on the ultimate means and methods implemented by the contractor. The project includes IAMFs to guide and put boundaries on the contractor to ensure that there are no additional construction-related impacts of the HSR project beyond what was disclosed in the EIR/EIS. IAMFs are not mitigation measures, nor are they the deferral of mitigation. The IAMFs are included in the Mitigation Monitoring and Enforcement Plan to enhance implementation tracking, identify the responsible party, and clarify implementation timing. The inclusion of IAMFs as part of the project does not constitute deferral of mitigation and does not represent a violation of CEQA.

1748-3118

Regarding parking, the EIR/EIS has disclosed the potential impact of the project on parking in and around San Jose Diridon Station and the SAP Center both directly and indirectly. The project has incorporated measures per the design of the project to replace permanently displaced parking spaces on a 1:1 basis and the implementation of TR-IAMF#8 in Section 3.2, Transportation, of the Draft EIR/EIS to temporarily replace parking in proximity to the San Jose Diridon Station and the SAP Center. The conclusion of the EIR/EIS is that the project would not have a substantial effect on the ability of SAP Center to hold events or for SAP Center patrons to access the center for events using multiple modes of access, including via vehicle and parking, transit, bicycle, and walking and that there would be adequate parking availability for those who access via vehicle when taking into account the future substantial increase in transit service in the area. The EIR/EIS provides successful examples of other arenas/sports venues in downtown areas where there are higher numbers of patrons using transit under the appropriate conditions. As such, the EIR/EIS does not identify any additional mitigation measures to address parking since the impact (after considering all of the above) does not warrant such additional mitigation.

As noted in prior responses (including to submission SJM-1748, comment 3043), the cumulative analysis also considered other project effects (including BART extension to San Jose, as well as the Google development).

1748-3119

Refer to Standard Response SJM-Response-TR-2: Construction Traffic and Parking Management Details.

Please refer to Impact SOCIO#1 in Section 3.12, Socioeconomics and Communities, of the Draft EIR/EIS for a description of the impacts of project-related construction activities on the communities and businesses referenced by the comment.

Response to Submission 1748 (Jeffrey Lawson, Silicon Valley Law Group, June 23, 2020) - Continued

1748-3120

Refer to Standard Response SJM-Response-TR-2: Construction Traffic and Parking Management Details.

Specific details on the nature, extent, and length of any construction-related sidewalk or lane closures are not currently available, as the precise means and methods of project construction are currently unknown. The Draft EIR/EIS discloses the potential outcomes during construction and delineates a plan for the contractor to provide safe and adequate access for vehicles and pedestrians through each phase of project construction.

1748-3121

Refer to Standard Response SJM-Response-ALT-1: Alternatives Selection and Evaluation Process, SJM-Response-ALT-2: Project-Specific Alternatives Considerations.

The comment states that there is no discussion of “Alternatives Considered but Rejected.” Please refer to Section 2.5, Alternatives Considered during Alternatives Screening Process, and Appendix 2-1, Interim Use/Phased Implementation, for design options considered but not carried forward as alternatives in the EIR/EIS.

The alternatives analysis included a comparison of impacts between the four alternatives, as identified in the various resource topic chapters of the EIR/EIS. Summary tables are provided to assist the reader in determining the relative impacts of each of the alternatives. Please refer to Chapter 8, Preferred Alternative, for a summary and comparison of the range of environmental impacts by alternative. Each alternative would reduce or avoid environmental impacts on specific resources.

The alternatives analysis and Alternatives 1 through 4 as well as the No Build Alternative satisfy the requirement “to ensure that all reasonable alternatives are thoroughly assessed by the responsible official (or board).” (*Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 197).

1748-3122

The Authority appreciates your comments on the Draft EIR/EIS. In prior individual comments, the commenter provided more specific details regarding their concerns. Each of these specific comments is addressed above.

Submission 1645 (Michael Mills, STOEL RIVES LLP, June 23, 2020)



June 23, 2020

Sent Via Email To san_jose_merced@hsr.ca.gov and Via First-Class Mail

Attn: Draft San Jose to Merced Project Section EIR/EIS 100 Paseo de San Antonio, Suite 300 San Jose, CA 95113

Michael N. Mills 500 Capitol Mall, Suite 1600 Sacramento, CA 95814 D. 916.319.4642 michael.mills@stoel.com

1645-2423

Re: Comment Letter re San Jose to Merced Project Section Draft EIR/EIS

Dear Sir/Madam:

Stoel Rives LLP is counsel to Liberty Packing Company ("Liberty Packing") in Santa Nella, California, just outside of Los Banos, California. Stoel Rives LLP submits this letter commenting on the California High Speed Rail Authority's ("Authority") Draft Environmental Impact Report/Environmental Impact Statement ("Draft EIR/EIS") for the San Jose to Merced Project Section of the High Speed Rail ("HSR Project") on behalf of Liberty Packing. As set out below, the Draft EIR/EIS is fundamentally flawed, such that certification of the Draft EIR/EIS in its current condition would, as a matter of law, violate the California Environmental Quality Act ("CEQA"). (Pub. Resources Code § 21000 et seq.) For the following reasons, the Draft EIR/EIS must be revised and recirculated. (CEQA Guidelines, § 15088.5.)

1645-2424

I. Liberty Packing and Its Business

Liberty Packing is a leading agricultural products facility on the west side of the San Joaquin Valley in Merced County, California. Founded in 2002 by owners of The Morning Star Company, Liberty Packing's Santa Nella facility processes approximately 1/7 of the entire U.S. crop of processing tomatoes, accounting for \$400-500 million in sales per year,¹ and employing 800 full and part-time employees. Liberty Packing accounts for 75 percent of the U.S. production of diced tomatoes, which are used in all spaghetti sauce and salsa products, 16 percent of the U.S. production of tomato paste, and 6 percent of U.S. food service tomato products. In addition, Liberty Packing is the exclusive tomato supplier for several international branded companies.

1645-2425

1645-2422

Liberty Packing's 840-acre facility lies directly in the potential path of the San Jose to Merced segment of the HSR Project. As a result of the catastrophic disruption the HSR Project will wreak on the West Side of Merced County, surrounding businesses and productive agricultural areas on which Liberty Packing depends for its survival, as well as Liberty Packing's employees and their families, Liberty Packing has been a staunch opponent of the HSR Project. This letter

1645-2426

¹This amount includes the businesses that supply Liberty Packing.

Attn: Draft San Jose to Merced Project Section EIR/EIS June 23, 2020 Page 2

will serve as an additional statement of Liberty Packing's opposition to this ill-conceived project that literally will cut Merced County in two and render our vibrant facility shuttered.

II. The HSR Project as Described in the Draft EIR/EIS Will Harm Liberty Packing, Its Surroundings and the Environment

The HSR Project as described in the Draft EIR/EIS could cause detrimental impacts to Liberty Packing and its environs in two discrete ways, which are set out below. The Draft EIR/EIS will not mitigate these impacts.

- 1. Liberty Packing currently uses the land surrounding to its Santa Nella facility for the land application and disposal of produced water. This process serves to both dispose of the produced water generated at the facility and to recharge the underlying groundwater basin. The HSR Project's path as described in the Draft EIR/EIS cuts across the land Liberty Packing uses for the land application of produced water. If the HSR Project is built as proposed, Liberty Packing will be forced to find a new way to dispose of its produced water, as its ability to engage in this land application will be either foreclosed completely or significantly reduced. It is estimated that replacing Liberty Packing's existing business and facilities, including its current land application and disposal process, will cost approximately \$400 million.
2. The Draft EIR/EIS has identified subsidence as a concern that must be monitored. (See e.g. Draft EIR/EIS Section 3.9.3.1; Section 3.9.5.2.) To the extent that subsidence control measures taken by the Authority would impact groundwater wells, Liberty Packing objects to any interference with its use of three groundwater supply wells integral to Liberty Packing's operations. It is imperative that Liberty Packing maintain full control over and use of its groundwater supply wells.

III. To Avoid Impacts to Liberty Packing and Other Local Businesses, the Authority Should Consider Project Alternatives

To the extent that they have not been evaluated by the Authority, Liberty Packing recommends consideration of the following project alternatives. Liberty Packing believes these suggested alternatives are superior to the planned HSR Project alignment because they will not result in impacts to Liberty Packing's Santa Nella Facility.

- 1. The Authority should relocate the HSR Project's proposed alignment to run adjacent to Highway 140. This realignment would achieve the goals of the HSR Project without creating any impacts to Liberty Packing's operations or its surrounding environment.
2. If the Authority decides to pursue the proposed track alignment, the Authority should continue the planned elevated track at the Ingomar Grade in the vicinity of Liberty Packing's Santa Nella facility. Elevated track would prevent interference with Liberty

Submission 1645 (Michael Mills, STOEL RIVES LLP, June 23, 2020) - Continued

Attn: Draft San Jose to Merced Project Section EIR/EIS
June 23, 2020
Page 3

1645-2426

Packing's land application and disposal processes and help mitigate the impacts to groundwater elevations described above.

1645-2427

IV. Conclusion

The proposed HSR Project's impacts on Liberty Packing and other local businesses have not been adequately addressed in the Draft EIR/EIS. Mitigation measures or alternatives have not been proposed that would substantially lessen these impacts. For these reasons, the Draft EIR/EIS must be revised and recirculated.²

Very truly yours,



Michael N. Mills

cc: Liberty Packing Company

² Despite requesting notices about this project from the High Speed Rail Authority, neither Liberty Packing, nor its counsel, received notice of the availability of Draft EIR/EIS.

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Response to Submission 1645 (Michael Mills, STOEL RIVES LLP, June 23, 2020)

1645-2422

Refer to Standard Response SJM-Response-GEN-1: Opposition and Comments on the Merits of the Project.

The comment is correct that Liberty Packing's property would be affected by the project alternatives. Section 3.12, Socioeconomics and Communities, of the Draft EIR/EIS, as well as the San Jose to Merced Project Section Draft Relocation Impact Report (Authority 2019b as cited in Section 3.12 of the Draft EIR/EIS) provide information regarding project-related displacements and acquisitions. Refer to Appendix A of the San Jose to Merced Project Section Draft Relocation Impact Report for more information regarding the Authority's relocation assistance programs. These programs address the rights and benefits of individuals displaced from residences and mobile homes, as well as businesses, farms, and nonprofit organizations. Specific consultations and arrangements with property owners would occur once the design is finalized.

1645-2423

Construction of any of the project alternatives would require both temporary and permanent acquisition of land owned by Liberty Packing Company for construction and operation of the rail right-of-way. The proposed alignment would be on viaduct across Liberty Packing's property and would not necessarily prohibit the current uses of the affected land. If necessary, the Authority would acquire land from property owners whose land is directly affected by the project in accordance with the Uniform Relocation Act (42 U.S.C. Chapter 61). Parcel-specific analysis will take place during the appraisal process before property acquisition, consistent with the Uniform Relocation Act, which establishes minimum standards for the treatment of and compensation to individuals whose real property is acquired for a federally funded project. Information about acquisition, compensation, and relocation assistance is also available on the Authority's website:

http://www.hsr.ca.gov/Programs/private_property.html. In addition, the Authority has committed to maintaining a permit bureau to help businesses overcome the regulatory disruptions caused by the project, including those related to changes in wastewater management.

1645-2424

The Authority does not expect that any subsidence control measures would adversely affect wells or alter existing groundwater pumping regulations, including wells owned by Liberty Packing. The Authority has incorporated features into the project that would require monitoring ground elevations to ensure that any construction-related dewatering operations would not accelerate ground subsidence. This would include, as needed, reducing the amount of construction dewatering to avoid or minimize any detected subsidence. The Authority expects that any dewatering that is necessary in the vicinity of Liberty Packing is expected to be relatively shallow, such that it would not affect the productivity of nearby wells. Furthermore, the subsidence control measures would reduce any potential impacts on wells by minimizing groundwater withdrawal. A review of DWR's Well Completion Report Map Application indicates that wells in the vicinity of Liberty Packing, on average, draw groundwater from deeper portions of the aquifer that should not be affected by project construction. However, if one or more of Liberty Packing's wells and/or associated surface equipment is located within the permanent HSR right-of-way, the State would pay for the cost of the replacement well and ensure that a functioning replacement well has been provided and is fully operational before the existing well is abandoned.

1645-2425

Refer to Standard Response SJM-Response-ALT-1: Alternatives Selection and Evaluation Process, SJM-Response-ALT-2: Project-Specific Alternatives Considerations.

1645-2426

The commenter's preference for an elevated track, if the current alignment is selected, is noted. The submission did not provide the parcels or other specific geographic boundaries associated with the Liberty Packing's Santa Nella facility, so the extent of viaduct in relation to the facility could not be evaluated. However, as shown on Sheet TT-D1603 in Book 4B of Volume 3, Preliminary Engineering for Project Design Record, HSR is on viaduct from Stations 4545+10 and 4618+00 in the vicinity of Liberty Packing's Santa Nella facility. The Authority would implement SOCIO-IAMF#2 and SOCIO-IAMF#3 if property acquisition or displacements occur.

Response to Submission 1645 (Michael Mills, STOEL RIVES LLP, June 23, 2020) - Continued

1645-2427

Section 3.12, Socioeconomics and Communities, of the Draft EIR/EIS discloses the residential, commercial/industrial businesses, agricultural, and community and public facility displacements that would result from construction of the project alternatives and provides information about relocation resources. Parcel-specific analysis would take place during the appraisal process before property acquisition, consistent with the Uniform Relocation Act, and businesses would be compensated at fair market value for the purchase of property and any related damages. Refer to the responses to comments 1645-2422 through 1645-2426 for additional detailed responses. No additional measures to avoid or minimize effects are warranted.

Submission 1348 (Steven Marlborough, Superior Automotive and RV, June 4, 2020)

San Jose - Merced - RECORD #1348 DETAIL

Status : Action Pending
Record Date : 6/4/2020
Submission Date : 6/4/2020
Interest As : Business and/or Organization
First Name : Steven
Last Name : Marlborough

Stakeholder Comments/Issues :

1348-140

I have to say that the options 1 and 3 are the ones that will not destroy the quality of life in Morgan Hill. High speed trains running through a neighborhood. That's just awful. I personally think route 3 makes the most sense. That way it will not be as disruptive of Gilroy. Option #4 also puts the new rail line at grade next to several neighborhoods.

I am hoping this project does not destroy my business and severely impact life in the southern parts of Santa Clara.

Response to Submission 1348 (Steven Marlborough, Superior Automotive and RV, June 4, 2020)

1348-140

Refer to Standard Response SJM-Response-ALT-1: Alternatives Selection and Evaluation Process.

The comment supports Alternatives 1 and 3 as being better for Morgan Hill than Alternative 4. Table S-3 and Table S-5 of the Draft EIR/EIS provide a comparison of the impacts of each alternative.

Submission 1302 (Martin Harris, Terra Land Group, May 26, 2020)

San Jose - Merced - RECORD #1302 DETAIL

Status : Action Pending
Record Date : 5/27/2020
Submission Date : 5/26/2020
Interest As : Business and/or Organization
First Name : Martin
Last Name : Harris
Attachments : 2020-05-26_LTR_HSR_PubComm.pdf (293 kb)

Stakeholder Comments/Issues :

Good Afternoon,

Attached please find a public comment letter dated May 26, 2020 from Terra Land Group to the California High Speed Rail Authority regarding the San Jose to Merced Project Section: Draft Environmental Impact Report/Environmental Impact Statement.

Please provide a confirmation when this letter has been received.

Thank you,

Martin Harris

Terra Land Group

MH/cm

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Submission 1302 (Martin Harris, Terra Land Group, May 26, 2020) - Continued

TERRA LAND GROUP, LLC

TERRA LAND GROUP, LLC

May 26, 2020

VIA EMAIL

California High Speed Rail Authority
San Jose to Merced Project Section: Draft EIR/EIS
100 Paseo de San Antonio, Suite 300
San Jose, CA 95113
(san.jose_merced@hsr.ca.gov)

Re: Public Comments on the California High Speed Rail Authority ("HSR") San Jose to Merced Project Section: Draft Environmental Impact Report/Environmental Impact Statement.

Dear Project Team,

My name is Martin Harris and I am an authorized representative for Terra Land Group, LLC ("TLG"). TLG owns properties and businesses in Lathrop, Manteca, and Los Banos.

For several years, TLG has advocated for protection from flooding caused by development impacts. TLG is concerned because as more and more land is repurposed for development in our areas of the Central Valley, irreversible impacts may be created to water pathways, conveyance, and drainage systems. These impacts may worsen the effects of flooding on homes and businesses which reside in flood-sensitive zones.

California Senate Bill No. 5 ("SB5") requires development projects to consider the impacts of both 100-year and 200-year flood events and their impact to the community as may be affected by the project.

Specifically, please consider any and all rail system at-grade and grade separation (aerial, embankment, tunnel, or trench) track modification impacts that may affect both 100-year and 200-year SB5 flood water drainage and other hydrology-related impacts resulting from the HSR San Jose to Merced Project. To ensure the protection of everyone that may be affected, TLG believes that those impacts should be considered for all related future rail system modifications and grade separations both inside and outside of the HSR San Jose to Merced alignment construction area.

Please also consider this project's effects on setting grade elevations and the potential for altering drainage flows in the areas affecting the ACEforward Rail and Valley Link Rail projects. (See Enclosure)

Thank you for your attention to this very important matter.

5151 E. ALMONDWOOD DRIVE MANTECA, CA 95337

Pg. 1 of 2

Respectfully,



Martin Harris
for Terra Land Group, LLC.

MH/cm

Enclosure:

This Enclosure is attached but it can also be downloaded from Dropbox through the provided hyperlink.

1. 2020-05-18 letter from TLG to the California Water Commission (https://www.dropbox.com/s/z7zuhq62dcokbzt/2020-05-18_LTR_CWC_AgIts9-11.pdf?dl=0)

cc:

San Joaquin Regional Rail Commission Board of Directors, % Jackie Miramontes
Tri-Valley - San Joaquin Valley Regional Rail Authority Board of Directors, % Candice Kendall

5151 E. ALMONDWOOD DRIVE MANTECA, CA 95337

Pg. 2 of 2

1302-117

Submission 1302 (Martin Harris, Terra Land Group, May 26, 2020) - Continued

TERRA LAND GROUP, LLC

ENCLOSURE

TERRA LAND GROUP, LLC

May 18, 2020

VIA EMAIL

California Water Commission
P.O. Box 942836
Sacramento, California 94236-0001
(cwc@water.ca.gov)

Re: May 20, 2020 Meeting of the California Water Commission ("CWC") Agenda Item 9: Action Item: Annual Review of the State Water Project; Item 10: Priorities for California's Water; and Item 11: State Role in Financing Regional Conveyance Infrastructure.

Dear Commission Members,

My name is Martin Harris and I am an authorized representative for Terra Land Group, LLC ("TLG"). TLG owns property and operates business in the Lathrop and South Manteca areas. Over the past few years, TLG representative Martin Harris has:

- (i) Attended many public and private meetings; and
(ii) Reviewed thousands of pages of environmental documents; and
(iii) Written over seven hundred letters to local and state authorities expressing concerns related to the effects of development on flooding in our area.

TLG believes as more and more people move into California and as more land is being developed or farmed, there needs to be more water storage and reuse opportunities to accommodate those increased needs. This is especially important as local city, county, state, and federal authorities take various actions to divert or hold back an increasing amount of water (from all sources) to make more water available to the public they serve. However, there also needs to be safe ways of storing, delivering, conveying, draining, and discharging that water to avoid flood and other hydrology-related impacts for the people who live in the areas that may be affected.

TLG is writing this letter to make the CWC members members aware of what appears to be a joint effort by both local, state, and federal authorities to pursue a phased strategy of flood protection and other federally-assisted improvements both inside and outside of the South Delta to meet California Senate Bill No. 5 ("SB 5") requirements as well as provide improved efficiencies in the ways we currently are storing, delivering, reusing, and draining water. (See Enclosure 1)

TLG believes that storing, delivering, reusing, and draining water in and along the South Delta becomes complicated when it is considered that the January 2018 San Joaquin River Basin Lower San Joaquin River, CA Final Integrated Interim Feasibility Report/EIR/EIS: ("LSJRFS") includes the following:

- 1. Page ES-1 of the LSJRFS states: The study area also includes the distributary channels of the San Joaquin River in the southernmost reaches of the Delta; Paradise Cut and Old River as far north as Tracy Boulevard, and Middle River as far north as Victoria Canal.

5151 E. ALMONDWOOD DRIVE MANTECA, CA 95337

- 2. Page 3-31 of the LSJRFS states: Currently, the levee safety program has defined the levee system that incorporates RD 17 as bounded on the north by Walker Slough, west by the San Joaquin River and south by the Stanislaus River. This includes RD 17, RD 2096, RD 2094, RD 2075 and RD 2064.
3. Page 5-17 of the LSJRFS states: Stanislaus River to Paradise Cut. The confluence of the San Joaquin and Stanislaus Rivers defines the upstream extent of the hydraulic model used for this study.
4. Page ES-2 of the LSJRFS states: Analysis of the study area is challenged by the presence of three sources of flooding, the Delta Front, Calaveras River and San Joaquin River. This results in commingled floodplains for the North and Central Stockton areas. The distributary nature of the Delta also affects Delta water levels, because high flows from the Sacramento River may "fill" the Delta prior to a peak inflow on the San Joaquin River as occurred in 1997, raising water levels on the Delta front levees.
5. Page 5-27 of the LSJRFS states: 2.1.1 FLOODING Problem: There is significant risk to public health, safety and property in the study area associated with flooding. The study area is located in the Central Valley of California which has very little topographic relief, resulting in potential flooding of areas far from water courses... (See Enclosure 1)

Potential Impacts to Consider:

TLG believes that all Mossdale Tract Flood modeling and Adequate Progress reports that have been publicly released to date have failed to fully consider and provide mitigation measures for:

- (i) Unresolved and continuing sedimentation issues that continue to reduce channel flow capacity in and along the South Delta Lower San Joaquin River System.
(ii) Climate change and continued uncertainty relating to its effect on increasing the total potential volumes of channel flows to be expected in and along the South Delta Lower San Joaquin River System.

COMMENT: Martin Harris and several other South Manteca rural neighbors attended a Central Valley Flood Protection Board Workshop on February 14, 2020. Although a number of climate change presentations were made by staff, flood models and associated drainage flow volumes related to climate change do not appear to have been fully determined.

QUESTION: What effect will this have on determining the total amount of reservoir storage water that can be safely stored in higher elevations throughout the Sacramento and San Joaquin River Reservoir System(s)?

COMMENT: The Paradise Cut Expansion project, in the form presented in the "Conceptual Design Technical Memo/Paradise Cut Expansion Project/April 9, 2019," may or may not prove adequate in offsetting the full range of development and other hydrology-related impacts that may be created. Also, TLG believes that the Paradise Cut Expansion Stage reductions called for between the Paradise Weir and the Airport Way (Vernalis Bridge)

5151 E. ALMONDWOOD DRIVE MANTECA, CA 95337

Submission 1302 (Martin Harris, Terra Land Group, May 26, 2020) - Continued

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may not fully address the potential for additional drainage impacts to be created. (See Enclosures 1-8)

This is especially concerning when considering pages 4 and 5 of the Mossdale Tract Program: 2019 Annual Adequate Progress Report Update for Urban Level of Protection-Final Report (included as Attachment 2 to the 8/20/2019 MCC Meeting Agenda Item B.3), which states that, "the Urban Flood Risk Reduction Study remains incomplete and the Climate Adoption Policy is underway. As such, a new determination that the project meets the appropriate Standard of Protection will need to be made in conjunction with the 2020 Annual Report."

QUESTION: How will what appears to be a very real potential for unresolved and continuing sedimentation and climate change issues in and along the South Delta be considered and allowed for in the final Mossdale Tract Drainage Plan? (See Enclosures 1-8)

(iii) A Stanislaus River right bank levee breach in the areas west of the City of Ripon.

(iv) Limited topographic relief to ground surface areas in and along the South Delta.

QUESTION: Will mitigation measures be included to prevent any potential for reverse channel flows and associated backwater effects that may impede the natural flow of Old River as identified on pages 3A-28 and 3A-29 of the Bay Delta Conservation Plan California WaterFix Final EIR/EIS (December 2016)?

QUESTION: Will limited topographic relief to ground surface areas in and along the South Delta slow down San Joaquin River (and Paradise Cut) channel flows and promote continuing sedimentation?

(v) Various federal and state-funded Manteca and Lathrop area highway construction and other state, federal, and/or county transportation improvement projects as presented in (a) the 2014 San Joaquin Council of Governments Sustainable Communities Strategy, Draft EIR and 2015 FTIP Conformity Document.

QUESTION: Have all roadway-related floodwater and other hydrology-related drainage impacts to the areas south of Manteca been properly considered (ie: Reclamation Districts 17, 2094, 2096, 2075, 2064, and the South San Joaquin Irrigation District ("SSJID"))?

(vi) Unresolved plans as to how the cities of Manteca and Lathrop can reasonably drain what appears to be ever-increasing amounts of stormwater and effluent wastewater from the residential, commercial, and industrial-zoned developing areas into non-developing areas that flooded in 1997.

COMMENT: TLG believes that any and all total drainage flow volumes and drainage flow patterns to be expected in and along the South Delta have not been adequately determined and may be different than what the narrow scope of existing flood models may indicate. (See Enclosures 1-8)

QUESTION: What potential increased flood water, stormwater, and effluent wastewater, irrigation water, potable water delivery, traffic circulation, emergency vehicle services response and private property road access impacts and changes to drainage patterns may

5151 E. ALMONDWOOD DRIVE MANTECA, CA 95337

Pg. 3 of 6

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be created due to the construction (and/or expansion) of 100-year flood protection infrastructure as appears to be called for due to a recent May 21, 2019 San Joaquin County Board of Supervisors approval of Morning Hearing item #1: Development Title Text Amendment No. PA 1900067 allowing revisions to the Definition of Structure?

QUESTION: What increased flood and back-water impacts may occur when that same 100-year infrastructure (as referenced in the previous question) is subjected to a 200-year flood event?

(vii) Flood and other hydrology-related drainage impacts anticipated to occur in conjunction with the ACE train and Valley Link rail expansions.

COMMENT: TLG believes that decisions related to rail system at-grade and grade separation (aerial, embankment, tunnel, or trench) track modifications in and along the areas crossing the South Delta (Mossdale) may affect both 100-year and 200-year California Senate Bill No. 5 ("SB5") flood water drainage and other hydrology-related impacts in the areas around the Manteca and Lathrop communities.

(viii) Flood and other hydrology-related drainage impacts anticipated to occur in conjunction with RD 17 planned improvements associated with any and all Phase II, Phase III, and California Senate Bill No. 5 200-year projects to be considered.

(ix) Flood and other hydrology-related impacts that may occur in conjunction with anticipated changes to the Tri-Dam Project, the South San Joaquin Irrigation District, South San Joaquin Groundwater Sustainability Agency ("SSJGSA"), South Delta Water Agency ("SDWA"), and the Eastern San Joaquin Groundwater Authority water master plans.

COMMENT: TLG believes that any Tri-Dam Project, SSJID, SSJGSA, SDWA, or Eastern San Joaquin Groundwater Authority water master plan needs to consider flood and other hydrology-related impacts associated with SSJID drain #11 (and SSJID drain #10) for all areas extending to their origin.

(x) Short-term and long-range flood and other hydrology-related impacts that may occur in conjunction with what is anticipated to be a continuing series of approvals of water transfer agreements between the SDWA and SSJID (or SSJGSA). (For an example, see SSJID 5/12/2020 meeting agenda items 9 and 10).

QUESTION: When considering the potential water supply needs in the areas of southwest Manteca and Lathrop, isn't it likely that a combination of one or more future SSJID/SDWA water transfer agreements will eventually over time result in water supply, conveyance, conservation, and drainage infrastructure being modified or constructed to transfer water to southwest Manteca as well as other SDWA users located downstream?

QUESTION: If so, what drainage and other hydrology-related impacts should be considered? (See Enclosures 1-8)

(xi) Flood and other hydrology-related impacts that may occur in conjunction with the anticipated expansion of River Islands as proposed in the Notice of Preparation for the River Islands Phase 1 or 2 Project/Update for the West Lathrop Specific Plan.

5151 E. ALMONDWOOD DRIVE MANTECA, CA 95337

Pg. 4 of 6

Submission 1302 (Martin Harris, Terra Land Group, May 26, 2020) - Continued

TERRA LAND GROUP, LLC

(xii) Flood and other hydrology-related impacts that may occur in conjunction with the adoption of the City of Lathrop's Integrated Water Resources Master Plan (See LCC 12/9/19 meeting agenda item 5.1 and associated project description figures 2.0-7 and 2.0-8).

(xiii) Flood and other hydrology-related impacts that may occur in conjunction with the SJAFCA's Lower San Joaquin River Project. TLG has been informed that this project has won a coveted "New Start" designation in Fiscal Year 2020 along with \$27.225 million in federal funding for preconstruction, engineering, design, and construction of the project's first increment. SJAFCA's Lower San Joaquin River Project will include Phase II of the Lower San Joaquin River Feasibility Study and Mossdale Tract.

An informational briefing was conducted in association with the April 24, 2020 CVFPB meeting agenda item 8D: San Joaquin Area Flood Control Agency Projects Update.

QUESTION: What mitigation measures will be provided as part of SJAFCA's Lower San Joaquin River Project to offset any floodwater and other hydrology-related drainage and water delivery, conservation, and supply impacts to the areas south of Manteca (ie: Reclamation Districts 17, 2094, 2096, 2075, 2064 and the SSJID)?

QUESTION: What part (if any) will the (i) Delta Conveyance Project and (ii) the California Water Resilience Portfolio Initiative play in mitigating any and all drainage and water delivery, conservation, and supply impacts that need to be considered?

QUESTION: When considering the anticipated economic downturn that many are expecting to occur due to the COVID-19 health crisis, will sufficient drainage district maintenance assessments and other drainage infrastructure construction funding be made available to construct (in a timely manner) all phases of the SJAFCA Lower San Joaquin River Project? This includes the Paradise Cut Expansion Project and other flood drainage protection project phases deemed necessary to protect the high-risk areas south of Manteca (ie. Reclamation Districts 17, 2094, 2096, 2075, 2064 and the SSJID). What potential impacts may occur if funding is either suspended or exhausted? (See Enclosure 8)

With these concerns in mind, TLG urges the CWC members to consider the comments and concerns stated in this letter before approving any state water project, conservation project, drainage or conveyance plan, or other agenda item with the potential to affect drainage patterns and total flow volumes in and along the areas south of Manteca (ie. RD 17, 2096, 2075, 2094, 2064, and the SSJID). (See Enclosures 1-8)

Thank you for your attention to this very important matter.

Respectfully,



Martin Harris
for Terra Land Group, LLC.

5151 E. ALMONDWOOD DRIVE MANTECA, CA 95337

TERRA LAND GROUP, LLC

MH/cm

Enclosures:

These Enclosures can be downloaded as needed via Dropbox through the provided hyperlinks.

1. 2018-02-26 letter from TLG to the San Joaquin Area Flood Control Agency (https://www.dropbox.com/s/8scnhemfwexbkr9/2018-02-26_LTR_SJAFCA_LSJLR%20EIR_PublicComm_wEncl.pdf?dl=0)
2. 2018-03-05 letter from TLG to the San Joaquin Area Flood Control Agency (https://www.dropbox.com/s/tl0ir7sookd6ze/2018-03-05_LTR_SJAFCA_Letter2.pdf?dl=0)
3. 2017-04-20 letter from TLG to the San Joaquin County Board of Supervisors (https://www.dropbox.com/s/7dy40jzlaeotw56/2017-04-20_LTR_SJCBS_Re04-25-17MtgPubComm_MHcm.pdf?dl=0)
4. 2019-03-18 letter from TLG to the City of Lathrop Public Works Department (https://www.dropbox.com/s/musf61jnz7azjvy/2019-03-18_LTR_LPW_EIRWaterResPlan.pdf?dl=0)
5. 2019-08-21 letter from TLG to the Eastern San Joaquin Groundwater Agency (https://www.dropbox.com/s/srnfonfc2rbj1j1/2019-08-21_LTR_ESJGA_GSP.pdf?dl=0)
6. 2019-10-07 letter from TLG to the San Joaquin Local Agency Formation Commission (https://www.dropbox.com/s/snktx3dvn8obbz/2019-10-07_LTR_LAFCo_Agts4.pdf?dl=0)
7. 2020-05-11 letter from TLG to the South San Joaquin Irrigation District (https://www.dropbox.com/s/c7plzfsw56gvf1b/2020-05-11_LTR_SSJID_Agts9.pdf?dl=0)
8. 2020-05-16 Manteca Bulletin news article "California Budget Cutbacks Threaten Environmental Spending Plans"

cc:

San Joaquin Area Flood Control Agency, Attn: Chris Elias
Central Valley Flood Protection Board, Attn: Ryan Jones

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Submission 1302 (Martin Harris, Terra Land Group, May 26, 2020) - Continued

5/18/2020

A: Main

ENCLOSURE 8

California budget cutbacks threaten environmental spending plans

SACRAMENTO (AP) — California Gov. Gavin Newsom’s proposed budget cuts include canceling billions of dollars in climate change spending, a blow to environmental advocates who look to the state as a stopgap for the Trump administration’s weakening of federal protections.

In January, Newsom proposed a \$12 billion “climate budget” that, over the next five years, would offer incentives for companies to convert to electric vehicles, give low-interest loans to businesses to clean up their practices and spend billions on projects preparing for floods, droughts and wildfires.

But Thursday, Newsom proposed eliminating most of the foundation for those programs to balance a budget that will have an estimated \$54.3 billion deficit. The economic downturn has been brought by a statewide stay-at-home order to limit the spread of the coronavirus. The order has closed most businesses for two months, putting more than 4.5 million people out of work and sending state tax collections plummeting.

The proposed cuts come as the state is battling the Trump administration over water quality and auto emissions, among other environmental issues.

“At a time when the Trump administration is mounting an unprecedented assault on environmental and public health protection, it’s absolutely devastating and horrifying,” said Kassie Siegel, director of the Climate Law Institute at the Center for Biological Diversity.

The Newsom administration says the cuts represent “unprecedented times” that have forced the state to “make sacrifices that we didn’t think six months ago we would have to do.” The administration chose to protect programs to clean up the air in disadvantaged communities and to provide safe drinking water.

“All the leaders around the world from Germany to Denmark to Japan are all suffering similar economic fates,” said Jared Blumenfeld, secretary of the California Environmental Protection Agency. “What California is doing is prioritizing and making sure, as the governor said, our values come first.”

The biggest cut was scrapping a proposal to borrow \$4.75 billion to prepare the state for climate-change disasters like sea level rise that threatens the coastal cities and devastating wildfires that have destroyed

to convince Newsom not to veto it over cost concerns.

Newsom canceled a \$250 million contribution to the “climate catalyst fund,” aimed at jump starting investment in technology to help clean up private sector polluters.

But the most ironic impact is on the state’s “cap and trade” program, which requires big businesses to purchase credits that allow them to pollute. Coronavirus-related closures since mid-March have shut down most businesses and kept cars off the road, leading to a dramatic improvement in air quality. But it’s also reduced the demand for credits, meaning the state is likely to make less money when it sells them.

That means less money for a host of programs offering incentives for companies to convert their diesel-powered fleets — one of the largest sources of air pollution — to electric vehicles.

“The good news is emissions are decreasing. However, there is a lot of funding that has occurred in the past that may not occur in the future as a result of that,” Blumenfeld said.

The Newsom administration canceled a plan to hire 53 more people to regulate the state’s oil and gas industry. The cut surprised environmental advocates because the new employees would have been paid for not by state income tax collections, but by fees paid from the oil and gas industry itself.

California Department of Natural Resources Secretary Wade Crowfoot said the new hires were withdrawn because of “COVID-related economic issues impacting that sector.”

“Oil and gas won,” said Kathryn Phillips, director of Sierra Club California. “But people who breathe and live near ports are losing.”

Western States Petroleum Association President Cathy Reheis-Boyd said “there are no ‘winners’ when the state or businesses have to make tough budget decisions.”

“Even without these new positions, California will continue to have the toughest regulatory standards for oil production in the world,” she said.

5/18/2020

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tens of thousands of buildings and killed more than 100 people.



That proposal could be revived in the Legislature, where lawmakers view it as a type of economic stimulus to create jobs during a coronavirus-induced economic downturn. But they would first have

Saturday, 05/16/2020 Page .A03

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Response to Submission 1302 (Martin Harris, Terra Land Group, May 26, 2020)

1302-117

Very few portions of the project within the San Joaquin Valley are located within floodplains, and this portion of the project is not expected to substantially alter floodplain conditions. As described in HYD-IAMF#2 (Appendix 2-E, Project Impact Avoidance and Minimization Features, of the Draft EIR/EIS), the entire project would be designed both to remain operational during flood events and to minimize increases in 100-year or 200-year flood elevations (depending on location), and the ways in which the project would achieve this would be described in a flood protection plan. However, the details of the flood protection plan are not currently available, because the plan would be prepared by the design-build contractor during the final design phase. Additionally, other project features would ensure that drainage and water conveyance facilities would remain functional during and after project construction to maintain existing water flow pathways. In some cases, the relocation of drainage and irrigation facilities are shown on the Roll Plots in Volume 3 of the Draft EIR/EIS. Where not shown on the Roll Plots, PUE-IAMF#2 (Appendix 2-E) would require the construction of replacement irrigation facilities before the original facilities are abandoned. During the final design phase, the Authority will coordinate with local agencies and partner agencies to refine the design of the project to ensure it does not result in adverse effects on drainage flows.

Submission 1713 (Abigail Ramsden, The Nature Conservancy, June 23, 2020)

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June 23, 2020

Brian P. Kelly, CEO
California High-Speed Rail Authority
770 L Street, Suite 620
Sacramento, CA 95814

RE: Draft Environmental Impact Report/Environmental Impact Statement for the San Jose to Merced Project Section of the California High-Speed Rail

Dear Mr. Kelly:

Peninsula Open Space Trust (POST), Santa Clara Valley Open Space Authority (Open Space Authority), and the Nature Conservancy (TNC) submit the following comments on the Draft Environmental Impact Report/Environmental Impact Statement (DEIR/EIS) for the San Jose to Merced Project Section (Project) of the California High Speed Rail (HSR).

We appreciate the collaborative spirit that High-Speed Rail Authority (HSRA) staff have brought to our multiple conversations about the Project over the past few years, and hope that collaboration will continue. This comment letter was prepared by Jodi McGraw on behalf of POST, the Open Space Authority, and TNC based on a synthesis of comments provided by Neal Sharma (POST), Tanya Diamond (Pathways for Wildlife), Edmund Sullivan (Santa Clara Valley Habitat Agency), and Jake Smith (Open Space Authority).

The comment letter begins with an overview of the region's significance for biodiversity conservation in California. It then summarizes key issues in the DEIR/EIS and provides detailed comments on the Biological and Aquatic Resources Analysis (Volume 1, Chapter 3, Section 3.7 and associated Technical Reports) and Preliminary Engineering Design Plans (Volume 3). Detailed comments relate to issues with: 1) landscape connectivity, 2) the proposed compensatory mitigation, 3) impacts to existing conservation lands, 4) impacts from construction, and 5) impacts to sensitive species.

We provide comments on the DEIR/EIS analysis of the Project's compatibility with government conservation plans, specifically the Santa Clara Valley Habitat Plan (Valley Habitat Plan), which is an approved federal Habitat Conservation Plan and California Natural Communities Conservation Plan (HCP/NCCP), and the Coyote Valley Landscape Linkage report and Santa Clara Valley Greenprint, both published by the Open Space Authority.

The letter provides comments on the Agricultural Farmland Analysis (Volume 1, Chapter 3, Section 3.14) regarding impacts to the important agricultural resources in the region, especially those identified in the State funded Santa Clara Valley Agricultural Plan adopted by Santa Clara County and the Open Space

High-Speed Rail San Jose to Merced DEIR/EIS POST, Open Space Authority, and TNC Comments

June 23, 2020

Authority. In addition, the letter includes comments on the analysis of impacts to parks, recreation, and open space resources (Volume 1, Chapter 3, Section 3.15). We identify other key documents and scientific research not sufficiently integrated or cited in Appendix 2-J and elsewhere, and additional conservation lands not properly considered.

Finally, we offer brief recommendations for next steps, including our hope that the HSRA will work with our organizations, regulatory agencies, and other stakeholders to refine the Project design, environmental analysis, and mitigations as outlined, in order to both minimize and adequately mitigate the Project's significant impacts on biological resources, including landscape connectivity, and related conservation values pertaining to working lands and public recreational access.

Based on this region's well-documented ecological significance, the significant impacts of every alternative on critical landscape linkages, and extensive issues with the DEIR/EIS's identification and analysis of significant effects, alternatives, and potential mitigation measures (including its lacking in use of the best available scientific information), we are gravely concerned with the Project's negative consequences and irreversible impacts.

The HSRA is charged with ensuring the Project will not harm our region's environment, including its fish and wildlife populations and plant and animal communities, as well the region's agricultural vitality and public recreation benefits, and simply must do better.

We are committed to working with the High-Speed Rail Authority to ensure that the Project utilizes comprehensive mitigation solutions that support the many excellent regional planning and conservation efforts that our organizations and others have invested in together.

Sincerely,

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Walter T. Moore
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Walter T. Moore
President
Peninsula Open Space Trust

DocuSigned by:
Andrea Mackenzie
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Andrea Mackenzie
General Manager
Santa Clara Valley Open
Space Authority

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Jay Ziegler
Director of External Affairs
The Nature Conservancy

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Submission 1713 (Abigail Ramsden, The Nature Conservancy, June 23, 2020) - Continued

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High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments

High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments

Regional Significance of the San Jose to Merced Project Area

The proposed San Jose to Merced Project Section has the potential to irreversibly alter a region of statewide importance for the conservation of biodiversity.

1713-3259

- **Habitat Connectivity:** The Project traverses critical linkages connecting core habitat in the Santa Cruz Mountains and Diablo Range. The Project threatens to sever connectivity in two tenuous linkages between these mountain ranges: Coyote Valley and the Upper Pajaro River (Penrod et al. 2013). It could similarly impact wildlife movement through the Pacheco Pass, which connects extensive core habitat in the northern and southern portions of the Diablo Range Mountains. If not properly designed and adequately mitigated, the Project's impacts on regional habitat connectivity will inhibit species dispersal that is essential for maintaining genetic diversity and persistence of wide-range species such as mountain lion, a candidate species under the California Endangered Species Act, which has experienced declines in genetic diversity in the Central Coast that are attributable to reduced habitat connectivity (Gustafson et al. 2018). Severing connectivity through the Pacheco Pass can impede species migrations along an extensive latitudinal gradient in the Diablo Range, which is essential to their adaptation to climate changes (Penrod et al. 2013). Likewise, lack of connectivity between the Santa Cruz Mountains and Diablo Range threatens the long-term viability of mountain lion and other species populations that could become isolated within the Santa Cruz Mountains.

1713-3260

- **Habitat for Special-Status Species:** The Project area supports numerous federal and state listed threatened, endangered, and other special-status species. These include species found nowhere else in the world, such as Coyote ceanothus and Mount Hamilton thistle, which are endemic to serpentine soils in the region, and species for which long-term recovery has been linked to the maintenance of critical habitat in the area, including California tiger salamander and San Joaquin kitfox. If not properly designed and adequately mitigated, the Project has the potential to imperil these species by: 1) reducing their populations directly, 2) fragmenting their habitat, and 3) degrading adjacent habitat by promoting the invasion and spread of exotic plants and other stressors associated with human development and activities. Given the long, linear nature of the Project, it is anticipated to have significant direct and indirect effects on a large area of adjacent habitat, and significantly alter pristine landscapes such as Pacheco Pass.

1713-3261

- **Sensitive Natural Communities:** The Project area features a diverse mosaic of natural communities including sensitive communities such as serpentine communities, streams, ponds, wetlands, and riparian areas. The Project will traverse and will directly and indirectly impact several of these communities that are widely diminished in the region and state, including the globally rare Sycamore Alluvial Woodland in the Pacheco Creek Reserve.

1713-3262

- **Significant Conservation Lands and Landscapes:** Recognizing its global conservation significance, the Project area has been a focus of significant conservation investment by a broad coalition of federal, state, and local conservation agencies and organizations. Over the past several decades, these entities have protected tens of thousands of acres of conservation lands and have collectively invested millions of dollars – including substantial State funding – and as a result have made significant progress in addressing the effects of historic land use by restoring and enhancing habitat. They have also worked closely with the community to develop and gain broad support for plans to protect important biological resources, enhance landscape connectivity, and safeguard water, scenic, cultural, and agricultural conservation values in the region. These plans include the Santa Clara Valley Habitat Plan (HCP/NCCP), Santa Clara Valley

1713-3262

Greenprint, Coyote Valley Landscape Linkage, and Santa Clara County Regional Conservation Investment Strategy.

The Project will traverse this significant conservation landscape and be built directly on existing conservation lands, such as the Pacheco Creek Reserve and Romero Ranch. In doing so, it will impact protected populations of species and occurrences of sensitive natural communities in the Project footprint, as well as indirectly affect a much larger swath of important protected lands along and near the alignment, by introducing a variety of anthropogenic stressors including invasive plants and pathogens, noise, light, and trash, among others. The Project will also impede future conservation efforts in the region, by increasing the complexity and cost of land protection, restoration, and enhancement, including wildlife crossing infrastructure improvements for Coyote Valley, the Upper Pajaro River Area, and Pacheco Pass, and Sycamore Alluvial Woodland restoration in Pacheco Pass. It could also eliminate or reduce the suitability of lands identified as important for habitat conservation and restoration.

Summary of Issues with the DEIR/EIS

The following summarizes the main issues identified in review of the DEIR/EIS and Project. The extent of the issues as well as the recommended revisions to the Project and DEIR/EIS are detailed in the individual comments that follow.

1713-3263

- **Inadequate Mitigation for Connectivity:** The Wildlife Corridor Assessment (WCA) does not accurately reflect the extent to which the existing landscape is permeable, nor does it acknowledge the anticipated benefits of existing, extensive efforts to enhance connectivity that are underway and that could be impeded by the Project. As a result, the DEIR/EIS analysis underestimates the impacts of the Project on important landscape linkages and does not propose adequate mitigation for habitat connectivity. Though Coyote Valley, Upper Pajaro River, and Pacheco Pass do have impediments to wildlife movement, abundant wildlife tracking data for the region reflects that wildlife do move through these important landscape linkages. The WCA fails to adequately identify the reduction in permeability that will be caused by the at-grade railway, including light, noise, and vibration, which will deter wildlife activity near the Project including use of the crossing structures proposed as mitigation. Additionally, the analysis does not acknowledge the importance of the Pacheco Pass area as a regional landscape linkage. As a result, the Project design and mitigation measures are inadequate for addressing the effects of the Project on connectivity for wildlife.

1713-3264

- **Wildlife Crossing Infrastructure may not be Effective:** The Project relies on culverts and other wildlife crossing infrastructure to mitigate its impacts on wildlife connectivity. However, review of the DEIR/EIS reveals the following issues and deficiencies related to wildlife crossing infrastructure:

- **Locations:** The structures in Pacheco Pass are not sited in areas of concentrated wildlife movement (and instead are based on topography and other considerations) and therefore are unlikely to be effective.
- **Landscapes Context:** The DEIR/EIS does not address habitat protection and restoration near the wildlife crossing structures, which will be essential to promoting their use by wildlife.

1713-3265

Submission 1713 (Abigail Ramsden, The Nature Conservancy, June 23, 2020) - Continued

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**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

- 1713-3266
 - o Design: Aspects of the design do not adhere to the widely accepted standards for effective crossing structures. The culverts in Pacheco Pass are too long (>120 feet) and other structures have limited vertical clearance (<10 feet) which is necessary to promote effective use by multiple species including mountain lion, black-tailed deer, and tule elk. The preliminary engineering designs lack sufficient detail about directional fencing, which is essential to the effectiveness of such structures at promoting safe passage by wildlife, and wildlife intrusion deterrents, which are intended to prevent wildlife from accessing the railway in areas of alternatives where HSR is at-grade.
- 1713-3267
 - o Monitoring: The DEIR/EIS does not address the need for monitoring of the structures to evaluate their effectiveness, nor does it propose remedial actions and adaptive management measures to ensure they promote wildlife movement. Such monitoring and adaptive management will be essential to mitigate the Project impacts to habitat connectivity.
- 1713-3268
 - **Compensatory Mitigation is Inadequate**: Effective compensatory mitigation will be essential to adequately mitigate the impacts of the Project on special status species, sensitive natural communities, and wildlife connectivity, among other biological resources. However, the methods proposed to compensate for the Project are unlikely to adequately mitigate the Project for the following reasons:
 - o Delayed Planning for Compensation: The DEIR/EIS defers planning for the compensatory mitigation until after the DEIR/EIS is reviewed, limiting the public's ability to evaluate its adequacy.
- 1713-3269
 - o Mitigation Ratios are Low: The mitigation ratios offered for sensitive species, communities, and other biological resources are highly variable, without justification for the varying levels (0.5:1 to 4:1). Many of the proposed ratios are likely to be too low to compensate for the impacts of the Project given its disproportionate effects. Due to its long, linear nature, the Project will have extensive edge effects on sensitive species and communities by reducing use of adjacent habitat by species wary of humans; promoting the invasion and spread of exotic plants, pests, and pathogens; polluting adjacent intact habitats; and facilitating populations of human commensal species (e.g., common raven) that can alter natural ecosystems and affect native populations.
- 1713-3270
 - o No Mitigation provided for Unoccupied Habitat: Although the DEIR/EIS analyzes impacts on suitable habitat, it proposes only replacing habitat found to be occupied based on subsequent focal species surveys. Abundant literature has demonstrated that temporarily unoccupied habitat is essential to the long-term persistence of populations, including those that exhibit metapopulation dynamics (e.g., Hanski 1994). Habitat that is not occupied at a given time (i.e., during a survey) is not synonymous with non-habitat (Hall et al. 1997). Additionally, focal species surveys are imperfect and may not detect individuals present, and are expensive and those resources could be better spent on actions that promote long-term viability of species populations in the region, including habitat protection, restoration, and management.
- 1713-3271
 - o Mitigation Ratios Need to be Additive: The DEIR/EIS does not specify that the compensatory mitigation for special-status species, sensitive habitats, and existing conservation lands will be additive, as it must be to adequately mitigate the Project impacts.

**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

- 1713-3271
 - o Alternatives to Transplantation should be Specified: As transplantation projects for rare plants and host plants oftentimes fail, the DEIR/EIS should identify alternative/backup mitigation, which should include permanent habitat protection.
- 1713-3272
 - **Impacts to Existing Conservation Lands**: The effects of the Project on existing conservation lands traversed by the Project should be minimized; moreover, the analysis of these impacts is not complete, and the mitigations provided are not sufficient to adequately address the effects.
 - o Minimize Impacts: The Project must minimize the impacts on existing conservation lands within the Project footprint by limiting the area that HSR condemns and removes from conservation land ownership.
 - o Mitigation Inadequate: The mitigation provided for impacts to existing conservation lands should: 1) be extended to all lands owned and managed for conservation purposes, and not just lands protected by conservation easement (as currently stated in the DEIR/EIS); 2) occur at a higher ratio than just 2:1 to recognize the significant lost public and private investment in the habitat, which has been restored and/or managed to improve its condition; 3) include compensation for staff time and associated costs to address the condemnation and its effects on the remainder of the conservation property, including related legal issues; 4) include compensatory mitigation that is in addition to that provided for impacts to the species habitat and sensitive communities in the land (i.e., the mitigation should be additive).
 - o Missing Lands: The DEIR/EIS analysis of impacts to conservation lands needs to be extended to all conservation lands, including those omitted from the DEIR/EIS such as Tulare Meadows Conservation Easement, Tulare Hill, and the new addition to Pacheco Creek Reserve, as well as new lands protected that might be protected between now and Project implementation.
- 1713-3273
 - **Compatibility with Other Plans**: The DEIR/EIS understates the Project impacts on the effective implementation of conservation plans, including the Valley Habitat Plan (HCP/NCCP), Coyote Valley Landscape Linkage, and the Santa Clara Valley Greenprint. Though the DEIR/EIS evaluated impacts to the plans, the analysis underestimated the impacts due to the following:
 - o Lack of Consideration of Opportunity Costs: The DEIR/EIS does not adequately consider the opportunity cost that the Project presents to plan implementers, who may not be able to pursue anticipated habitat protection and restoration opportunities on critical lands, such as Sycamore Alluvial Woodland restoration in Pacheco Creek Reserve.
 - o Lack of Consideration of Impacts to Non-Quantitative Goals: The DEIR/EIS failed to analyze the impacts of the Project on goals, actions, and other plan elements unless they featured quantitative targets. Though it is understandably more difficult to assess impacts if goals lack quantitative metrics, the Project could still impact the ability of plans to achieve the goals and implement actions that are not quantified, and these impacts should be evaluated and mitigated, as needed.
 - o Lack of Recognition of the Constraints Caused by the Project on the Other Plans: Even where the Project may not preclude a conservation project, it may make it impracticable by increasing the complexity and/or cost, and such constraints should be addressed in the DEIR/EIS.
 - o Lack of Understanding of the Plans: The DEIR/EIS analysis reflects some misunderstandings of the plans, which HSRA should work to clarify by coordinating with the conservation agencies and organizations that developed and are working to
- 1713-3274
 - o Mitigation Ratios are Low: The mitigation ratios offered for sensitive species, communities, and other biological resources are highly variable, without justification for the varying levels (0.5:1 to 4:1). Many of the proposed ratios are likely to be too low to compensate for the impacts of the Project given its disproportionate effects. Due to its long, linear nature, the Project will have extensive edge effects on sensitive species and communities by reducing use of adjacent habitat by species wary of humans; promoting the invasion and spread of exotic plants, pests, and pathogens; polluting adjacent intact habitats; and facilitating populations of human commensal species (e.g., common raven) that can alter natural ecosystems and affect native populations.
- 1713-3275
 - o Mitigation Ratios are Low: The mitigation ratios offered for sensitive species, communities, and other biological resources are highly variable, without justification for the varying levels (0.5:1 to 4:1). Many of the proposed ratios are likely to be too low to compensate for the impacts of the Project given its disproportionate effects. Due to its long, linear nature, the Project will have extensive edge effects on sensitive species and communities by reducing use of adjacent habitat by species wary of humans; promoting the invasion and spread of exotic plants, pests, and pathogens; polluting adjacent intact habitats; and facilitating populations of human commensal species (e.g., common raven) that can alter natural ecosystems and affect native populations.
- 1713-3276
 - o No Mitigation provided for Unoccupied Habitat: Although the DEIR/EIS analyzes impacts on suitable habitat, it proposes only replacing habitat found to be occupied based on subsequent focal species surveys. Abundant literature has demonstrated that temporarily unoccupied habitat is essential to the long-term persistence of populations, including those that exhibit metapopulation dynamics (e.g., Hanski 1994). Habitat that is not occupied at a given time (i.e., during a survey) is not synonymous with non-habitat (Hall et al. 1997). Additionally, focal species surveys are imperfect and may not detect individuals present, and are expensive and those resources could be better spent on actions that promote long-term viability of species populations in the region, including habitat protection, restoration, and management.
- 1713-3277
 - o Mitigation Ratios Need to be Additive: The DEIR/EIS does not specify that the compensatory mitigation for special-status species, sensitive habitats, and existing conservation lands will be additive, as it must be to adequately mitigate the Project impacts.
- 1713-3278
 - o Mitigation Ratios Need to be Additive: The DEIR/EIS does not specify that the compensatory mitigation for special-status species, sensitive habitats, and existing conservation lands will be additive, as it must be to adequately mitigate the Project impacts.

Submission 1713 (Abigail Ramsden, The Nature Conservancy, June 23, 2020) - Continued

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High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments

1713-3278

implement the respective plans. There are notable misunderstandings regarding the wildlife crossing structures as part of the Coyote Valley Landscape Linkage, which have been refined by the Santa Clara County Wildlife Corridor Technical Working Group (2019) as part of plan implementation.

1713-3279

- **Agricultural Farmland:** The DEIR/EIS analysis mischaracterizes agricultural conservation easements and fails to analyze the Project's full effects on agricultural resources and farm operators. The DEIR/EIS fails to recognize the substantial efforts underway to protect agricultural lands in the region. Agriculture conservation goals contained in Santa Clara County's Agricultural Plan and the Open Space Authority's Santa Clara Valley Greenprint will be hindered by the Project, and the mitigation is proposed is neither justified nor adequate.

1713-3280

- **Parks, Recreation, and Open Space Resources:** The DEIR/EIS underrepresents existing and planned park, recreation, and public access resources in the resource study area that will be directly and indirectly impacted by the project during construction and ongoing operations, resulting in an inadequate analysis of Project impacts on these lands.

1713-3281

- **New Information to be Addressed:** The DEIR/EIS needs to be updated to reflect new information including:
 - o **Mountain Lion Listing:** As a candidate for listing under the California Endangered Species Act, mountain lion in the Central Coast will require additional Project design considerations and compensatory mitigation to adequately mitigate the Project impacts on this species, which is vulnerable to population declines due to reduced genetic diversity as a result of habitat fragmentation created by the Project.

1713-3282

- o **Important Reports and Plans:** The DEIR/EIS should integrate results of several reports and plans that are not adequately addressed in the Project design and analysis, including plans developed during preparation of the EIR.

1713-3283

- o **Additional Protected Lands:** The DEIR/EIS needs to address additional conservation lands including the Tulare Meadows Conservation Easement, the Northern Coyote Valley Conservation Area, Tulare Hill, and the Pacheco Creek Reserve.

1713-3284

To address the issues in this letter, HSR should work actively with conservation agencies and organizations, including regulatory agencies, as well as stakeholders that are actively working on conservation in the region. Discussions should address the comments, including the following main issues:

- **Habitat Connectivity,** including aspects of the wildlife crossing infrastructure designs to ensure that they are informed by the best available scientific information and integrate with efforts to promote connectivity through the region;
- **Impacts to existing conservation lands,** including habitat, agriculture, parks, and other open space, to minimize and adequately mitigate them;
- **Impacts to implementation of existing plans,** including the Valley Habitat Plan, which must be successful to help safeguard biodiversity conservation in the region; and

Develop the compensatory mitigation plan, to ensure that it reflects the best available scientific information and will complement, and not conflict with, the efforts of conservation organizations to implement their plans, including achievement of the goals by the Valley Habitat Plan.

High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments

Biological Resource Impacts and Mitigations

Most of the following comments include three elements: 1) the comment (in bold); 2) the description of the comment, background information, and a discussion of the issue (regular font); and 3) a request, usually written in the form of a question, to solicit a written response (numbered, bold, and italics). Some comments requiring a response may not be in this format. Also see the following appendices as noted:

- **Appendix A:** Detailed comments on the preliminary engineering designs for the Project;
- **Appendix B:** Responses to the DEIR/EIS's analysis of conflicts with the Valley Habitat Plan.

Landscape and Habitat Connectivity

Analysis Underrepresents Impacts on Habitat Connectivity

Integrate Successful Conservation to Improve Landscape Connectivity

The DEIR/EIS fails in its analysis of the impacts of the Project to consider the successful, proactive work that is being conducted by conservation agencies and organizations in Coyote Valley, Upper Pajaro Area/Soap Lake, and Pacheco Pass to promote wildlife connectivity and safeguard other conservation values.

Section 3.7.7.7 states that, "Under the No Project Alternative.... future infrastructure improvements such as highway expansions to accommodate population growth, would have impacts on wildlife movement similar to those that have resulted from past development, such as impediments to wildlife movement along established corridors." (page 3.7-110). This analysis fails to acknowledge the past and ongoing work of Peninsula Open Space Trust, Santa Clara Valley Open Space Authority, Santa Clara Valley Habitat Agency, The Nature Conservancy, Caltrans, and their partners including Pathways for Wildlife, to protect habitat, enhance and restore habitat, improve wildlife crossing infrastructure, and advise agencies and organizations on how to safeguard connectivity when planning infrastructure and development in the area, in order to promote habitat connectivity through these important choke points within the landscape linkages.

Likewise, Section 3.19 states, "Past development in the cumulative RSA has resulted in the widespread conversion of undeveloped land to commercial, residential, transportation, and agricultural land uses, resulting in large-scale destruction of habitats for plants and wildlife. These trends are expected to continue, although at a slower pace, resulting in additional conversion or degradation of land cover types for special-status species, non-special-status wildlife, special-status plant communities, aquatic resources, and wildlife movement corridors." (page 3.19-49). This fails to acknowledge trends in conservation, including published/adopted plans, relevant policies (e.g., CA Public Resources Code Section 35180 et seq./Coyote Valley Conservation Program), and the pace and scale of conservation activity such as land acquisition and habitat restoration.

Finally, Section 3.19 goes on to state, "Ongoing development and transportation projects have created new barriers to wildlife movement, reducing habitat connectivity for wildlife throughout the region" and "Most of the planned transportation projects consist of improvements to existing roads or railroads that already serve as barriers to wildlife movement" (page 3.19-53). While it is true that these factors have contributed to degraded habitat and connectivity, studies in Coyote Valley, Upper Pajaro Area/Soap Lake, and Pacheco Pass have documented some degree of landscape permeability, including across

Submission 1713 (Abigail Ramsden, The Nature Conservancy, June 23, 2020) - Continued

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**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

1713-3285

highways (Serieys and Wilmers 2019, Pathways for Wildlife 2020). Due to the stated impacts on wildlife movement due to HSR, further mitigation through design, onsite and offsite compensatory mitigation, and a dedicated monitoring plan to evaluate the effectiveness of features such as wildlife crossing infrastructure will be essential to adequately mitigate the Project impacts on wildlife connectivity.

(1) Will the DEIR/EIS be revised to provide discussion of these past and current conservation efforts and plans which could improve connectivity, acknowledge that connectivity remains (albeit impaired), and discuss the need to coordinate the Project and its mitigation with the ongoing conservation efforts in the region?

1713-3286

Pacheco Pass as a Critical Landscape Linkage

The DEIR/EIS does not acknowledge the importance of the Pacheco Pass area as a critical landscape linkage within the region and the state, nor does it identify or adequately mitigate the project impacts on wildlife connectivity in this area.

Pacheco Pass has been identified as a priority for connectivity by the California State Wildlife Action Plan (CDFW 2015) and the Santa Clara County Regional Conservation Investment Strategy (ICF 2019), and is a natural landscape block in the California Essential Habitat Connectivity Project (Spencer et al 2010). The Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan (Valley Habitat Plan or VHP) identifies Pacheco Pass on SR-152 as a focal area in the Biological Goals and Objectives, Reserve System Design, and long-term monitoring (Santa Clara Valley Habitat Plan 2012). A recent report, *Wildlife Permeability and Hazards across Highway 152 Pacheco Pass 2018-2019* (Pathways for Wildlife 2020), documents wildlife use of bridges and culverts to cross under SR-152 and recommended improvements to wildlife crossing infrastructure. Stakeholders who participated in the HSRA's Wildlife Corridor Assessment (Appendix C of the Biological and Aquatic Resources Technical Report) emphasized the importance of maintaining permeability through this essential linkage area.

Nonetheless, the Project proposes 2.5 miles of cut and fill to install the rail at grade with extensive fencing, which will fragment habitat within this important landscape linkage which is essential for maintaining species populations including adapting to climate change. As designed, the Project will limit the potential for movement by wide-ranging species for which the Project area provides suitable habitat including mountain lion, tule elk, black-tailed deer, and American badger. These species have been documented using wildlife crossing infrastructure and moving at grade through SR-152 (Pathways for Wildlife 2020, POST et al. unpublished data). The embankment and associated fence proposed for the Project will direct wildlife towards SR-152, increasing wildlife mortality due to wildlife-vehicle collisions.

Despite the broad recognition of the importance of the Pacheco Pass region for wildlife connectivity, the DEIR/EIS analysis of impacts to wildlife movement in Section 3.7.9.6 (page 3.7-198) and Section 3.7.7.7 (page 3.7-110) (Impact Bio#42 Temporary Impacts to Wildlife Movement and Impact Bio#43 Permanent Impacts to Wildlife Movement) does not mention Pacheco Pass. The area is not characterized in the Wildlife Connectivity Analysis report, which is Appendix C of the Biological and Aquatic Resources Technical Report, which therefore does not provide recommended design measures for habitat connectivity in this segment.

Moreover, BIO-MM#79 provides for land protection and conservation in Coyote Valley and Upper Pajaro Area/Soap Lake, but not in Pacheco Pass. Likewise, BIO-MM#76 minimizes impacts on wildlife movement during construction within known movement routes for wildlife, but does not reference Pacheco Pass. Additionally, the wildlife crossing infrastructure proposed for this region was not sited based on wildlife movement data, nor is it designed to accommodate the large, wide-ranging species,

9

**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

1713-3286

including tule elk, that will need to utilize it to avoid having the Project fragment their populations as described further below.

(2) How will the DEIR/EIS be revised to address the gaps in the analysis of the importance of maintaining permeability through Pacheco Pass, including: 1) add design features to prevent habitat fragmentation in this area, 2) analyze the impacts of the Project on wildlife movement through this landscape linkage, and 3) provide mitigation including compensatory mitigation for the Project impacts on connectivity through the Pacheco Pass?

1713-3287

Misleading Figure and Table in Wildlife Connectivity Analysis

Table 2-1 and Figure 2-2 of the Wildlife Corridor Assessment (Appendix C of the Biological and Aquatic Resources Technical Report) characterizes the Pacheco Pass segment as being in a tunnel, which is misleading as the rail will be at grade for 2.5 miles in Pacheco Pass. This segment will be created using cut and fill and will include extensive fencing to keep wildlife and people off the rail. This is then properly displayed in Figure 2.6.

(3) Will Table 2-1 and Figure 2-2 be revised in the DEIR/EIS to accurately characterize the rail alignment in Pacheco Pass?

1713-3288

Reduction in Permeability at Pacheco Pass

The permeability analysis in the Wildlife Corridor Assessment failed to identify the reduction in permeability post Project at the cut and fill section of the Project design within the Pacheco Pass, where the Project will be at grade for 2.5 miles. Specifically, the analysis appears to fail to acknowledge the reduction in permeability due to installation of fencing to exclude wildlife from the tracks in this section. The failure to identify a reduction in permeability in this area may be the reason that the Project does not incorporate sufficient wildlife crossing infrastructure and other mitigations to safeguard connectivity in this important landscape linkage.

(4) Will the DEIR/EIS permeability analysis be revised to address the impacts of the rail design in Pacheco Pass, and adjust the Project design and mitigations to address the anticipated decline in permeability due to the Project being at grade for 2.5 miles?

1713-3289

Inadequate Mitigation for Connectivity to Pacheco Pass

The DEIR/EIS should be revised to apply all mitigation measures for habitat connectivity to Pacheco Pass, which has been identified as part of the landscape linkage (Penrod et al. 2013) and large landscape block (Spencer et al. 2010). The following specific measures should be applied to Pacheco Pass:

1. **BIO-MM#76:** This measure minimizes impacts on wildlife movement during construction within known movement routes for wildlife, which should include a specific reference to Pacheco Pass.
2. **BIO-MM#79:** This measure will protect 238 acres (or 239 acres for Alternative 3) of, "lands prioritized for importance to wildlife movement in the Santa Cruz Mountains to Diablo Range Wildlife Linkage and the Soap Lake 100-year floodplain, which corresponds to a 1-to-1 ratio of protected land to project footprint at the MOWF [maintenance of way facility]." This measure should be expanded to include land protection to safeguard wildlife connectivity in the landscape linkage within Pacheco Pass (Penrod et al. 2013), where priorities are identified in

10

Submission 1713 (Abigail Ramsden, The Nature Conservancy, June 23, 2020) - Continued

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High-Speed Rail San Jose to Merced DEIR/EIS POST, Open Space Authority, TNC Comments

1713-3289

coordination with the Valley Habitat Agency, which is working on landscape connectivity in the region.

(5) Will the DEIR/EIS be revised to incorporate mitigations including minimization measures as well as land acquisition to promote connectivity in Pacheco Pass where such measures are recommended for other areas important for wildlife connectivity including Coyote Valley and Soap Lake?

1713-3290

Roads as Barriers

The DEIR/EIS Wildlife Corridor Assessment methods characterizes existing roads as barriers, causing the analysis to underestimate the impacts of the Project on permeability of the landscape for wildlife. For example, wildlife in Coyote Valley are impacted by the presence of roads; however, the available data suggest roads are somewhat permeable (Serieys and Wilmers 2019, SCOSA and CBI 2017, SCCWCTWG 2019). Nonetheless, it is imperative that the Project not further degrade permeability through this tenuous linkage. Published and ongoing studies in the Upper Pajaro River Area and Pacheco Pass similarly reflect a degree of permeability across (under) existing roads, including for HSR focal species (Pathways for Wildlife 2020; POST et al. unpublished data).

(6) Will the DEIR/EIS be revised to reflect that roads are not impermeable and therefore document and mitigate the additional impact of the Project on wildlife movement near roads?

1713-3291

Reduction in Permeability due to Rail Design

The designs reflected on Preliminary Engineering for Project Design sheet TT-D4011 will reduce permeability across areas of the Union Pacific Railroad Tracks. The existing rails are slightly elevated above the ballast on the railway sleeper (tie) so that a small animal (e.g., California tiger salamander or small California red-legged frog) would be able to crawl between the rails and ballast at multiple spots throughout the length of the track. A California red-legged frog could hop over the rails anywhere along these tracks. At Blanchard Road, Emado Avenue (north of Bailey Avenue), Fox Lane, Palm Avenue, Live Oak Avenue, and Tilton Avenue, the existing rails are at the same level as the road, which would allow western pond turtle, California red-legged frog, and California tiger salamander to cross, although increased train traffic frequency from HSR operations, as described in 3.19-77, would present further hazards for attempted at-grade crossings by wildlife. There is at least one record for western pond turtle mortality on Monterey Road (gravid female; H.T. Harvey 2020). Thus, the existing rail line is somewhat permeable for wildlife including herpetofauna, and the permeability analysis presented in the Wildlife Corridor Assessment for the Project does not reflect the reduction in net permeability that will be caused by the Project, especially for smaller animals.

(7) Will the DEIR/EIS be revised to more critically analyze and correctly characterize the current permeability of the landscape and accurately represent the decline in wildlife connectivity that will be caused by the Project, and then identify additional measures to adequately mitigate these impacts?

1713-3292

Effects of Noise, Vibration, and Light

Measures to minimize noise, visual, and train strike impacts (BIO-MM#80) should be implemented throughout the entire Coyote Valley, Upper Pajaro River/Soap Lake, and Pacheco Pass sections. Will this be included prior to train operation? If so, to what extent will it mitigate impacts to focal species? In particular, to what extent will it sufficiently mitigate noise, vibration, and light to an extent that is comparable with wildlife crossing structures that have been proven effective for the focal species in

High-Speed Rail San Jose to Merced DEIR/EIS POST, Open Space Authority, TNC Comments

1713-3292

other locations? Operations impacts caused by noise, vibration, and light could present such a deterrent that there would be avoidance behavior across a variety of taxa, with associated life history, demographic, and natural community impacts (Shilling, 2020).

(8) Will the DEIR/EIS be revised to include mitigation measures for noise, light, and vibration along the Coyote Valley, Soap Lake, and Pacheco Pass sections, specify that the measures will be installed prior to operation, include monitoring to evaluate the effectiveness of the mitigation measures, and provide remedial measures to promote animal movement through the train corridor if mitigation proves to be insufficient?

1713-3293

Vibration

The DEIR/EIS states, "While reptiles, amphibians, and burrowing rodents may perceive ground vibrations caused by passing trains, such vibrations have low potential to affect wildlife movement because they would be of short duration and would occur primarily during the day when most vibration-sensitive wildlife species are inactive. Therefore, CEQA does not require mitigation." (page 3.7-116). However, many native animals sensitive to vibration (e.g., pocket gophers) are diurnal species and are active during the day. Several keystone species including American badger, California tiger salamander, and burrowing owl are fossorial linkage dwellers, which dig or use burrows within landscape linkages as they are traveling through them (Quinn and Diamond 2008, Penrod et al. 2006, Penrod et al. 2013). Burrowing owl and American badger, which occur within the Project area, are very sensitive to human disturbance around burrows and can be easily displaced (Pathways for Wildlife 2020).

(9) Will the DEIR/EIS be revised to conclude that noise and vibration will significantly impact special-status species and wildlife movement including on diurnal species, and develop adequate mitigation for these impacts?

1713-3294

Also, the DEIR/EIS notes that Alternative 4 (the identified Preferred Alternative) would have the greatest contribution to operational vibration impacts (page 3.19-104).

(10) Will the DEIR/EIS include additional design considerations to minimize impact of vibration on wildlife use of crossing structures?

1713-3295

Light

With regards to light, the DEIR/EIS states, "The impact under CEQA would be less than significant for all four alternatives. While artificial light from passing trains and HSR track and systems may result in altered movement or foraging patterns of terrestrial and aerial wildlife species, particularly in non-urban areas, such effects would be localized. Therefore, CEQA does not require mitigation." (page 3-117).

However, several species such as tule elk, mountain lion, and American badger, which utilize the Project area, are sensitive to light disturbance (Beier 2006, Rich and Longcore 2006, Quinn and Diamond 2008, Wilmers et al. 2013). The Project will introduce light into Pacheco Pass, which features limited human development and light.

More detail is needed in the DEIR/EIS regarding specific mitigation measures intended to minimize the significant and unavoidable impacts of new sources of artificial light (e.g., due to the railway and trains, facilities and buildings, maintenance-of-ways, etc.), particularly in conservation areas, where it is important to avoid or reduce contribution to light pollution.

Submission 1713 (Abigail Ramsden, The Nature Conservancy, June 23, 2020) - Continued

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**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

1713-3295

Additionally, localized light impacts near wildlife crossing infrastructure should be fully mitigated to ensure wildlife crossings are effective and adequately mitigate for impacts elsewhere in essential landscape linkages including Coyote Valley, Upper Pajaro Area/Soap Lake, and Pacheco Pass.

(11) Will the DEIR/EIS be revised to acknowledge the significant effects of intermittent and permanent lighting on species that are sensitive to light disturbance and avoid lighted areas at night? How will HSR mitigate the effects of light disturbance, which can deter animal movement through the well-documented linkages such as the Pacheco Pass, Coyote Valley, and the Upper Pajaro River floodplain? How will the EIR address the potential for light to limit wildlife use of wildlife crossing infrastructure, which the Project and DEIR/EIS are relying on to mitigate otherwise significant impacts on wildlife connectivity?

1713-3296

Noise

The DEIR/EIS states, "Alternative 4 would have the most noise impacts because it would result in HSR trains sounding horns at the at-grade crossings and the Caltrain Morgan Hill, San Martin, and Gilroy Stations, whereas the other project alternatives would not." (p. 3.8-17).

(12) What design and operational mitigations will be used to reduce noise impacts along at-grade crossings in Coyote Valley, given its ecological significance?

1713-3297

The DEIR/EIS does not appear to quantify the effects of the portal noise effect, whereby a loud noise (i.e., a 'boom') will occur when the trails emerge from the tunnels, nor does it mitigate the effects of this noise on wildlife. Section 3.4.1 discusses how the tunnel portal design will attenuate the noise associated from the train as it leaves the tunnel; however, a discussion of the specific impacts of this noise on wildlife could not be found. The tunnels are located in areas important for wildlife, including the Upper Pajaro Area and Pacheco Pass, where loud noises associated with the train could inhibit wildlife habitat use and movement through important landscape linkages.

(13) Will the DEIR/EIS be revised to discuss such sound from rail operation at the tunnel ends and how its impacts on wildlife and habitat connectivity will be mitigated?

1713-3298

Effects of Noise Mitigation on Wildlife Movement

The DEIR/EIS mitigation for noise may exacerbate the effects of the Project and should be mitigated. Specifically, BIO-MM#80 states that, "noise barriers would be a minimum height of 17 feet and would be designed to provide a minimum of 10 dBA attenuation of sound generated by HSR operations..." (page 3.7-170).

(14) How will these additional barriers to wildlife movement be mitigated? Will HSR coordinate design of the noise barriers with the appropriate regulatory agencies and stakeholders working to address habitat connectivity in Pacheco Pass, the Upper Pajaro Area, and Coyote Valley?

1713-3299

Issues with Wildlife Crossing Infrastructure (includes Appendix A)

Overreliance on Wildlife Crossing Infrastructure to Mitigate Connectivity

Impacts

The DEIR/EIS relies heavily on wildlife crossing infrastructure included in the Project design and mitigations to address the Project's significant effects on wildlife connectivity and associated impacts on populations in the region, including mountain lion, San Joaquin kit fox, and other protected

**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

1713-3299

species. However, the effectiveness of the infrastructure at mitigating the Project impacts may be limited due to a variety of factors including:

1. Wildlife may be deterred from using the structures by the Project's significant light, vibration, and noise, which may not be fully mitigated;
2. The ecological context including location of the infrastructure with respect to wildlife movement is not fully considered, such that the crossing structures may not be located in areas important for wildlife use;
3. The Project does not address the need for habitat protection and restoration to ensure habitat on either side is intact and can promote effective use of the crossing infrastructure; and
4. Aspects of the crossing structure design do not adhere to the widely accepted standards, as some structures have limited vertical clearance and/or are too long to be used by many wildlife species.

The DEIR/EIS does not include monitoring to evaluate the effectiveness of the structures at facilitating wildlife passage through the train corridor, nor does it include an adaptive management plan with remedial actions to promote wildlife movement in the event that the proposed infrastructure is not sufficient to mitigate the impacts.

(15) Due to the stated impacts on wildlife movement by the Project, further mitigation through design is encouraged, onsite and offsite compensatory mitigation will be needed, and a dedicated monitoring and adaptive management plan will be essential to evaluate the effectiveness of features such as wildlife crossing infrastructure and to prevent the Project from severing connectivity in critical landscape linkages that it traverses including Coyote Valley, the Upper Pajaro Area/Soap Lake, and Pacheco Pass.

1713-3300

Need to Monitor Wildlife Crossing Infrastructure

The DEIR/EIS relies heavily on wildlife crossing infrastructure to mitigate the Project impacts on wildlife connectivity. However, the DEIR/EIS does not discuss how monitoring will be used to evaluate effectiveness of the structures, including through documenting wildlife use, or identify alternative mitigations and remedial actions in the case that they are not effective at preventing habitat fragmentation.

(16) Will the DEIR/EIS be revised to discuss how wildlife underpasses will be monitored and how remedial actions will be taken to improve wildlife connectivity if/where monitoring indicates that one or more species are not able to utilize the structures and the Project is impeding wildlife connectivity?

1713-3301

Mitigate Impacts to Habitat On-Site to Ensure Crossing Structures are Effective

In areas important for wildlife connectivity, including where wildlife crossing infrastructure will be installed or improved, the temporary Project impacts should be restored and additional habitat mitigation should be conducted *on site*, where feasible and necessary to maintain the larger landscape linkage and promote wildlife use of the crossing infrastructure. This approach is recommended generally and is specifically warranted in regards to the design in TT-D1201, in the Lover's Lane/Tequisquita Slough in the Upper Pajaro area, where an embankment feature would destroy a riparian area that is likely serving as refugia habitat and a wildlife corridor in a landscape that has otherwise been highly altered by agricultural use. Remaining habitat and connectivity in that landscape, which is vulnerable to

Submission 1713 (Abigail Ramsden, The Nature Conservancy, June 23, 2020) - Continued

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High-Speed Rail San Jose to Merced DEIR/EIS POST, Open Space Authority, TNC Comments

1713-3301

the impacts of the Project, necessitate on-site restoration and related mitigation to offset impacts on wildlife movement and to avoid severing connectivity in this landscape.

(17) Will the DEIR/EIS be revised to ensure the habitats impacted temporarily by the Project are restored and additional habitat mitigation is conducted on site, where feasible and necessary to maintain habitat connectivity and promote wildlife use of the crossing infrastructure?

1713-3302

Pacheco Pass Crossings is not Well Sited, Too Long to Facilitate Wildlife Movement, and Lacks Directional Fencing

The proposed culverts in Pacheco Pass are not sited in locations known to be important for wildlife movement, in contrast to the DEIR/EIS which states, "all alternatives would include wildlife undercrossings in locations known to be important for wildlife movement in Coyote Valley, eastern Pacheco Pass, and the Central Valley" (Section 3.7.7.7 BIO#43).

The culverts for western Pacheco Pass (between Casa de Fruta and Pacheco Creek Reserve), which are not mentioned in this section, are not sited in locations identified as important for wildlife connectivity based on animal movement data; instead, they appear to have been selected based on geography and topographical considerations.

Moreover, Crossings A, B, C, and D proposed for Pacheco Pass are also too long to promote effective use by wildlife, including wide-ranging species that rely on the landscape linkage such as mountain lion, tule elk, black-tailed deer, and American badger (Beier 1993, Beier 1995, Forman 2000, Cramer 2002, Dickson et al. 2005, Penrod et al. 2006, Ruediger 2007, Meese et al. 2009, Beckmann et al. 2010, Forman 2010, Clevenger and Huijser 2011, Wilmers et al. 2013).

In an email dated December 13, 2018, Pathways for Wildlife provided feedback on draft designs for wildlife crossing infrastructure for the Pacheco Pass region and advised HSRA on the need to review the literature above, particularly Cramer 2002, to design crossing structures that are no more than 120 feet in length to facilitate use by black-tailed deer. The email recommended bridges to promote movement by tule elk (Diamond 2018). However, these identified issues were not addressed and the proposed culverts are inadequate mitigation for the 2.5 miles of cut and fill where the rail will be on embankment and heavily fenced. Additionally, the Project does not appear to incorporate directional fencing to guide animals to the culverts and wildlife crossing infrastructure, which is essential to its effectiveness (Dodd et al. 2007, Gagnon et al. 2010, Loberger et al. 2013).

As a result, the Project, as currently designed and mitigated, will create a formidable barrier to wildlife movement within a designated landscape linkage (Penrod et al. 2013) where extensive wildlife movement has been documented (Pathways for Wildlife 2020). The Valley Habitat Agency and Pathways for Wildlife are working with CDFW and Caltrans to promote wildlife movement through SR-152. The Project will conflict with these efforts by introducing a new barrier with poorly designed wildlife crossings that do not adequately mitigate the Project.

The Wildlife Corridor Assessment included analysis and recommendations for areas of permeability reductions as outlined in Section 4.3.8 of said appendix. However, these analyses and recommendations were not conducted for Pacheco Pass.

The supplemental permeability modelling described in Section 4.3.9 of the Wildlife Corridor Assessment describes how local data and linkage designs were used to develop a supplemental model for Coyote Valley. The stakeholder group that supplied data for Coyote Valley also provided data and a report documenting wildlife movement through Pacheco Pass (Pathways for Wildlife 2020); however, these data were not used to develop a supplemental permeability model for this area.

15

High-Speed Rail San Jose to Merced DEIR/EIS POST, Open Space Authority, TNC Comments

1713-3302

The Wildlife Corridor Assessment post-Project fencing analysis does not appear to have adequately addressed the fencing in the 2.5-mile long segment in Pacheco Pass where the rail will be at grade and fencing will be used to keep wildlife and people off the rail. As a consequence, the permeability of the Project area post Project is not reduced to reflect the fencing.

(18) How will the DEIR/EIS be revised to provide specific analysis and recommendations and incorporate adequate mitigation for wildlife connectivity in the Pacheco Pass area, including by creating crossing structures that can promote wildlife movement? Will the data provided for Pacheco Pass be used to develop a supplemental permeability analysis and recommendations for designs for this area? Will the influence of fencing be integrated into the permeability analysis to identify impacts in the 2.5-mile long segment at grade? Will HSRA revisit the location, type, and dimensions of the proposed wildlife crossing infrastructure in this area to ensure it can mitigate the impacts of the Project on movement of a broad suite of animals in this important landscape linkage? Specifically, will the DEIR/EIS replace the excessively long culverts with one or more bridges or wildlife crossing overpasses, reduce culvert lengths to no more than 120 feet where culverts must be used instead of bridges, and locate crossing infrastructure in areas of documented wildlife movement?

1713-3303

Impacts of the Train on Wildlife Movement through Pacheco Creek Reserve Require Mitigation

The Project would cause unmitigated impacts to wildlife movement under the bridge under SR-152 in the Pacheco Creek Reserve during construction as well as from vibration, light, and noise during operation. The Project traverses the Valley Habitat Agency's Pacheco Creek Reserve, where wildlife movement monitoring has documented multiple species moving under the Pacheco Creek Bridge to move through the SR-152 corridor. These species include mountain lion, a State Candidate Endangered Species, for which the bridge is the only location where the species has been observed traversing through SR-152 in the area (Pathways for Wildlife 2020).

While the Project rail line will be constructed on a bridge through the Pacheco Creek Reserve, operation of the Project will cause noise, vibration, and light that will likely deter wildlife from using the Pacheco Creek Bridge; such impacts are also anticipated to occur during construction. Many wildlife species are active during the day, and could be impacted by construction and operations, contrary to the DEIR/EIS assessment that, "vibrations have low potential to affect wildlife movement because they would be of short duration and would occur primarily during the day when most vibration-sensitive wildlife species are inactive." (p. 3.7-116). Introduction of artificial lighting as part of the Project into the Pacheco Creek Reserve, where there is currently no artificial lighting, will deter use of the Pacheco Creek Bridge as a wildlife crossing, as light disturbance has been shown to cause wildlife to avoid areas including use of important wildlife linkages (Beier 2006, Rich and Longcore 2006).

(19) Will the DEIR/EIS be revised to discuss and mitigate the effects of the Project construction and operations on wildlife movement, including through the Pacheco Creek Bridge which is important for wildlife movement through SR-152?

1713-3304

Lack of Detail in Wildlife Crossing Infrastructure

The DEIR engineering plans lack sufficient detail regarding directional fencing and wildlife intrusion deterrents, which can make or break the effectiveness of wildlife crossing infrastructure.

1. Directional Fencing: The DEIR/EIS designs for wildlife crossing infrastructure do not provide detail on the configuration and extent of directional/exclusionary fencing, which is critical to

16

Submission 1713 (Abigail Ramsden, The Nature Conservancy, June 23, 2020) - Continued

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**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

1713-3304

achieving passage structure effectiveness and promoting permeability through/across highways (Dodd et al. 2007, Gagnon et al. 2010, Loberger et al. 2013) and by extension applies to railway ecology. Appendix J of the Wildlife Corridor Assessment provides some description of taxa-specific and multispecies fencing consideration and BIO-MM#81 provides some narrative description of fencing; however, the Preliminary Engineering for Project Design plans do not provide the details including the extent and tie-ins, which are critical to effectiveness. Appropriately designed and maintained fencing will be essential to prevent wildlife from entering the HSR right of way and adjacent Monterey Road and Union Pacific railway in Coyote Valley.

2. **Wildlife Intrusion Deterrents:** More detail is needed regarding the specifications of the wildlife intrusion deterrents (BIO-MM#81) for at-grade crossings, given the variability of effectiveness of these features to deter deer (Kintsch et al. 2017), as well as a discussion of design considerations for local focal species, including special-status herpetofauna.

(20) Will the DEIR/EIS be revised to include detailed designs for directional fencing and wildlife intrusion deterrents and ensure that these elements are designed based on the literature documenting factors influencing their effectiveness?

1713-3305

Crossing Structure Height

The Project and DEIR/EIS include crossing structures that are of insufficient height to promote use by many native animal species. A minimum height of 10' (feet/foot) is recommended for wildlife undercrossings intended for use by large mammals including mountain lion, black-tailed deer, and tule elk (Clevenger and Huijser 2011). Shorter structures, such as the 10' wide, 4.1' tall crossing between B4080 and B4085(TT-D1411), are unlikely to facilitate wildlife movement by multiple species/guilds as necessary to mitigate the Project impacts on animal populations including mountain lion, deer, and tule elk, and promote connectivity for wildlife. An overcrossing may be needed to provide safe passage for these and other species through the Project in this area.

(21) Will the DEIR/EIS be revised to ensure that all wildlife crossing infrastructure achieve the minimum height necessary to ensure the mitigation is effective?

1713-3306

Viaduct through Coyote Valley

The DEIR/EIS includes construction of a viaduct through Coyote Valley, which may preclude the ability for conservation agencies and organizations to work to promote landscape connectivity in the region and/or to construct a functional wildlife overcrossing, due to impacts on engineering feasibility, cost, and operational impacts from the Project.

(22) To address these conflicts, HSR should meet with stakeholders and regulatory agencies in the region to discuss the engineering/design and biological resource considerations in order to refine the Project, including by evaluating whether an overcrossing (ecoduct) can be implemented and used by the focal species.

Preliminary Engineering Designs

Appendix A provides additional feedback on the Preliminary Engineering Designs for the wildlife crossing infrastructure.

17

**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

1713-3307

Compensatory Mitigation

Development of the Compensatory Mitigation Plan

BIO-MM#10 calls for preparation and implementation of the compensatory mitigation plan (CMP) for species and species habitat. The CMP should be developed with input from conservation agencies and organizations with expertise in the Project Area, to ensure that it promotes, rather than conflicts with, the goals of conservation plans, strategies, and other initiatives in the region, and that it reflects local expertise and the region's conservation values. These agencies and organizations can play a key role in successful implementation of the CMP by providing local knowledge and capacity in the field of land conservation and management.

(23) Will the DEIR/EIS be revised to state that the CMP will be developed in close coordination with conservation agencies and organizations with expertise and active conservation programs in the Project area in order to enhance the effectiveness of the compensatory mitigation?

1713-3308

Mitigation Ratios Insufficient to Offset Disproportionate Impacts of the Linear Project Area

As a result of its long-linear nature, the Project will likely have extensive edge effects and indirect effects on sensitive species and communities that are disproportionately high relative to the size of the area of impact. The exceptionally high perimeter-to-area ratio of the Project area will result in extensive indirect effects of the Project on adjacent habitat outside of the Project footprint including by:

1. Reducing or eliminating use of habitat by species that are wary of humans;
2. Promoting the invasion and spread of exotic plants, which are promoted by disturbance and invade intact habitat along infrastructure corridors (Hobbs and Huenneke 1992);
3. Facilitating the spread of pests and pathogens in association with human activities including vegetation management;
4. Polluting intact habitats with dust and other airborne pollutants as well as trash; and
5. Promoting populations of human commensal species (e.g., common raven) that can displace native species that occupy areas away from human activities (Kristan et al. 2007).

As a result of its high perimeter-to-area ratio, the Project's impacts are disproportionate to its size when compared with a Project of the same impact area that is more compact/discrete geographically speaking. As a result, the compensatory mitigation ratios that are provided for special-status species and sensitive habitat as well as other sensitive biological resources should be much higher in order to adequately mitigate the impacts of the Project.

(24) Will the DEIR/EIS be revised to increase the mitigation ratios in order to reflect the disproportionate effects of the Project on sensitive biological resources, to ensure the mitigation is appropriate and will reduce the impacts to below a significant level?

1713-3309

Mitigate for Suitable Habitat

The DEIR/EIS specifies that mitigation will not be provided if, "habitat is determined to be unoccupied based on negative species surveys" (page 3.7-141). Such presence/absence surveys cannot reliably conclude a species is absent. Animals may move through habitat periodically and be missed during

18

Submission 1713 (Abigail Ramsden, The Nature Conservancy, June 23, 2020) - Continued

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High-Speed Rail San Jose to Merced DEIR/EIS POST, Open Space Authority, TNC Comments

1713-3309

‘snapshot’ surveys. Surveys of long, linear features such as the Project area may also fail to detect species occurring in the landscape due to the nature of the survey area. Abundant literature has demonstrated that temporarily unoccupied habitat is essential to the long-term persistence of populations, including those that exhibit metapopulation dynamics (e.g., Hanski 1994). Habitat important for conservation can include a wide variety of space and resource configurations, including areas that are marginal or of low quality (Vanbianchi et al. 2018) and stopover habitats that are occupied temporarily or sporadically such as during migration (Sheehy et al. 2011). Habitat that is not occupied at a given time is not synonymous with non-habitat (Hall et al. 1997). Finally, such surveys are expensive and those resources could be better spent on actions that promote long-term viability of species populations in the region, including habitat protect, restoration, and management.

(25) Will the DEIR/EIS be revised to provide compensatory mitigation for suitable habitat rather than occupied habitat to maximize the cost effectiveness of the resources expended by HSRA on environmental mitigation?

1713-3310

Mitigation Ratios are Highly Variable, Not Supported, and Often Too Low

The DEIR/EIS proposes compensating for Project impacts to special-status species habitat at a wide range of mitigation ratios from 0.5:1, which is less than replacement value, to 4:1. In most cases, the DEIR/EIS does not provide a rationale for the mitigation ratio; therefore, it is not possible to evaluate whether the mitigation is appropriate, proportional, and will avoid or substantially reduce the impacts, or whether it will reduce impacts to below a significant level.

Many of the proposed ratios are very low, such as 1:1 for burrowing owl breeding habitat and 0.5:1 for low-value and 1:1 for moderate or high-value land for San Joaquin kit fox. While these and other low ratios may be applied elsewhere in the state, they will be inadequate to mitigate the impacts of the Project in this region due to the species’ rarity in this landscape, and the disproportionate effect of the Project due to its high perimeter-to-area ratio as described above.

(26) Will the DEIR/EIS be revised to increase the compensatory mitigation for species habitat and provide the rationale for the mitigation ratios, which should be developed based on the impacts of the Project, be appropriate, and sufficient to reduce the impacts below a significant level?

1713-3311

No Compensatory Mitigation Provided for Some Special-Status Species

The DEIR/EIS fails to provide compensatory mitigation for the Project impacts to certain special-status species, including American badger as outlined in Impact BIO#28 (page 3.7-213). While the DEIR/EIS identifies mitigations including compensation for habitat loss of burrowing owl, a California Species of Special Concern, the DEIR/EIS identifies numerous impacts to American badger, including loss of denning and dispersal habitat, direct mortality, disturbance, and habitat fragmentation; however, the DEIR does not compensate for Project impacts to this other Species of Special Concern. Moreover, while the DEIR/EIS follows the Valley Habitat Plan’s conditions of approval for burrowing owl, the DEIR/EIS does not incorporate the conditions of approval for American badger. The Valley Habitat Agency is amending their HCP/NCCP permits to include American badger. Lack of effective mitigation for the Project will negatively impact these efforts by imperiling this species.

(27) Will the DEIR/EIS be revised to provide mitigation for American badger, a California Species of Special Concern, including: 1) compensatory mitigation for habitat loss, and 2) incorporation of the conditions of approval for projects under the Valley Habitat Plan designed to protect American badger?

19

High-Speed Rail San Jose to Merced DEIR/EIS POST, Open Space Authority, TNC Comments

1713-3312

Multiple Mitigation Ratios Require Clarification

The DEIR/EIS identifies multiple mitigation ratios for Sycamore Alluvial Woodland:

- **BIO-MM#72:** “The Authority would compensate for permanent impacts on riparian habitats at a ratio of 2:1 (mixed riparian and palustrine forested wetland) or 4:1 (California sycamore woodland...” (p. 3.7-168) as compensation for permanent impacts on riparian habitat.
- **BIO-MM#85:** “To offset permanent impacts at the Pacheco Creek Reserve and alleviate conflict with the SCVHP, the Authority would provide compensatory mitigation at a 1:1 ratio” (p. 3.7-172).

(28) Will the DEIR/EIS be revised to clarify this language? As noted below, the mitigation ratios provided for special-status species, sensitive natural communities, and existing conservation lands, should be additive, such that impacts to Sycamore Alluvial Woodland in the Pacheco Creek Reserve should be provided at a 7:1 ratio: 4:1 for the community type, 1:1 for impacts to the community at the Pacheco Creek Reserve, and 2:1 for loss of existing conservation lands per BIO-MM#84.

1713-3313

Alternatives to Transplantation

The DEIR/EIS should specify alternative/remedial actions for transplantation of rare plants and host plants for rare species to address the likely event that transplantation fails. Transplantation projects are oftentimes not successful at achieving their goals and success criteria and thus fail to offset Project impacts. To address this, the DEIR/EIS should provide backup or alternative mitigation, which should include permanent protection of land supporting the rare species affected.

(29) Will the DEIR/EIS be revised to specify the alternative/backup mitigation for mitigation measures involving transplantation including permanent habitat protection for the impacted species?

1713-3314

Mitigation Land Recipients

The DER states, “Title to lands acquired in fee would be transferred to CDFW and conservation easements would be held by an entity approved in writing by the applicable regulatory agency.” The DEIR/EIS does not state why CDFW was identified as the future landowner. Additionally, Table 3.7-25 states that, “the mitigation sites would not be open to the public”; however, CDFW fee lands may be open to the public.

(30) Will the DEIR/EIS be revised to state that the mitigation lands will be transferred to the most suitable landowner/manager in the region, which will be determined in coordination with conservation agencies and organizations in the region, including CDFW, as part of development and implementation of the CMP?

1713-3315

Impacts to Existing Conservation Lands

Some Conservation Lands are Not Included in the Analysis

The DEIR/EIS analysis omits existing conservation properties in its analysis of the Project impacts to conservation lands that have or will be protected by the time of the Project including:

- Pacheco Creek Reserve, along Pacheco Creek (Santa Clara Valley Habitat Agency);

20

Submission 1713 (Abigail Ramsden, The Nature Conservancy, June 23, 2020) - Continued

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**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

1713-3315

- Tulare Meadows Conservation Easement and the rest of the North Coyote Valley Conservation Property (Santa Clara Valley Open Space Authority, POST, and the City of San Jose); and
- Tulare Hill Reserve, on the eastern slope of Tulare Hill (Santa Clara Valley Habitat Agency).

The Project could impact additional lands protected between now and its implementation.

(31) Will the DEIR/EIS be revised to include a comprehensive list of all of the existing conservation lands impacted by the Project, as well as acknowledge that additional lands could be protected prior to the Project and would also require mitigation?

1713-3316

Project Must Minimize and Adequately Mitigate Impacts to Existing Conservation Lands

The Project must minimize and more adequately mitigate its impacts on existing conservation lands. The Project will condemn and develop portions of existing protected lands that were conserved to safeguard critical conservation values in the region, including to promote habitat connectivity. The DEIR/EIS does not describe the process or the measures that will be taken to ensure that impacts to the existing protected lands and their conservation values are minimized, including by working with the conservation agencies and organizations.

(32) Will the DEIR/EIS be revised to describe how HSRA will work with conservation agencies and organizations to minimize impacts to existing protected lands, including by taking only the land that is necessary to implement the Project?

1713-3317

Also, Bio-MM#84 calls for replacing conservation easements at a 2:1 and also compensation for easement violations. The mitigation measure should be revised to state that: 1) it will apply to lands protected in fee title as well as those featuring conservation easements, 2) the mitigation ratio will be increased to reflect the investment of resources into these lands, 3) funding will be provided for conservation agency and organization staff to replace the lands, and 4) the mitigation for conservation lands will be in addition to any mitigation provided for the biological and other resources impacted on the lands.

(33)

- Will the DEIR/EIS be revised to clarify that mitigation applies to all conservation lands including those held in fee title by conservation agencies and organizations but that may not feature conservation easements?

1713-3318

- Will the mitigation ratio for conservation lands be increased so that this measure adequately mitigates impacts of fragmentation and habitat degradation on these important conservation lands, given the investments made on them including restoration, management, and monitoring?

1713-3319

- Will compensation be provided to conservation agencies and organizations whose lands are condemned to offset staff time and other costs associated with identifying and protecting replacement sites, and not just addressing easement violations as noted in the DEIR/EIS?

1713-3320

- Will the DEIR/EIS be revised to explicitly state that the compensation for impacts to existing conservation lands will be in addition to that provided for the habitat they support, as described in other mitigation measures?

1713-3321

- If the Project impacts Sycamore Alluvial Woodland within an existing conservation area, compensatory mitigation should be provided at the ratio for the rare community

**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

1713-3321

(4:1 per BIO-MM#72) plus the conservation area (2:1 per BIO-MM#84), with additional mitigation provided if it is in the Pacheco Creek Reserve (1:1, per BIO-MM#85)?

1713-3322

- In general, will the DEIR/EIS clarify how the mitigation ratios proposed for the various mitigation measures relate to one another, including where they are additive (i.e., stack) to reflect the additional needs for mitigation to offset compounding impacts of the Project on the conservation lands, sensitive communities, and special-status species?

1713-3323

Assessment of Impacts to All Existing Conservation Lands

In its assessment of impacts to existing conservation lands in Impact BIO#54, the DEIR/EIS failed to analyze the impacts of the Project to lands deemed protected for agricultural purposes. Specifically, the DEIR/EIS states, "Certain land parcels—the contiguous Bloomfield North and Bloomfield South easements—have already been protected by the SCVOSA and accordingly constitute functional elements in implementation of the Greenprint. Alternative 3 would bisect both parcels with a guideway on viaduct and part of the footprint for the existing Gilroy Station. These parcels, however, have been protected consistent with the agricultural lands protection goal of the Greenprint, rather than with its habitat conservation goals. Therefore, impacts on these parcels are not evaluated." (p. 3.7-126).

The Bloomfield Easement includes a wetland easement which states, "7. Wetland Easement. Grantors hereby conveys to Grantee a nonexclusive wetland corridor easement which includes passive restoration consisting of livestock exclusionary fencing on both sides of the wetland within parcel 841-40-010 and 841-40-009, southern portion of the Property (as identified within the Baseline Documentation Report). Said exclusionary fencing will be paid for, installed and maintained by the Grantee." "WHEREAS, the Property possesses agricultural, scenic, open space, trail and wetland values (collectively, "Conservation Values") of importance to Grantors, the people of Santa Clara County and the people of the State of California; and WHEREAS, Grantors intend that the Property be maintained in agricultural production, and that the Conservation Values of the Property be protected, in perpetuity."

Given the habitat conservation goals of conservation easement, the DEIR/EIS should analyze the Project impacts on these parcels.

(34) Will the DEIR/EIS be revised to include the analysis of the Project impacts to this and other exiting conservation lands with biological resource conservation values and ensure that adequate mitigation is provided for them?

1713-3324

Conflicts with Infrastructure in Tulare Meadows Property

The DEIR/EIS includes features within Preliminary Engineering for Project Design sheet TT-D4011 and TT-D4012 that may conflict with the Tulare Meadows Conservation Easement recorded in 2019 and impact the feasibility of planned wildlife overcrossing at this location. Specifically:

1. The new access road (CV-S4001); and
2. New access and relocation of the municipal water well and pump station.

(35) To avoid and mitigate conflicts of the Project with wildlife connectivity and related conservation work in the Tulare Meadows Conservation Easement, HSRA should work with the landowner and conservation easement holder to refine the design and implementation of the Project.

Submission 1713 (Abigail Ramsden, The Nature Conservancy, June 23, 2020) - Continued

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High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments

1713-3325

Project Construction Methods and Impacts

Bore Rather Than Dig Tunnels to Reduce Impacts

To minimize impacts to sensitive communities, special-status species, and habitat connectivity, tunnels should be completed using the boring machine rather than digging from the surface. By minimizing the surface-level disturbance, this technique can reduce the extensive indirect impacts associated with surface disturbances, including the introduction and spread of exotic plant species to natural lands adjacent to the Project area.

(36) Will the DEIR/EIS be revised to discuss how tunnels will be bored rather than dug to minimize surface impacts to habitat and species?

1713-3326

Naturally Occurring Asbestos

Will the disturbance of naturally occurring asbestos noted in Section 3.10 present adverse impacts to the health of wildlife? If excavated material is used in Project features such as embankments, is there a risk of exposure to hazardous material?

(37) Will the DEIR/EIS be revised to discuss impacts of asbestos on the health of native wildlife and provide mitigations to minimize its impacts?

1713-3327

Sensitive Species

Project Impacts on Mountain Lion as a Candidate Species

The DEIR/EIS does not specifically analyze the impacts of the Project on Central Coast mountain lion, which is a candidate for listing under the California Endangered Species Act. The petition and candidacy are due, in part, to the low genetic diversity of mountain lions in the region relative to other regions (e.g., the Sierra Nevada Mountains), which reflects limited dispersal due to degraded habitat connectivity (Gustafson et al. 2018). The significant barrier imposed by the Project, if not adequately mitigated, will further impact habitat connectivity for mountain lion within the Central Coast region. Given the candidate status of the species, the DEIR/EIS should be revised to include the following, at a minimum:

1. Address the direct, indirect, and cumulative impacts of the Project on mountain lion;
2. Redesign the Project including wildlife crossing infrastructure to ensure it can be used by mountain lion, to mitigate its effects on habitat connectivity which is imperative for this wide-ranging species that has exhibited declines in genetic diversity due to existing habitat fragmentation which the Project will exacerbate, if not adequately mitigated;
3. Develop minimization measures to limit negative impacts of construction and operations, including noise, lights, vibration, and human activities associated with maintenance; and
4. Identify compensatory mitigation to address the impacts of the Project on habitat for mountain lion.

(38) Will the DEIR/EIS be revised to address these and other elements to ensure that the impacts of the Project on mountain lion are identified and adequately mitigated?

High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments

1713-3328

Monarch Butterfly

The DEIR/EIS did not address monarch butterfly, which meets the criteria for Special-Status species under CEQA and could be listed under the federal Endangered Species Act by the time the Project is implemented.

(39) Will the DEIR/EIS be revised to identify and adequately mitigate the Project impacts on western monarch butterfly?

Compatibility with HCP and Other Conservation Plans

Valley Habitat Plan Conflicts (includes Appendix B)

Conflicts with Implementation of the Valley Habitat Plan

The Project has the potential to conflict with several design principles, goals, and actions of the Valley Habitat Plan—the approved HCP/NCCP in the Santa Clara Valley, the success of which is vital for conservation in the region. Appendix B identifies specific conflicts identified.

Conflicts for Protection of Sycamore Alluvial Woodland

The Project has the greatest potential to impede the ability of the Valley Habitat Agency to achieve the Valley Habitat Plan goals and implement necessary actions related to Sycamore Alluvial Woodland and connectivity.

The DEIR/EIS notes the potential for conflict between the Project and the VHP ability to achieve goals related to Sycamore Alluvial Woodland, which is a rare habitat type. However, it concludes that there is sufficient mitigation available for both the Project and the VHP by stating there is 2,544 acres of available (unprotected) lands. This number is not supported by SFEI and H.T. Harvey (2017), which is cited by the DEIR/EIS. Keeler-Wolf et al. (1996) estimates there was only 2,000 acres of true Sycamore Alluvial Woodland remaining in the state in the mid-1990s. Keeler-Wolf (1996) mapped stands greater than 10 acres. In Santa Clara County, the limits on size of what could potentially be considered as Sycamore Alluvial Woodland was pushed due to lack of sites suitable to support 10 or more acres. The results of the study were simply looking for areas that supported stands of sycamores that could be considered for further evaluation of regeneration and habitat restoration/creation.

SFEI and H.T. Harvey (2017) used coarsely mapped polygons to draw areas observed as supporting some sycamores to provide a general understanding of locations of areas to potentially be considered for further assessment; it did not quantify areas of Sycamore Alluvial Woodland. It is clearly stated that these areas are what is recommended for consideration for enhancement, and detailed site-specific surveys would be required before determining if they are actually suitable. Much of the mapped area in the study may not be Sycamore Alluvial Woodland, and given hybridization, climate change, and the disruption of the historical hydro-curve, most of those acres are not suitable for Sycamore Alluvial Woodland conservation or mitigation.

In addition, the Project will potentially derail the VHP's Sycamore Alluvial Woodland mitigation strategy at the Pacheco Creek Reserve property, where VHA plans to protect 8 acres and restore/create up to 20 acres. Pacheco Creek is one of the last areas of this rare community type that features naturally recruiting California sycamore in the Plan area.

Submission 1713 (Abigail Ramsden, The Nature Conservancy, June 23, 2020) - Continued

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**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

1713-3329

(40) How will the DEIR/EIS reassess and analyze conflicts with the Valley Habitat Plan regarding Sycamore Alluvial Woodland, and develop a proper mitigation measure for Impact BIO#53?

1713-3330

Connectivity within the Diablo Range

The project would negatively affect the connectivity within the Diablo Range at the Pacheco Pass, which was identified as a critical linkage in the VHP, including for its ability to promote species movements along a north-south latitudinal gradient in response to a warming climate. The 2.5 miles of cut and fill will be heavily fenced off resulting in a large barrier within the linkage.

(41) How will the DEIR/EIS be revised to reflect this conflict with the VHP?

1713-3331

Reliance on the Existence of Quantitative Targets to Conclude a Conflict

The DEIR/EIS concludes that there is no conflict for goals or actions that lack quantitative targets. The logic of this is not clear, as the Project could impact goals or actions that are not quantified, though it is understandably more difficult to assess this. Appendix B highlights some of these conflicts which were dismissed due to lack of quantitative elements.

(42) Will the DEIR/EIS be revised to address general conflicts based on the types of actions and goals rather than defaulting to a conclusion of no conflict in the absence of a quantitative target?

1713-3332

HCPs and Conservation Plans

The DEIR/EIS states, "Construction of the project alternatives would result in potential impacts on three HCPs: the SCVHP, the Greenprint, and the Coyote Valley Linkage" (page 3.7-198). While it is good that the DEIR/EIS analyzed the Project impacts on other regional conservation plans, the Greenprint and Coyote Valley Landscape Linkage are not HCPs (habitat conservation plans) as defined under Section 10(a) of the ESA.

(43) Will the EIR be revised to clarify that the Valley Habitat Plan is the only regional HCP/NCCP in the Project area?

1713-3333

Coyote Valley Landscape Linkage

Overall Insufficient Detail and Understated Impacts

The DEIR/EIS does not provide sufficient detail about the Project to evaluate impacts to the Coyote Valley Linkage from Impact BIO#55. The DEIR/EIS concludes that, "the impact under CEQA would be significant for all four alternatives..." (p. 3.7-129). However, additional information, including designs for directional/exclusionary fencing associated with wildlife crossing structures and the wildlife intrusion barriers, is needed to support the conclusions in BIO-MM#77-81.

Similarly, the DEIR/EIS does not provide sufficient detail about the Project to support the conclusion that, "Project operations are not expected to have any conflicts with the SCVHP, Coyote Valley Linkage, or the Greenprint. Therefore, the project alternatives would not have any impacts on an approved HCP." (p. 3.7-129). Additional analyses of the Project design including fencing are needed to support the finding regarding project operations.

(44) Will the DEIR/EIS be revised to include additional details needed to support the analysis?

**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

1713-3334

Additionally, with regards to the Metcalf Canyon Road overpass and Bailey Road wildlife undercrossing at Blanchard road, the DEIR/EIS states that the Project, "would increase the complexity of construction and incrementally increase the length of the proposed crossings (except under Alternative 4)." (p. 3.7-189). However, this understates the impacts of the Project on these planned wildlife crossing infrastructure improvements as the Project would greatly increase the complexity of design and construction of the projects and thus increase their cost and decrease the likelihood they will be able to be constructed as outlined in the plan.

(45) Will the DEIR/EIS be revised to reflect the greater impact of the Project on the feasibility of implementation of planned wildlife crossing infrastructure improvements, and thus the cumulative impacts of the Project on regional habitat connectivity

1713-3335

The DEIR/EIS focuses on wildlife crossing infrastructure on Monterey Road. A rail-effect zone analysis (following the road-effect zone research methods in road ecology as pioneered by Dr. Richard Forman) should be conducted so that the potential conflicts are more comprehensively assessed relative to the entire Coyote Valley Linkage vision, which involves protection of existing habitat, restoration of degraded habitat, and implementation of wildlife crossing infrastructure.

(46) This more comprehensive analysis should be conducted with the appropriate regulatory agencies and stakeholders working to implement the linkage design in Coyote Valley to ensure that the best available information is integrated in the analysis and resulting designs/mitigation.

1713-3336

Specific Crossings and Geographies

The following are specific comments regarding the DEIR/EIS assessment of conflicts with recommended crossing modifications which are outlined in Table 3.7-23 of the DEIR/EIS.

Metcalf Bridge

The DEIR/EIS analysis presented for Impact BIO-#55 does not appropriately assess the relationship between the Recommended Crossing Modification for Metcalf Bridge and its associated conflicts with HSR. The Metcalf Bridge is proposed to provide animals with safe passage across Highway 101 and Monterey Road. If implemented, wildlife would need to be able to access the proposed undercrossings at Tulare Swale and/or Fisher Creek. For Project Alternatives 1 and 3, the retaining wall in Coyote Creek could preclude effectiveness of this project, if implemented. However, the designs do not provide detail on the configuration and extent of directional/exclusionary fencing incorporated with wildlife crossing structures to evaluate this.

In Alternative 2, the intrusion barrier would reduce permeability for wildlife to cross Monterey Road at grade near Metcalf Road, as evidenced by successful crossing events (i.e. without wildlife-vehicle collision) by collared bobcats (SCCWCTWG 2019; Serieys and Wilmers 2019). Again, the specifications for the directional fencing as well wildlife intrusion deterrents will come into play. Alternative 4 would present similar concerns identified for Alternatives 1, 2, and 3.

(47) To avoid and mitigate potential conflicts of the Project with the Metcalf Bridge, HSR should work with the appropriate regulatory agencies and stakeholders to refine the design and implementation of Project features and their mitigations, including to develop a spatially-explicit fencing plan that is integrated with wildlife crossing structures.

Submission 1713 (Abigail Ramsden, The Nature Conservancy, June 23, 2020) - Continued

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High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments

1713-3337

Monterey Road Median

The DEIR/EIS analysis presented for Impact BIO-#55 does not adequately consider the full range of potential conflicts between the Recommended Crossing Modification and HSR with regards to the Monterey Road Median. In Alternatives 1 and 3, the presence of a retaining wall in a noted wildlife movement area would conflict with the intent of creating gaps in the median to increase permeability for wildlife crossing at-grade. Seventy-eight percent of the roadkill on Monterey Road was observed in the section from approximately Metcalf Road to Bailey Avenue (SCCWCTWG 2019), where multiple collared bobcats have also crossed Monterey Road (Serieys and Wilmers 2019). It would be more effective to use directional fencing to direct wildlife to safe passage rather than increase the likelihood for wildlife-vehicle collisions on Monterey Road through implementation of this measure when combined with design elements such as the retaining wall in Coyote Creek.

The presence of the retaining wall in Coyote Creek, even if there are gaps in the median on the east side of Monterey Road, would present a barrier and trap/hazard for American badger and juvenile bobcat, which are documented as roadkill on Monterey Road in the vicinity of Tulare Hill (SCCWCTWG 2019). Enhancements to the Fisher Creek underpass, as well as other planned wildlife crossing structures in Coyote Valley, particularly at Tulare Swale and Emado Ave, should be implemented.

Under Alternative 4, the ballast retainer would create a barrier for certain small taxa including western pond turtle, which has been observed as roadkill in the vicinity of Blanchard Ave (SCCWCTWG 2019). For wildlife that are able to traverse the ballast retainer feature, the increased frequency of train traffic under the Project would increase risk of wildlife-train collisions (train strikes) for wildlife attempting at-grade crossings of the railway. This may be mitigated by directional fencing, though the effectiveness of such fencing would depend on the specifications, which were not provided in the DEIR/EIS.

(48) To avoid and mitigate potential conflicts of the Project with wildlife connectivity work proposed for the Monterey Road corridor, HSRA should work with the appropriate regulatory agencies and stakeholders to refine the design and implementation of Project and its mitigations.

1713-3338

Tulare Swale

The DEIR/EIS analysis presented for Impact BIO-#55 with regards to Tulare Swale needs to be updated based upon information provided in the Monterey Road Report (SCCWCTWG 2019), which was published to further develop wildlife crossing concepts described in the Coyote Valley Landscape Linkage Report (SCOSA and CBI 2017). The conceptual design calls for a 15'H x 100'-150'W wildlife crossing to connect Tulare Hill and Coyote Creek Parkway. Alternatives 1 and 3 present a substantial departure from the design, given the spacing of the crossings and reduction in height, which may reduce effectiveness. Alternatives 2 and 4 are closest to the conceptual design, though review of detailed specifications regarding directional fencing would be needed to fully evaluate the Project and its conflict with this planned connectivity enhancement work. This location has been identified as especially important for wildlife connectivity based on animal movement data (GPS-collared bobcats and multi-species roadkill), its location between existing protected land on both sides of the crossing since the Santa Clara Valley Habitat Agency acquired land in 2019, and other site characteristics that render it uniquely suited for a large (wide) wildlife undercrossing.

(49) To avoid and mitigate potential conflicts of the Project with wildlife connectivity work proposed for the Tulare Swale, HSRA should work with the appropriate regulatory agencies and stakeholders to refine the design and implementation of Project and its mitigation.

27

High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments

1713-3339

Fisher Creek

The DEIR/EIS analysis presented for Impact BIO-#55 does not capture the potential conflict with Fisher Creek improvements for wildlife connectivity. The specifications for directional fencing would be needed to evaluate the Project impacts under Alternatives 1 and 3. Alternative 2 appears to suggest a culvert with a jog/bend, which would reduce line of sight (i.e. visibility through)—an essential characteristic of functional wildlife crossing structures, as described in BIO-MM#77 and broadly supported in the literature.

The analysis states that Alternative 4 would not modify the Fisher Creek culvert and also says that Alternative 4 (and 2) would increase the height and width of the Fisher Creek culvert. This is contradictory and needs clarification.

The DEIR/EIS states that the Fisher Creek (#4) culvert project is designed to "reduce seasonal flooding" (p. 3.7-128). This should be revised to state that the project is designed to "provide wildlife passage during seasonal flooding."

Additionally, the DEIR/EIS states, "Under all alternatives, existing and new Fisher Creek culverts would maintain the existing hydrologic condition. The project would increase the engineering complexity and cost of modifications to the existing underpass to improve conveyance of seasonal flood flows." (p.3.7-128). However, it is unclear how existing and new Fisher Creek culverts maintain the existing hydrologic condition while simultaneously improving conveyance of seasonal flood flows, since increased conveyance of seasonal flood flows from Fisher Creek will reduce seasonal flooding of upstream valley floor wetlands. The ability to maintain and increase seasonal flooding along Fisher Creek is essential for restoring the Laguna Seca Wetland Complex, and other valley floor wetlands, which are the focus of restoration by conservation agencies and organizations working in the region.

Given the issues raised above, additional design is needed to determine whether the structure will be functional for wildlife passage. This is particularly important as this is the only existing location for safe wildlife passage across (under) Monterey Road (Diamond and Snyder 2016, SCOSA and CBI 2017, and SCCWCTWG 2019). The recommended modification as stated to reduce seasonal flooding would be important to generally provide passage in dry substrate for certain taxa, as described in BIO-MM#77.

(50) To avoid and mitigate potential conflicts of the Project with wildlife connectivity work proposed for Fisher Creek and its culvert, HSRA should work with the appropriate regulatory agencies and stakeholders to refine the design and implementation of Project and its mitigations.

1713-3340

Emado Avenue

The DEIR/EIS analysis presented for Impact BIO-#55 needs to be updated based upon information provided in the Monterey Road Report (SCCWCTWG 2019), which was published to further develop wildlife crossing concepts described in the Coyote Valley Landscape Linkage Report (SCVOSA and CBI 2017). The conceptual design developed by the SCCWCTWG (2019) calls for a wildlife undercrossing 15'H x 40'-150'W. Only Alternative 4 meets the minimum design criteria. Any increase in length would reduce effectiveness for wildlife use.

(51) To avoid and mitigate potential conflicts of the Project with wildlife connectivity work proposed for the Emado Avenue culvert, HSRA should work with the appropriate regulatory agencies and stakeholders to refine the design and implementation of Project and its mitigations.

28

Submission 1713 (Abigail Ramsden, The Nature Conservancy, June 23, 2020) - Continued

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**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

1713-3341

Bailey Avenue

All of the Project Alternatives in the DEIR/EIS may preclude the ability for conservation stakeholders to construct a functional wildlife overcrossing at Bailey Avenue, due to impacts on engineering feasibility, cost, and operational impacts from the Project.

(52) To avoid and mitigate potential conflicts of the Project with wildlife connectivity work proposed for the Bailey Avenue overpass, HSRA should work with the appropriate regulatory agencies and stakeholders to design and build a wildlife overcrossing as well as the proposed undercrossings—a key element of the conservation vision for an area recognized as important to the state per CA Public Resources Code Section 35180 et seq.

1713-3342

Santa Clara Valley Greenprint

Understates Project impacts on the Santa Clara Valley Greenprint

The DEIR/EIS concludes that, “the project alternatives would not conflict with implementation of the Greenprint” (p. 3.7-189) because the strategy lacks quantitative goals and because it would only impact the Bloomfield parcels which were protected for agriculture and not habitat conservation. This assessment fails to acknowledge that the Project can impact the ability of a plan to achieve goals even if they are not quantified. It also does not recognize the wetland easement recorded on the Bloomfield property.

Two editorial notes related to the Greenprint: 1) Current DEIR/EIS references to the “Silacci Property” should refer to Bloomfield North and Bloomfield South” and the Greenprint Conservation Focus Area should be referred to as “Upper Pajaro River” rather than “UPR.”

(53) Will the DEIR/EIS be revised to reflect these conflicts with the Santa Clara Valley Greenprint and ensure that mitigation is provided for any impacts to existing conservation lands which, like the Bloomfield Property, may have biological resource as well as other conservation values not apparent to the DEIR/EIS preparers?

Agricultural Resources and Parks, Recreation, and Open Space Impacts

1713-3343

Agricultural Resources

Recognizing Impacts to Agriculture Conservation Easements and Other Lands

Section 3.14-1 defines Agricultural Conservation easements as, “Conservation easement lands are lands that have been dedicated to agricultural use under the California Farmland Conservation Program Act (California Public Resources Code [Cal. Public Res. Code] §§ 10200–10277). The term agricultural conservation easement means an interest in land, less than fee simple that represents the right to prevent the development or improvement of the land for any purpose other than agricultural production. The easement is granted for the California Farmland Conservancy Program by the owner of a fee simple interest in land to a local government, nonprofit organization, resource conservation district, or to a regional park or open-space district or regional park or open-space authority that has the conservation of farmland among its stated purposes or as expressed in the entity’s locally adopted policies.” and concludes that, “there are no agricultural conservation easements or forest lands in the RSA; therefore, they are not discussed further in this section.” (page 1).

**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

1713-3343

This is an inaccurate and incomplete definition of agricultural easements. There are multiple agricultural conservation easements as well as fee lands held by conservation organizations within the RSA. These easements, although not granted by the California Farmland Conservancy Program, have the stated purpose of conservation of farmland and dedicating land for agricultural uses, and easement holders are legally obligated to defend these easements from impacts to their agricultural productivity and other conservation values. In some cases, these lands were protected for agricultural uses in addition to other complementary co-benefits, such as wildlife habitat connectivity or flood protection.

(54) Will the DEIR/EIS be revised to expand its definition of conservation easements to recognize conservation easements that have not been granted by or for the California Farmland Conservancy Program, including the Tulare Meadows Conservation Easement, Bloomfield North and Bloomfield South Conservation Easements?

1713-3344

Clarification of Impacts to Important Farmland

Section 3.14-.30 states that, “For all project alternatives, no permanent conversion of Important Farmland would occur in the San Joaquin Diridon Station Approach or Monterey Corridor Subsections.” (page 30) This is false. Multiple Project alternatives (notably alternatives 1, 2, and 3) would result in permanent conversion of Important Farmland in the Monterey Corridor.

(55) Will the EIR be updated to reflect permanent conversion impacts to important farmland in the Monterey Corridor?

1713-3345

Recognizing Regional and Local Plans and Policies for Agriculture

Appendix 2-J does not include the Santa Clara County and the Open Space Authority adopted Santa Clara Valley Agricultural Plan (2018) and does not include analysis of agricultural goals that are included in the Santa Clara Valley Greenprint. The Santa Clara Valley Agricultural Plan, which received significant funds from the State’s Sustainable Agricultural Lands Conservation (SALC) program through multiple planning grants, identifies a defined agricultural resource area and a spatially explicit representation of successful implementation of agricultural conservation efforts in the Santa Clara Valley. Moreover, the Santa Clara Valley Agricultural Plan was developed in partnership with the State of California to help the State meet its greenhouse gas reduction targets while supporting the State’s agricultural economy, which is mutually reinforcing to the HSRA stated priority of, “furthering economic development and mobility without producing greenhouse gas emissions” (from High Speed Rail website).

(56) Will the DEIR/EIS be revised to recognize the state-funded Santa Clara Valley Agricultural Plan and include an analysis of impacts to the agricultural goals specified in the Santa Clara Valley Agricultural Plan and the Santa Clara Valley Greenprint?

1713-3346

Appendix 2-J does not include the Pajaro River Flood Prevention Authority’s Soap Lake Floodplain Preservation Project Initial Study (2005), which sets out goals and supports funding for conservation easements on agricultural lands to protect the floodplain capacity of the Upper Pajaro River floodplain (commonly known as Soap Lake). This document provides information on the benefits of permanent protection of lands in agricultural use for the purpose of maintaining flood hydrology across Soap Lake. Several easements and fee lands purchased or by conservation organizations in Soap Lake that are characterized as agricultural in the DEIR/EIS were in fact protected for reasons related to floodplain hydrology with recognized co-benefits for wildlife habitat and connectivity for wide-ranging wildlife.

Submission 1713 (Abigail Ramsden, The Nature Conservancy, June 23, 2020) - Continued

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High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments

1713-3346

(57) Will the DEIR/EIS be revised to include consideration of the Pajaro River Floodplain Preservation Project Initial Study and include an analysis of impacts to protected agricultural lands that also provide hydrological benefits by attenuating regional flooding?

1713-3347

Updated Mapping of Farmland of Local Importance in Santa Clara County

Santa Clara County Planning Department and the Open Space Authority formally engaged California Department of Conservation Farmland Mapping and Monitoring Program staff in February 2020 to update Santa Clara County's definition for farmland of Local Importance, and add the category of Farmland of Local Potential. These updates will designate thousands of acres of additional farmland in Santa Clara County as Important Farmland in the 2018 Important Farmland Map series for Santa Clara County.

(58) Will the DEIR/EIS be revised to include an analysis of impacts to updated best available Important Farmland Map data provided by the California Department of Conservation, including Santa Clara County's updated definitions for Farmland of Local Importance and Farmland of Local Potential?

1713-3348

Minimization and Mitigation of Permanent Conversion of Important Farmland

Section 2-k-25 of the appendix states that, "the Authority would fund the DOC California Farmland Conservancy Program's purchase of agricultural easements from willing sellers. This program would preserve Important Farmland in an amount commensurate with the quantity and quality of the converted farmlands, within the same agricultural regions as the impacts occur." (page 25). However, the Project does not define what constitutes an agricultural region, or how it would handle updated farmland designations as conditions change on properties within the RSA.

(59) Will the DEIR/EIS be revised to include a definition for agricultural regions to align to County boundaries, and clarify how it will address changing conditions as they relate to the quality of farmland that will be converted by the Project?

1713-3349

Section 3.14-54 states, "These mitigation measures would preserve some Important Farmland and minimize the impacts; however, there would still be a net loss of Important Farmland. While these mitigation measures would provide for preservation of agricultural land in agricultural conservation easements and minimize the area of Important Farmland near aerial guideways that would be converted, they would not avoid all conversion." (page 54). Coordination with local conservation entities and local agricultural conservation plans would align the Project's Important Farmland mitigation activities with local priorities for conservation, thus increasing the conservation benefit of the Project's mitigation.

(60) Will mitigation of permanent conversion of Important Farmland be done in coordination with local conservation entities and provide preference to projects that occur within approved local agricultural preservation plan areas?

1713-3350

Additionally, Section 3.14-33 states that, "Project features, specifically the Farmland Consolidation Program (AG-IAMF#3), would minimize the permanent conversion of Important Farmland resulting from creation of remnant parcels by facilitating the sale of remnant parcels to neighboring landowners for consolidation with adjacent farmland properties. Remnant farmland parcels that are consolidated with adjacent farmland parcels are anticipated to remain in agricultural use. Some remnant parcels, however, would not be viable for continued agricultural use, so the program would minimize but not avoid the permanent conversion of Important Farmland to nonagricultural use." (page 33). Although the Project

High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments

1713-3350

seeks to keep remnant farmland in production, it does not seek to permanently conserve this remnant farmland to prevent development in addition to impacts from the Project.

(61) Will the DEIR/EIS include additional mitigation measures for remnant farmland that ensure these lands are permanently conserved from additional development, including offering sale of fee title or conservation easement to local conservation organizations?

1713-3351

Section 3.14-41 states, "In addition to mitigation for Important Farmlands that are permanently converted to nonagricultural use, the Authority would fund the purchase of an additional increment of acreage for agricultural conservation easements at a ratio of not less than 0.5:1 for Important Farmland within a 25-foot-wide area adjacent to permanently fenced HSR infrastructure." (page 41).

The DEIR/EIS does not explain the rationale behind the 0.5:1 mitigation ratio for agriculture land within the 25-foot-wide area adjacent to permanently fenced HSR. It is likely that a 25-foot area adjacent to HSR facilities would be used for access roads to access cultivated areas, ultimately reducing the acreage of farmland that is used for cultivation, making the 0.5:1 ratio too low to effectively mitigate for impacts to cultivated agricultural lands.

(62) Will the DEIR/EIS be updated to increase its proposed mitigation ratio to 1:1 for agricultural land within the 25-foot-wide area adjacent to permanently fenced HSR?

1713-3352

Consideration of Ongoing Agricultural Conservation Efforts by Conservation Organizations and Local Municipalities

Section 3.14-27 states that, "Planned and other reasonably foreseeable projects anticipated to be built by 2040 include residential, commercial, industrial, recreational, and transportation development. Specifically, future development projects in Santa Clara, San Benito, and Merced Counties include implementation of general and specific plans throughout the counties, resource management plans, solar farm projects, water transfer programs, commercial development plans, quarry projects, and reclamation plans. Planned and other reasonably foreseeable projects under the No Project Alternative also include such transportation projects as reconstruction of interchanges; overcrossing construction; bridge replacements; road widenings and lane additions, including high-occupancy vehicle or express lanes; road realignment and extensions; recreational bike/pedestrian trail construction; and transit projects such as train and HSR projects and, in Santa Clara County, train electrification, bus rapid transit, and light rail. Pressure to convert Important Farmland as a result of these types of development activities is anticipated to continue in the three-county region—approximately half of Santa Clara's remaining 27,000 acres of farmland is at immediate risk of development (County of Santa Clara 2018), and Merced County anticipates conversion as a result of a high projected population growth of 8 percent between 2010 and 2018 (CDOF 2018). These future development activities would continue the historical trend of agricultural conversion and urbanization in the region." (page 27).

This section fails to recognize renewed agricultural preservation efforts in Santa Clara County, including:

- Preservation of over 900 acres of prime farmland within San Jose City limits in Coyote Valley;
- conservation easement acquisitions in support of the Soap Lake Floodplain Preservation project;
- Santa Clara County's efforts to establish dedicated local funding sources for proactive agricultural conservation;
- Santa Clara County's ongoing efforts to update local zoning ordinances to mitigate and reduce conversion of agricultural land;

Submission 1713 (Abigail Ramsden, The Nature Conservancy, June 23, 2020) - Continued

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**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

1713-3352

- Ongoing efforts by Santa Clara County Local Area Formation Commission to avoid premature development of agricultural lands;
- Efforts by the Cities of Gilroy and Morgan Hill to administer agricultural mitigation ordinances; and
- California Department of Conservation funded efforts by Santa Clara County and the Santa Clara Valley Open Space Authority to develop and implement a centralized agricultural conservation easement purchasing program in the Santa Clara Valley.

Also, the EIR does not recognize the potential growth-inducing impacts associated with the Project, and how they may increase conversion of agricultural land and agricultural parcels to rural residential uses near Project station areas.

(63) Will the DEIR/EIS be updated to include documentation and analysis of these local agricultural conservation efforts, how these efforts are addressing historic agricultural conversion trends, and the Projects impacts on the successful implementation of these growing agricultural conservation efforts in Santa Clara County?

1713-3353

Insufficient Notice to Farmland Property Owners and Lease Holders

Section 3.14-34 states, "The notice would be provided at least 3 months but no more than 12 months prior to the start of construction activity. With adequate lead time, property owners or leaseholders could prepare functionally and economically for the temporary change in circumstances. This measure would allow agricultural property owners and leaseholders to make changes to their operations in anticipation of and in response to project construction under any of the alternatives." (page 34)

At least 3 months but no more than 12-months' notice is inadequate lead time for property owners and leaseholders to prepare for impacts to local farming or ranching operations. Local property owners or lease holders should be notified as soon as practicable, but no less than 12 months in advance of construction activities to help ensure farm operations are not making investments in farmland that will be impacted by the Project.

Also, construction activities could impact the economic viability of some leaseholder operations in the region, potentially reducing agricultural operations from the Santa Clara Valley, and undermining ongoing local efforts to increase the diversity and viability of farming operators in Santa Clara County.

(64) Will the DEIR/EIS be updated to increase notice provisions to as soon as practicable, but no less than 12 months in advance of construction activities, and will it add mitigation activities to ensure the property owners and leaseholders are able to find alternative farmland to support their operations in the region?

1713-3354

Parks, Recreation, and Open Space Resources

Underrepresentation and Analysis of Parks, Recreation, and Open Space Areas

Section 3.15-5 states, "For the purposes of this analysis, information on parks, recreation, and open space resources was collected by reviewing local and regional land plans and policies identified in Volume 2, Appendix 2-J, local jurisdiction websites, and the California Protected Areas Database (CPAD), and by using geographic information system (GIS) data layers and Google Earth aerial imagery. Only parks and recreational facilities open to the public were considered in the analysis."

**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

1713-3354

The DEIR/EIS's analysis does not include an assessment of lands where public access is planned, and underrepresents lands that currently provide public access and events (most notably Coyote Ridge Open Space Preserve, the Northern Coyote Valley Conservation Area, and Tulare Meadows Conservation Easement), apparently relying on 2016 California Protected Areas Database's spatial data to accurately reflect public access in the resource study area. California Protected Areas Database's Disclaimer clearly states that, "Independent verification of all data contained herein should be obtained by any user of these products, or the underlying data." The DEIR/EIS needs to be updated with independently verified public access data provided directly by the managing agencies and needs to also consider impacts to planned or negotiated public access facilities within the resource study area.

(65) Will the DEIR/EIS be updated to expand its analysis to include planned or negotiated public access facilities within the resource study area, and will it independently verify the location of where parklands exist with local managing agencies?

1713-3355

Underrepresentation and Analysis of Planned Trails

Section 3.15-3 states, "General plans for the counties and cities within the resource study area (RSA) and the municipal codes for these counties and cities were consulted for applicability to the project, as well as the Santa Clara County Countywide Trails Master Plan and the Santa Clara County Valley Greenprint." However, Figures 3.15-1 to 3.15-7 do not include or analyze impacts to planned trails that are included in the Santa Clara County Countywide Trails Master Plan and the Santa Clara Valley Greenprint. In addition, the Bay Area Ridge Trail Council is conducting a Feasibility Study for a trail(s) across Coyote Valley that would augment and connect to trails identified in the Santa Clara County Countywide Trails Master Plan and the Santa Clara Valley Greenprint, that should be consulted as well.

(66) Will the DEIR/EIS be updated to include and analyze planned trails that are included in the Santa Clara County Countywide Trails Master Plan, the Santa Clara Valley Greenprint, and the Bay Area Ridge Trail Council's Coyote Valley Trails Feasibility Study?

1713-3356

Changed Circumstances and Additional Information

Other Documents not Used or Cited

The DEIR/EIS does not integrate or effectively utilize all of the available scientific information in aspects of Project design, impact analysis, and mitigation. The *References* provided in this document include additional resources that should be used to revise the DEIR/EIS and Project. The following local reports and plans were not adequately addressed and can improve the Project and its environmental review.

RMC Water & Environment. 2005. Soap Lake Floodplain Preservation Project Final Initial Study and Negative Declaration. Prepared for the Pajaro River Watershed Flood Prevention Authority. <https://pajaroriverwatershed.org/pages/downloads.htm>

Philip Williams & Associates, Ltd. 2008. A Restoration Vision for the Pájaro River and Soap Lake. Prepared for The Nature Conservancy, San Francisco, CA. Developed with assistance from the San Francisco Estuary Institute and H.T. Harvey & Associates.

California Department of Fish and Wildlife (CDFW). 2015. California State Wildlife Action Plan, 2015 Update: A Conservation Legacy for Californians. Edited by Armand G. Gonzales and Junko Hoshi, PhD. Prepared with assistance from Ascent Environmental, Inc., Sacramento, CA.

Submission 1713 (Abigail Ramsden, The Nature Conservancy, June 23, 2020) - Continued

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**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

1713-3356

H.T. Harvey. 2020. Coyote Valley Reptile and Amphibian Linkage Study: Findings and Recommendations. Prepared for the Santa Clara Valley Open Space Authority. January 2020. 111 pages.

ICF International. 2019. Santa Clara County Regional Conservation Investment Strategy. October. Prepared for the Santa Clara Valley Open Space Authority, San Jose, CA.

ICF International. 2012. Santa Clara Valley Habitat Plan. <http://scv-habitatagency.org/178/Santa-Clara-Valley-Habitat-Plan>

Pathways for Wildlife. 2020. Wildlife Permeability and Hazards across Highway 152 Pacheco Pass 2018-2019. Report prepared for the Habitat Agency. February 2020.

Spencer, W.D., P. Beier, K. Penrod, K. Winters, C. Paulman, H. Rustigian-Romsos, J. Strittholt, M. Parisi, and A. Pettler. 2010. California Essential Habitat Connectivity Project. A Strategy for Conserving a Connected California. Prepared for California Department of Transportation, California Department of Fish & Game, and Federal Highways Administration.

Santa Clara County. 2018. Santa Clara Valley Agricultural Plan. https://www.sccgov.org/sites/dpd/DocsForms/Documents/SCV_ActionPlan.pdf

Santa Clara County Wildlife Corridor Technical Working Group (SCCWCTWG). 2019. Recommendations to reduce wildlife-vehicle collisions on the Monterey Road corridor in Coyote Valley, Santa Clara County. Santa Clara County Wildlife Corridor Technical Working Group, Coyote Valley Subcommittee. San Jose, CA. 38 p. <https://openspacetrust.org/downloads/MontereyRoadReport.pdf>

Seriys, L.E.K. and C. Wilmers. 2019. Coyote Valley Bobcat Habitat Preference and Connectivity Report. https://www.openspaceauthority.org/system/documents/COVA_FinalReport_05072019_sm.pdf

(67) As the landscape traversed by the Project is an active conservation landscape, in which new studies, plans, and projects are being implemented continually, HSRA should coordinate closely with regulatory agencies and stakeholders to obtain the best available scientific information and plans and integrate them into the Project and DEIR/EIS.

1713-3357

Additional Conservation Lands

The DEIR/EIS list of conservation lands impacted by the Project should be expanded to include the following lands:

1. Pacheco Creek Reserve (which was expanded in 2020);
2. Tulare Meadows Conservation Easement (Santa Clara Valley Open Space Authority);
3. Northern Coyote Valley Conservation Area (Santa Clara Valley Open Space Authority);
4. Coyote Ridge Open Space Preserve (Santa Clara Valley Open Space Authority); and
5. Tulare Hill (Santa Clara Valley Habitat Agency)
6. Pajaro Ranch (The Nature Conservancy)

Also, the Silacci property should be referred to as "Bloomfield North and Bloomfield South" throughout the DEIR/EIS.

Next Steps

**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

1713-3358

To address the issues in this letter, HSRA should work actively with conservation agencies and organizations including regulatory agencies as well as stakeholders working in the region. Discussions should address the following:

- **Connectivity issues**, including aspects of the wildlife crossing infrastructure designs, to ensure that they are informed by the best available scientific information and integrate with efforts to promote connectivity through the region;
- **Impacts to existing conservation lands**, including habitat, agriculture, and recreational, to minimize them and adequately mitigate them;
- **Impacts to implementation of existing plans**, including the Valley Habitat Plan, which must be successful to help safeguard biodiversity conservation in the region; and
- **Develop the compensatory mitigation plan**, to ensure that it reflects the best available scientific information and will complement, and not conflict with, the efforts of conservation organizations to implement their plans, including achievement of the goals of the Valley Habitat Plan.

Submission 1713 (Abigail Ramsden, The Nature Conservancy, June 23, 2020) - Continued

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High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments

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37

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38

Submission 1713 (Abigail Ramsden, The Nature Conservancy, June 23, 2020) - Continued

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**High-Speed Rail San Jose to Merced DEIR/EIS
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39

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40

Submission 1713 (Abigail Ramsden, The Nature Conservancy, June 23, 2020) - Continued

DocuSign Envelope ID: 4E6F4C1C-E973-4273-B96B-EA7D761E3383

High-Speed Rail San Jose to Merced
POST, Open Space Authority, TNC Comments

Appendix A:
Detailed Engineering Design Comments

Appendix A: Detailed Comments on Preliminary Engineering and Project Design for Wildlife Crossing Infrastructure

Section	Page	Figure/Table	Comment
1713-3359 Volume 3 - Alternative 4	TT-D4012	B770-B780	New access and relocation of municipal water well and pump station facility may conflict with conservation easement on the Tulare Meadows property (North Coyote Valley Conservation Area). May impact feasibility of planned wildlife overcrossing at this location.
1713-3455 Volume 3 - Alternative 4	TT-D4012	Richmond Ave	Why is the wildlife crossing structure located at cul-de-sac and switching station infrastructure? Wildlife crossing should be located (buffered) from human activity.
1713-3456 Volume 3 - Alternative 4	TT-D1201	B2160-B2175	Permanent impact to riparian forest, should be mitigated onsite for habitat/refugia (including connectivity/landscape linkage) value.
1713-3457 Volume 3 - Alternative 4 (as well as Alts 1 and 2)	TT-D1202; TT-D1203	Tunnel	How is sound from rail traffic/operation mitigated at tunnel ends? This is known badger habitat (and suitable for other wildlife), so any features such as fencing along the ROW or TCE should be permeable to wildlife.
1713-3458 Volume 3 - Alternative 4 (as well as Alts 1 and 2)	TT-D1402	Section A	How are wildlife protected from drop and other hazards?
1713-3459 Volume 3 - Alternative 4 - Book 4E	TN-D1406	Plan	Any fencing to delineate ROW and/or TCE should be wildlife-friendly, when located in natural areas.
1713-3460 Volume 3 - Alternative 1	TT-D0702	Section A	Example of why appropriate wildlife fencing is needed on the outside of all transportation infrastructure -- Given the design of the retaining wall in Coyote Creek, need to prevent animals from access from west and getting trapped on the road (for wildlife-vehicle collisions). Wall will act as directional feature for animals within Coyote Creek Parkway, as long as it properly ties into wildlife crossing structures.
1713-3461 Volume 3 - Alternative 1	TT-D1202	Plan and profile	Embankment and associated fence will direct wildlife towards Highway 152. For example, this area has multiple recent badger observations (live and roadkill). What design elements will mitigate the potential to increase wildlife-vehicle collisions?
1713-3462 Volume 3 - Alternative 2	TT-D0804	B930-B935	How will impacts from operations (e.g. light, noise) be mitigated, including through site design?

Submission 1713 (Abigail Ramsden, The Nature Conservancy, June 23, 2020) - Continued

DocuSign Envelope ID: 4E6F4C1C-E973-4273-B96B-EA7D761E3383

**High-Speed Rail San Jose to Merced
POST, Open Space Authority, TNC Comments**

**Appendix A:
Detailed Engineering Design Comments**

Table A-1: Detailed comments on the Project wildlife connectivity infrastructure in the Preliminary Engineering and Project Design			
Section	Page	Figure/Table	Comment
1713-3463 Volume 3 - Alternative 2 - Book C - Roadway	CV-S0802	Plan	This new proposed road should be coordinated with land manager (Santa Clara Valley Open Space Authority).
1713-3464 Volume 3 - Alternative 2 - Book C - Roadway	CV-T0803	Plan	This proposed road is routed near sensitive and important habitat connectivity area in Coyote Creek. What is the anticipated traffic? How will impacts from traffic, light, noise, and pollutants be mitigated?
1713-3465 Volume 3 - Alternative 2 - Book C - Roadway	CV-T0804	Plan	Bridge and new road results in permanent loss of farmland and impact to operations as well as potential impacts to wildlife use (e.g. bobcat activity documented by Serieys et al. 2019). How will impacts to wildlife be mitigated through road design?
1713-3466 Volume 3 - Alternative 2 - Book D - Roadway and Maintenance of Way	TN-D1405	Plan	How will impacts from operations (e.g. traffic, light, noise) be mitigated, including through site design?
1713-3467 Volume 3 - Alternative 3	See note	See note	Same comments about design details as applicable from other Alternatives for Coyote Valley (e.g. retaining wall in Coyote Creek and wildlife fencing on west side of UPRR -NS 18), Soap Lake, Pacheco (B3255 example – how to protect wildlife from drop and other hazards? Fencing to keep off tracks?
1713-3468 Volume 3 - Alternative 3	TT-D1403	Plan	How will impacts of operations, including traffic, lighting, etc. be minimized/mitigated? Will there be curbs or fences adjacent to road and facility?

Submission 1713 (Abigail Ramsden, The Nature Conservancy, June 23, 2020) - Continued

DocuSign Envelope ID: 4E6F4C1C-E973-4273-B96B-EA7D761E3383

**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

**Appendix B:
Conflicts with the Valley Habitat Plan**

Appendix B: Conflicts between the Project and the Valley Habitat Plan

Table B-1: Comments on the DEIR/EIS Assessment of the Project’s Impacts on the Valley Habitat Plan

	Statement of Action	DEIR/EIS Assessment of Impacts	Comment
1713-3469	LAND-WP4. Acquire habitat that is adjacent to permanently protected aquatic resources with a high potential to support CRLF and is in the East San Francisco Bay Recovery Unit for red-legged frog (USFWS 2002) (Coyote Creek, Pacheco, and Pescadero Watersheds).	Action does not include quantitative targets for performance, thus the project alternatives would not have any potential to conflict with performance of action.	The impact will depend on what HSRA purchases to mitigate its impacts, rendering it essential that HSRA coordinate their acquisition strategy with the VHA to avoid a conflict.
1713-3470	LAND-R3. Acquire in fee title or obtain conservation easements on lands that protect at least 40 acres of existing Central California sycamore alluvial woodland to ensure that this very rare and threatened land cover type is preserved in the study area.	Effects along Pacheco Creek on an appreciable percentage of this habitat type in the plan area. Moreover, the greatest effects occur in an area not modeled as sycamore woodland (although it is) that SCVHA has recently acquired. It is possible that project alternatives could be modified to avoid this effect, which in the absence of mitigation would constitute a significant impact.	The project could derail VHA’s capstone sycamore alluvial mitigation strategy at the Pacheco Creek Reserve property where VHA will implement 8 acres of preservation and up to 20 acre of restoration/creation. Pacheco Creek itself is one of the last bastions of intact sycamore alluvial community featuring with natural California sycamore recruitment in the Plan Area.
1713-3471	CHAP-1. Conduct prescribed burns in chaparral and northern coastal scrub to maintain canopy gaps and promote regeneration. Use targeted studies to inform locations and frequency.	Action does not include quantitative targets for performance, thus the project alternatives would not have any potential to conflict with performance	One does not need to have a quantitative target to conflict with an action. How does HSR plan to resolve this issue in the DEIR/EIS?
1713-3472	GRASS-1. Continue or introduce livestock and native herbivore (e.g., elk) grazing in a variety of grazing regimes.	This action only occurs with Reserve System lands, which would not occur within the project extent, so there is no potential for a conflict with action GRASS-1.	The Project could impact VHA’s ability to graze current and future reserve system lands in the Pacheco Pass area, as well as the viability of grazing and the ranching community in the Pacheco Pass area.
1713-3473	GRASS-4. Conduct selected seeding of native forbs and grasses in the Reserve System.	This action only occurs with Reserve System lands, which would not occur within the project extent, so there is no potential for a conflict with action GRASS-4.	The Project will impact VHA’s ability to implement GRASS-4 on the Pacheco Creek Reserve Property. How does HSR plan to resolve this issue in the DEIR/EIS?

Submission 1713 (Abigail Ramsden, The Nature Conservancy, June 23, 2020) - Continued

DocuSign Envelope ID: 4E6F4C1C-E973-4273-B96B-EA7D761E3383

**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

**Appendix B:
Conflicts with the Valley Habitat Plan**

Table B-1: Comments on the DEIR/EIS Assessment of the Project's Impacts on the Valley Habitat Plan			
	Statement of Action	DEIR/EIS Assessment of Impacts	Comment
1713-3474	GRASS-6. Introduce livestock grazing where it is not currently used, and where conflicts with covered activities are minimized, to reduce vegetative cover and biomass that currently excludes ground squirrel and encourage ground squirrel colonization of new areas within the Reserve System.	This action only occurs with Reserve System lands, which would not occur within the project extent, so there is no potential for a conflict with action GRASS-6.	The Project will impact VHA's ability to implement GRASS-6 on the Pacheco Creek Reserve property. How does HSR plan to resolve this issue in the DEIR/EIS?
1713-3475	GRASS-9. Create and maintain artificial burrows to encourage colonization of sites where ground squirrels establishment is not feasible or during the interim before ground squirrel colonies naturally establish.	This action only occurs with Reserve System lands, which would not occur within the project extent, so there is no potential for a conflict with action GRASS-9.	The Project will impact VHA's ability to implement GRASS-9 on the Pacheco Creek Reserve Property and TNC's Pajaro Ranch Property. How does HSR plan to resolve this issue in the DEIR/EIS?
1713-3476	OAK-1. Conduct prescribed burns in low-density oak woodlands to enhance the community and to reduce non-native, invasive grass cover beneath oaks and encourage growth of a native understory and oak seedlings.	Action does not include quantitative targets for performance, thus the project alternatives would not have any potential to conflict with performance of action.	If the Project is constructed, the VHA may not be able to implement this management action in Reserve System lands adjacent to the Project alignment. How does HSR plan to resolve this issue in the DEIR/EIS?
1713-3477	POND-13. Excavate sections of ponds to provide deeper pools that will be utilized by California red-legged frog adults and sub-adults and western pond turtles, while maintaining shallow areas to provide rearing habitat for California red-legged frog tadpoles, California tiger salamander larvae, and western pond turtle hatchlings.	This action only occurs with Reserve System lands, which would not occur within the project extent, so there is no potential for a conflict with action POND-13.	The Project will impact the VHA's ability to implement POND-13 on the Pacheco Creek Reserve Property. How does HSR plan to resolve this issue in the DEIR/EIS?
1713-3478	POND-16. Restore freshwater marsh, seasonal wetlands, and/or ponds that will support dense reed-like vegetation (cattails) or other native vegetation that will attract nesting tricolored blackbirds.	This action only occurs with Reserve System lands, which would not occur within the project extent, so there is no potential for a conflict with action POND-16.	The Project will impact VHA's ability to implement POND-16 on the Pacheco Creek Reserve and Tulare Hill properties as well as within North Coyote Valley. How does HSR plan to resolve this issue in the DEIR/EIS?

Submission 1713 (Abigail Ramsden, The Nature Conservancy, June 23, 2020) - Continued

DocuSign Envelope ID: 4E6F4C1C-E973-4273-B96B-EA7D761E3383

**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

**Appendix B:
Conflicts with the Valley Habitat Plan**

Table B-1: Comments on the DEIR/EIS Assessment of the Project’s Impacts on the Valley Habitat Plan

	Statement of Action	DEIR/EIS Assessment of Impacts	Comment
1713-3479	POND-17. In areas with non-native vegetation (e.g., Himalayan blackberry) that supports existing tricolored blackbird colonies, initiate a gradual (3-4 year) transition from non-native vegetation to native vegetation that is structurally similar.	This action only occurs with Reserve System lands, which would not occur within the project extent, so there is no potential for a conflict with action POND-17.	The Project will impact VHA’s ability to implement POND-17 on the Pacheco Creek Reserve Property and within North Coyote Valley, given project footprint and the anticipated impacts of noise and vibration for the tricolored blackbird colonies. How does HSR plan to resolve this issue in the DEIR/EIS?
1713-3480	POND-10. In addition to the creation of ponds described in POND-9, create up to 52 acres of ponds in-kind within the Reserve System to increase the amount available habitat and enhance connectivity among existing ponds and wetlands if all anticipated impacts occur.	This action only occurs with Reserve System lands, which would not occur within the project extent, so there is no potential for a conflict with action POND-10.	The Project will impact VHA’s ability to implement POND-10 on the Pacheco Creek Reserve and Tulare Hill properties. How does HSR plan to resolve this issue in the DEIR/EIS?
1713-3481	GRASS-2. Conduct prescribed burns. Use targeted studies to inform methods, timing, location, and frequency.	Project alternatives intersect a substantial acreage of modeled grassland habitat for these species, but the affected area is a very small fraction of this habitat type in the plan area. Also, most of project extent would be in agricultural/developed areas where prescribed burning is not feasible, and in general, prescribed burning has been a minor management tool under the SCVHP due to regulatory challenges in getting burn permits. Accordingly, the project alternatives would not affect the feasibility of completing action LAND-WP1a.	The Project will impact VHA’s ability to implement GRASS-2 on the Pacheco Creek Reserve property as well as any future Pacheco Pass area acquisitions, which currently features extensive intact habitat suitable for controlled burns that could be inhibited or prohibited near HSR infrastructure. How does HSR plan to resolve this issue in the DEIR/EIS?
1713-3482	LM-7a. Restore a minimum of 1.0 miles of stream, 50 acres of riparian forest and scrub, and 20 acres of freshwater marsh, and create 20 acres of ponds to contribute to species recovery.	Project alternatives would affect few streams or freshwater wetlands relative to their abundance, and would affect a small linear length of streams. All project alternatives would affect a variety of ponds in the Pacheco and Llagas Creek watersheds, but the number and area of effects is small relative to the availability of pond habitat in these areas. Project alternatives would also have few effects on riparian	The Project will impact VHA’s ability to implement its upcoming stream restoration project on our Pacheco Creek Reserve property and will prevent implementation of a marsh/pond/wetland restoration on our Tulare Hill property. Moreover, the project will potentially derail VHA’s capstone sycamore alluvial mitigation strategy at the Pacheco Creek Reserve property, which includes 8 acres of

Submission 1713 (Abigail Ramsden, The Nature Conservancy, June 23, 2020) - Continued

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**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

**Appendix B:
Conflicts with the Valley Habitat Plan**

Table B-1: Comments on the DEIR/EIS Assessment of the Project's Impacts on the Valley Habitat Plan		
Statement of Action	DEIR/EIS Assessment of Impacts	Comment
1713-3482	forest and scrub, apart from the sycamore forests along Pacheco Creek (treated in action LAND-R3); however those effects would not be extensive enough to affect the feasibility of completing action LM-7a.	preservation and up to 20 acres of restoration/creation. Pacheco Creek itself is one of the last areas of sycamore alluvial community featuring natural recruiting California sycamore within the Plan Area. How does HSR plan to resolve this issue in the DEIR/EIS?
1713-3483	POND-19. Restore a minimum of 20 acres and up to 45 acres of freshwater marsh within the Reserve System in the Santa Cruz Mountains, Santa Clara Valley, and Diablo Range.	The Project will impact VHA's ability to implement the wetland component of its upcoming restoration project on the Pacheco Creek Reserve property and will prevent implementation of a marsh/pond/wetland restoration within the Tulare Hill property. How does HSR plan to resolve this issue in the DEIR/EIS?
1713-3484	POND-6. Restore 20 acres of perennial freshwater marsh within the Reserve System in suitable sites and those likely to support covered species.	The Project will impact VHA's ability to implement the wetland component of its upcoming restoration project on the Pacheco Creek Reserve property and will prevent implementation of a marsh/pond/wetland restoration within the Tulare Hill property. How does HSR plan to resolve this issue in the DEIR/EIS?
1713-3485	POND-7. In addition to the perennial freshwater marsh restoration described in POND-6, restore up to 25 acres of perennial freshwater marsh within the Reserve System in the Santa Cruz Mountains, Santa Clara Valley, and Diablo Range.	The Project will impact VHA's ability to implement the wetland component of its upcoming restoration project on the Pacheco Creek Reserve property and will prevent implementation of a marsh/pond/wetland restoration within the Tulare Hill property. How does HSR plan to resolve this issue in the DEIR/EIS?
1713-3486	POND-9. Create at least 20 acres of ponds at 40 sites, at least 10 sites in the Santa	The Project will impact VHA's ability to implement restoration on the Pacheco Creek Reserve property and will prevent implementation of a

Submission 1713 (Abigail Ramsden, The Nature Conservancy, June 23, 2020) - Continued

DocuSign Envelope ID: 4E6F4C1C-E973-4273-B96B-EA7D761E3383

High-Speed Rail San Jose to Merced DEIR/EIS POST, Open Space Authority, TNC Comments

Appendix B: Conflicts with the Valley Habitat Plan

Table B-1: Comments on the DEIR/EIS Assessment of the Project's Impacts on the Valley Habitat Plan		
Statement of Action	DEIR/EIS Assessment of Impacts	Comment
1713-3486 Cruz Mountains and 20 sites in the Diablo Range.	areas). However, the number and area of effects is small relative to the availability of pond habitat in these areas, so the effects would not affect the feasibility of completing action POND-9.	marsh/pond/wetland restoration on the Tulare Hill property. How does HSR plan to resolve this issue in the DEIR/EIS?
1713-3487 STREAM-4. Replace concrete, earthen or other engineered channels as part of the 10.4 miles of stream restoration to restore floodplain connectivity. Location and length will be determined by site-specific conditions.	Project alternatives would affect few streams relative to their abundance, and would affect a small linear length of streams. Project alternatives therefore would not affect the feasibility of completing action STREAM-4.	The Project will impact VHA's ability to implement an upcoming stream restoration project on its Pacheco Creek Reserve property. How does HSR plan to resolve this issue in the DEIR/EIS?
1713-3488 STREAM-5. Replace confined channels to restore floodplain connectivity and commensurate functions as part of the 10.4 miles of stream restoration. Location and length will be determined by site-specific conditions.	Project alternatives affect few streams relative to their abundance, and affect a small linear length of streams. Therefore, the project alternatives would not affect the feasibility of completing action STREAM-5.	The Project will impact VHA's ability to implement an upcoming stream restoration project on its Pacheco Creek Reserve property. How does HSR plan to resolve this issue in the DEIR/EIS?
1713-3489 LM-2. When replacing small culverts ensure that the culvert has a natural bottom and is large enough for larger mammals such as deer and mountain lions to pass, if feasible. Culverts must provide direct movement from one side of the road to the other and ensure that the culvert is visible to the target species (i.e., do not obscure entrance with vegetation). Install fencing or other features that will direct wildlife towards the culvert or other safe crossing within the first 20 years of implementation.	BIO-IAMF#25 would provide equivalent protection within the project footprint for each alternative, so there is no potential for a conflict with action LM-2.	For each alternative, BIO-IAMF #25 does not provide equivalent protection within the project footprint. None of these management recommendations are being applied to Pacheco Pass. Will the FIER include these management plans for Pacheco Pass? How does HSR plan to resolve these conflicts in the DEIR/EIS?
LM-3. Where structurally possible, replace culverts with free span bridges to ensure free movement for wildlife under roadways.	BIO-IAMF#25 would provide equivalent protection within the project footprint for each alternative, so there is no potential for a conflict with action LM-3.	

Submission 1713 (Abigail Ramsden, The Nature Conservancy, June 23, 2020) - Continued

DocuSign Envelope ID: 4E6F4C1C-E973-4273-B96B-EA7D761E3383

High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments

Appendix B:
Conflicts with the Valley Habitat Plan

Table B-1: Comments on the DEIR/EIS Assessment of the Project’s Impacts on the Valley Habitat Plan

Statement of Action	DEIR/EIS Assessment of Impacts	Comment
LM-4. Ensure that median barrier removal and/or median perforations are considered as alternatives during project design.	BIO-IAMF#25 would provide equivalent protection within the project footprint for each alternative, so there is no potential for a conflict with action LM-4.	
LM-5. Remove median barriers or perforate sections of median barriers along roadways to improve successful wildlife crossings and install fencing or other features to direct wildlife to those open sections within first 20 years of implementation. Use feasibility study to determine location and length of barrier removal.	BIO-IAMF#25 would provide equivalent protection within the project footprint for each alternative, so there is no potential for a conflict with action LM-5.	
1713-3490 POND-3. Plant native emergent vegetation around the perimeter and in ponds and wetlands.	BIO-IAMF#5 and BIO-IAMF#6 would provide equivalent protection within the project footprint for each alternative, so there is no potential for a conflict with action POND-3.	The Project will impact VHA’s ability to implement the wetland component of its upcoming restoration project on the Pacheco Creek Reserve property and will prevent implementation of a marsh/pond/wetland restoration within the Tulare Hill property. How does HSR plan to resolve this issue in the DEIR/EIS?
1713-3491 STREAM-2. Plant and/or seed in native understory and overstory riparian vegetation within 15 feet of the edge of the low-flow channel to create structural diversity, provide overhead cover, and moderate water temperature at all riparian restoration sites.	BIO-IAMF#5 and BIO-IAMF#6 would provide equivalent protection within the project footprint for each alternative, so there is no potential for a conflict with action STREAM-2.	The Project will impact VHA’s ability to implement the Pacheco Creek restoration project. How does HSR plan to resolve this issue in the DEIR/EIS?
1713-3492 STREAM-3. Plant and/or seed in native riparian vegetation in gaps in existing riparian corridors, or re-establish severely degraded or historic riparian corridors, to promote continuity within conservation lands.	BIO-IAMF#5 and BIO-IAMF#6 would provide equivalent protection within the project footprint for each alternative, so there is no potential for a conflict with action STREAM-3.	The Project creates a potential conflict with the VHP in the Pacheco Pass area; in particular, the Pacheco Creek Reserve property is primarily riparian and floodplain habitat which the Project will directly impact. How does HSR plan to resolve this issue in the DEIR/EIS?

Submission 1713 (Abigail Ramsden, The Nature Conservancy, June 23, 2020) - Continued

DocuSign Envelope ID: 4E6F4C1C-E973-4273-B96B-EA7D761E3383

High-Speed Rail San Jose to Merced DEIR/EIS POST, Open Space Authority, TNC Comments

Appendix B: Conflicts with the Valley Habitat Plan

Table B-1: Comments on the DEIR/EIS Assessment of the Project's Impacts on the Valley Habitat Plan		
Statement of Action	DEIR/EIS Assessment of Impacts	Comment
1713-3493 Goal: Protect and manage an interconnected system of wildlands and natural areas to support native habitats and species and to ensure resilience to a changing environment.	Goal does not include quantitative or specific targets for performance, thus the project alternatives only have potential to conflict with attainment of goal if there is a conflict with one of the Strategies for Protecting Wildlands and Natural Areas listed in this table.	The Project is in direct conflict with the VHP's ability to achieve this goal especially in Pacheco Pass area. How does HSR plan to resolve this issue in the DEIR/EIS?
1713-3494 Strategy 1. Focus land conservation efforts in areas critical for the long-term viability of native species and biological communities and the ecosystem services they provide.	No specific focus areas are named, and there are no quantitative or measurable targets named under this strategy. Elsewhere the Greenprint identifies natural communities of concern. With regard to potential effects from the project alternatives, the Greenprint and the SCVHP include the same areas of potential effect, apart from a small area within the City of Gilroy that is not under SCVOSA jurisdiction. Since the analysis of SCVHP effects on natural communities (Table 1) did not find any conflicts, there would also be no conflict between the project alternatives and Strategy 1.	The Project is in direct conflict with the VHP's ability to achieve Strategy 1 especially in Pacheco Pass area. How does HSR plan to resolve this issue in the DEIR/EIS?
1713-3495 Strategy 3. Protect and maintain connections between large open space parcels to provide large habitat blocks, ensure critical linkages, and provide climate resilience.	Areas critical for habitat connectivity are identified on Figure 5 of the Greenprint. There are no quantitative or measurable targets named under this strategy. With regard to potential effects on connectivity, all areas of concern identified in the Greenprint are also identified in the SCVHP. Since the analysis of SCVHP effects on habitat connectivity (Table 1) found that a final determination of the potential for conflict must await conclusion of the analysis of project extent effects on connectivity, determination of the potential for conflict between the project alternatives and Strategy 3 must also await conclusion of that analysis.	The Project will have significant and detrimental impacts on the VHA's ability to implement Strategy 3 in the Pacheco Pass area. How does HSR plan to resolve this issue in the DEIR/EIS?
1713-3496 Goal 3: Permanently protect habitat connectivity for terrestrial and aquatic species.	Goal does not include quantitative or other specific targets for performance. Project alternatives only have the potential to conflict with attainment of goal if	The project will impact VHA's ability to achieve this goal, especially in the Pacheco Pass area. How does HSR plan to resolve this issue in the DEIR/EIS?

Submission 1713 (Abigail Ramsden, The Nature Conservancy, June 23, 2020) - Continued

DocuSign Envelope ID: 4E6F4C1C-E973-4273-B96B-EA7D761E3383

**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

**Appendix B:
Conflicts with the Valley Habitat Plan**

Table B-1: Comments on the DEIR/EIS Assessment of the Project's Impacts on the Valley Habitat Plan		
Statement of Action	DEIR/EIS Assessment of Impacts	Comment
1713-3496	there is a conflict with one of the associated Design Principles or proposed wildlife crossings (which are listed below in this table).	
1713-3497	Goal: Provide live-in and dispersal habitat for full community of species, including sensitive species, that can also facilitate daily and seasonal migrations, as well as long-term range shifts as species adapt to changing climate.	Goal does not include quantitative or other specific targets for performance. Project alternatives only have the potential to conflict with attainment of goal if there is a conflict with one of the associated Design Principles or proposed wildlife crossings (which are listed below in this table).
1713-3498	Goal: Accommodate the range of taxa and guilds between mountain ranges, even those that are not currently in the area but might be in the future as species shift distribution in response to climate change.	Goal does not include quantitative or other specific targets for performance. Project alternatives only have the potential to conflict with attainment of goal if there is a conflict with one of the associated Design Principles or proposed wildlife crossings (which are listed below in this table).
1713-3499	Goal: Protect, expand, and connect habitat patches in a way that minimizes edge effects.	Goal does not include quantitative or other specific performance targets by which the project's effects can be evaluated. The project alternatives only have the potential to conflict with attainment of goal if there is a conflict with one of the associated Design Principles or proposed wildlife crossings (which are listed below in this table).
1713-3500	Goal: Prevent linkage fragmentation from future incompatible land uses (e.g. urban development, transportation projects, etc.).	Goal does not include quantitative or other specific performance targets by which the project's effects can be evaluated. The project alternatives only have the potential to conflict with attainment of goal if there is a conflict with one of the associated Design Principles or proposed wildlife crossings (which are listed below in this table).
1713-3501	Goal: Use landscape resilience planning principles for sustainability (Beller <i>et al.</i>	Goal does not include quantitative or other specific performance targets by which the project's effects can be evaluated. The project alternatives only have the

Submission 1713 (Abigail Ramsden, The Nature Conservancy, June 23, 2020) - Continued

DocuSign Envelope ID: 4E6F4C1C-E973-4273-B96B-EA7D761E3383

**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

**Appendix B:
Conflicts with the Valley Habitat Plan**

Table B-1: Comments on the DEIR/EIS Assessment of the Project’s Impacts on the Valley Habitat Plan

Statement of Action	DEIR/EIS Assessment of Impacts	Comment
1713-3501 2015) in an urban ecosystem in the face of a changing and uncertain future: Incorporate as much terrestrial and aquatic landform diversity, complexity, and connectivity as possible. Provide redundancy of elements (both habitat types and safe crossings). Consider historical ecology to understand the driving factors of setting. Provide space for dynamic natural processes (e.g. flooding) to operate. Develop the project at the scale at which landscape processes can operate meaningfully.	potential to conflict with attainment of goal if there is a conflict with one of the associated Design Principles or proposed wildlife crossings (which are listed below in this table).	processes to operate. How does HSR plan to resolve this issue in the DEIR/EIS?
1713-3502 Design Principle: Maintain a wide wildland area.	Design principle is qualitative in nature and does not provide specific performance targets by which the project’s effects can be evaluated. The project alternatives only have the potential to conflict with attainment of the design principle if there is a conflict with one of the proposed wildlife crossings listed below in this table.	The Project will create a direct conflict in the Pacheco Pass area. How does HSR plan to resolve this issue in the DEIR/EIS?
1713-3503 Design Principle: Protect nature’s stage – areas with the least fragmentation, existing protected lands, and the most landform diversity and topographic and hydrological complexity	Design principle is qualitative in nature and does not provide specific performance targets. The project alternatives only have the potential to conflict with attainment of the design principle if there is a conflict with one of the proposed wildlife crossings listed below in this table.	The Project conflicts with connectivity implementation and preservation but also fragmentation at a landscape scale as well as disruption of hydrological complexity. How does HSR plan to resolve this issue in the DEIR/EIS?
1713-3504 Design Principle: Restore freshwater wetlands and a more natural hydrologic regime.	Design principle is qualitative in nature and does not provide specific performance targets. The project alternatives only have the potential to conflict with attainment of the design principle if there is a conflict with one of the proposed wildlife crossings listed below in this table.	The Project may disrupt the natural hydrologic processes and limited any wetland restoration envisioned in North Coyote Valley including Tulare Hill drainage basin. How does HSR plan to resolve this issue in the DEIR/EIS?

Submission 1713 (Abigail Ramsden, The Nature Conservancy, June 23, 2020) - Continued

DocuSign Envelope ID: 4E6F4C1C-E973-4273-B96B-EA7D761E3383

**High-Speed Rail San Jose to Merced DEIR/EIS
POST, Open Space Authority, TNC Comments**

**Appendix B:
Conflicts with the Valley Habitat Plan**

Table B-1: Comments on the DEIR/EIS Assessment of the Project’s Impacts on the Valley Habitat Plan		
Statement of Action	DEIR/EIS Assessment of Impacts	Comment
1713-3505 Design Principle: Restore a mosaic of natural communities along the valley floor, especially rare habitat that complements wetlands, such as Valley oak woodlands and savanna.	Design principle is qualitative in nature and does not provide specific performance targets. The project alternatives only have the potential to conflict with attainment of the design principle if there is a conflict with one of the proposed wildlife crossings listed below in this table.	Achievement of this goal could be at risk dependent upon whether or not the hydrologic regime in both the Pacheco and Fisher Creek watersheds is disrupted. How does HSR plan to resolve this issue in the DEIR/EIS?
1713-3506 Design Principle: Improve permeability throughout the linkage by maintaining as much open space as possible and constraining further urban development.	Dedicated crossings and project design features are intended to minimize fragmentation at linkages within the Coyote Valley.	Pacheco Pass is identified in the VHP as a critical north-south linkage which is supported by the data the SCVHA has collected (Pathways for Wildlife 2020). How does HSR plan to resolve this issue in the DEIR/EIS?
1713-3507 Design Principle: Increase the number of engineered strategic connections across the more significant barriers.	Dedicated crossings and project design features are intended to minimize fragmentation at linkages within the Coyote Valley and may contribute to improvements of existing barriers	Again, what about Pacheco Pass where the Project will have a significant impact on connectivity (wildlife permeability) How does HSR plan to resolve this issue in the DEIR/EIS?
1713-3508 Design Principle: Use multi-benefit landscape planning to ensure actions maximize public benefits while protecting unique values.	Design principle is qualitative in nature, does not provide specific performance targets, and does not define criteria for a “wide wildlife area”. The project alternatives only have the potential to conflict with attainment of principle if there is a conflict with one of the proposed crossing modifications for protecting habitat connectivity listed in this table.	The Project will affect multiple benefits as well as connectivity? How does HSR plan to resolve this issue in the DEIR/EIS?

Response to Submission 1713 (Abigail Ramsden, The Nature Conservancy, June 23, 2020)

1713-3258

The Draft EIR/EIS is based on the best data available at the time the analysis was conducted. The Authority is responsible for planning, designing, building and operation of the nation's first high-speed rail system. While the Authority is committed to a cleaner environment and preservation of agricultural and protected lands, that does not mean that Authority projects "will not harm our region's environment." The project includes mitigation where practicable to compensate for these significant impacts.

1713-3259

Please refer to submission SJM-1618, comment 2572.

1713-3260

Please refer to submission SJM-1618, comment 2573.

1713-3261

Please refer to submission SJM-1618, comment 2574.

1713-3262

Please refer to submission SJM-1618, comment 2575.

1713-3263

Please refer to submission SJM-1618, comment 2576.

1713-3264

Please refer to submission SJM-1618, comment 2577.

1713-3265

Please refer to submission SJM-1618, comment 2578.

1713-3266

Please refer to submission SJM-1618, comment 2579.

1713-3267

Please refer to submission SJM-1618, comment 2580.

1713-3268

Please refer to submission SJM-1618, comment 2581.

1713-3269

Please refer to submission SJM-1618, comment 2582.

1713-3270

Please refer to submission SJM-1618, comment 2583.

1713-3271

Please refer to submission SJM-1618, comment 2584.

1713-3272

Please refer to submission SJM-1618, comment 2585.

1713-3273

Please refer to submission SJM-1618, comment 2586.

1713-3274

Please refer to submission SJM-1618, comment 2587.

1713-3275

Please refer to submission SJM-1618, comment 2588.

1713-3276

Please refer to submission SJM-1618, comment 2589.

1713-3277

Please refer to submission SJM-1618, comment 2590.

Response to Submission 1713 (Abigail Ramsden, The Nature Conservancy, June 23, 2020) - Continued

1713-3278

Please refer to submission SJM-1618, comment 2591.

1713-3279

Please refer to submission SJM-1618, comment 2592.

1713-3280

Please refer to submission SJM-1618, comment 2593.

1713-3281

Please refer to submission SJM-1618, comment 2594.

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Please refer to submission SJM-1618, comment 2595.

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Please refer to submission SJM-1618, comment 2596.

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Please refer to submission SJM-1618, comment 2597.

1713-3285

Please refer to submission SJM-1618, comment 2598.

1713-3286

Please refer to submission SJM-1618, comment 2599.

1713-3287

Please refer to submission SJM-1618, comment 2600.

1713-3288

Please refer to submission SJM-1618, comment 2601.

1713-3289

Please refer to submission SJM-1618, comment 2602.

1713-3290

Please refer to submission SJM-1618, comment 2603.

1713-3291

Please refer to submission SJM-1618, comment 2604.

1713-3292

Please refer to submission SJM-1618, comment 2605.

1713-3293

Please refer to submission SJM-1618, comment 2606.

1713-3294

Please refer to submission SJM-1618, comment 2607.

1713-3295

Please refer to submission SJM-1618, comment 2608.

1713-3296

Please refer to submission SJM-1618, comment 2609.

1713-3297

Please refer to submission SJM-1618, comment 2610.

1713-3298

Please refer to submission SJM-1618, comment 2611.

1713-3299

Please refer to submission SJM-1618, comment 2612.

Response to Submission 1713 (Abigail Ramsden, The Nature Conservancy, June 23, 2020) - Continued

1713-3300

Please refer to submission SJM-1618, comment 2613.

1713-3301

Please refer to submission SJM-1618, comment 2614.

1713-3302

Please refer to submission SJM-1618, comment 2615.

1713-3303

Please refer to submission SJM-1618, comment 2616.

1713-3304

Please refer to submission SJM-1618, comment 2617.

1713-3305

Please refer to submission SJM-1618, comment 2618.

1713-3306

Please refer to submission SJM-1618, comment 2619.

1713-3307

Please refer to submission SJM-1618, comment 2620.

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Please refer to submission SJM-1618, comment 2621.

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Please refer to submission SJM-1618, comment 2622.

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Please refer to submission SJM-1618, comment 2623.

1713-3311

Please refer to submission SJM-1618, comment 2624.

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Please refer to submission SJM-1618, comment 2625.

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Please refer to submission SJM-1618, comment 2626.

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Please refer to submission SJM-1618, comment 2627.

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Please refer to submission SJM-1618, comment 2628.

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Please refer to submission SJM-1618, comment 2630.

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Please refer to submission SJM-1618, comment 2631.

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Please refer to submission SJM-1618, comment 2632.

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Please refer to submission SJM-1618, comment 2633.

1713-3321

Please refer to submission SJM-1618, comment 2634.

Response to Submission 1713 (Abigail Ramsden, The Nature Conservancy, June 23, 2020) - Continued

1713-3322

Please refer to submission SJM-1618, comment 2635.

1713-3323

Please refer to submission SJM-1618, comment 2636.

1713-3324

Please refer to submission SJM-1618, comment 2637.

1713-3325

Please refer to submission SJM-1618, comment 2638.

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Please refer to submission SJM-1618, comment 2639.

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Please refer to submission SJM-1618, comment 2640.

1713-3328

Please refer to submission SJM-1618, comment 2641.

1713-3329

Please refer to submission SJM-1618, comment 2642.

1713-3330

Please refer to submission SJM-1618, comment 2643.

1713-3331

Please refer to submission SJM-1618, comment 2644.

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Please refer to submission SJM-1618, comment 2645.

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Please refer to submission SJM-1618, comment 2646.

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Please refer to submission SJM-1618, comment 2647.

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Please refer to submission SJM-1618, comment 2648.

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Please refer to submission SJM-1618, comment 2649.

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Please refer to submission SJM-1618, comment 2650.

1713-3338

Please refer to submission SJM-1618, comment 2651.

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Please refer to submission SJM-1618, comment 2652.

1713-3340

Please refer to submission SJM-1618, comment 2653.

1713-3341

Please refer to submission SJM-1618, comment 2654.

1713-3342

Please refer to submission SJM-1618, comment 2655.

1713-3343

Please refer to submission SJM-1618, comment 2656.

Response to Submission 1713 (Abigail Ramsden, The Nature Conservancy, June 23, 2020) - Continued

1713-3344

Please refer to submission SJM-1618, comment 2657.

1713-3345

Please refer to submission SJM-1618, comment 2658.

1713-3346

Please refer to submission SJM-1618, comment 2659.

1713-3347

Please refer to submission SJM-1618, comment 2660.

1713-3348

Please refer to submission SJM-1618, comment 2661.

1713-3349

Please refer to submission SJM-1618, comment 2662.

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Please refer to submission SJM-1618, comment 2663.

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Please refer to submission SJM-1618, comment 2664.

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Please refer to submission SJM-1618, comment 2665.

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Please refer to submission SJM-1618, comment 2666.

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Please refer to submission SJM-1618, comment 2667.

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Please refer to submission SJM-1618, comment 2669.

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Please refer to submission SJM-1618, comment 2670.

1713-3358

Please refer to submission SJM-1618, comment 2673.

1713-3359

Please refer to submission SJM-1618, comment 2672.

1713-3455

Please refer to submission SJM-1618, comment 2674.

1713-3458

As noted in revised mitigation measure BIO-MM#77a in the Final EIR/EIS, the Authority has further clarified the process that would be used to site and design crossings, in coordination with agency and stakeholder partners in the region. The Authority believes this measure is necessary because the project has not been fully designed yet and is therefore conceptual in nature. Additionally, land ownership and land use could change between the Final EIR/EIS and the time of construction. BIO-MM#77a would ensure that current land use is considered and the most optimal placement of wildlife crossings.

1713-3460

Please refer to submission SJM-1618, comment 2676.

1713-3461

Please refer to submission SJM-1618, comment 2675.

Response to Submission 1713 (Abigail Ramsden, The Nature Conservancy, June 23, 2020) - Continued

1713-3462

Please refer to submission SJM-1618, comment 2677.

1713-3457

Please refer to submission SJM-1618, comment 2678.

1713-3456

Please refer to submission SJM-1618, comment 2679.

1713-3459

Please refer to submission SJM-1618, comment 2680.

1713-3465

Please refer to submission SJM-1618, comment 2681.

1713-3463

Please refer to submission SJM-1618, comment 2682.

1713-3464

Please refer to submission SJM-1618, comment 2685.

1713-3466

Please refer to the response to submission SJM-1618, comment 2684.

1713-3468

Please refer to submission SJM-1618, comment 2683.

1713-3467

Please refer to submission SJM-1618, comment 2673.

1713-3469

Please refer to submission SJM-1618, comment 2687.

1713-3473

Please refer to submission SJM-1618, comment 2688.

1713-3470

Please refer to submission SJM-1618, comment 2690.

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Please refer to submission SJM-1618, comment 2689.

1713-3471

Please refer to submission SJM-1618, comment 2691.

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Please refer to submission SJM-1618, comment 2693.

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Please refer to submission SJM-1618, comment 2696.

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Please refer to submission SJM-1618, comment 2695.

1713-3480

Please refer to submission SJM-1618, comment 2697.

1713-3479

Please refer to submission SJM-1618, comment 2699.

Response to Submission 1713 (Abigail Ramsden, The Nature Conservancy, June 23, 2020) - Continued

1713-3481

Please refer to submission SJM-1618, comment 2700.

1713-3482

Please refer to submission SJM-1618, comment 2698.

1713-3484

Please refer to submission SJM-1618, comment 2702.

1713-3485

Please refer to submission SJM-1618, comment 2701.

1713-3483

Please refer to submission SJM-1618, comment 2704.

1713-3486

Please refer to submission SJM-1618, comment 2703.

1713-3487

Please refer to submission SJM-1618, comment 2705.

1713-3488

Please refer to submission SJM-1618, comment 2706.

1713-3489

Please refer to submission SJM-1618, comment 2707.

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Please refer to submission SJM-1618, comment 2709.

1713-3491

Please refer to submission SJM-1618, comment 2708.

1713-3492

Please refer to submission SJM-1618, comment 2710.

1713-3493

Please refer to submission SJM-1618, comment 2711.

1713-3496

Please refer to submission SJM-1618, comment 2713.

1713-3495

Refer to Standard Response SJM-Response-BIO-7: Clarifications Regarding Project Conflicts with the Santa Clara Valley Habitat Plan.

Please refer to submission SJM-1618, comment 2712.

1713-3494

Please refer to submission SJM-1618, comment 2714.

1713-3498

Please refer to submission SJM-1618, comment 2715.

1713-3497

Please refer to submission SJM-1618, comment 2716.

1713-3501

Please refer to submission SJM-1618, comment 2718.

1713-3499

Please refer to submission SJM-1618, comment 2717.

1713-3500

Please refer to submission SJM-1618, comment 2719.

Response to Submission 1713 (Abigail Ramsden, The Nature Conservancy, June 23, 2020) - Continued

1713-3504

Please refer to submission SJM-1618, comment 2720.

1713-3503

Please refer to submission SJM-1618, comment 2721.

1713-3502

Please refer to submission SJM-1618, comment 2722.

1713-3505

Please refer to submission SJM-1618, comment 2725.

1713-3506

Please refer to submission SJM-1618, comment 2724.

1713-3508

Please refer to submission SJM-1618, comment 2723.

1713-3507

Please refer to submission SJM-1618, comment 2726.

Submission 1289 (Abigail Ramsden, The Nature Conservancy in California, May 19, 2020)

San Jose - Merced - RECORD #1289 DETAIL

Status : Action Pending
Record Date : 5/19/2020
Submission Date : 5/19/2020
Interest As : Business and/or Organization
First Name : Abigail
Last Name : Ramsden

Stakeholder Comments/Issues :

To Whom it May Concern,

1289-100

The Nature Conservancy (TNC) respectfully requests an extension of time for the public comment period of the California High-Speed Rail Project - San Jose to Merced Project Section Draft EIR/EIS.

As posted, the DEIR/DEIS is available for public review for 45 days, ending on June 8, 2020. TNC, like many other public agencies, organizations and private individuals throughout California, has encountered disrupted work schedules and other complications from the current statewide stay-at-home order at a time when we are normally very busy. We believe we are not the only entity seeking to extend the public comment period for this Project Section because so many of us have been under duress for several weeks.

TNC formally requests that the public comment period for the San Jose to Merced Project Section DEIR/DEIS be extended by a minimum of two weeks and would strongly recommend that the HSR Authority extend the period for a full 30 days beyond this initial 45-day comment period.

Thank you very much for your consideration.
Abigail Ramsden

Abigail Ramsden | Sustainable Development & Cities | The Nature Conservancy in California |
she/her<<https://www.mypronouns.org/what-and-why>>
(415) 281-0435<tel:(415)%20281-0435> (o) (415) 722-0732<tel:(415)%20722-0732> (m) | 201 Mission St.,
Floor 4, San Francisco, CA 94105

Response to Submission 1289 (Abigail Ramsden, The Nature Conservancy in California, May 19, 2020)

1289-100

Refer to Standard Response SJM-Response-OUT-1: Public Outreach.

Submission 1387 (David Reynolds, Trevis Berry Transportation, June 18, 2020)

San Jose - Merced - RECORD #1387 DETAIL

Status : Unread
Record Date : 6/18/2020
Submission Date : 6/18/2020
Interest As : Individual
First Name : David
Last Name : Reynolds

Stakeholder Comments/Issues :

1387-3014

I emailed previously and I am trying to understand the map of the Gilroy station and the parcels of property that this line appears to be acquiring. How do we know what the plan is for a parcel to potentially be used as part of this plan when there is an operating business on that site and there has been no information to the property owner of what appears to be an intended take over?

The property in question is 6791 Alexander St., Gilroy. It is difficult to decipher on the different alternatives and plans what the actual plan is at this point regarding that site. It appears that plan 2 & 3 would have parking in place of where this industrial operation that has been operating for 20 years would somehow become a parking lot. That compared to plan 4 would have the parking lot in the vacant lot that sits along auto mall parkway at this point.

Could someone respond back and let us know exactly the intention for 6791 Alexander St. Gilroy and the timeline of said property in question being taken over. There is a long term lease in place with that operation and we have not received any information about a possible take over of that site by the HSR system.

Thanks,
Dave

David Reynolds

Trevis Berry Transportation

655 E. Luchessa Ave.

Gilroy, CA 95020

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Response to Submission 1387 (David Reynolds, Trevis Berry Transportation, June 18, 2020)

1387-3014

The commenter requested additional information about potential impacts to property owned at 6791 Alexander Street in Gilroy. Note that the Authority's outreach team did contact and speak with the commentor about his property.

Three of the four project alternatives evaluated in the Draft EIR/EIS would require the partial or full acquisition of private property associated with APN 841-16-120 (6791 Alexander Street). Alternatives 1 and 2 would require the full acquisition of this parcel due to the expansion of the existing railway right-of-way and construction of new project features such as an automatic train control facility, an access road, and a surface parking lot. Alternative 3 traverses through east Gilroy, rather than downtown Gilroy, and would have no impacts on APN 841-16-120. Alternative 4, which is the Authority's Preferred Alternative, would require the partial acquisition of the westernmost portion of APN 841-16-120 to accommodate expansion of the existing rail right-of-way; it is not anticipated that business operations on APN 841-16-120 would be affected by Alternative 4.

The Authority would acquire land from property owners whose land is directly affected by the project in accordance with the Uniform Relocation Act (42 U.S.C. Chapter 61). Parcel-specific analysis would take place during the appraisal process before property acquisition, consistent with the Uniform Relocation Act, which establishes minimum standards for the treatment of and compensation to individuals whose real property is acquired for a federally funded project. Additional information about acquisition, compensation, and relocation assistance is also available in Appendix 3.12-A, Relocation Assistance Documents, in this Final EIR/EIS and at the Authority's website: http://www.hsr.ca.gov/Programs/private_property.html.

Submission 1390 (David Reynolds, Trevis Berry Transportation, June 18, 2020)



June 1, 2020

California High-Speed Rail Authority
Attn: San Jose to Merced: Draft EIR/EIS
100 Paseo de San Antonio, Suite 300
San Jose, CA 95113
san.jose_merced@hsr.ca.gov

Ricci Graham

Subject San Jose Merced Draft EIR/EIS comments

1390-2320

I am writing as the local business owner that operations the transportation out of 6791 Alexander Street, Gilroy CA 95020. This property has an existing commercial operation that has been in place for over 20 years. This operation supplies essential corrugated paper to support the agricultural industry of Central California primarily, but also supports operations in all of California and surrounding Western States.

I have reached out via email without response to what appears to be a proposal to have the HSR acquire this facility and turn it into a parking lot. There is a property with approximately 9-10 acres adjacent to the 6791 Alexander St. that is un-developed land. The land is occasionally rented by surrounding car dealerships to park their inventory. This seems like it would be a far more appropriate utilization for a parking lot than an essential commercial industry in Gilroy, California, and the surrounding Western States of the United States.

Please respond that you have received my communications and if there is another forum or additional information needed to better understand the true impact, please let me know.

Sincerely,

David Reynolds
Trevis Berry Transportation

Response to Submission 1390 (David Reynolds, Trevis Berry Transportation, June 18, 2020)

1390-2320

Under the Preferred Alternative (Alternative 4) 6791 Alexander Street in Gilroy is not proposed to be converted to parking. Please refer to Sheet AR-C1201 in Book 4C of Volume 3, Preliminary Engineering for Project Design Record.

The 6791 Alexander Street in Gilroy property is proposed for acquisition under Alternatives 1 and 2 to provide station parking. Station drawings for these alternatives are found in Books 1B and 2B in Volume 3. The Authority will coordinate with the City of Gilroy and refine the parking design during Detailed Design Post-ROD and based on land use at that time.

Submission 1399 (David Reynolds, Trevis Berry Transportation, June 18, 2020)

San Jose - Merced - RECORD #1399 DETAIL

Status : Unread
Record Date : 6/18/2020
Submission Date : 6/18/2020
Interest As : Business and/or Organization
First Name : David
Last Name : Reynolds

1399-2328

Please provide clarification if I have misread the reports and parcel 841-161-20 will not be impacted by this project.

Stakeholder Comments/Issues :

Good Afternoon,

Thank you,

David

1399-2328

I have been reviewing the documentation online and I am confused about the acquisition of land as it related to a customer location that has a long term commercial production lease at the facility.

The following parcel is the one in question as it related to the Gilroy station: 841-161-20.

My company manages the transportation for the commercial operation that has been at this location for almost 20 years. I currently employ almost 50 local families with my transportation business and if I am understanding the map correctly, that lot is slated to be taken over and turned into a parking lot?

Parcel 841-161-17 which is adjacent to the commercial property is not developed and is currently parking cars for the dealerships across the street, so I do not understand why that location could not be used instead of the commercial operation with over 150k warehouse operation and improvements.

You would not only be closing a production plant which employs over 50 local employees, you would also be causing my business to shut down. My business has been in continuous operation for almost 80 years and the impact of the project taking over parcel 841-161-20 for parking would be devastating.

David Reynolds

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Submission 1399 (David Reynolds, Trevis Berry Transportation, June 18, 2020) - Continued

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Response to Submission 1399 (David Reynolds, Trevis Berry Transportation, June 18, 2020)

1399-2328

Three of the four project alternatives evaluated in the Draft EIR/EIS would require the partial or full acquisition of private property associated with APN 841-16-120. Alternatives 1 and 2 would require the full acquisition of this parcel due to the expansion of the existing railway right-of-way and construction of new project features such as an automatic train control facility, an access road, and a surface parking lot. Alternative 3 traverses through east Gilroy, rather than downtown Gilroy, and would have no impacts on APN 841-16-120. Alternative 4, which is the Authority's Preferred Alternative, would require the partial acquisition of the westernmost portion of APN 841-16-120 to accommodate expansion of the existing rail right-of-way and would construct a surface parking lot on APN 841-16-117. It is not anticipated that business operations on APN 841-16-120 would be affected by Alternative 4.

Submission 1619 (Adrian Guerrero, Union Pacific Railroad, June 23, 2020)



June 23, 2020

Attn: Draft San Jose to Merced Project Section EIR/EIS
 100 Paseo de San Antonio, Suite 300
 San Jose, CA 95113

To Whom It May Concern

Union Pacific Railroad Company (UPRR) submits these comments in response to the California High-Speed Rail Authority's (CHSRA) Draft Environmental Impact Report/Environmental Impact Statement (DEIR/DEIS): San Jose to Merced Project Section.

UPRR owns and operates a common carrier freight railroad network in the western two thirds of the United States, including the State of California. Specifically, UPRR owns and operates rail main lines connecting the San Francisco Bay Area to Sacramento and points east and north, and to Los Angeles and points east and southeast. UPRR is the largest rail carrier in California in terms of both mileage and train operations. UPRR's network in California is vital to the economic health of the state and the nation as a whole, and its rail service to California customers is crucial to the current and future success and growth of those customers.

UPRR has been actively engaged in discussions with CHSRA for many years in order to ensure that the safety and efficiency of the UPRR system, including UPRR's ability to serve current and future customers, is preserved during the planning, construction, and operation of the California high-speed rail project. UPRR and CHSRA have entered into several agreements that reflect these interests, including the Memorandum of Understanding and Implementing Agreement Related to High-Speed Rail Development in California dated July 11, 2012 (MOU) and the Engineering, Construction, and Maintenance Agreement Related to the California High-Speed Rail Authority Project Merced to Bakersfield Segment dated December 23, 2014.

UPRR has also submitted formal comments in response to proposals at several points during the environmental permitting process for various aspects of the high-speed rail project. That communication has included comments on plans for the proposed Fresno to Bakersfield high-speed rail segment, the Downtown Bakersfield High-Speed Rail Station Area Plan, and the recent DEIR/DEIS for the Bakersfield to Palmdale high-speed rail segment.

1619-2416

CHSRA's San Jose to Merced DEIR/DEIS proposes a Preferred Alternative (Alternative 4) alignment that seeks to utilize approximately thirty miles of UPRR right-of-way that would result in a shared corridor, raising several operating, engineering, real estate and commercial franchise challenges through the corridor. Except where UPRR has, following negotiation with CHSRA, implemented significant capacity improvements and other mitigation measures to address adverse impacts to its franchise, UPRR will not allow any part of the high-speed rail system to be located on UPRR-owned property. UPRR and CHSRA have, however, been engaged in such discussions related to a shared corridor through this segment since 2017. Where the CHSRA and UPRR alignments run in close proximity, a safe and operationally functional distance must be maintained between them. All CHSRA facilities that may cross above or below UPRR right of way must clear-span the UPRR property and be constructed a sufficient distance away to permit UPRR's full utilization of its property for railroad purposes.

With these general principles as context, UPRR offers these specific points:

1619-2417

- Any new facilities that cross UPRR's right of way in relation to the project, including new or realigned roads, must be grade-separated and comply with UPRR's then-current minimum engineering standards.

1619-2418

- Depending on the design and proximity of the CHSRA facilities to the UPRR right of way, special conditions such as safety barriers may be required.

1619-2419

- To comply with the terms of the MOU, CHSRA must design its alignment in a manner that does not interfere with UPRR's access to current or future customers. Section 2(A)(2) of the MOU says CHSRA "will take all steps available under law to avoid impeding UPRR's commercially reasonable access to current and potential customers and the access of current and potential customers to UPRR along the corridor." Drawings for the Preferred Alternative from San Jose to Gilroy appear to depict the CHSRA alignment realigning UPRR track infrastructure and right of way for several miles, thereby impacting existing UPRR spur tracks and facilities owned or operated by current UPRR customers. The proposed alignment also appears to separate UPRR from developable property adjacent to the UPRR main line at various points along the proposed route. Impacts to existing and future freight rail customers associated with the proposed Preferred Alternative alignment are unacceptable. If the Preferred Alternative is chosen as the selected route, UPRR will seek to require modification of the route per the terms of the MOU so that there are no impacts to our ability to serve existing or future customers.

UNION PACIFIC CORPORATION
 901 Mission Road
 Roseville, CA 95747

Adrian Guerrero
 Gen. Eng. Network Dev.
 Network Planning & Operations
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Submission 1619 (Adrian Guerrero, Union Pacific Railroad, June 23, 2020) - Continued

1619-2420

• It is not clear whether the DEIR/DEIS has examined the impact that construction of the CHSRA alignment may have on the future ability of cities or other road authorities to grade-separate roads that cross the UPRR tracks along the route. State and federal policies encourage the elimination of railroad grade crossings for the benefit of safety and the efficient movement of trains and vehicular traffic. The design of the CHSRA alignment and its proximity to the UPRR right of way under the Preferred Alternative may permanently prevent roads that currently cross the freight tracks at grade from being grade-separated in the future. UPRR requests that an analysis be completed to determine the extent of these potential impacts and that the results be formally communicated to the respective roadway authorities who might be impacted and to UPRR.

1619-2421

Considering the potentially serious and detrimental impacts to UPRR facilities, operations, current and future customer access, and to long-term roadway accessibility over UPRR tracks along the Preferred Alternative route, UPRR encourages CHSRA to continue working with UPRR to develop an alignment that meets UPRR safety and engineering guidelines, addresses the concerns identified in this letter or that have yet to be identified, and meet the obligations outlined in our standing agreements. If CHSRA does select the Preferred Alternative route, then CHSRA must mitigate any and all impacts to UPRR and our customers. CHSRA must provide solutions to overcome the impacts to UPRR noted above and any others UPRR identifies as the design of the Preferred Alternative route is developed in more detail.

Thank you for considering our comments.

Sincerely,



Adrian Guerrero
General Director Network Development

Response to Submission 1619 (Adrian Guerrero, Union Pacific Railroad, June 23, 2020)

1619-2416

The comment concerns utilization of the UPRR right-of-way that would result in a shared corridor. The Draft EIR/EIS describes the features of the shared corridor, including a discussion of “UPRR Adjacency” with respect to all four alternatives (Draft EIR/EIS, pages 2-58 through 2-60). The Draft EIR/EIS explains how each alternative would interact with UPRR right-of-way, including visual “cross-section” depictions showing how the alignment of HSR and freight rail tracks would vary depending on the vertical profile. The discussion explains that Alternative 4 is designed to maximize use of existing passenger and freight rail right-of-way to reduce additional right-of-way impacts; accordingly, Alternative 4 would have the greatest impacts on UPRR right-of-way. The remainder of Chapter 2, Alternatives, of the Draft EIR/EIS provides narrative descriptions of each alternative, including specific modifications to the freight rail alignment that would be required. The Draft EIR/EIS discusses impacts on freight rail service in detail in Section 3.2, Transportation, and explains the trackage rights held by UPRR on pages 3.2-41 to 3.2-42. Section 3.2.5.6, Freight Rail Service, of the Draft EIR/EIS provides a description of existing freight rail service, and Section 3.2.6.6, Freight Rail Service, analyzes the impacts of the HSR project on freight rail service, listed as Impacts TR#20, TR#21, and TR#22. The Authority will continue to engage jurisdictions and stakeholders, including UPRR, during the design, construction, and operation of the project.

1619-2417

The comment states that any new facilities that cross the UPRR right-of-way must be grade separated and comply with UPRR’s minimum engineering standards. While the Authority will comply with UPRR minimum engineering standards, the Authority is not proposing any facilities crossing the rail corridor that are not grade separated beyond those already in place. Alternative 4 includes closure of some of these facilities. The Authority will continue to engage jurisdictions and stakeholders throughout the design, construction, and operation of the project. Please refer to Section 3.2.6.6, Freight Rail Service, of the Draft EIR/EIS, for a discussion of disruptions to freight rail service and identification of UPRR right-of-way crossings.

1619-2418

Refer to Standard Response SJM-Response-SS-1: At-Grade Crossing Safety.

The comment states that special conditions such as safety barriers may be required depending on the design and proximity of HSR to the UPRR right-of-way. Chapter 2, Alternatives, of the Draft EIR/EIS explains the role of intrusion barriers between freight rail and HSR as part of system design. Safety and security concerns, including derailment, are analyzed in Section 3.11, Safety and Security, of the Draft EIR/EIS. Intrusion barriers have been included in project design where warranted according to TM 2.1.7, Rolling Stock and Vehicle Intrusion Protection for High-Speed Rail and Adjacent Transportation Systems (Authority 2013b, as cited in Section 3.11 of the Draft EIR/EIS). Additional special safety conditions will be identified and addressed as part of detailed design post-ROD in coordination with UPRR.

Response to Submission 1619 (Adrian Guerrero, Union Pacific Railroad, June 23, 2020) - Continued

1619-2419

The comment states that design of the alignment must comply with the terms of the MOU with UPRR. Impacts on UPRR infrastructure and operation have been analyzed in Section 3.2.6.6, Freight Rail Service, of the Draft EIR/EIS. Impact TR#20 in Section 3.2, Transportation of the Draft EIR/EIS describes temporary impacts on freight rail operations associated with HSR construction. Freight rail operations occur in the rail rights-of-way that would be used for portions of the project construction, and, as a result, project construction would temporarily disrupt freight rail operations. This would inconvenience freight operators and customers and could result in additional truck traffic if necessary to meet freight delivery requirements. Section 3.2 of the Draft EIR/EIS identifies the specific locations (by alternative) of potential disruption to freight operations associated with construction. As shown in the preliminary engineering designs in Volume 3 of the EIR/EIS, rail access is being maintained for all existing rail customers within the corridor, and all access is maintained to both sides of the track to all customers. Please refer to Section 3.2.6.6 of the Draft EIR/EIS for a discussion of construction and operational impacts on freight rail operations. As noted in that section, the Authority and the freight railroads would work together to construct the project in a manner consistent with the agreements negotiated by the Authority's contractor during the final design process. This would enable each entity to conduct its relevant activities in a manner that would reduce impacts on freight railroad operations. TR-MM#3 would be implemented to minimize disruption to freight operations and would be effective in minimizing the disruption to freight rail services during project construction. Additional design refinements may be part of detailed design post-ROD. The Authority will continue coordination with UPRR to address conflicts during planning, design, construction, and operation.

1619-2420

Refer to Standard Response SJM-Response-GS-1: Requests for Grade Separations.

The comment requested that the Draft EIR/EIS include an evaluation of the effects that Alternative 4 may have on the future ability of cities or other authorities to construct grade separations for roads that cross the UPRR tracks. Please refer to Chapter 2, Alternatives, of the Draft EIR/EIS for a discussion of how each alternative would interact with UPRR right-of-way and an explanation that Alternative 4 is designed to maximize use of existing passenger and freight rail right-of-way to reduce additional right-of-way impacts. Currently, no grade separations are programmed, planned, or funded within the Project Section.

The construction of Alternative 4 would not physically preclude any entity from constructing a grade separation at any at-grade crossing within the Project Section. Alternative 4 would add one to two tracks south of the Diridon Station to Gilroy at the existing at-grade crossing locations. The addition of one to two tracks would mean that any subsequent grade separation effort would either be wider (if raising or depressing the tracks) or longer (if raising or depressing the roadway). The additional width or length would be an incremental additional cost and construction effort, but the primary cost would be changing of the grade of the railroad, the crossing road, or both and the addition of tracks would be an incremental cost above that. The additional one to two tracks would not physically preclude grade separations as there are many examples of grade separations of at-grade crossings with two to three tracks. Regardless, whether a grade separation is constructed now or later, the construction effort would be similar. As noted above and in the Standard Response JM-Response-GS-1: Request for Grade Separations, the Authority does not have adequate funding to add grade separations to Alternative 4 at this time.

Response to Submission 1619 (Adrian Guerrero, Union Pacific Railroad, June 23, 2020) - Continued

1619-2421

Please refer to Impact TR#20, ImpactTR#21, and Impact TR#22 in Section 3.2, Transportation, of the Draft EIR/EIS for a discussion of the project's impacts on freight rail operations and facilities. Rail access is being maintained to all existing rail customers within the corridor, and no existing rail customers would be acquired by the Authority under any of the alternatives. All of the alternatives would retain or reconstruct existing railroad sidings. All access is maintained to both sides of the tracks to all customers. The preliminary drawings in Volume 3, Preliminary Engineering for Project Design Record, of the Draft EIR/EIS show where tracks would be realigned or relocated and show that track access would be maintained for freight operations. The Authority looks forward to working with the UPRR in the development and implementation of additional phases of the project.

Submission 2072 (Leslie Miles, Weston Miles Architects, June 22, 2020)

June 22, 2020
Response to HSR EIR

HSR CEO Brian Kelly and the HSR Board of Directors,

2072-2937

Morgan Hill is a great example of a small unique community that has redeveloped itself into a vital and thriving town with a happening downtown. The existing Caltrain stop is used very heavily and the VTA parking lot is typically full.

As we think about HSR coming through our town and after review of the EIR documents- the following issues and concerns arise:

2072-2938

1. Access from one side of the tracks to the other. There are seven major road crossings and the concern is both safety and access from one side of the tracks to the other.

- a. At the minimum three grade separations are essential to provide safety for pedestrians at the Caltrain stop as well as regular and emergency vehicles traveling from one side of town to the other.
 - i. The City of MH has engaged a Urban Design firm to provide needed direction in order to accomplish this clearly unsafe division of the City of Morgan Hill.
 - ii.

2072-2939

2. The EIR does not currently but should consider all potential trains and the ultimate coordination of those trains.

- a. HSR trains
- b. Caltrain
- c. Amtrak
- d. Freight trains
- e. Proposed commuter train to San Jose from Monterey and Salinas
- f. Tack maintenance and safety vehicles routinely.
- g. Any other future transportation

2072-2940

3. The valley is very narrow as the tracks pass through the downtown the acoustics amplify the train noise.

- a. The EIR should consider this very real and unique topography and address the concern on how best to mitigate noise for the HSR trains and all rail partners.
- b. Quieting horns should be a mitigation requirement with other safety offsets.
- c.

2072-2941

4. Ensure that all information in the EIR is current- maps and information is more that 6 years old with maps that do not show current constructed development in the downtown.

2072-2942

5. Construction sequencing awareness and development of a plan to mitigate construction impacts.

- a. Based on visits to the Central Valley large swaths of commercial space were demolished and are now being rebuilt as the overall design and construction process was not well thought-out.

2072-2943

- b. Maintain existing businesses and provide an early on liason. This person should be more than a project manager who can develop a cohesive plan, continued community and stakeholder engagement in thinking through and executing this process.

2072-2944

If all of these items are thought through and the HSR acknowledges the clearly unsafe and inequitable analysis for the preferred alternative 4, there is an opportunity for Morgan Hill to be an example of What to Do and How to Do it. If not, our community will be devastated by the HSR.

Lesley Miles



Lesley Miles AIA, LEED AP
Principal, Weston Miles Architects
Owner and Developer, The Granary and Barley Place

Morgan Hill Citizen

Response to Submission 2072 (Leslie Miles, Weston Miles Architects, June 22, 2020)

2072-2937

The comment is noted regarding the heavy use of the Caltrain stop and VTA parking lot in Morgan Hill. The comment does not indicate any specific concerns regarding analysis conclusions of the Draft EIR/EIS and no changes have been made for the Final EIR/EIS based on this comment..

2072-2938

Refer to Standard Response SJM-Response-SS-1: At-Grade Crossing Safety, SJM-Response-SS-2: Emergency Vehicle Response Times.

2072-2939

Refer to Standard Response SJM-Response-TR-3: Gate-Down Time Calculation Details.

The Draft EIR/EIS transportation assessment considers all anticipated train movements. Details on the numbers of train movements associated with each service are provided in Standard Response SJM-Response-TR-3: Gate-Down Time Calculation Details.

2072-2940

The noise analysis includes topography in the calculations and impact assessment and future train schedules for all trains that would operate in the project corridor, including HSR, Caltrain, other passenger trains, and freight trains. NV-MM#4 in Section 3.4, Noise and Vibration, of the Draft EIR/EIS discusses the Authority's support of potential implementation of Quiet Zones by local jurisdictions, should they choose to implement them. Establishing Quiet Zones would eliminate train warning horns for all trains approaching at-grade highway and rail crossings under normal, nonemergency situations.

2072-2941

The Draft EIR/EIS includes a thorough description of existing physical conditions as the environmental baseline for analysis. The Draft EIR/EIS is based on the best data available at the time the analysis was conducted. The Authority has made several revisions to update the status of relevant plans and projects in the Final EIR/EIS.

2072-2942

The comment discusses construction sequencing awareness and development of a plan to mitigate construction impacts. Numerous IAMFs have been incorporated into the project to manage or avoid construction impacts, as identified in the various resource topic chapters of the Draft EIR/EIS. These project features include construction management plans to protect various resources such as safety and security, water quality, air quality, and noise. A list of these IAMFs can be found in Section 2.6.2.3, HSR Project Impact Avoidance and Minimization Features. Mitigation measures have been included as appropriate for the various resource topics and can be found in Table S-5.

2072-2943

The comment requests that existing businesses be maintained and provision of an early-on liaison. Please refer to the response for submission SJM-2072, comment 2942. SOCIO-IAMF#3 provides for a plan to minimize relocations and other impacts on businesses (Volume 2, Appendix 2-E, Project Impact Avoidance and Minimization Features). The Authority will continue to engage jurisdictions and stakeholders throughout the design, construction, and operation of the project.

2072-2944

Please refer to other responses to comments on submission SJM-2072 for specific responses to each concern of the comment.

The comment claims that there is unsafe and inequitable analysis for the Preferred Alternative. The Final EIR/EIS satisfies the CEQA and NEPA requirements for analysis and disclosure of environmental impacts. The Authority will continue to engage jurisdictions and stakeholders throughout the design, construction, and operation of the project.

Submission 1422 (Elder G-Lady G B-W, Word of Faith Christian Center, June 22, 2020)



PO Box 612822
San Jose CA 95161-2822

**"Draft EIR/EIS Comment."
San Jose Word of Faith Christian Center**

To The California High-Speed Rail Authority:
Attn: Draft San Jose to Merced Project Section EIR/EIS
100 Paseo de San Antonio, Suite 300
San Jose, CA 95113

1422-346

This letter is from San Jose Word of Faith Christian Center (San Jose Word of Faith) to formally document our public comments and concerns with severe sound and vibration generated during HSR construction and operation.

The impact under CEQA would be significant for all four project alternatives because operations would generate noise levels above existing ambient levels and in exceedance of FRA criteria, causing severe noise impacts at sensitive receptors. This exceedance would occur under all four project alternatives and in both the opening year and 2040, although the most noise impacts would occur in 2040, and under Alternative 4, followed by Alternative 2, Alternative 1, and Alternative 3.

1422-347

San Jose Word of Faith Christian Center is located at 873 Delmas Ave, San Jose CA, (Parcel # 264-41-60) which is in close proximity (parallel to the train route between San Jose Diridon and Tamien train stations. (Peninsula Corridor Joint Powers Board-Southern Pacific Transportation Co-S.B.E.# 872-43-(02)-96N PCL 51). {264-41-69}

The above mentioned facility has experienced structural damage mostly due to years of exposure to vibrational energy generated by the trains (Cal Train and So Pacific) and given the expected commuter volume and train speeds, it is highly probable the structure will be exposed to more significant vibrational energies and noise during HSR operation and construction..

1422-348

Construction Concerns:

NV-MM#2: Construction Vibration Mitigation Measures Prior to construction involving impact pile driving within 50 feet of any building, the contractor would provide the Authority with a vibration technical memorandum documenting how project pile driving criteria would be met. Upon approval of the technical memorandum by the Authority, and where a noise-sensitive receptor is present, the contractor would comply with the vibration reduction methods described in that memorandum. Potential construction vibration building damage is only anticipated from impact pile driving at very close distances to buildings. If pile driving occurs more than 50 feet from buildings, or if alternative methods such as push piling or auger piling are used, damage from construction vibration is not expected to occur.

**"Draft EIR/EIS Comment."
San Jose Word of Faith Christian Center**

1422-348

In section 3.4 of the Noise & Vibration mitigation summary, which includes definitions related to Vibration, the term "Receptor" is basically a building or structure that is in the path of a vibration energy. The "Receptor" summary states, "Not all receptors have the same vibration sensitivity;" and unknown.

1422-349

When a construction scenario has been established, the contractor would conduct pre-construction surveys at locations within 50 feet of pile driving to document the existing condition of buildings in Section 3.4 Noise and Vibration California High-Speed Rail Authority April 2020 San Jose to Merced Project Section Draft EIR/EIS Page | 3.4-81

If case damage is encountered during preconstruction surveys, it should be reported during or after construction. The contractor would arrange for the repair of damaged buildings or would pay compensation to the property owner. It is our desire to take a proactive approach with a structural assessment of San Jose Word of Faith Christian Center prior to the start of construction, to avoid or minimize the risk of damage during construction. Also to assist in the continuous monitoring as part of the project to ascertain how much, if any damage is occurring during the construction phase and once the project is completed, then a continuous monitoring once the train is up and running.

1422-350

HSR Operational Concerns:

As previously mentioned, the San Jose Word of Faith facility has incurred structural damage mostly due to its proximity to the train route between San Jose Diridon and Tamien train stations. Once the HSR is operational and the anticipated commuter train volume is achieved, we are concerned that this scenario will cause significantly more damage to the San Jose Word of Faith structure. We believe the proposed sound and vibration mitigation are too general and will not sufficiently apply to our facility. Per Section 3.4 of the Noise & Vibration mitigation summary, "Not all receptors have the same vibration sensitivity". Given this fact, we request a formal assessment of the San Jose Word of Faith structure and surrounding foundation prior to the start of HSR construction to ensure the proposed mitigation will be effective. We want to advise that San Jose Word of Faith is roughly 100 years old and has a basement so it is critical that an assessment occur so we will know that the building is sound enough to endure the nature of this project.

1422-351

Conclusion:

In order to eliminate or mitigate the risk of incremental structural or foundational damage incurred during construction and operation of the HSR, we request a full assessment of San Jose Word of Faith's 873 Delmas Ave structure and surrounding foundation prior to the start of HSR construction.

1422-352

Appendix A: High Speed Rail Outreach Team Assessment Summary:

Noise Barrier Materials as mentioned—if they have to do anything around our area—we need to have parking spaces available for our ministry services, we need to negotiate some parking spaces on City of San Jose's Parcel # 264-41-087 (park area-on the back side of our property!) We need advance notice if they would need to upgrade our windows, build any fencing, etc. so we could prepare for relocation if needed. We need to make sure there is no construction happening on Sundays from 8:00 a.m. to 5:00 p.m.

Submission 1422 (Elder G-Lady G B-W, Word of Faith Christian Center, June 22, 2020) - Continued

**"Draft EIR/EIS Comment."
San Jose Word of Faith Christian Center**

1422-353

If there needs to be any easement agreements—we need to determine how much of an encroachment will be needed to complete their project and if that impacts part our parking—thus another reason we would need to have alternative parking arrangements.

Noise Barriers—Prior to operation of the HSR, the Authority would install noise barriers where they can achieve between 5 and 15 dB of exterior noise reduction, depending on their height and location relative to the tracks. The primary requirements for an effective noise barrier are that the barrier must (1) be high enough and long enough to break the line-of-sight between the sound source and the receiver, (2) be of an impervious material with a minimum surface density of four pounds per square foot, and (3) not have any gaps or holes between the panels or at the bottom. Because many materials meet these requirements, aesthetics, durability, cost, and maintenance considerations usually determine the selection of materials for noise barriers. Depending on the situation, noise barriers can become visually intrusive. Typically, the noise barrier style is selected with input from the local jurisdiction to reduce the visual effect of barriers on adjacent lands uses (Authority 2014). For example, noise barriers could be solid or transparent, and made of various colors, materials, and surface treatments. Pursuant to the Noise and Vibration Mitigation Guidelines, recommended noise barriers must meet the following criteria to be considered a reasonable and feasible mitigation measure: – Achieve a minimum of 5 dB of noise reduction, which is then defined as a benefited receptor. – The minimum number of receptors should be at least 10. – The length should be at least 800 feet. – Must be cost-effective, defined as mitigation not exceeding \$95,000 per benefited receptor. The maximum noise barrier height would be 14 feet for at-grade sections. Berm and berm/wall combinations are the preferred types of noise barriers where space and other environmental constraints permit. On aerial structures, the maximum noise barrier height would also be 14 feet, but barrier material would be limited by engineering weight restrictions for barriers on the structure. All noise barriers would be designed to be as low as possible to achieve a substantial noise reduction. Noise barriers on both aerial structures and at-grade structures would consist of solid, semitransparent, or transparent materials, as defined in Aesthetic Options for Non-Station Structures (Authority 2014). Figure 3.4-32 shows an example of a noise barrier that meets the Authority's typical requirements. Volume 2, Appendix 3.4-B, Noise and Mitigation Guidelines, provides additional details.

Section 3.4 Noise and Vibration

April 2020 California High-Speed Rail Authority Page | 3.4-82 San Jose to Merced Project Section Draft EIR/EIS

MAY 2019

Figure 3.4-32 Example of a Typical Noise Barrier

- Install Building Sound Insulation—If noise barriers are not proposed for receptors with severe impacts, or if proposed noise barriers do not reduce exterior sound levels to below a severe impact level, the Authority would consider providing sound insulation as a potential additional mitigation measure on a case-by-case basis. Sound insulation of residences and institutional buildings to improve outdoor-to-indoor noise reduction is a mitigation measure that can be

Page 3 of 5

considered when the use of noise barriers is not feasible in providing a reasonable level (5 to 7 dBA) of noise reduction. Although this approach has no effect on noise in exterior areas, it may be the best choice for sites where noise barriers are not feasible or desirable and for buildings where indoor sensitivity is of most concern. Substantial improvements in building sound

**"Draft EIR/EIS Comment."
San Jose Word of Faith Christian Center**

insulation (on the order of 5 to 10 dBA) can often be achieved by adding an extra layer of glazing to windows, by sealing holes in exterior surfaces that act as sound leaks, and by providing forced ventilation and air conditioning so that windows do not need to be opened. • **Noise Easements**—If a substantial noise reduction cannot be completed through installation of noise barriers or installing sound insulation, the Authority would consider acquiring a noise easement on properties with a severe impact on a case-by-case basis. An agreement between the Authority and the property owner can be established wherein the property owner releases the right to petition the Authority regarding the noise level and subsequent disruptions. This would take the form of an easement that would encompass the property boundaries to the right-of-way of the rail line. The Authority would consider this mitigation measure only in isolated cases where other mitigation is ineffective or infeasible. Noise barriers could have secondary impacts on visual aesthetics and require tree or vegetation removal. Depending on their design, height, and location, noise barriers can become visually intrusive, blocking views or creating places for unwanted graffiti. Within the Caltrain Corridor portions of Alternative 4, noise barriers would be installed within the fenced areas of the existing Caltrain right-of-way, which is often shielded from view by fencing or landscaping (described in Section 3.16, Aesthetics and Visual Quality). Per Mitigation Measure AVQ-MM#7 (see description in Section 3.16, Aesthetics and Visual Quality), as part of the final design and construction management plan, the Authority would work with local jurisdictions to develop the appropriate noise barrier style and treatments for visually sensitive areas, to reduce the visual effect of barriers on adjacent land uses. For example, noise barriers could be solid or transparent, made of various colors, materials, and surface treatments, screened with vegetation, or treated

Section 3.4 Noise and Vibration

California High-Speed Rail Authority April 2020 San Jose to Merced Project Section Draft EIR/EIS Page | 3.4-83

with surface coatings to facilitate cleaning and removal of graffiti. Providing sound insulation would involve modest building retrofit activity similar to routine residential or commercial window modifications or insulation replacement and would not result in significant secondary effects.

Respectfully submitted by:

**San Jose Word of Faith Christian Center
Dr. Willie G. Nutt, Pastor and the Governing Body-The Nehemiah Board**

cc: email to san_jose_merced@hsr.ca.gov
bcc: Cathy Paskin; Abby Fullem; Kai Walcott; Dave Shpak, Cici Vu, Cooper Tamayo
Dr. Willie G. Nutt, Pastor and the Governing Body-The Nehemiah Board

Page 4 of 5

Submission 1422 (Elder G-Lady G B-W, Word of Faith Christian Center, June 22, 2020) - Continued

**"Draft EIR/EIS Comment."
San Jose Word of Faith Christian Center**

Email response received on May 8, 2020, from the HSR Team:

Cici Vu cvu@kearnswest.com Fri 5/8/2020 9:24 PM

Cooper Tamayo

Cc: Cathy Paskin; Abby Fullem; Kai Walcott; Shpak, Dave@HSR

Hello Glenna,

Our environmental team crafted the answer below to your multi-part inquiry for information in the Draft EIR/EIS. This does NOT constitute an official response to your comment. We encourage you to submit your related comment(s) during the public comment period (before June 8) for the Draft EIR/EIS so that you may receive an official response.

1. The noise and vibration analysis for the EIR/EIS includes the specific Word of Faith Church location at 873 Delmas Avenue in San Jose
2. The noise and vibration analysis is presented in EIR/EIS Volume I, Section 3.4.
 - a. Technical supporting data is in Volume 2, Appendix 3.4, which also includes the Noise and Vibration Technical Report.
 - b. The analysis followed the established methodologies in the Federal Transit Administration (FTA) and Federal Railroad Administration (FRA) guidance.
3. There would be no significant impacts of Alternatives 1, 2, or 3 at this location because the alignment for these alternatives is along I-280 and SR 87 and not the Caltrain Corridor.
4. The impact analysis below applies to Alternative 4 only.
5. Construction noise and vibration
 - a. There would be construction noise and vibration adjacent to the church. These impacts are identified as significant in the EIR/EIS. Impact Avoidance and Minimization Feature (IAMF) #1 and Mitigation Measures NV-MM#1 and NV-MM#2 would include implementing construction measures as necessary including potential temporary noise barriers, avoiding nighttime construction near residential areas, using low-noise emissions equipment and vibration reduction measures whenever high-vibration producing activity would occur within 50 feet of any building. These measures would reduce noise impacts to a less than significant level except during night-time work and pile driving and would reduce vibration impacts to a less than significant impact.
2. Operations
 - a. Operational noise and vibration are related to an increase in trains operating within the Caltrain corridor. At the study location, there would be an increase of up to approximately 176 HSR trains per day by 2040.
 - b. Operational Noise
- i. The analysis concluded that the project would not increase noise levels by an amount that exceeds the FTA moderate impact or severe impact criteria. This is why there is no notation of a moderate or significant impact in Figure 3.4-19 on page 3.4-55 for this location.
- c. Operational Vibration
- i. No significant operational vibration effects relative to building damage are expected.
- ii. The project would more than double the number of vibration events resulting in annoyance due to the project and the analysis concluded that there would be a significant impact. This is why a vibration impact is shown for the church location in Figure 3.4-29 on page 3.4-75. The EIR/EIS identifies mitigation measure NV-MM#8, which includes a range of design-level vibration mitigation procedures such as special trackwork and supports and other measures that will reduce the level of annoyance due to vibration, possibly to a less than significant level. Because the final design has not been completed yet, this impact related to annoyance is disclosed conservatively as significant and unavoidable at this time.

Best,
Cici and team

Cici Vu
High-Speed Rail Outreach Team
(415) 697-0574

Response to Submission 1422 (Elder G-Lady G B-W, Word of Faith Christian Center, June 22, 2020)

1422-346

The results of the noise analysis indicate that no noise impact is predicted at this location under any of the project alternatives. Under Alternative 4, HSR trains would pass by the building, but the project would also cause some existing trains including ACE, Starlight, and freight operations to shift farther away, reducing noise.

1422-347

The project would not cause structural damage from train operations. Please refer to Impact NV#10 in Section 3.4, Noise and Vibration, of the Draft EIR/EIS.

1422-348

Table 3.4-9 in Section 3.4, Noise and Vibration, of the Draft EIR/EIS includes the vibration impact criteria for human annoyance for the project and descriptions of various land use categories. This table indicates different types of buildings and the different impact criteria based on building sensitivity. The Word of Faith building is considered a Category 3 building.

1422-349

The results of the noise analysis indicate that no noise impact is predicted at this location under any of the project alternatives. In addition, a detailed vibration analysis has been conducted for the Word of Faith building. The results indicate that a vibration impact is predicted due to vibration levels exceeding the criterion for human annoyance. However, the vibration levels would not exceed the thresholds for potential structural damage. Please refer to Impact NV#10 in Section 3.4, Noise and Vibration, of the Draft EIR/EIS. NV-MM#8 would be implemented to address impacts.

1422-350

The results of the noise analysis indicate that no noise impact is predicted at this location under any of the project alternatives. In addition, a detailed vibration analysis has been conducted for the Word of Faith building. The results indicate that a vibration impact is predicted due to vibration levels exceeding the criterion for human annoyance. However, the vibration levels would not exceed the thresholds for potential structural damage. Please refer to Impact NV#10 in Section 3.4, Noise and Vibration, of the Draft EIR/EIS. NV-MM#8 would be implemented to address impacts.

1422-351

As discussed in NV-MM#2 in Section 3.4, Noise and Vibration, of the Draft EIR/EIS, once a construction scenario has been established by the contractor, pre-construction surveys would be conducted at locations that are within 50 feet of planned pile driving to document the existing conditions of buildings in case damage is reported during or after construction. The contractor would arrange for the repair of damaged buildings or would pay compensation to the property owner.

1422-352

The comment is noted. No noise impact would occur at the Word of Faith Christian Center. Please refer to Impact NV#10 in Section 3.4, Noise and Vibration, of the Draft EIR/EIS.

The results indicate that a vibration impact is predicted, due to vibration levels exceeding the criterion for human annoyance. However, the vibration levels would not exceed the thresholds for potential structural damage. Please refer to Impact NV#10 in Section 3.4, Noise and Vibration, of the Draft EIR/EIS. NV-MM#8 would be implemented to address impacts.

1422-353

The comment noted the commenter's parking may be affected. Please refer to Volume 3, Preliminary Engineering for Project Design Record. These composite plans provide the ability to identify at a large scale the specific improvements through scrolling through the plan sheets.

26 BUSINESS AND ORGANIZATION COMMENTS (Part 2)

Submission 2125 (Jessica S. Johnson, Baker Manock & Jensen, PC, June 7, 2021)

San Jose - Merced - RECORD #2125 DETAIL
Status : Unread
Record Date : 6/8/2021
Submission Date : 6/7/2021
Interest As : Business and/or Organization
First Name : Jessica
Last Name : S. Johnson
Attachments : CHSRA_letter_re_San_Jose_to_Merced_Project_Section_RevisedSuppleme
ntal...PDF (4 mb)

Stakeholder Comments/Issues :

Good Evening.

Please find attached a comment letter on behalf of Eugene J. and Carolyn D. Vierra regarding the Revised/Supplemental Draft EIR/EIS for the San Jose to Merced Project Section. A hard copy of this letter is also being delivered via overnight mail. We thank you for the opportunity to comment on the R/S Draft EIR/EIS.

Regards,

Jessica

Jessica S. Johnson

Attorney <http://bakermanock.com/> [http://bakermanock.com/logo.png] <http://bakermanock.com/>

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& Jensen PC
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June 7, 2021

VIA ELECTRONIC MAIL AND OVERNIGHT MAIL

California High Speed Rail Authority
Attn: San Jose to Merced Project Section:
Revised/Supplemental Draft EIR/EIS
100 Paseo de San Antonio, Suite 300
San Jose, California 95113
E-Mail: san_jose_merced@hsr.ca.gov

Re: San Jose to Merced Project Section
Revised/Supplemental Draft EIR/EIS Comment Letter

To Whom it May Concern:

Please accept the following comments on behalf of our clients Eugene J. and Carolyn D. Vierra in response to the California High-Speed Rail Project ("HSR Project"), San Jose to Merced Project Section, Revised/Supplemental Draft Environmental Impact Report/Environmental Impact Statement ("R/S Draft EIR/EIS") made available for public comment on April 23, 2021. We previously provided comments on the original San Jose to Merced Project Section, Draft Environmental Impact Report/Environmental Impact Statement ("Draft EIR/EIS") on behalf of Mr. and Mrs. Vierra by letter dated June 23, 2020. As requested, we have limited the scope of this comment letter to the portions of the previously published Draft EIR/EIS that have been revised/supplemented, but reiterate that the issues outlined in our June 23, 2020, letter must still be addressed in order for the California High Speed Rail Authority ("CHSRA") and the Federal Railroad Administration ("FRA") to move forward with the HSR Project.

I. INTRODUCTION

As a reminder, Mr. and Mrs. Vierra own Merced County Assessor's Parcel Numbers ("APNs") 070-090-004 and 070-010-014, which are approximately 89 and 63 acres respectively (the "Vierra Ranch"). The Vierra Ranch is highlighted in yellow and green on the attached Google Earth map and is located in the San Joaquin Valley Subsection (Carlucci Road to I-5) of the proposed HSR Project. APN 070-010-014 was purchased by Mr. Vierra's grandfather prior

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Submission 2125 (Jessica S. Johnson, Baker Manock & Jensen, PC, June 7, 2021) - Continued

San Jose to Merced Project Section
 Revised/Supplemental Draft EIR/EIS
 June 7, 2021
 Page 2

to 1909 and has been in the family ever since. APN 070-090-004 was purchased by Mr. Vierra's father in 1948 and has also stayed with the family. Mr. Vierra and his four siblings were all born on the Vierra Ranch and grew up working on the ranch and the co-located dairy.

2125-6273

The Vierra Ranch is currently home to multiple low-income tenants who farm the land. The vintage dairy barn and historic milk house remain, as well as a drainage ditch running along the northern portion of the properties. There are three residences on the Vierra Ranch, all rented to very low-income families. The residences have been rented to the same families for approximately 45 years, 25 years, and 5 years, respectively. Mr. and Mrs. Vierra understand their tenants' economic hardships and charge only minimal rent. They are extremely concerned that the HSR Project will require the removal of their tenants' homes and the displacement of their occupants, who may not be able to afford rent anywhere else – especially as prices for purchasing or renting homes are skyrocketing. The two tenant farmers that lease portions of the Vierra Ranch farm the ground on the Vierra Ranch with feed crops to supply their nearby dairy ranches and rely on the drainage ditch on the property for adequate drainage. Furthermore, the Vierra Ranch is entitled to and is delivered Central California Irrigation District ("CCID") surface water, which is extremely valuable.

2125-6274

As identified in the attached map from Appendix 3.1-A of the Draft EIR/EIS, the San Joaquin Valley Subsection of the HSR Project will go directly through the Vierra Ranch and destroy all three residences thereon, displacing three very low-income families. It will also make the drainage ditch inoperable; cut off access to CCID water; and interfere with CCID's access easement to maintain the concrete ditch that delivers water to the Vierra Ranch and other nearby farmers; all of which will make farming the Vierra Ranch impossible. The HSR Project berms will further prevent cattle and sheep grazing, disrupting an over 100-year old practice in the area.

2125-6275

The currently recommended Preferred Alternative for the San Jose to Merced Project Section is Alternative 4. However, as mentioned in our prior letter, all four alternatives are the same for the San Joaquin Valley Subsection. Mr. and Mrs. Vierra find this simply unacceptable, because alternatives were not adequately considered for the San Joaquin Valley Subsection. The enormous cost of building aerial HSR infrastructure was also not discussed. For example, starting at the National Cemetery for approximately five miles are the following major structures where very costly bridging would be required: the Delta-Mendota Canal, Interstate Highway 5 (4 lanes), State Highway 33, two county roads, CCID's irrigation canal, Fahey Road, the concrete irrigation ditch for local farmers, the CCID easement mentioned earlier, a second CCID irrigation canal, an irrigation pond on Silveira's Dairy, railroad tracks, and Ingomar Grade road.

2125-6276

We reiterate that this lack of any possible alternative to the admitted significant and unreasonable impacts to a myriad of environmental factors in the San Joaquin Valley prevents any meaningful discussion of actions that would lessen or mitigate those impacts. Other proposed alternatives should have been considered for the San Joaquin Valley Subsection as part of the Draft EIR/EIS and the R/S Draft EIR/EIS. We suggest including a design north of Fahey

2789076v3 / 20561.0001

San Jose to Merced Project Section
 Revised/Supplemental Draft EIR/EIS
 June 7, 2021
 Page 3

2125-6276

Road that would not displace the very low-income tenants on both the Vierra Ranch and the additional three houses on the adjoining property to the west.

We address our remaining comments specifically to the R/S Draft EIR/EIS below.

2125-6277

**II.
 ISSUES**

A. The R/S Draft EIR/EIS Continues to Ignore Impacts to Honey Bees in the San Joaquin Valley Subsection.

In our June 23, 2020 comment letter, we noted that there was no mention in the Draft EIR/EIS of the impacts the HSR Project will have on the honey bee population that is used to pollinate the agricultural lands throughout the San Joaquin Valley. That analytical deficiency remains in the R/S Draft EIR/EIS.

1. Losing Agricultural Land Could Present a Substantial Economic Impact to the Commercial Honey Bee Industry Nationwide.

Section 3.7, Biological and Aquatic Resources, was revised in the R/S Draft EIR/EIS to address the addition of two "special-status" species: the monarch butterfly, recently added as a candidate under the federal Endangered Species Act and the Southern California/Central Coast population of mountain lion, recently added as a candidate species under the California Endangered Species Act. However, there continues to be no mention of the direct, indirect, and cumulative impacts that the HSR Project will have on managed honey bees and the nationwide industry that depends on providing honey bees to pollinate the trees in the agricultural lands located along the San Joaquin Valley Subsection and throughout the San Joaquin Valley.

2125-6278

Even though the California Environmental Quality Act ("CEQA") focuses on physical changes to the environment, the Guidelines for the Implementation of CEQA ("CEQA Guidelines") Section 15131, subdivision (b), states that "[e]conomic or social effects of a project may be used to determine the significance of physical changes caused by the project." Also, an EIR/EIS is required to discuss cumulative impacts when a project's incremental effects cumulatively impose a substantial impact on the environment.¹ Accordingly, we believe that the loss of valuable agricultural land as a result of segmentation and disruption from the construction and operation of the HSR Project in the whole San Joaquin Valley will affect the honey bee supply chain and itself demonstrate a significant and unreasonable cumulative impact.

2125-6279

The commercial honey bee industry represents a vital partnership with agriculture in the San Joaquin Valley that has repercussions throughout the world. Pollinator-dependent crops,

¹ Cal. Code Regs., tit. 14, § 15130, subd. (a).

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Submission 2125 (Jessica S. Johnson, Baker Manock & Jensen, PC, June 7, 2021) - Continued

San Jose to Merced Project Section
 Revised/Supplemental Draft EIR/EIS
 June 7, 2021
 Page 4

San Jose to Merced Project Section
 Revised/Supplemental Draft EIR/EIS
 June 7, 2021
 Page 5

2125-6279

including nuts, stone fruit, melons, and tomatoes, have been estimated to be worth \$11.7 billion in California alone.² Almond trees in particular depend entirely on honey bee pollination for crop production during bloom season. The almond industry in the San Joaquin Valley requires approximately 1.8 million colonies of honey bees in order to adequately pollinate nearly one million acres of almond-bearing orchards. Commercial beekeepers travel from across the United States to provide honey bee colonies to growers in the San Joaquin Valley.³ Closer to home, approximately 1/2 mile from the Vierra Ranch on Fahey Road, is a newly planted almond orchard. Also on Fahey Road to the east is another almond orchard, and on Highway 59 Route to Merced, there are many acres recently planted as almond orchards. These farms all depend on pollinators to produce their crops.

2125-6280

The United States Department of Agriculture has recognized the economic importance of both native and cultivated pollinators such as honey bees, and has implemented through its Natural Resources Conservation Service a wide array of conservation programs prioritized to protect them since before 2008, and most recently as authorized in the 2018 Farm Bill.⁴ Similarly, the United States Fish & Wildlife Service identifies habitat loss, degradation, and fragmentation as some of the main threats facing pollinators.⁵

With vast swaths of agricultural land in the San Joaquin Valley (including the Vierra Ranch) going out of production as a result of the construction and operation of the HSR Project, the commercial honey bee industry – already severely impacted by Colony Collapse Disorder resulting from a variety of factors, including invasive pests, disease, and loss of habitat, and pesticides – would suffer another devastating blow. Though we appreciate the addition of pollinator conservation measures in the annual vegetation control program proposed in BIO-MM#70 on page 3.7-22 of the R/S Draft EIR/EIS, the indirect and cumulative impacts of the loss of pollinator-dependent land continue to be ignored and unanalyzed in the R/S Draft EIR/EIS.

² Cal. Dept. of Fish & Wildlife, *Science: Pollinators* <<https://wildlife.ca.gov/Science-Institute/Pollinators>> (as of June 6, 2021).

³ American Beekeeping Federation, *Pollination Facts: Honey Bees Are Pollinators* <<https://www.abfnet.org/page/PollinatorFacts#:~:text=As%20honey%20bees%20gather%20polle,for%20pollination%20at%20bloom%20time>> (as of June 6, 2021).

⁴ See, e.g., U.S. Dept. of Agriculture, *Using 2014 Farm Bill Programs for Pollinator Conservation*, p. 1 (May 2015) <<https://directives.sc.egov.usda.gov/OpenNonWebContent.aspx?content=37370.wba>>; Agriculture Improvement Act of 2018 (“2018 Farm Bill”) Pub.L. No. 115-334 (Dec. 20, 2018).

⁵ U.S. Fish & Wildlife Service, *Pollinators: Threats to Pollinators* (last updated June 15, 2020) <<https://www.fws.gov/pollinators/PollinatorPages/Threats.html>>.

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2125-6281

2. Noise and Vibration Impacts to Invertebrates Such as Honey Bees Are Downplayed or Ignored in the R/S Draft EIR/EIS.

The R/S Draft EIR/EIS also provided a supplemental analysis of noise and vibration impacts during HSR Project construction and operations.⁶ However, the R/S Draft EIR/EIS continues to exclude direct and indirect impacts to invertebrates in its analysis. Impact BIO#44 – Intermittent Noise Disturbance of Wildlife Using Corridors during Operations on pages 3.7-16-17 bases its analysis only on “noise impacts on mammals and on birds.” Similarly, Impact BIO#45 – Intermittent Vibration Disturbance of Wildlife Using Corridors during Operations on pages 3.7-17–18 bases its analysis only on *reptiles, amphibians, and burrowing mammals*; even going so far as to declare that “no evidence suggests invertebrate sensitivity to noise.”⁷ In the revised Section 3.7, the R/S Draft EIR/EIS states that the vibration impacts would be less than significant because, in part, “disturbances would be brief and more frequent during daylight hours when most sensitive species are inactive.”⁸

2125-6282

It is well known that honey bees use vibration to communicate and are affected by airborne and terrestrial soundwaves; in fact, studies have shown that honey bees will stop in their tracks when exposed to certain decibel ranges.⁹ Yet, the R/S Draft EIR/EIS does not address these impacts to honey bees, nor even to the “special-status” Crotch bumble bee addressed in the Draft EIR/EIS, which nests underground and similarly uses vibration to forage for pollen.¹⁰ Moreover, while the R/S Draft EIR/EIS states that the vertebrate species that may be potentially impacted would be less impacted because they are nocturnal and trains will be passing more infrequently at nighttime, honey bees are diurnal and could be very much affected by the projected 148 mph high-speed trains passing during daylight hours by 2040.¹¹ The R/S Draft EIR/EIS continues to erroneously find vibration impacts as less than significant, when they have not in fact been analyzed for pollinators.

2125-6283

As far as noise impacts, the HSR Project’s only proposed mitigation measure is a revised BIO-MM#80, which uses existing proposed visual barriers to prevent impacts to birds to serve a

⁶ R/S Draft EIR/EIS, Appendix 3.7-E – Supplemental Noise Analysis on Terrestrial Species.

⁷ R/S Draft EIR/EIS, Appendix 3.7-E, p. 3.7-E-1.

⁸ *Id.* at Section 3.7, Biological and Aquatic Resources, p. 3.7-39.

⁹ H. Franklin Little, *Reactions of the Honey Bee, Apis mellifera L., to Artificial Sounds and Vibrations of Known Frequencies* (Jan. 1, 1962) *Annals of the Entomological Society of America*, vol. 55, iss. 1, pp. 82–89.

¹⁰ Cal. Dept. of Fish and Wildlife, *Report to the Fish and Game Commission. Evaluation of the Petition from the Xerces Society, Defenders of Wildlife, and the Center for Food Safety to List Four Species of Bumble Bees as Endangered under the California Endangered Species Act* (Apr. 4, 2019) <<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=166804&inline>>.

¹¹ Draft EIR/EIS, Alternatives, Table 2-14, pp. 2-131–132; see also, Xerces Society, *Petition for Listing 4 Species of Bumble bee to the Cal. Fish and Game Commission* p. 23-24 (Dec. 16, 2018) <<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=161902&inline>>.

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Submission 2125 (Jessica S. Johnson, Baker Manock & Jensen, PC, June 7, 2021) - Continued

San Jose to Merced Project Section
Revised/Supplemental Draft EIR/EIS
June 7, 2021
Page 6

2125-6283

dual purpose as noise/visual barriers on some sections of the alignment. Only two noise/visual barriers are proposed in the San Joaquin Valley Subsection, despite the alignment in all four alternatives running along the south side of Henry Miller Road, which runs through primarily rural and agricultural land that relies heavily on both managed and native pollinators for crops and native habitat. While we anticipate a large amount of the agricultural land along the San Joaquin Valley alignment will go out of production (which is a substantial environmental impact in and of itself), the parcels that remain close to HSR Project aerials and embankments (within 90 to 150 feet or closer) would face noise impacts at 93 dBA (A-weighted decibels), very close to the range that affects honey bees.¹² Moreover, since Henry Miller Road is much less trafficked than SR-101 or even SR-152, there would be no purported incidental mitigation from “masking” (i.e., the “reduced perception of one sound due to the introduction of another sound”¹³). We believe that only two noise/visual barriers along the entire San Joaquin Valley Subsection is a woefully inadequate mitigation measure to prevent impacts to pollinators.

2125-6284

3. Nighttime Lighting Impacts to Honey Bees Could Cause Disorientation and Result In Train Strike.

Finally, in response to commenters’ disagreement with the CHSRA’s conclusion in the Draft EIR/EIS that lighting would have a less-than-significant impact on wildlife, the CHSRA conducted a Supplemental Artificial Light Analysis on Terrestrial Wildlife Species.¹⁴ While the R/S Draft EIR/EIS now concludes that Artificial Light at Night (“ALAN”) from construction and HSR Project operations is a significant impact under all four alternatives, it again excludes any analysis of impacts to honey bees and to invertebrates in general.

ALAN is defined in the R/S Draft EIS/EIR as “all exterior artificial light sources used during construction and operations to light the site, as well as vehicle-mounted lighting” and also states that it “alters natural light regimes spatially, temporally, and spectrally.”¹⁵ Impact BIO#47 discusses only terrestrial and aerial mammalian and avian impacts.¹⁶ Similarly, the new Appendix 3.7-F only analyzes terrestrial species, though it does note that BIO-IAMF#12 proposes using “facility lighting that does not attract birds or their prey to project sites.”¹⁷ This is not enough.

2125-6285

CEQA Guidelines Section 15382 defines the term “significant effect on the environment” as “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

¹² See R/S Draft EIR/EIS Table I of App. 3.7-E, p. 3.7-E-2.

¹³ *Id.* at p. 3.7-E-3.

¹⁴ See *id.* at App. 3.7-F, Supplemental Artificial Light Analysis on Terrestrial Wildlife Species.

¹⁵ *Id.* at p. 3.7-F-1–F-2.

¹⁶ *Id.* at p. 3.7-19–20.

¹⁷ *Id.* at App. 3.7-F., p. 3.7-F-1.

2789076v3 / 20561.0001

San Jose to Merced Project Section
Revised/Supplemental Draft EIR/EIS
June 7, 2021
Page 7

2125-6285

noise, and objects of historic and aesthetic significance.” ALAN, of course, also substantially affects insects – a type of fauna. While honey bees are diurnal, sources of light can draw them away from the hive at night, similar to moths, leading to disorientation and death. Accordingly, nighttime construction lights, train headlights, and lights at maintenance-of-way facilities, traction power stations, and crossings, would all constitute ALAN potentially affecting honey bees. This should be analyzed pursuant to CEQA.

2125-6286

The San Joaquin Valley has very low ALAN to begin with, as the R/S Draft EIR/EIS recognizes.¹⁸ Bright lights throughout the night will have a substantial impact on insects there that are unused to such light, resulting in train strike and loss of the already delicate managed honey bee industry. We do not believe that BIO-MM#89¹⁹, which proposes, *when feasible*, reducing the use of blue lights, constructing limited visual barriers, and implementing remote monitoring lighting, for instance, to minimize the impacts of operational lighting on wildlife species, sufficiently holds the CHSRA accountable for mitigating these effects down to less-than-significant. Formulation of mitigation measures cannot be deferred until a later time, and CHSRA should identify the responsible party for implementing the proposed measures and ensure they will be enforced pursuant to CEQA Guidelines Section 15126.4.

2125-6287

III. CONCLUSION

First, we reiterate that the Draft EIR/EIS does not adequately analyze alternatives for the San Joaquin Valley Subsection of the Merced to San Jose Section of the HSR Project. This is an abuse of discretion.²⁰ As such, the CHSRA must simply choose the No Action Alternative as the Preferred Alternative. However, this is not what is currently being recommended by your staff. If something other than the No Project Alternative is to be selected, then there needs to be additional alternatives analyzed for the San Joaquin Valley Subsection.

2125-6288

Additionally, the one proposed alternative for the San Joaquin Valley Subsection will cause significant environmental and cumulative impacts to managed honey bees and economic effects to the honey bee industry at large that are not adequately analyzed or mitigated. The Draft EIR/EIS and R/S Draft EIS/EIR should be revised again to adequately evaluate these concerns and environmental impacts.

2125-6289

Therefore, we continue to insist that the CHSRA and FRA select the No Action Alternative for the San Joaquin Valley Subsection or proceed with additional environmental

¹⁸ See R/S Draft EIR/EIS Fig. 1 at p. 3.7-F-3.

¹⁹ *Id.* at p. 3.7-29.

²⁰ See *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d. 376, 4404–4406; *Kings County Farm Bureau v. City of Hanford* (1990) Cal.App.3d. 692, 731.

2789076v3 / 20561.0001

Response to Submission 2125 (Jessica S. Johnson, Baker Manock & Jensen, PC, June 7, 2021)

2125-6273

Please refer to response to submission SJM-1839, comment 3228 on the Draft EIR/EIS. The Authority appreciates these comments on the Draft EIR/EIS. With respect to the commenter's concern about displacement of residential tenants, all four project alternatives would require the acquisition and displacement of one of the three residences located on APNs 070-090-004 and 070-010-014 to construct the HSR guideway, which is evaluated in the Draft EIR/EIS. The gap analysis performed for the Draft Relocation Impact Report (Authority 2019b, as cited in Section 3.12, Socioeconomics and Communities, of the Draft EIR/EIS) indicated that there would likely be sufficient available residential and nonresidential properties in the RSA to accommodate displaced residents. Displaced residents would be supported in their efforts to find replacement housing in accordance with the Uniform Relocation Act, which provides benefits to displaced individuals to assist them financially and with advisory services related to relocating their residence. Qualified tenants would be eligible for replacement housing payments in the form of rent differential or a down payment option. The Authority would develop a relocation mitigation plan (SOCIO-IAMF#3) for all displaced properties in consultation with affected cities and counties. Drainage infrastructure and access to water and wastewater facilities would be maintained or relocated per AG-MM#4 in Section 3.14, Agricultural Farmland, of the Draft EIR/EIS. PUE-IAMF#2 in Section 3.6, Public Utilities and Energy, of the Draft EIR/EIS also provides that, where relocating an irrigation facility is necessary, the contractor would verify the new facility is operational prior to disconnecting the original facility, where feasible. Access to Central California Irrigation District water would be maintained.

2125-6274

Refer to Standard Response SJM-Response-AG-1: Temporary and Permanent Disruption of Agricultural Infrastructure Serving Important Farmland as a Result of Project Construction, SJM-Response-AG-2: Farmland Impacts—Remnant Parcels.

The commenter noted that the San Joaquin Valley Subsection of the proposed HSR San Jose to Merced Project Section would pass directly through the Vierra Ranch, resulting in displacement of three low-income families and affecting the irrigation and drainage system, including access to CCID water. In addition, construction of the berm would prevent cattle and sheep grazing.

Please refer to Standard Response SJM-Response-AG-1: Temporary and Permanent Disruption of Agricultural Infrastructure Serving Important Farmland as a Result of Project Construction for a discussion of permanent disruption of agricultural infrastructure, including irrigation and drainage, and project IAMFs to address permanent disruption.

Please refer to Standard Response SJM-Response-AG-2: Farmland Impacts—Remnant Parcels for a discussion of impacts on Important Farmland as a result of parcel severance, including parcels that are severed from a larger parcel because the HSR right-of-way would divide the parcel. For any parcels that are considered not viable for continued agricultural use, Mitigation Measure AG-MM#1 requires that the Authority (in partnership with the California Department of Conservation) acquire conservation easements to protect an equivalent amount of Important Farmland from future conversion.

Please refer to response to submission SJM-2125, comment 6273 regarding the displacement of residences on the Vierra Ranch.

Response to Submission 2125 (Jessica S. Johnson, Baker Manock & Jensen, PC, June 7, 2021) - Continued

2125-6275

Refer to Standard Response SJM-Response-ALT-1: Alternatives Selection and Evaluation Process, SJM-Response-ALT-2: Project-Specific Alternatives Considerations.

A reasonable range of feasible alternatives was analyzed in the Draft EIR/EIS, including options for the San Joaquin Valley Subsection portion of the alignment. Factors taken into consideration included aquatic resources, wildlife, and state park resources. As identified in Table 2-3 in Chapter 2, Alternatives, of the Draft EIR/EIS, different alignment options were withdrawn. Additional detail on the alternatives screening process can be found in Appendix 2-I, Alternatives Considered During Alternatives Screening Process (located in Volume 2, Technical Appendices, of the Draft EIR/EIS). The different alignment options were dismissed as they would have additional aquatic resources and Section 4(f) impacts to the north and additional impacts on aquatic resources, cost, and logistical issues because of the longer alignment to the south. Further, while the cost of bridging or constructing aerial infrastructure is more expensive than at grade, cut-and-cover tunnel options can be approximately 2 times and bored tunnel options can be approximately 2.5 times more costly than a viaduct option.

2125-6276

Refer to Standard Response SJM-Response-ALT-1: Alternatives Selection and Evaluation Process, SJM-Response-ALT-2: Project-Specific Alternatives Considerations.

The comment states that other alternatives in the San Joaquin Valley Subsection should have been evaluated, specifically going north of Fahey Road. The alignments that were considered in the San Joaquin Valley identified the Grasslands Ecological Area as a key resource to be avoided. The screening of alternatives looked at going completely around the GEA to the north and completely around the GEA to the south. These were both rejected from further analysis, and a middle route that threaded through the narrow neck of the GEA was selected. This route was advanced for evaluation in this EIR/EIS. Going around the GEA to the north (GEA North/Merced) would have additional aquatic resource and Section 4(f) impacts. Going around the GEA to the south (South of the GEA) would have aquatic resource, cost, and logistical issues because of the longer alignment.

2125-6277

Commenter makes no specific comment regarding the treatment of managed honeybees in the Revised/Supplemental Draft EIR/EIS. However, see the responses to submission SJM-2125, comments 6278, 6282, 6283, 6284, 6286, and 6288 for specific responses to specific comments regarding potential project impacts on honeybees. As there detailed, the Revised/Supplemental Draft EIR/EIS determination of less-than-significant impacts on invertebrate wildlife is confirmed. Also, please note that Section 3.7, Biological and Aquatic Resources, of the Final EIR/EIS analyzes project impacts on wildlife, plants, and related native organisms; honeybees as discussed by the commenter are a domestic animal and thus not subject to the regulatory protections described in Section 3.7.

2125-6278

The commenter does not offer factual analysis or substantive evidence showing that loss of "valuable agricultural land" would result in impacts on honeybees. See response to submission SJM-2125, comment 6280. As stated in Section 3.14, Agricultural Farmland, of the Draft EIR/EIS, project construction would result in the temporary use of 460.9 acres of Important Farmland. This would be the least impact among the alternatives. IAMFs to require the Authority to provide advance written notice to agricultural property owners or leaseholders immediately adjacent to the disturbance limits for the project footprint (AG-IAMF#4) and to require the Authority to restore affected Important Farmland after construction (AG-IAMF#1) would minimize potential temporary impacts on Important Farmland, and accordingly the alternative would not result in the permanent conversion of Important Farmland to nonagricultural use. Construction of the Preferred Alternative would also result in permanent conversion of 1,032.6 acres of Important Farmland. This would be the least impact among the alternatives. Section 3.19, Cumulative Impacts, of the Draft EIR/EIS indicates that even with implementation of Mitigation Measures AG-MM#1 and AG-MM#2, the project alternatives would contribute to the cumulative impact on permanent conversion of Important Farmland to nonagricultural use. Impacts SOCIO#12 and SOCIO#13 discuss impacts on the agricultural economy. However, in accordance with Section 15064(e) of the CEQA Guidelines, "economic and social changes resulting from a project shall not be treated as significant effects on the environment." Therefore, no CEQA conclusions are made related to impacts on the agricultural economy, and CEQA does not require mitigation.

Response to Submission 2125 (Jessica S. Johnson, Baker Manock & Jensen, PC, June 7, 2021) - Continued

2125-6279

The comment is noted and does not indicate any specific concern regarding any of the conclusions in the Revised/Supplemental Draft EIR/EIS

2125-6280

The commenter alleged that the HSR project would cause loss of native and cultivated pollinator habitat and that the Revised/Supplemental Draft EIR/EIS should identify indirect and cumulative impacts on pollinators. The comment does not recognize the differences between cultivated pollinators (i.e., honeybees) and wild pollinators. Honeybees are managed, not wild, insects. Honeybees are cultivated to provide pollination services as a byproduct of commercial honey production. Honeybee hives are moved seasonally from place to place by beekeepers to provide pollination services. Honeybees do not have a “habitat” in the sense of wildlife habitat; they have a series of locations where they are located temporarily to pollinate flowering crops. The removal of agricultural land from production does not contribute to Colony Collapse Disorder, nor does it contribute to other problems affecting the honeybees, such as pesticides. While the HSR project would remove land from agricultural production, any effects on honeybees would constitute a change on the demand for domestic pollinator services, which does not affect the use of land for agricultural purposes. Further, native pollinators are adapted to native food sources rather than agricultural crops, so it is unlikely that any change in land in agricultural use would affect native pollinator populations.

2125-6281

As the commenter notes, the analysis observes that “no evidence suggests invertebrate sensitivity to noise.” Commenter speculates that such a sensitivity exists but provides no references or evidence in support of this assertion. Refer to responses to submission SJM-2125, comments 6282 and 6283.

2125-6282

Commenter cites a study of noise effects on honeybees. Commenter omits to mention that the study found “Sound levels above 108 decibels were necessary to elicit the reaction.” Noise from the proposed project would be far below this level, with exposures as loud as 108 decibels not expected to occur anywhere in the project area; noise levels from passing trains would be well below 108 dBA. There is some evidence that loud noises (how loud was not stated by the researchers) can cause honeybees to remain temporarily within their combs, but the effect is brief (Muszynska and Rybak 2002), and, as noted in the analysis, exposures to train noise would likewise be brief. These sources of evidence do not alter the conclusions of the analysis. Commenter also refers to the use of vibration in honeybee communication. The Draft EIR/EIS found no evidence for a significant impact on wildlife due to vibration from operating trains, due largely to the very brief and intermittent daily exposures. This rationale would equally apply to potential exposure of honeybees.

2125-6283

See the response to submission SJM-2125, comment 6282; 93 dBA is not “very close” to the noise level that affects honeybees; it is in fact 15 decibels (dB) less than the 108 dB level that affects bees. A 10 dB difference represents a 10-fold difference in sound energy, and a 15 dB difference is an over 30-fold difference. In humans, a 10 dB decrease is experienced as a halving of sound, and a 15 dB decrease represents a profound reduction. The 93 dBA noise level would only be experienced by organisms immediately adjacent to the project, with lower noise exposures at greater distances. Accordingly, there is no need to mitigate for noise effects on invertebrates, honeybees included, and mitigation measure BIO-MM#80 is not intended to do so.

Response to Submission 2125 (Jessica S. Johnson, Baker Manock & Jensen, PC, June 7, 2021) - Continued

2125-6284

The Authority agrees with the commenter that honeybees could be attracted to ALAN sources. However, review during Revised/Supplemental Draft EIR/EIS analysis revealed no evidence that such incidental attraction would potentially result in substantial adverse effects upon invertebrates. Commenter also presents no evidence indicating that any invertebrate life forms would be substantially affected by ALAN. Moreover, honeybees, as discussed by the commenter, are an imported and managed species and thus not subject to the regulatory protections and thresholds of effect used in assessing potentially significant effects upon wildlife; thus, Impact BIO#47 is not relevant to honeybees.

2125-6285

The commenter asserts that the Draft EIR/EIS should analyze the impacts of artificial lighting at night on honeybees. See the response to submission SJM-2125, comment 6284.

2125-6286

See response to submission SJM-2125, comment 6284. Commenter asserts that BIO-MM#89 is not sufficient to mitigate effects of ALAN, but (1) there are no significant effects on invertebrates that necessitate mitigation, and (2) commenter provides no evidence supporting the assertion that the mitigation measures would not be effective. Mitigation, with specific requirements (e.g., a single headlight of at least 200,000 candelas is specified), is provided in BIO-MM#89, and thus the standards under the mitigation measure are not deferred to a later date or some unknown standard; they are specified in the measure. With regard to feasibility of the measure, BIO-MM#89 has been revised in the Final EIR/EIS to further clarify that feasibility will be determined through compliance with OSHA and other applicable requirements.

2125-6287

Refer to Standard Response SJM-Response-ALT-1: Alternatives Selection and Evaluation Process, SJM-Response-ALT-2: Project-Specific Alternatives Considerations.

A reasonable range of feasible alternatives was analyzed in the Draft EIR/EIS, including options for the San Joaquin Valley Subsection portion of the alignment. Factors taken into consideration included aquatic resources, wildlife, and state park resources. As identified in Table 2-3 in Chapter 2, Alternatives, of the Draft EIR/EIS, options to go around the GEA (i.e., GEA North/Merced and South of GEA) were withdrawn. Going around the GEA to the north (GEA North/Merced) would have additional aquatic resource, North Grasslands Wildlife Area, and Section 4(f) impacts (state park crossing). Going around the GEA to the south (South of the GEA) would have aquatic resource, cost, and logistical issues because of the longer alignment. The GEA North/Merced option was withdrawn from further analysis because the potential effects on aquatic resources would be substantially greater than those of the alignment along Henry Miller Road, and it would be the only option to affect the North GEA. This option would result in high visual intrusiveness by adding an HSR river crossing within a state park. Further, this option would add 4 minutes of travel time between San Francisco and Los Angeles, likely making it inconsistent with the travel time objective of Proposition 1A (2 hours 40 minutes between Los Angeles Union Station and San Francisco). Because it is inconsistent with Proposition 1A, this option does not meet the project's purpose and need. The South of the GEA option was withdrawn from further analysis because it would have the greatest effect on aquatic resources of options considered and would have high cost and logistical issues due to its extensive environmental effects and additional miles of alignment.

The comment claims that the alternatives analysis is inadequate. The comment's support for the No Project Alternative is noted.

Response to Submission 2125 (Jessica S. Johnson, Baker Manock & Jensen, PC, June 7, 2021) - Continued

2125-6288

Commenter asserts significant impacts on honeybees but provides no evidence supporting this assertion. Also, see the response to submission SJM-2125, comment 6284 regarding the status of honeybees as an imported and managed animal not subject to the regulatory protections afforded wildlife. Regarding cumulative and economic effects on the honeybee industry, please see submission SJM-2125, comment 6280.

2125-6289

Refer to Standard Response SJM-Response-ALT-1: Alternatives Selection and Evaluation Process, SJM-Response-ALT-2: Project-Specific Alternatives Considerations.

A reasonable range of feasible alternatives was analyzed in the Draft EIR/EIS, including options for the San Joaquin Valley Subsection portion of the alignment. Factors taken into consideration included aquatic resources, wildlife, and state park resources. As identified in Table 2-3 in Chapter 2, Alternatives, of the Draft EIR/EIS, options to go around the GEA (i.e., GEA North/Merced and South of GEA) were withdrawn. Going around the GEA to the north (GEA North/Merced) would have additional aquatic resource, North Grasslands Wildlife Area, and Section 4(f) impacts (state park crossing). Going around the GEA to the south (South of the GEA) would have aquatic resource, cost, and logistical issues because of the longer alignment. The GEA North/Merced option was withdrawn from further analysis because the potential effects on aquatic resources would be substantially greater than those of the alignment along Henry Miller Road, and it would be the only option to affect the North GEA. This option would result in high visual intrusiveness by adding an HSR river crossing within a state park. Further, this option would add travel time between San Francisco and Los Angeles. This option does not meet the project's purpose and need. The South of the GEA option was withdrawn from further analysis because it would have the greatest effect on aquatic resources of options considered and would have high cost and logistical issues due to its extensive environmental effects and additional miles of alignment.

The comment claims that the alternatives analysis is inadequate. The comment's support for the No Project Alternative is noted.

Submission 2131 (Tiffany Yap, Center for Biological Diversity, June 9, 2021)

San Jose - Merced - RECORD #2131 DETAIL

Status : Unread
Record Date : 6/9/2021
Submission Date : 6/9/2021
Interest As : Business and/or Organization
First Name : Tiffany
Last Name : Yap
Attachments : CBD HSR San Jose-Merced RDEIR comments 06-09-2021.pdf (249 kb)

Stakeholder Comments/Issues :

Hello,

I tried emailing this to the email provided on the link here<<https://hsr.ca.gov/programs/environmental-planning/project-section-environmental-documents-tier-2/san-jose-to-merced-project-section-draft-environmental-impact-report-environmental-impact-statement/>>, which was jose_merced@hsr.ca.gov<mailto:jose_merced@hsr.ca.gov>, but the email bounced back. So I am emailing the address that was used for the Draft EIR/EIS comments that we submitted in June 2020.

On behalf of the Center for Biological Diversity, I am submitting these comments on the Revised Draft Environmental Impact Report/Environmental Impact Statement for the San Jose to Merced Project Section of the California High-Speed Rail Project proposed by the High Speed Rail Authority.

The references cited are provided at the following link:

[?Folder icon] CBD Comments References - High Speed Rail Merced to San Jose RDEIR<<https://centerforbiologicaldiversity.org/EITE5HQ5CMxEgrHJJ4kNRYBsEFBjbqwdZf2wH2QDw9MVw?e=X9wlOK>>

Please confirm that you've received the comment letter and are able to access the documents at the provided link.

Thanks for your time and consideration,

Tiffany

Tiffany Yap, DEnv/PhD (she, her)
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CENTER for BIOLOGICAL DIVERSITY

Because life is good.

June 9, 2021

Sent via email

Attn: Draft San Jose to Merced Project Section EIR/EIS
100 Paseo de San Antonio, Suite 300
San Jose, CA 95113
san_jose_merced@hsr.ca.gov

Re: Comments on Revised Draft Environmental Impact Report/Environmental Impact Statement for the San Jose to Merced Project Section of the California High-Speed Rail Project

To whom it may concern:

These comments are submitted on behalf of the Center for Biological Diversity's (the "Center") members, staff and supporters, regarding the Revised Draft Environmental Impact Report/Environmental Impact Statement (RDEIR) for the San Jose to Merced Project Section of the California High-Speed Rail Project (Project) proposed by the High Speed Rail Authority (the "HSRA"). The Center has reviewed the RDEIR and provides comments on numerous issues. In particular, the RDEIR fails to adequately describe, assess, and mitigate impacts to wildlife movement and habitat connectivity, thereby imposing significant impacts to wildlife connectivity, many special-status species that occur or have the potential to occur in the area, designated critical habitat, and the innumerable unprotected plant and animal species that make the region's ecosystems rich with biodiversity. While the Center sees many benefits to high-speed rail transportation, high-speed rail must be planned to adequately avoid and minimize impacts to sensitive species, habitats, and connectivity between and among heterogeneous habitats. More robust mitigation must be required to adequately offset impacts and preserve California's incredible biodiversity. We urge the HSRA to address these issues.

The Center is a non-profit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has over 1.7 million members and online activists throughout California and the United States. The Center and its members have worked for many years to protect imperiled plants and wildlife, open space, air and water quality, and overall quality of life for people in the region and throughout California.

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BiologicalDiversity.org

Submission 2131 (Tiffany Yap, Center for Biological Diversity, June 9, 2021) - Continued

2131-6256

I. The RDEIR fails to adequately assess and mitigate impacts to mountain lions.

The Center appreciates that the RDEIR attempts to better address the Project’s impacts to mountain lions by providing additional mitigation measures; however, the RDEIR still fails to adequately assess and mitigate impacts to mountain lions to less than significant. MM BIO#87 states that a biologist “would conduct pre-construction surveys for *known* or *potential* mountain lion dens within suitable habitat located within the work area and within 1,970 feet of the work area” (RDEIR at 3.7-28). This mitigation measure is insufficient and not based on the best available science. Kitten dens are very well hidden in rocky outcrops or dense vegetation. Experts often find them because the mother has a GPS collar, and her behavior (*e.g.*, having a smaller home range, staying in one location frequently) can signal she has had kittens. But mountain lions in the Project area are less monitored than other populations, and it is unlikely that all lions in the area will be radio-collared. And there are currently no formalized, CDFW-approved survey protocols for mountain lions or mountain lion dens. These surveys would likely be ineffective at determining the presence or potential presence of mountain lion dens. Such dens could be easily missed during surveys, which could result in kittens being killed or orphaned if the mother is deterred by nearby human activity and abandons them. Simply conducting mountain lion den surveys, especially without a CDFW-approved biologist, is insufficient and inadequate mitigation.

2131-6257

Should a potential or known den be identified, the RDEIR states that “A nondisturbance buffer of at least 1,970 feet will be established around the known or potential den until the Project Biologist can document and confirm that the den is not occupied” (RDEIR at 3.7-28). It is unclear how this amount of buffer was chosen, though perhaps it is based on a study conducted by Yovovich et al. (2020), in which the researchers found that “Areas immediately surrounding (≤ 600 m) puma communication sites were also almost entirely composed of undeveloped habitat or low-density development,” since 1,970 feet is equal to 600.456 meters. However, there is a disconnect here; puma communication sites and nursery habitat cannot be treated equally. Males create communication sites to communicate their presence to competing males and to advertise to females for breeding opportunities while nursing females choose the denning site and keep a relatively small home range (~ 9 km²) that consists of predominantly natural habitat and little human influence (Yovovich et al., 2020). Therefore, any human activity within the nursery home range could have significant impacts on the mother and her kittens.

2131-6258

Every lion in the Project area is critical for the long-term survival of healthy mountain lion populations throughout the state. The primary threat to mountain lions in the Southern California/Central Coast ESU is genetic isolation due to lack of connectivity caused by continuous development in mountain lion habitat with little regard for their movement needs. Thus, the persistence of the six populations with the Southern California/Central Coast ESU relies heavily on being connected with mountain lions throughout the ESU as well as statewide. The location of the proposed Project slices through important linkages between the Santa Cruz Mountains and the Diablo Range and bisects the Diablo Range across critical connectivity areas along Pacheco Pass. Effective wildlife connectivity that considers the life history and behaviors of mountain lions in this region is paramount for the survival of the Southern California and Central Coast mountain lions, yet the RDEIR fails to disclose this information and appropriately

2131-6258

mitigate impacts to mountain lions. The RDEIR also fails to disclose that the continued operation and maintenance of the Project would result in indirect impacts to genetic connectivity for mountain lions, which could further impact already struggling populations of mountain lions and contribute to their local extirpation. Thus, the RDEIR fails to adequately describe, assess, and mitigate impacts to Southern and Central Coast mountain lions.

2131-6259

Kitten dens are not the only vulnerable aspect of mountain lion life history. The lack of a known or potential den does not indicate the area is not being used by mountain lions. Mountain lions are nocturnal, elusive creatures that are difficult to find in the wild. They are so stealthy and secretive that lion sightings are rare despite the high numbers of outdoor recreationists in mountain lion habitat. They occur in low densities and have large home ranges. In California, resident adult and total population densities have been found to be 1.1 and 3.6 per 100 km², respectively (Pierce & Bleich, 2003). According to the Santa Cruz Puma Project, in the Santa Cruz Mountains female home ranges are on average about 100 km² and male home ranges are about 230 km² (Santa Cruz Puma Project, 2015). Riley et al. (2014) found that mountain lions in the Santa Monica Mountains have home ranges of 100-200 km² for females and 300-500 km² for males. If one does not see a mountain lion or evidence of a mountain lion in the area, it could still be there using the site in some way. For example, a wildlife camera study conducted in the Northlake project area in northwestern Los Angeles County found no trace of mountain lions on the site, yet in November 2020 a mountain lion was recorded on a wildlife camera using a culvert adjacent to the site. Even just one migrant has been shown to increase genetic diversity in an isolated population (Gustafson et al., 2017), which underscores that pre-construction surveys for mountain lions in the area do little, if anything, to address whether the area is important long-term for connectivity. The temporary impacts of construction and permanent impacts of operation and maintenance could significantly impact the long-term survival of struggling mountain lion populations in the Southern California/Central Coast ESU.

2131-6260

The loss of adequate undisturbed communication and nursery habitat, both temporarily and permanently from Project activities and operation/maintenance, could disrupt important mountain lion communication and reproductive behaviors that facilitate social structure and overall survival. Yovovich et al. (2020) documented the impacts of human activities on mountain lion communication and reproductive behaviors important for their survival. Males use scrapes to delineate territories as well as attract potential mates (Allen et al., 2015, 2016), and the males in the study preferred to use relatively flat areas away from human influence as scrape habitat (Yovovich et al., 2020). Similarly, when nursing females (with kittens less than 8 weeks old) shrank their home ranges to an average of 9 km² while their young were most vulnerable, they also selected undeveloped lands away from human disturbance, opting for habitat with protective cover and sufficient water and prey availability (Yovovich et al., 2020). Thus, continued habitat loss and fragmentation due to the Project extending into mountain lion habitat with little regard for their movement and behavioral needs threaten the long-term survival of mountain lions throughout the proposed Southern California/Central Coast ESU.

It is clear that although mountain lions are top predators, they are fearful of people and modify their behavior to avoid humans as much as possible. In addition to the study conducted by Yovovich et al. (2020), other studies conducted in the Santa Cruz Mountains have shown that pumas were less likely to occur in areas with higher density development (Smith et al., 2019;

Submission 2131 (Tiffany Yap, Center for Biological Diversity, June 9, 2021) - Continued

2131-6260 Wilmers et al., 2013), fled the area at the sound of human voices (Suraci et al., 2019), and even became more nocturnal to avoid humans hiking and biking in open space (Nickel et al., 2020). In addition, mountain lions were found to eat less of their kills and expend more energy when closer to human development, which could affect reproductive success and food chain dynamics (Smith et al., 2015; Wang et al., 2017). These studies highlight the severe impacts of human activities on mountain lions and the need to protect and enhance wildlife connectivity that accommodates their ecological and behavioral needs.

2131-6261 MM-BIO#88 states that the Authority would provide “compensatory mitigation for impacts on mountain lion core and patch habitat through the preservation of suitable habitat that is acceptable to CDFW” with inadequate mitigation ratios of 2:1 for “high-priority foraging and dispersal habitat” and 1:1 for “low-priority foraging and dispersal habitat” (RDEIR at 3.7-29). The RDEIR fails to provide adequate detail as to how such habitat categorizations would be determined or quantified, where potential compensatory mitigation lands would be located, or what would be deemed as “acceptable to CDFW” (RDEIR at 3.7-29). This prevents the public and decisionmakers from being able to evaluate the effectiveness of the mitigation and amounts to improperly deferred mitigation. Mitigation measures for the Project must be considered in the RDEIR so that the proper environmental analysis can take place. (See *Sundstrom v. Co. of Mendocino* (1988) 202 Cal.App.3d 296.). The amount and location of the land to be set aside for impacts to mountain lion habitat need to be included in the RDEIR to enable the public and decisionmakers to evaluate the effectiveness of the mitigation measures to minimize impacts to mountain lions.

2131-6262 In addition, there is no mention of habitat connectivity in MM-BIO#88, which is critical for the long-term survival of mountain lions. Large, interconnected, intact swaths of habitat should be prioritized for conservation and restoration, and any mitigation lands should be adaptively managed with measurable success criteria in perpetuity. For example, Sargent Ranch is adjacent to the Upper Pajaro River IBA and lies on the Amah Mutsun ancestral lands of Juristac, which has been identified as an important linkage area (CDFW 2010; Penrod et al. 2013) with numerous special-status species, including steelhead, California red-legged frogs, western pond turtles, California tiger salamanders, and mountain lions. Such lands are an ideal candidate for compensatory mitigation for the numerous impacts to wildlife connectivity and special-status species due to the proposed Project. Also, although MM-BIO#88 states that “where feasible and acceptable to CDFW, [compensatory mitigation will] contribute to preserving important movement lands across the HSR alignment” (RDEIR at 3.7-29), the RDEIR should also acknowledge the need for connectivity across the entirety of the alignment and implement structural and functional connectivity with more wildlife crossings throughout the alignment (See Section II for further detail). In addition, compensatory mitigation MM-BIO#88 is grossly insufficient to minimize impacts to mountain lions due to the Project to less than significant.

Protecting mountain lions by preserving intact habitat and implementing wildlife crossing infrastructure would not only benefit mountain lions but also imperiled wildlife and plants that are the cornerstone of California’s unique biodiversity. The presence of pumas has been shown to help promote watershed health and maintain diverse habitats that support a multitude of fish, amphibian, reptile, bird, mammal, insect, and invertebrate species (Elbroch et al., 2017; Ripple et

2131-6262 al., 2014). Loss of the species could potentially lead to further degraded ecosystems and decreased biodiversity.

2131-6263 **II. The RDEIR fails to adequately assess and mitigate impacts to wildlife movement and habitat connectivity.**

The Project slices through habitat for numerous special-status plant and animal species, including but not limited to mountain lions, California tiger salamander, California red-legged frog, San Joaquin kit fox, steelhead, Bay checkerspot butterflies, Monarch butterflies, western pond turtles and many others. Not only does the Project destroy thousands of acres of habitat for these species, but it also significantly fragments the landscape at a local and regional scale, impeding gene flow and threatening the persistence of numerous populations of special-status species.

While the Center acknowledges that the RDEIR has provided some additional mitigation measures to reduce the impacts from construction and operation of the Project on wildlife connectivity, the RDEIR still falls short of adequately assessing and mitigating the significant impacts to local, regional, and statewide wildlife connectivity. For example, the RDEIR states in BIO-MM#77a that “the Authority would work with agency and stakeholder partners—CDFW, USFWS, NMFS, the SCVOSA, SCVHA, Peninsula Open Space Trust, and The Nature Conservancy—to validate and optimize wildlife crossing locations at the 75 to 90 percent design phase” (RDEIR 3.7-24). However, design that incorporates wildlife connectivity should be implemented from the beginning for it to be most effective in terms of both cost and function for the targeted species or guild; therefore, experts should be involved in the design process from the very beginning. The Authority should be working with stakeholders now – not simply after approval or near the end of the design process – to finalize the locations and design of wildlife crossings. The RDEIR also states that the “Wildlife Crossing Design, Inspection, and Maintenance Plan would be developed in coordination with wildlife agencies—CDFW, USFWS, and NMFS—and local wildlife movement stakeholders (e.g., SCVOSA, SCVHA, Peninsula Open Space Trust, and The Nature Conservancy)” (RDEIR at 3.7-24), but this mitigation measure should not only require *coordination*; it should require *approval* by CDFW, USFWS, and NMFS. CEQA requires the adoption of mitigation measures *prior* to project approval; not simply a commitment to work with relevant agencies later on.

2131-6264 BIO-MM#77a should also include protecting lands on both sides of the crossing sites. Such areas are important in providing effective wildlife crossings because animals are more likely to use them if there is suitable habitat on both sides of the crossing. Studies have shown that wildlife crossing infrastructure with suitable, protected habitat on both sides of the crossings gradually increase the level of wildlife permeability (Dodd et al., 2012; Kintsch et al., 2018; Sawyer et al., 2012). Lands on both sides of the rail where crossings will be placed should be acquired and managed in perpetuity.

2131-6265 Additionally, while the Center is encouraged to see that BIO-MM#77b was added and includes monitoring and adaptive management of wildlife crossings, as currently written this mitigation measure is inadequate. It states that “The monitoring and adaptive management plan would be developed in coordination with wildlife agency staff and local wildlife movement

Submission 2131 (Tiffany Yap, Center for Biological Diversity, June 9, 2021) - Continued

2131-6265

stakeholders such as the SCVHA, the SCVOSA, The Nature Conservancy, and the Peninsula Open Space Trust” (RDEIR at 3.7-25); as stated above, this plan should not only involve coordination with experts, but it should be approved by CDFW, USFWS, and NMFS. In addition, it is unclear why the monitoring would be focused on crossings “within defined wildlife movement corridors” (RDEIR at 3.7-25). How would a wildlife movement corridor be defined? The purpose of the crossings is to make linear infrastructure like the Project more permeable to wildlife who don’t necessarily follow strict movement paths and often meander as they forage or seek shelter or mates. Therefore, all crossings should be monitored to get a fuller idea of how permeable. It is also unclear why monitoring would start “no less than 2 years following construction (to allow time for habituation). Total initial monitoring period not to exceed 5 years following construction. Additional monitoring associated with adaptive management to be confined to the location triggering the adaptive management and not to exceed 5 years” (RDEIR at 3.7-25). Instead, crossings should be monitored once construction is completed and adaptively managed and maintained in perpetuity, and reports of species usage and should be submitted to CDFW, USFWS, and NMFS and made public available every two years.

2131-6266

The success criteria provided in BIO-MM#77 is vague and inadequate. It simply states that success criteria of a crossing would be “Based on expected use by movement guild representatives known to be present in the region” (RDEIR 3.7-25). However, understanding whether a crossing is providing functional connectivity for target species requires deeper analyses, including documentation of which species, if any, are using the crossing, how often species are using the crossing, which species are coming up to the crossing but then turning away, etc. Camera traps provide the number and types of species that use the corridors (Kintsch et al., 2018; Singer et al., 2011). For example, a one-year study of the I-70 Mountain Corridor in Colorado documented over 20 species of animals (including red foxes, porcupines, and mountain lions) using 33 crossings along the highway (Singer et al., 2011). However, a more informative metric that uses camera trap data is the passage rate, which is determined by calculating the successful use of a corridor structure per approach for an individual. Reported passage rates range from 10% to 100% in Arizona, Colorado, and Montana (Cramer & Hamlin, 2017; Dodd et al., 2012; Kintsch et al., 2018), which suggests that some crossings are better placed or more attractive to cross than others. Although determining this rate may require more effort and resources, the benefit is considerable because comparing passage rates between crossings over time helps provide insight regarding why some locations/techniques for crossings work well and others do not. Comparing these rates in similar terrain and vegetation would allow researchers and engineers to determine the structural characteristics, design, and proximity to other crossings needed to increase passage rates for target species in future projects. The RDEIR should include more specific success criteria that is based on the best available science.

2131-6267

The RDEIR provides insufficient details regarding where wildlife crossings would be constructed and which species the crossings would be targeting. More in-depth analyses that include on-the-ground movement studies of which species are moving in the area and their home range area, habitat use, and patterns of movement are needed to determine how to best implement such crossings. For example, smaller species with poor dispersal abilities, like the blunt-nosed leopard lizard or California tiger salamander, would require more frequent intervals of crossings compared to larger wide-ranging species, like mountain lions or tule elk, to increase their chances of finding a crossing. Gunson et al. (2016) recommend that crossing structures

2131-6267

generally be spaced about 300m (~0.19mi) apart for small animals when transportation infrastructure bisects large expanses of continuous habitat, though they recognize that some amphibians may need more frequent crossings no more than 50m (~0.03mi) apart. And for many amphibian and reptile species, such as California red-legged frogs and western pond turtles, undercrossings should have grated tops so that the light and moisture inside the crossings are similar to that of the ambient environment. There are several published reports that, based on wildlife movement studies, identify prioritized movement barriers and provide recommendations to improve permeability and facilitate animal movement in Coyote Valley (e.g., Phillips et al. 2012; Diamond and Snyder 2016; Santa Clara County Wildlife Corridor Technical Working Group Coyote Valley Subcommittee 2019). Given that much of the proposed Project goes through wetland habitats, the HSRA should implement crossings that are spaced 50-300m apart and that are designed specifically to accommodate target species. Yet BIO-MM#77a-b does not provide any information regarding where wildlife crossings would be implemented, how many crossings there will be, how they will be spaced out, which species will be targeted, or how the HSRA will determine whether the crossings are effective.

2131-6268

The RDEIR fails to acknowledge the need for corridor redundancy (*i.e.* the availability of alternative pathways for movement). Corridor redundancy is important in regional connectivity plans because it allows for improved functional connectivity and resilience. Compared to a single pathway, multiple connections between habitat patches increase the probability of movement across landscapes by a wider variety of species, and they provide more habitat for low-mobility species while still allowing for their dispersal (Mcrae et al., 2012; Olson & Burnett, 2008; Pinto & Keitt, 2008). In addition, corridor redundancy provides resilience to uncertainty, impacts of climate change, and extreme events, like flooding or wildfires, by providing alternate escape routes or refugia for animals seeking safety (Cushman et al., 2013; Mcrae et al., 2008; Mcrae et al., 2012; Olson & Burnett, 2008; Pinto & Keitt, 2008).

2131-6269

Corridor redundancy is critical when considering the impacts of climate change on wildlife movement and habitat connectivity. Climate change is increasing stress on species and ecosystems, causing changes in distribution, phenology, physiology, vital rates, genetics, ecosystem structure and processes, and increasing species extinction risk (Warren et al., 2011). A 2016 analysis found that climate-related local extinctions are already widespread and have occurred in hundreds of species, including almost half of the 976 species surveyed (Wiens, 2016). A separate study estimated that nearly half of terrestrial non-flying threatened mammals and nearly one-quarter of threatened birds may have already been negatively impacted by climate change in at least part of their distribution (Pacifi et al., 2017). A 2016 meta-analysis reported that climate change is already impacting 82 percent of key ecological processes that form the foundation of healthy ecosystems and on which humans depend for basic needs (Scheffers et al., 2016). Genes are changing, species’ physiology and physical features such as body size are changing, species are moving to try to keep pace with suitable climate space, species are shifting their timing of breeding and migration, and entire ecosystems are under stress (Cahill et al., 2012; Chen et al., 2011; Maclean & Wilson, 2011; Parmesan, 2006; Parmesan & Yohe, 2003; Root et al., 2003; Warren et al., 2011). Thus, RDEIR fails to use the best available science and adequately assess and mitigate impacts to wildlife movement to less than significant.

Submission 2131 (Tiffany Yap, Center for Biological Diversity, June 9, 2021) - Continued

2131-6270

III. The RDEIR fails to adequately assess and mitigate impacts to Monarch butterflies.

The RDEIR fails to disclose information about or adequately assess or mitigate impacts to Monarch butterflies. The western monarch butterfly population has collapsed by 99.9% to fewer than 2,000 butterflies recorded overwintering in coastal California this past year (CBD, 2021). The situation is dire for the species, as it is currently a candidate for listing under the federal Endangered Species Act. Yet the RDEIR only provides a dismal compensatory mitigation ratio of 1:1 for occupied breeding and foraging habitat, “unless a higher ratio is required by the FESA” (RDEIR at 3.7-27). This is grossly insufficient, and given the dire situation of the population, any impacts to monarch butterfly habitat should be avoided as much as possible, and if avoidance is not feasible, then the mitigation ratio should be a minimum of 5:1, with mitigation lands adaptively managed, maintained, monitored, and funded in perpetuity.

2131-6271

IV. The HSRA failed to notify interested public of the RDEIR’s availability.

The Center’s comment letter on the Draft Environmental Impact Report/Draft Environmental Impact Statement (DEIR) dated June 23, 2020 specifically asked to be added to this project’s notice list for all updates associated with this project. However, we were never notified that an RDEIR was produced or available. The agency’s inability to conduct adequate outreach to the interested public disenfranchises the purpose of CEQA/NEPA, perhaps purposefully.

2131-6272

V. Conclusion

Thank you for the opportunity to submit comments on the RDEIR for the for the San Jose to Merced Project Section of the California High-Speed Rail Project. While these comments are not comprehensive, the Center presents some key environmental issues that the RDEIR fails to adequately describe, assess, and mitigate. Please add the Center to your notice list for all future updates to the Project and do not hesitate to contact the Center with any questions at the number or email listed below.

Sincerely,



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(Provided via OneDrive)

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Submission 2131 (Tiffany Yap, Center for Biological Diversity, June 9, 2021) - Continued

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Response to Submission 2131 (Tiffany Yap, Center for Biological Diversity, June 9, 2021)

2131-6256

The commenter asserts that pre-construction surveys for mountain lion required under BIO-MM#87 are insufficient and inadequate. The Authority acknowledges that there are technical challenges surrounding the identification of mountain lion dens, as noted by the commenter. However, there are also no existing survey protocols that have been developed to date for mountain lions. Consequently, the Authority determined that surveys for mountain lion dens would represent a “best effort” to find and avoid dens if possible, absent other options. To improve the implementation of the mitigation measure, the Authority has revised BIO-MM#87 in the Final EIR/EIS to include the monitoring of GPS collars, as suggested by CDFW and other commenters. Lastly, an additional requirement that the Project Biologist conducting the survey will be qualified and approved by CDFW has been added to BIO-MM#87 in the Final EIR/EIS.

2131-6257

The Authority acknowledges the important information communicated in the comment and has modified BIO-MM#87 in response in the Final EIR/EIS to note that a greater buffer distance could be required during the state CESA permitting process. The 600-meter (1,970-foot) buffer distance was derived from Wilmers et al. (2013), who found that denning mountain lions require a larger buffer from human development (600 meters) than they do for movement or feeding (150 meters and 50 meters, respectively). The additional study noted by the commenter, Yovovich et al. (2020), indicates a relatively small home range area (9 square kilometers) during denning with kittens (less than 8 weeks old). However, as illustrated in the paper, nursery home ranges are rarely uniform in shape or size, and thus any standard buffer distance cannot be readily inferred from this information. The Authority notes that there are currently no guidelines for appropriate buffer distances for mountain lions, which is normal for a newly listed species. Some time is often required by the wildlife agencies to synthesize research and to develop science-based guidelines that can be implemented as mitigation. Consequently, the Authority believes that the buffer distance described in BIO-MM#87 is reasonable and adequate under CEQA, and notes the added requirement that the buffer can be expanded in the future during later consultations with CDFW under CESA.

2131-6258

Refer to Standard Response SJM-Response-BIO-8: Impact on Wildlife Movement in the Western Pacheco Pass Region.

2131-6259

The commenter summarizes and provides background information on mountain lion biology and ecology. The Authority notes that the Revised/Supplemental Draft EIR/EIS also summarizes mountain lion biology and ecology, including the factors affecting the long-term population viability, primarily genetic isolation. The Revised/Supplemental Draft EIR/EIS acknowledges the significance of this impact under Impact BIO#42 (temporary impacts on wildlife movement) and under Impact BIO#43 (permanent impacts on wildlife movement), specifically related to the potential effects the project could have on the gene flow between subpopulations.

2131-6260

The commenter notes the factors affecting mountain lion communication and reproductive behaviors, primarily the presence of human activity, and asserts that the HSR project would both temporarily and permanently affect these behaviors. The Authority notes that the Revised/Supplemental Draft EIR/EIS already acknowledges the impacts of human activity on mountain lions, including those proposed under the HSR project. Impact BIO#42 in the Revised/Supplemental Draft EIR/EIS notes “Mountain lions are sensitive to human activity, and they would be likely to avoid active construction areas. Consequently, construction activities are likely to temporarily limit the movement of mountain lions during the construction period or cause them to alter their behavior, including taking longer routes to avoid active construction areas. Such avoidance behaviors can be expected to result in additional stressors, including changes in breeding activity.” Consequently, in light of this assessment, impacts were considered significant on mountain lion under all alternatives in the Revised/Supplemental Draft EIR/EIS. Consequently, the Authority has included several mitigation measures to address these significant impacts. These include BIO-MM#76, which helps to minimize impacts on wildlife, including mountain lions, during construction; BIO-MM#77a and BIO-MM#77b, which require specific wildlife crossing designs and monitoring and management; BIO-MM#87, which requires surveys and avoidance measures for mountain lion dens; and BIO-MM#88, which requires the Authority to provide compensatory mitigation for impacts on mountain lion habitat.

Response to Submission 2131 (Tiffany Yap, Center for Biological Diversity, June 9, 2021) - Continued

2131-6261

Refer to Standard Response SJM-Response-BIO-8: Impact on Wildlife Movement in the Western Pacheco Pass Region.

The commenter asserts that the Revised/Supplemental Draft EIR/EIS does not provide adequate detail regarding the habitat categorizations. The Authority disagrees and notes that the definitions and mapping of the habitat categorizations were provided in Appendix 3.7-D, Supplemental Species Habitat Model Descriptions, to the Revised/Supplemental Draft EIR/EIS.

Additionally, the commenter asserts that the EIR/EIS fails to specify where compensatory mitigation lands would be located and that this results in improperly deferred mitigation. The Authority disagrees with this assertion and notes that the compensatory mitigation planning process for a project of this scale is complex and must be coordinated extensively with federal, state, and local agencies, stakeholders, and sometimes private landowners to achieve the greatest conservation benefit. Additionally, at the request of CDFW and other commenters, the Authority has included additional mitigation in the Final EIR/EIS to implement regional wildlife movement improvements. The precise location of these improvements is not yet known but would be based on the best available science and coordination with the wildlife movement stakeholders in the region. On this basis, the precise location of mitigation cannot be known at this time. However, the EIR/EIS clearly identifies the mitigation ratios for mountain lion in BIO-MM#88 that the Authority will employ to replace habitat, unless a higher ratio is required by a regulatory agency. Consequently, the EIR/EIS does not defer mitigation.

2131-6262

Refer to Standard Response SJM-Response-BIO-8: Impact on Wildlife Movement in the Western Pacheco Pass Region.

BIO-MM#79b has been added in the Final EIR/EIS to further address habitat connectivity through wildlife movement enhancement in the region. The Authority also appreciates the suggestion of appropriate mitigation lands in the region and will consider all such lands as the compensatory mitigation planning process develops. Lastly, the Authority notes that BIO-MM#10 (Prepare and Implement a Habitat Mitigation Plan for Species and Species Habitat) also specifies criteria for habitat acquisition, like important linkages and lands adjacent to existing protected lands, which must be considered. The information provided by the commenter is important in that context for implementation under BIO-MM#10.

Response to Submission 2131 (Tiffany Yap, Center for Biological Diversity, June 9, 2021) - Continued

2131-6263

The commenter generally asserts that the Revised/Supplemental Draft EIR/EIS fails to assess and mitigate wildlife movement and connectivity, fragments the landscape, and has impacts on habitat for numerous special-status plant and animal species. The Authority notes that commenter made similar comments on the Draft EIR/EIS and refers the reader to responses to those comments. Generally, the Authority addresses each of the issues noted by the commenter in the Draft EIR/EIS and/or the Revised/Supplemental Draft EIR/EIS. As noted in several other responses to comments, the Authority has considered all comments received on the Draft EIR/EIS and the Revised/Supplemental Draft EIR/EIS and has incorporated numerous changes into the Final EIR/EIS in response to comments received. Collectively, the Authority finds that the Final EIR/EIS addresses the general issues raised by the commenter. The Authority notes that the commenter also provided numerous other more detailed comments on these general topics and has responded to each of those individually below in subsequent responses.

Additionally, the commenter asserts that because BIO-MM#77a requires the Authority to work with agency and stakeholder partners later in the design phase to validate and optimize wildlife crossing locations, wildlife movement and connectivity are not addressed adequately in the project or the EIR/EIS. The Authority disagrees and notes that it has been meeting with the local wildlife movement stakeholders for several years to address wildlife movement issues to the extent possible within the constraints of a preliminary design. The results of that coordination have been numerous dedicated wildlife crossings and detailed mitigation measures in the Draft EIR/EIS and in the Final EIR/EIS addressing wildlife movement. These measures primarily include BIO-MM#77a, which requires the Authority to optimize crossing locations and designs with local expert input at the design phase, and BIO-MM#77b, which requires the Authority to monitor and adaptively manage the crossings once they are constructed to ensure they are effective. Because a significant amount of time may pass between the Final EIR/EIS and the ROD and the time that final designs and construction occur, land uses as well as the science of wildlife crossing design may change. For these reasons, the Authority believes that validating and optimizing crossings at the time of more detailed project design is the most appropriate method to ensure the best available science and information are used.

The commenter also notes that the Wildlife Crossing Design, Inspection, and Maintenance Plan should be “approved” by CDFW, USFWS, and NMFS. The Authority

2131-6263

notes that permits and other approvals are required from each of these agencies, and wildlife movement and connectivity issues would be analyzed and addressed by each agency under their respective regulatory jurisdictions. However, the Authority also notes that there are no regulatory requirements outside of each agency’s respective permits and approvals that would allow them to “approve” such a plan. Consequently, BIO-MM#77a requires the Authority to coordinate with those agencies.

2131-6264

The commenter suggests that land on both sides of HSR where crossings would be placed should be acquired and managed in perpetuity and cites several studies (Dodd et al. 2012, Kintsch et al. 2018, and Sawyer et al. 2012). The Authority has reviewed these additional studies and recognizes the importance of habitat connectivity as one factor to the successful implementation and use of wildlife crossings; however, the Authority also notes that we cannot confirm at this stage of design whether such a measure is possible. Consequently, BIO-MM#77a notes that the adjustment of some crossings may be appropriate or necessary to ensure they are oriented “the most advantageously to protected and natural lands.” Furthermore, as noted in BIO-MM#77a, the Authority would plan and prioritize species, wetland, and other mitigation, in coordination with the wildlife stakeholders in the region, to be at or near wildlife crossings to facilitate the continued accessibility and use of the crossings by wildlife. Lastly, the Authority notes that BIO-MM#79 in the Final EIR/EIS also requires the Authority to prioritize the protection of open space corridors between wildlife crossings and the nearest conserved open space, floodplain, passive recreation, or open agricultural properties to facilitate the permanent functionality of wildlife crossings.

Response to Submission 2131 (Tiffany Yap, Center for Biological Diversity, June 9, 2021) - Continued

2131-6265

Please see response to submission SJM-2131, comment 6263, which addresses the commenter's assertions regarding the implementation of BIO-MM#77b. The commenter also questions how a wildlife movement corridor would be defined for the purposes of implementing BIO-MM#77b. The Authority has modified BIO-MM#77b in the Final EIR/EIS to further define how the measure would be implemented. The commenter also suggests that monitoring under BIO-MM#77b should begin once construction is completed. The Authority appreciates the comment and, considering similar comments from local wildlife movement stakeholders, has modified BIO-MM#77b in the Final EIR/EIS to require monitoring to start following construction. Lastly, the commenter suggests that all crossings should be monitored once construction is completed. The Authority disagrees and believes that a representative sample of the crossings, focusing on those most important for the continued gene flow of animals (i.e., mountain lion) will be adequate to document the effectiveness of crossings and to make adaptive management decisions. BIO-MM#77b has been modified in the Final EIR/EIS to clarify this approach.

2131-6266

The commenter asserts that the success criteria provided under BIO-MM#77 (BIO-MM#77b in the Revised/Supplemental Draft EIR/EIS) are not adequate. The Authority acknowledges the commenter's suggestion for deeper analysis using documentation of which species are using the crossing and potentially a passage rate; however, the Authority also notes that because none of the proposed crossings have been constructed yet such metrics are not possible to collect at this point. The Authority has further clarified in the Final EIR/EIS how the success criteria under BIO-MM#77b would be considered. Each of the crossings would be designed with specific minimum dimensions and design criteria as outlined in the WCA (Appendix C of Authority 2020a, as cited in Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS). BIO-MM#77b has been modified in the Final EIR/EIS to note that success criteria for wildlife crossings will be based on the expected use of each of the wildlife crossings as outlined in the WCA. In other words, crossings that have been designed for a particular species or species guild will be deemed successful if they are used by that species or species guild. Lastly, the Authority notes that the monitoring methods would include camera stations and would record passage rates as noted in the Final EIR/EIS in BIO-MM#77b.

2131-6267

The commenter notes that the Revised/Supplemental Draft EIR/EIS does not provide details regarding where wildlife crossings would be constructed. The commenter is correct. As described in the public review notice for the Revised/Supplemental Draft EIR/EIS, the document does not present all analysis from the Draft EIR/EIS, only those topics related to the recent listing of the mountain lion as a candidate under CESA, and the recent candidacy of the monarch butterfly under FESA. The analysis completed for wildlife crossings is described in the WCA (Appendix C of Authority 2020a, as cited in Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS). The analysis in the WCA considers various movement "guilds," or different sizes and types of animals, including the smaller and larger species as noted by the commenter. As described in the WCA, dedicated wildlife crossings were placed based on a permeability analysis, with spacing of crossings considered using a broad review of the literature and specific species needs. BIO-MM#77a and BIO-MM#77b do not provide information where crossings would be located as noted by the commenter, because the crossings are already part of the proposed project. BIO-MM#77a simply describes in additional detail how the crossings would be designed and implemented. BIO-MM#77b does include monitoring to determine whether the crossings are effective, as well as adaptive management if needed. Collectively, the Authority believes that it has worked hard and in good faith with local wildlife stakeholders to design and place crossings for the benefit of all species movement guilds.

2131-6268

The commenter asserts that the Revised/Supplemental Draft EIR/EIS should consider wildlife "corridor redundancy." The Authority believes that the permeability analysis completed for the project, as described in the WCA (Appendix C of Authority 2020a, as cited in Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS) already considers this concept by design. The permeability analysis already considers habitat patches in the context of all crossings within the design. Stated another way, each time a crossing was added for a particular location or to connect two "habitat patches," the permeability analysis factors that into the overall permeability "score," in consideration of all other crossings to the same habitat patch. The Authority also notes that, in most instances, dedicated crossings are located relatively close together, which also provides for the corridor redundancy suggested by the commenter.

Response to Submission 2131 (Tiffany Yap, Center for Biological Diversity, June 9, 2021) - Continued

2131-6269

The commenter again asserts that the Revised/Supplemental Draft EIR/EIS fails to consider wildlife corridor redundancy, especially considering the impacts of climate change on wildlife movement and habitat connectivity. Please see response to submission SJM-2131, comment 6268 and 6267, which describes that the wildlife movement analysis and the dedicated crossings in the project already consider this concept.

2131-6270

The commenter asserts that the Revised/Supplemental Draft EIR/EIS does not adequately assess and mitigate impacts on monarch butterflies. The Authority disagrees and believes that the mitigation provided is commensurate with the impact and considers the context of the species biology and threats to its survival. While habitat loss is a significant contributor to the decline of the monarch population, there are numerous other primary drivers affecting the health of the western population, including impacts on overwintering sites in California (no overwintering sites are affected by the project), conversion of grasslands to agriculture, widespread use of herbicides, exposure to insecticide, and climate change. Thus, while the project would remove some occupied migratory habitat, the amount of occupied migratory habitat is not limited in the region surrounding the project, and numerous other factors are equally or more damaging to the species. The mitigation provided in the Revised/Supplemental Draft EIR/EIS has been considered in this context, and the Authority finds that a 1:1 ratio is sufficient to mitigate the impact to a less-than-significant level.

2131-6271

In response to this comment, the Center for Biological Diversity has been added to the project notification and distribution list.

2131-6272

In response to this comment, the Center for Biological Diversity has been added to the project notification and distribution list.

Submission 2116 (Trudie Nieuwkoop, FG Spreader Service, April 29, 2021)

San Jose - Merced - RECORD #2116 DETAIL

Status : Unread
Record Date : 4/29/2021
Submission Date : 4/29/2021
Interest As : Business and/or Organization
First Name : Trudie
Last Name : Nieuwkoop

Stakeholder Comments/Issues :

2116-6238

I am NOT in favor of HSR. You will be putting us out of business. Taking our business and home. Please save all the mountain lions and monarch butterflies. Taking away peoples and animals lives is a disgrace. NO TO HSR.

Response to Submission 2116 (Trudie Nieuwkoop, FG Spreader Service, April 29, 2021)

2116-6238

Refer to Standard Response SJM-Response-GEN-1: Opposition and Comments on the Merits of the Project.

Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021)

San Jose - Merced - RECORD #2126 DETAIL	
Status :	Unread
Record Date :	6/8/2021
Submission Date :	6/8/2021
Interest As :	Business and/or Organization
First Name :	Ellen
Last Name :	Wehr
Attachments :	Attachment to GWD Comments A_Dziegiel Thesis.pdf (4 mb) GWD_Comments_on_Supplemental_Project_DEIR_EIS.pdf (351 kb)

Stakeholder Comments/Issues :

Good afternoon,
Please find attached comments from Grassland Water District, Grassland Resource Conservation District, and the Grassland Fund, with one attachment.

Thank you,

Ellen Wehr
Grassland Water District
(916) 873-2020
ewehr@gwdwater.org<mailto:ewehr@gwdwater.org>

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June 8, 2021

VIA U.S. MAIL AND E-MAIL

California High-Speed Rail Authority
Attn: San Jose to Merced Project Section: Supplemental Draft EIR/EIS
100 Paseo de San Antonio, Suite 300
San Jose, CA 95113
E-Mail: san.jose_merced@hsr.ca.gov

Re: Comments on Supplemental DEIR/EIS for San Jose to Merced Project Section

On June 23, 2020, the Grassland Water District (GWD), Grassland Resource Conservation District (GRCD), and the Grassland Fund submitted a 64-page comment letter on the Draft Environmental Impact Report/Environmental Impact Statement (DEIR/EIS) for the San Jose to Merced Project Section of the California High-Speed Rail Project (HSR). On April 23, 2021, the High-Speed Rail Authority (Authority) released a Supplemental DEIR/EIS (SDEIR/EIS) for this Project Section. Despite the passage of ten months, and comprehensive comments submitted by resource management agencies, the SDEIR/EIS contains only a limited analysis of certain project impacts, and does not correct flaws in the original DEIR/EIS. The Authority continues to reject our request for a meeting with the Grassland Ecological Area (GEA) Working Group, which is concerning.

It also appears that the Authority has changed the Project description to include high-speed train operations throughout the night, which was not previously analyzed in the DEIR/EIS. The revised analysis in the SDEIR/EIS introduces additional flaws. For these reasons, we urge direct consultation with the GEA Working Group, as was anticipated in the 2008 Programmatic EIR/EIS for the Project (p. 3.15-70). These comments summarize our previous comments on the DEIR/EIS, address the revised Project description, and discuss the flaws in the new analysis contained in the SDEIR/EIS.

2126-6431

2126-6432

Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

2126-6433 | I. **SUMMARY OF PREVIOUS COMMENTS**

2126-6434 | 1. General Summary. In general, the DEIR/EIS fails to set forth a stable and finite project description, fails to consider less damaging Project alternatives, does not properly tier to the previously adopted Program EIR/EIS, does not set forth an accurate environmental or regulatory baseline, fails to identify and mitigate impacts, proposes inadequate and unenforceable mitigation measures, and improperly defers the formulation of mitigation.

2126-6435 | 2. Incomplete Project Description. The DEIR/EIS does not adequately describe the location, height, or abundance of proposed nighttime lighting during Project construction or operation. The DEIR/EIS also fails to clearly describe the location of maintenance and related facilities.

2126-6436 | 3. Failure to Consider Alternatives. All four Project alternatives are identical in the San Joaquin Valley subsection, with no differences in alignment, design, or Project features, despite requests by the GEA Working Group to consider alternatives that avoid damaging the GEA and its associated educational and recreational uses. All Project alternatives are above grade through the GEA, which would disturb and kill birds and other wildlife, and interfere with noise-sensitive camping, wildlife viewing, and environmental education in the immediate Project vicinity. The Authority has not provided a reasoned explanation for why it considered but rejected a proposed below-grade design alternative, especially when such an alternative would avoid substantial impairment of the Volta and Los Banos State Wildlife Areas and adjacent lands with state conservation easements, as required by Section 4(f) of the USDOT Act.

2126-6437 | 4. Failure to Tier to Program EIR/EIS. The DEIR/EIS is not consistent with the 2008 Program EIR/EIS, does not use the framework of analysis that was previously adopted, and does not incorporate or comply with the relevant commitments contained in the Program EIR/EIS. The Program EIR/EIS committed to specific measures to address impacts on the GEA, which were supposed to be included in the Project-level DEIR/EIS. Among those measures that are missing from the DEIR/EIS are an appropriate biological field survey, an analysis of project level impacts to biological resources, minimization of Project facility footprints, a detailed analysis of the timing of construction activities to minimize disturbance, lighting and glare reduction measures, and a detailed program to acquire 10,000 acres of easements for habitat protection.

2126-6437 | 5. Inadequate Baseline. The DEIR/EIS improperly describes the GEA and uses incorrect boundaries for the GEA. It omits the GEA from a list of important conservation areas, fails to include policies and procedures set forth by the Merced County General Plan, and improperly relies on models to describe existing biological resources.

2126-6438 | 6. Impacts Inadequately Addressed. The analysis of impacts is inaccurate due to the use of the wrong GEA boundary. The use of a biological model instead of conducting field surveys underestimates biological impacts. Impacts to wildlife from noise, vibration, lighting and glare are inaccurate, and impacts to rare plants and eagles are unmitigated. Finally, impacts to recreational hunting and fishing are underestimated and unmitigated.

2126-6439 | 7. Inadequate and Unenforceable Mitigation. Crucial mitigation measures are not protective enough, are vaguely worded and entirely unspecific. A number of mitigation measures are not legally enforceable and their implementation will only be overseen only by the Authority itself. These measures must be revised and improved. *See also the discussion in section III.C, below.*

2126-6440 | 8. Deferred Mitigation. The DEIR/EIS impermissibly defers the formulation of mitigation measures to post-approval studies and plans of an uncertain date.

2126-6441 | II. **COMMENTS ON SDEIR/EIS**

The GEA Working Group is comprised of the three Grassland entities submitting these comments (Grassland Water District, Grassland Resource Conservation District, and the Grassland Fund), two wildlife agencies (CDFW and USFWS), and more than half a dozen environmental non-profit organizations with expertise in wetlands and wildlife conservation (Audubon California, Defenders of Wildlife, Ducks Unlimited, Point Blue Conservation Science, California Waterfowl Association, The Nature Conservancy and Environmental Defense Fund).

For years, the GEA Working Group met with Authority staff and consultants who were developing the DEIR/EIS, to focus on ways to avoid, minimize, and mitigate significant impacts on the GEA. Much of this work was not reflected in the DEIR/EIS. The SDEIR/EIS indicates that the additional analysis of noise and lighting impacts was conducted in response to comments received on the DEIR/EIS. However, the SDEIR/EIS continues to ignore both the results of regular meetings with the GEA Working Group, and the detailed comments on the DEIR/EIS that were previously submitted.

Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

2126-6442 | The SDEIR/EIS provides little to no useful information about the Project, or the specific and enforceable mitigation measures that will be undertaken. Although the SDEIR/EIS takes steps toward improving wildlife protections through additional noise barriers outside the GEA, our extensive comments on noise impacts within the GEA are not addressed at all. Moreover, the supplemental nighttime lighting analysis in the SDEIR/EIS attempts to take steps toward better addressing those impacts, but the analysis and mitigation are inadequate and must be revised and strengthened. Unfortunately, the Authority appears to be running out of time to correct these flaws.

2126-6443 | A. Revised Project Description Appears to Include All-Night Train Operations

On page 3.7-E-3 of Appendix 3.7-E, the Supplemental Noise Analysis, the SDEIR/EIS states that trains would be operating for 24 hours each day. This represents a significant change to the Project description that would have wide-ranging implications for the environment, and would require numerous revisions to the DEIR/EIS. As just one example, page 3.7-E-9 of that same Appendix notes that impacts to kit fox were analyzed with the assumption that no trains would operate between 12 a.m. to 6 a.m. The operational schedule of the Project must be clarified before the DEIR/EIS can be approved. If the Project has been altered so that trains will run all night through the GEA, a revised environmental analysis will certainly be needed.

2126-6444 | B. Nighttime Lighting, and Associated Impacts in the GEA, Are Not Adequately Described

Pages 10-11 of our comments on the DEIR/EIS discussed how, despite repeated requests from the GEA Working Group, the Project description lacks any information about the location, height, or abundance of nighttime lighting during construction or operation, making it impossible to analyze impacts and propose appropriate mitigation. This is despite the fact that the GEA Working Group provided examples of successful Lighting Plans that other project proponents have completed in the vicinity of the GEA, and requested that the Authority do the same. Despite repeated requests and proposals presented by the GEA Working Group, the Authority has refused to develop a nighttime lighting plan for the GEA.

2126-6445 | Furthermore, the Authority has not updated its Technical Reports to reflect the new analysis and information presented in the SDEIR/EIS. Updating these reports is critical to providing a comprehensive assessment of the environmental impacts caused by the Project.

2126-6446 | One specific failure to adequately describe and mitigate lighting impacts in the GEA includes a lack of information about nighttime construction. When analyzing impacts from construction lighting, page 3.7-F-4 of the SEIR/EIS states: “Night work within areas with existing low levels of ALAN and, thus, potential impacts due to construction site lighting, is only proposed in Coyote Valley and at the tunnel portals.” *Does this mean that the Project will not involve night work in any other areas with low levels of ALAN, such as the GEA?* This was promised to the GEA Working Group leading up to the publication of the DEIR/EIS, but no such clear statement is found anywhere in either the DEIR/EIS or the SDEIR/EIS. In fact, the “additional recommended measures” regarding construction lighting, described on page 3.7-F-12 of the DEIR/EIS, are stated to be needed for all construction areas east of Gilroy, which suggests that night work *would* occur in the GEA. A clearly stated restriction on nighttime construction in and near the GEA *must* be clearly stated, to resolve the otherwise confusing and misleading statements made by the Authority and the above-quoted statement in the SDEIR/EIS.

2126-6447 | Another specific failure to adequately describe and mitigate lighting impacts in the GEA is a lack of information about the location of permanent operations and maintenance facilities. For example, although the GEA Working Group and the Authority staff and consultants had agreed that those facilities would be sited in already-developed areas as far from wetland habitat and state wildlife areas as possible, the DEIR/EIS still showed several “alternate” locations for two traction power paralleling stations, a radio tower, two ATC structures,” and a switching station near the GEA. As just as one example, a potential location for the switching station was directly adjacent to the Los Banos State Wildlife Area and the Grassland Environmental Education Center. The lack of information about the location of permanent facilities is perpetuated in the SDEIR/EIS.

2126-6448 | C. IAMFs and Mitigation Measures, Plus New “Recommendations,” Remain Vague and Unenforceable

We are pleased that the Authority is taking more seriously the impacts associated with the Project’s nighttime lighting. However, the SDEIR/EIS does not adequately address this issue. Our comments on the DEIR/EIS spent a significant amount of time explaining the flaws in the lighting impacts analysis (see pp. 26-30), yet those comments are not addressed at all in the SDEIR/EIS.

2126-6449 | We criticized the conclusion in the DEIR/EIS that nighttime lighting effects from Project operations would be less than significant because the impacts would be “localized.” The RDEIR/EIS appears to contradict that prior conclusion, stating that

Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

2126-6449 | even with previously proposed avoidance and mitigation measures, “lighting effects remain from the use of continuous lighting” and intermittent lighting associated with the Project. However, the statement that “effects remain” is inadequate under CEQA and NEPA. The SDEIR/EIS should be revised to clarify that the Authority has determined that nighttime lighting from Project construction an operation will be “significant,” and that the contrary conclusion in the DEIR/EIS has now changed.

2126-6450 | Similarly, mitigation for these effects remains insufficient. The SDEIR/EIS, on page 3.7-F-12, describes five types of theoretical mitigation measures for nighttime lighting impacts: (1) maintain or create dark areas; (2) use lighting only where it is needed; (3) reduce lighting intensity; (4) reduce light duration (switch off lighting when not needed); and (5) minimize wavelengths with high biological activity.

2126-6451 | We do not agree with the conclusion in the SDEIR/EIS that the first two of these measures have already been addressed to the extent feasible, citing IAMF #12 and other unspecified mitigation measures. Our comments on the DEIR/EIS criticized the vague and unenforceable language of IAMF #12, which sets forth a laundry list of potential measures to reduce lighting, with no actual specific commitments or oversight by a resource agency, and without enforceability (see pp. 29-30, 44). To the contrary, the specific measures proposed by the GEA Working Group are feasible, effective, and should be incorporated into the DEIR/EIS.

2126-6452 | Second, the SDEIR/EIS improperly “recommends” five additional measures, without expressly incorporating those as mitigation measures. A recommendation is not an enforceable mitigation measure as required under CEQA and NEPA.

2126-6453 | Third, the language of the recommendations perpetuates the vague and unenforceable qualities seen in many other proposed measures. Such phrases include: (1) “notify wildlife agencies of planned activities and discuss means to minimize construction effects”; (2) perform recommended measures “to the extent feasible”; (3) employ alternatives, “for example by using methods other than lighting to ensure security”; and (4) use the “lowest color temperature feasible,” such as green or red lighting which may “be appropriate for some applications.” In addition to the vague nature of the recommended measures, how are they supposed to be overseen, and by whom? How would they be enforced?

2126-6454 | Again, we urge the Authority to make revisions to the DEIR/EIS before it is too late, and have a straightforward discussion with the GEA Working Group about the need for a detailed Lighting Plan for the GEA. In addition to the specific and feasible design/mitigation measures previously proposed by the GEA Working

2126-6454 | Group, we agree with the SDEIR/EIS, on page 3.7-F-12, that if dark areas cannot be maintained, they can be “created” by taking specific steps to reduce nighttime lighting elsewhere within the GEA. This is a feasible additional mitigation measure for lighting impacts that should be incorporated into the DEIR/EIS.

2126-6455 | The Grassland Ecological Area is an irreplaceable, internationally significant ecological resource. Further loss or degradation of this largest remnant wetland habitat in the Central Valley will have a negative impact on migratory species that move across the North American continent and among continents during their annual cycles. For these reasons, protection of this unique ecosystem is essential to the preservation and maintenance of the productivity of this important natural heritage. The Authority may not approve the Project until the DEIR/EIS is revised and recirculated, this time by properly addressing the comments made by members of the GEA Working Group.

2126-6456 | *D. New Information on Tule Elk Ranges Must Be Considered*

The SDEIR/EIS, on page 3.7-E-10, states that tracking collar data for Tule Elk published in 2017 indicated that State Route (SR) 152 constitutes a barrier to elk moving northward, and therefore the SDEIR/EIS presumes that Tule Elk do not have access to land in the vicinity of the rail alignment. More recent tracking collar data, however, clearly indicates that this presumption is incorrect, and that Tule Elk do have access to land in that vicinity.

2126-6457 | A thesis submitted by a Fresno State master’s student, Abigail Dziegiel, in May 2021 synthesizes tracking collar data for Tule Elk in the Project vicinity, collected by CDFW between 2015 and 2019. The data show that multiple elk occupy the area in the vicinity of the Project alignment, including the area near O’Neill Forebay that is located north of SR 152 and east of the proposed Pacheco Pass tunnel. CDFW is also in the process of developing a proposed wildlife overpass that would allow for greater movement of Tule Elk into this area. *A copy of Ms. Dziegiel’s thesis is attached to these comments.*

2126-6458 | The DEIR/EIS must be revised to reflect this new information, and to ensure that the Project avoids and mitigates any adverse impacts on Tule Elk through the addition of barriers to movement or disruption from noise, vibration, and other impacts.

Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

2126-6459

E. Compensatory Mitigation for Monarch Butterfly Should Include Reference to Grassland Conservation Initiative

The SDEIR/EIS includes a new Mitigation Measure, BIO-MM#86, which would provide compensatory mitigation for impacts on monarch butterfly habitat. We request that this mitigation measure be revised to make reference to the monarch butterfly conservation initiatives currently being undertaken by the Grassland Resource Conservation District and Grassland Water District. By including a reference to existing monarch restoration initiatives near the Project, the proposed mitigation measure would thus ensure that the Authority is committed to investing in on-the-ground restoration, rather than paying in-lieu fees or similar actions to mitigate impacts on monarch butterflies.

2126-6460

Recently, GRCD was awarded a grant from the California Association of Resource Conservation Districts for the Grasslands Monarch-Friendly Canals Pilot Project, construction is complete and site restoration is now underway. The Pilot Project is restoring monarch habitat by planting native milkweed and other pollinator-friendly plant species along several miles of GWD canals, with the intention of scaling to a much larger habitat restoration project in the immediate vicinity of the proposed alignment. The Grassland Water District was selected to develop a larger proposal by the National Fish and Wildlife Foundation for further long-term investments in the monarch restoration effort within the GEA. We request that Mitigation Measure BIO-MM#86 be revised as follows:

BIO-MM#86: Provide Compensatory Mitigation for Impacts on Monarch Butterfly Habitat

To compensate for permanent impacts on monarch butterfly habitat (breeding and foraging habitat for the monarch butterfly), the Authority would provide compensatory mitigation at a minimum 1:1 ratio for occupied breeding and foraging habitat, unless a higher ratio is required by the FESA. The Authority, in accordance with authorizations issued under the FESA, would determine the compensatory mitigation required to offset impacts on habitat for monarch butterfly. Compensatory mitigation could include one or more of the following:

- Purchase of credits from an agency-approved conservation bank or state/federally funded restoration program in the Project vicinity*
- Acquisition in fee title of USFWS-approved property*

2126-6460

- Purchase or establishment of a conservation easement or permanent habitat agreement with an endowment for long-term management of the property-specific conservation values, for example through the Grasslands Monarch-Friendly Canals Project*

2126-6461

- An in-lieu fee contribution determined through negotiation and consultation with the USFWS.*

Representatives from the GWD, GRCD and Grassland Fund request further consultation with Authority staff regarding the issues raised in this letter and in our previous comments. Thank you for considering these comments.

Sincerely,

Ellen Wehr
General Counsel

Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

ABSTRACT

WHERE THE TULE ELK ROAM: HOME RANGE, MOVEMENT BARRIERS, AND WILDLIFE OVERCROSSING PLACEMENT

GPS radio tracking has fundamentally changed the way many biologists and land managers view animal habitat use and movement. We can now acquire a startling abundance of location-based data on many species, including many with characteristics that make them difficult to study; for example, the tule elk (*Cervus canadensis nannodes*), a wide-ranging ungulate endemic to California. Tule elk are sensitive to habitat loss, though they live in a landscape characterized by steady human development and disturbance. Despite this, research on the home range and anthropogenic effects on this subspecies is relatively rare. This study used the non-parametric home range algorithm T-LoCoH to construct tule elk home ranges with time-stamped GPS location data. I compared home range metrics in conjunction with sex, proximity to barriers, and month. Using ArcMap, I analyzed point location density and constructed movement paths to identify and assess potential barriers to movement for tule elk, located elk hotspots along a major highway, and identified potential sites for a wildlife overcrossing using a slope-based least cost path analysis. The results showed no clear home range patterns with respect to sex or month. However, proximity to barriers had a marked effect on home range size, and barriers such as highways and barbed wire fences also hindered tule elk movements in general. This study highlights the need to account for the effects that movement barriers and landscape features have on habitat use when designing projects to promote habitat connectivity for wide-ranging species like tule elk.

Abigail Stefani Dziegiel
May 2021

Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

WHERE THE TULE ELK ROAM: HOME RANGE, MOVEMENT
BARRIERS, AND WILDLIFE OVERCROSSING PLACEMENT

by
Abigail Stefani Dziegiel

A thesis
submitted in partial
fulfillment of the requirements for the degree of
Master of Science in Biology
in the College of Science and Mathematics
California State University, Fresno
May 2021

APPROVED

For the Department of Biology:

We, the undersigned, certify that the thesis of the following student meets the required standards of scholarship, format, and style of the university and the student's graduate degree program for the awarding of the master's degree.

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Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

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To my committee chair, Steve Blumenshine, thank you for helping me develop my analytical skills and statistical literacy. I hope to continue learning from the scaffolding you helped put in place. Thank you for constantly seeking and sharing career, academic, and research opportunities. I have benefitted immensely from taking advantage of opportunities you have sent my way. Many aspects of this project were initially quite daunting, but things did gradually fall into place. I would like to thank my other committee members, Dr. Wang and Dr. Lent, for providing insights and guidance as I worked to understand and develop methods to tackle my research questions.

Thanks to my fellow Blumenshine Lab mates, including Amy, Curt, Stephen, and Karen, for helping me navigate the world of grad school with the choicest teas, coffees, and background music. Thanks to my many friends from other labs, including Dalton and Sami, for sharing your research with me, and for your camaraderie during those long evenings in the lab. Sami, thanks for keeping tabs on me, for being an awesome co-TA, and for keeping me sane when things got hectic.

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Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

TABLE OF CONTENTS	Page
LIST OF TABLES	vi
LIST OF FIGURES	vii
INTRODUCTION	1
Remote Sensing.....	1
Home Range Studies.....	2
How Barriers Affect Movement	3
Tule Elk History and Conservation	5
METHODOLOGY	9
Home Range	10
Movement Barriers	12
Identifying Potential Wildlife Overcrossing Sites	13
RESULTS	16
Home Range Analyses.....	17
Movement Barriers	27
Identifying Potential Wildlife Overcrossing Sites	41
CONCLUSION	46
Home Range.....	46
Movement Barriers	47
Identifying Potential Wildlife Overcrossing Sites	49
REFERENCES	51
APPENDIX: HOME RANGE CONSTRUCTION PARAMETERS	56

LIST OF TABLES	Page
Table 1. Results of reverse stepwise discriminant analysis to predict whether elk were male or female based on the following home range metrics: percent core area (core area %), and 95% and 50% home range area, edge length, and edge to area ratio. Prior probabilities were set to reflect the proportion of elk that were actually in each category (0.43 for female, 0.57 for male).	20
Table 2. Results of reverse stepwise discriminant analysis to predict whether elk home ranges were adjacent to the highway based on the following home range metrics: percent core area (core area %), and 95% and 50% home range area, edge length, and edge to area ratio. Prior probabilities were set to reflect the proportion of elk that were actually in each category.	26

Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

LIST OF FIGURES

	Page
Figure 1. The San Luis Reservoir Tule Elk Management Unit is completely bounded by roads and highways. The purple line indicates a section of highway that CDFW recognizes as a barrier of movement to tule elk and other species.	8
Figure 2. Overlaid 95% and 50% core area home ranges are shown for 24 male (shown in blue) and 17 female (shown in light green) tule elk. Areas where male and female ranges overlapped are dark green. The full bounds of any one individual's home range at any isopleth level are not necessarily contiguous.	16
Figure 3. The 95% and 50% home range area among female and male elk.	17
Figure 4. Boxplot showing the proportion of the 95% home range that was identified as 50% core use area for male and female elk.	18
Figure 5. Boxplot showing the edge lengths of 95% and 50% home ranges among male and female elk. Edge length refers to the combined lengths of the boundaries of all areas considered to be part of an individual's home range.	18
Figure 6. Boxplot of 95% and 50% home range edge to area ratio among female and male elk.	19
Figure 7. Discriminant analysis to distinguish between female and male elk based on 95% home range area. The outer circles represent 95% confidence groups, and inner circles represent 50% confidence groups.	21
Figure 8. Boxplot showing log scale hull revisitation rates by month. Hull revisitation is represented by the number of separate visits (nsv) per hull given an intervisit gap (ivg) of 12 hours.	21
Figure 9. Boxplot showing log scale visit duration per hull by month. Visit duration is represented by the mean number of locations per visit (mnlv) per hull given an intervisit gap (ivg) of 12 hours.	22
Figure 10. Boxplot showing the areas of the 95% and 50% home ranges according to whether the home range was adjacent to a highway.	23
Figure 11. Boxplot comparing the proportion of the 95% home range that was identified as 50% core use area for individuals depending on whether they were adjacent to SR 152 (in addition to other hard barriers).	23
Figure 12. Box plot of 95% and 50% home range edge lengths among elk according to whether their home ranges were adjacent to the highway.	24
Figure 13. Boxplot of the edge to area ratio of the 95% and 50% home ranges according to whether the home range was adjacent to a highway.	25
Figure 14. Discriminant analysis to categorize elk by home range metrics according to whether they were adjacent to a highway. The outer ellipses represent 95% confidence groups, and inner ellipses represent 50% confidence groups.	26
Figure 15. The grid separates the landscape into eight sections of equal area. The colored lines represent the movement paths of radio-collared tule elk.	28
Figure 16. Map of elk paths in grid section 1, which includes the northern region of the San Luis Reservoir, SR 152, and secondary roads. Elk paths are overlaid, with each individual represented by a uniquely colored line. Angles along line paths represent GPS location points.	29
Figure 17. Map of elk location points in grid section 1, which includes the northern region of the San Luis Reservoir, SR 152, and secondary roads. Location points of all individuals in the area are depicted as grey dots.	29
Figure 18. Map of elk paths in grid section 2, which includes the northeastern region of the San Luis Reservoir, the O'Neill Forebay, SR 152, I-5, and secondary roads. Elk paths are overlaid, with each individual represented by a uniquely colored line. Angles along line paths represent GPS location points.	30
Figure 19. Map of elk location points in grid section 2, which includes the northeastern region of the San Luis Reservoir, the O'Neill Forebay, SR 152, I-5, and secondary roads. Location points of all individuals in the area are depicted as grey dots.	31
Figure 20. Map of elk paths in grid section 3, which includes the southwestern region of the San Luis Reservoir, SR 152, and secondary roads. Elk paths are overlaid, with each individual represented by a uniquely colored line. Angles along line paths represent GPS location points.	32
Figure 21. Map of elk location points in grid section 3, which includes the southwestern region of the San Luis Reservoir, SR 152, and secondary roads. Location points of all individuals in the area are depicted as grey dots.	32
Figure 22. Map of elk paths in grid section 4, which includes the southeastern region of the San Luis Reservoir, SR 152, SR 33, I-5, and secondary roads. Elk paths are overlaid, with each individual represented by a uniquely colored line. Angles along line paths represent GPS location points.	34
Figure 23. Map of elk location points in grid section 4, which includes the southeastern region of the San Luis Reservoir, SR 152, SR 33, I-5, and secondary roads. Location points of all individuals in the area are depicted as grey dots.	35

Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

ix	x
Page	Page
Figure 24. Map of elk paths in grid section 5, which includes the region southwest of the San Luis Reservoir. Only secondary roads are present in this area. Elk paths are overlaid, with each individual represented by a uniquely colored line. Angles along line paths represent GPS location points.36	paths indicate the least costly path of movement for elk, while red indicates movement paths with the highest cost to an individual crossing SR 152.43
Figure 25. Map of elk location points in grid section 5, which includes the region southwest of the San Luis Reservoir. Only secondary roads are present in this area. Location points of all individuals in the area are depicted as grey dots.36	Figure 34. A 3-dimensional rendering of the modeled tule elk crossing paths (shown in red) along the section of SR 152 (shown as a double black line) that is adjacent to the San Luis Reservoir Wildlife Area. The northwestern extremes of the San Luis Reservoir are visible on the right side of the image.44
Figure 26. Map of elk paths in grid section 6, which includes the region southeast of the San Luis Reservoir. Only secondary roads are present in this area. Elk paths are overlaid, with each individual represented by a uniquely colored line. Angles along line paths represent GPS location points.37	
Figure 27. Map of elk location points in grid section 6, which includes the region southeast of the San Luis Reservoir. Only secondary roads are present in this area. Location points of all individuals in the area are depicted as grey dots.38	
Figure 28. Map of elk paths in grid section 7, which includes the distant region southwest of the San Luis Reservoir. Only secondary roads are present in this area. The path of the only collared individual in this area is represented by a teal-colored line. Angles along line paths represent GPS location points.39	
Figure 29. Map of elk location points in grid section 7, which includes the distant region southwest of the San Luis Reservoir. Only secondary roads are present in this area. The location points of the only collared individual in the area are shown as grey dots.39	
Figure 30. Map of elk paths in grid section 8, which includes the distant region southeast of the San Luis Reservoir. Only secondary roads are present in this area. The path of the only collared individual in this area is represented by a teal-colored line. Angles along line paths represent GPS location points.40	
Figure 31. Map of elk location points in grid section 8, which includes the distant region southeast of the San Luis Reservoir. Only secondary roads are present in this area. The location points of the only collared individual in the area are shown as grey dots.41	
Figure 32. Hot spot analysis using GPS location data. Sixteen individuals whose boundaries were adjacent to the highway boundary were mapped individually and superimposed on one another.42	
Figure 33. Slope-based least cost path analysis from San Luis Reservoir Wildlife Area to Cottonwood Creek Wildlife Area. SR 152 is shown in purple. This analysis was conducted using the 126 animal location points in San Luis Reservoir Wildlife Area that were within 150 meters of SR 152. Blue	

Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

2

INTRODUCTION

As human development expands, biologists and land managers face increasingly numerous and complex conservation challenges. A key concern in conservation is the maintenance of connectivity between fragmented habitats, especially for wide-ranging species that are sensitive to habitat loss and fragmentation. The tule elk (*Cervus canadensis nannodes*), a protected subspecies of elk endemic to California, is one such example. The wide-ranging nature and protected status of tule elk (CDFW, 2018) make this subspecies difficult to study over long periods of time. Thus, despite the need for information about home ranges and movement patterns to inform habitat connectivity mitigation projects, research on tule elk is relatively sparse.

However, new remote data collection methods such as GPS radio tracking provide less labor intensive, and less invasive ways to obtain accurate, long-term location data. This study used GPS radio collar location data from the California Department of Fish and Wildlife to construct tule elk home ranges, determine how barriers such as highways and fences affect movement, and inform the placement of a wildlife overcrossing to connect two habitats that have been divided by a highway.

Remote Sensing

The idea to remotely track animal movements sparked in the 1950s with the efforts of researchers like LeMunyan, whose team developed their own miniature radio transmitter in the hopes of spending less time searching burrows for woodchucks (*Marmota monax*) and more time studying their physiology (LeMunyan et al., 1959). Since then, ecologists have expanded beyond simply trying to locate elusive study subjects with remote transmitters to using them to remotely collect location, physiological, and other data. Remote sensing has rapidly broadened researchers' ability to study wildlife from a distance in ways that were once either impossible or notoriously

difficult. Detailed animal movement paths that would normally require countless hours of in-person field observation to delineate can now be reconstructed using remotely collected data from tools such as VHF radio transmitters and GPS radio collars. The ability to retrieve location data at regular time intervals enhances our ability to answer questions about how animal movement relates to many other aspects of animal ecology including behavior, species distributions, and population structure (Patterson et al., 2008), habitat use and home ranges (Broomhall et al., 2003; Seidel & Boyce, 2016; Klaassen & Broekhuis, 2018; Amor et al., 2019), responses to anthropogenic impacts like roads (Dickson et al., 2005; Shepard et al., 2008; Gates et al., 2012) and fences (Loarie et al., 2009; Vanak et al., 2010; Gates et al., 2012; Cozzi et al., 2013; Gagnon et al., 2015), migration movements (Siegel et al., 2016; Marques et al., 2020), and dispersal patterns (Fryxell et al., 2008). As a whole, remote sensing provides more avenues to study species that are cryptic, wide-ranging, or generally difficult to observe (Wilmers et al., 2015), and offers less intrusive methods for studying protected species.

Home Range Studies

Long-term location point data can be used to construct home ranges and utilization distributions, which delineate the areas an animal used over a given period of time and differentiate areas according to how often the animal used them. The simplest method to construct a home range is to draw a minimum convex polygon that never angles inward and contains all of the animal's recorded locations. This method is simple and intuitive, and its core concept is used frequently. However, polygons alone do not provide any insight regarding the animal's movement or behavior within the boundaries of its home range and can encompass areas that are never actually used (Worton, 1987). Kernel density estimators are one answer to the need to assess habitat use within a home range. Kernel methods construct utilization distributions by weighting each location point

Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

3

according to the density of points around it. This results in a collection of probability distributions that are then smoothed to represent the intensity of an animal's habitat use in an area as a collection of peaks and valleys. This provides much more information than the minimum convex polygon. However, many basic kernel methods are parametric methods that still tend to include unused areas and can ignore obvious boundaries and holes (such as roads and reservoirs) in an animal's home range (Getz et al., 2007).

Time Local Convex Hull (T-LoCoH) is a non-parametric home range construction method that constructs smaller minimum convex polygons (referred to as "hulls") around each location point and its nearest neighbors (Lyons et al., 2013). This algorithm has the added benefit of incorporating the time elapsed between each location point to help determine who those nearest neighbors are, and to construct a utilization distribution with each hull. These features contribute to sensitivity in constructing irregularly shaped home ranges and allows the user to glean information about habitat use and movement within a home range (Lyons et al., 2013). T-LoCoH has been used to estimate home range size, identify core use areas, measure site fidelity, and analyze habitat use and movement according to sex, seasons, and other metrics in a wide range of species including deer (Dinh et al., 2020), giraffes (Flanagan et al., 2016), grey seals (Lidgard et al., 2020), big cats (Briers-Louw et al., 2019), and sturgeon (Whitmore & Litvak, 2018).

How Barriers Affect Movement

The advancement in home range algorithms has also broadened researchers' ability to answer questions about anthropogenic effects on animal habitat use, home ranges, and movement. Urban development has diminished and divided the amount of suitable habitat available to wildlife. Even where there is enough habitat to support a species, a lack of connectivity between different areas of the landscape may hinder natural movement and can be a cause for concern (Villard & Metzger, 2014). At the

4

population level, reduced connectivity between habitats could lead to genetically partitioned subpopulations that appear stable as a whole population, while each subpopulation individually experiences inbreeding depression (Shepard et al., 2008). It seems likely that fragmentation effects such as this largely depend on the characteristics of both the barrier and the species in question.

Roads are frequently incriminated as agents of habitat fragmentation, but the degree to which a road prevents wildlife passage varies widely. According to Forman and Alexander (1998), the connectivity between adjacent habitats decreases as road width and traffic density increase. Furthermore, the size, mobility, and adaptations of the species seem to play a role. Oxley et al. (1974) found that animals adapted to open landscapes crossed roads more readily than forest-adapted species, and that divided highways with wide clearances and low vegetative cover seemed to inhibit the dispersal of small mammals. Wide, busy roads are more likely than small roads to restrict the movement of large animals like pronghorn (Gates et al., 2012) and cougars (Dickson et al., 2005). Fenced roads can further limit crossing by animals that might not otherwise be deterred (Jaeger & Fahrig, 2004; Gagnon et al., 2015), and fences alone have also been shown to alter movement patterns, especially in large mammals (Cozzi et al., 2013; Vanak et al., 2010; Loarie et al., 2009; Gates et al., 2012). Past studies such as that of Oxley et al. (1974) relied on intensive methods such as mark and recapture to deduce animal movements along or across roads. GPS location data allows us to answer these questions with far more ease and certainty.

Habitat fragmentation is an especially challenging issue for wide-ranging species when anthropogenic development reduces movement between habitats. One potential strategy to improve habitat connectivity for these species is the construction or maintenance of wildlife corridors. Wildlife corridors provide animals with safe passageways across anthropogenic barriers that separate otherwise contiguous habitat.

Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

5

Where pre-existing corridors do not exist, man-made under- and overcrossings have been constructed in places like Banff National Park and have been proposed in others like southern California. Location data coupled with GIS analysis could provide a powerful way to inform the ideal placement of wildlife overcrossings based on landscape features that are likely to be relevant to the target species. Gentle slope, low topographic complexity, and various slope aspects, for example, seemed to facilitate marten, elk, wolf, lynx, and cougar movement along and across roads at Banff National Park (Alexander & Waters, 2000).

Tule Elk History and Conservation

Rapid population growth in California is likely to affect large mammals who are sensitive to habitat loss and fragmentation. The tule elk (*Cervus canadensis nannodes*), a protected subspecies of elk endemic to California, is a prime example. Faced with habitat loss due to farming and population declines due to unregulated hunting, wide-ranging populations of the once widespread tule elk dropped so low that they were thought to be extinct in the 1870s (McCullough, 1969). Tule elk narrowly avoided this fate, but only through the arduous work of legislators and local conservationists (McCullough, 1969). As tule elk populations have grown, conservation efforts have recentered from simply avoiding extinction towards broadening our knowledge of the subspecies, promoting its genetic diversity, and maintaining habitat stability (CDFW, 2018).

General knowledge regarding tule elk home ranges is relatively sparse. In other elk subspecies, home range size and location have been found to vary by herd, season, hunting season, and diel period (Amor *et al.*, 2019). Seidel and Boyce (2016) found that elk generally tend to select areas with more forage, protective cover, steeper slopes, and lower traffic on the nearest road. Sex has also been found to influence habitat selection, but not home range size (McCorquodale, 2003). Habitat loss and fragmentation due to

6

human development likely hinder migratory behavior in tule elk, though migration is a defining characteristic of other subspecies. Furthermore, tule elk occupy more open landscapes than other elk subspecies. Therefore, it is uncertain whether home range characteristics observed in other elk would be similar in tule elk.

There are at least 22 geographically isolated metapopulations of tule elk scattered across California (Williams *et al.*, 2004). State management of the species includes targeted translocations of certain individuals to other populations to encourage genetic diversity. However, large distances and extensive human development present significant barriers to natural gene flow among these groups. This genetic isolation, in combination with a genetic bottleneck due to near extinction, has had lasting impacts on the statewide population. For instance, Williams *et al.* (2004) found that tule elk have less than 50% of the heterozygosity and allelic diversity observed in subspecies such as Roosevelt and Manitoban elk. The effective population size of tule elk has been estimated to be between 10 and 13% of the census population size (Williams *et al.*, 2004), which implies that despite significant population growth, the bulk of tule elk genetic diversity relies on the reproductive success of relatively few individuals.

Anthropomorphic disturbance can play an important role not only in gene flow but also in general habitat use. The effect of roads and other barriers on elk habitat use have been widely studied, and the broad consensus is that elk tend to avoid roads, especially those with high amounts of traffic (Dodd *et al.*, 2007; Gagnon *et al.*, 2007; Seidel and Boyce, 2016; Prokopenko *et al.*, 2017). However, proximity to water and forage may encourage elk to approach or cross roads (Dodd *et al.*, 2007; and Gagnon *et al.*, 2007). Barrier effects on tule elk habitat use and movement have not been well-explored, yet this is an important topic given the ever-increasing landscape surrounding this species.

Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

7

Given that anthropogenic impacts to the landscape are unlikely to disappear, it is critical to understand how they affect animal habitat use and movement patterns when making management decisions. The California Department of Fish and Wildlife (CDFW) has identified key areas in California where tule elk and other wildlife species face movement barriers that fragment critical habitat patches and pose conservation concerns. Currently, CDFW seeks to build a wildlife overcrossing over State Route 152 (SR 152) to connect the San Luis Reservoir Tule Elk Management Unit (SLR Management Unit) to the adjacent Cottonwood Creek Wildlife Area (Figure 1). This could significantly increase the available habitat for the more than 687 tule elk living in the SLR Management Unit (C. Langner, personal communication, November 2019). Information regarding tule elk home ranges, habitat use, and responses to movement barriers would provide value to this decision-making process.

For this study, CDFW provided GPS location data that I used to describe tule elk home range characteristics, assess sensitivity to various movement barriers, and identify locations along SR 152 that could be suitable for installation of a highway overcrossing. In the home range analyses I estimated home range area, edge length, and edge to area ratio for 95% and 50% core home ranges, and the ratio between core area and 95% area (hereafter referred to as “percent core area”). I compared these metrics among tule elk according to sex and proximity to a highway. In addition, I calculated hull visit duration and visitation rate and analyzed them for monthly patterns. I assessed the effects of barriers on movement by identifying landscape features that may have impacted location point and movement path density. Finally, I identified potential overcrossing sites based on overall tule elk location density and on the slope of the terrain.

8

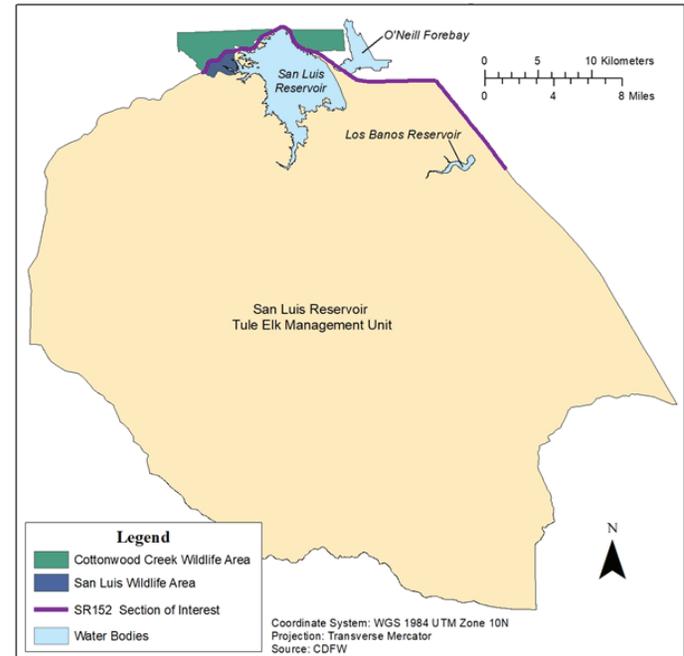


Figure 1. The San Luis Reservoir Tule Elk Management Unit is completely bounded by roads and highways. The purple line indicates a section of highway that CDFW recognizes as a barrier of movement to tule elk and other species.

Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

10

METHODOLOGY

The study was located at the San Luis Reservoir Tule Elk Management Unit, which encompasses the San Luis Reservoir (Figure 1) and extends into the counties of Merced, Santa Clara, Fresno, and San Benito. The general area is semiarid with hilly terrain and is dominated by an oak woodland community of annual grasses, shrubs, and trees (CDFW, 2018). The unit is about 500,000 acres comprising about 90% privately-owned land that is mostly used for livestock grazing (CDFW, 2018). Public lands within the management unit include Pacheco State Park (6,800 acres) and the San Luis Reservoir State Recreation Area (25,000 acres). The Upper Cottonwood Creek Wildlife Area, located north of State Route 152, is a state-owned management area north of the tule elk management unit that contains a small number of tule elk. This area has suitable habitat for the species; however, State Route 152 completely separates the Upper Cottonwood Creek Wildlife Area from the adjacent tule elk management unit. The tule elk herds included in this study were mostly concentrated south of State Route 152, though two were located in the Cottonwood Creek Wildlife Area.

California Department of Fish and Wildlife (CDFW) biologists used Lotek Iridium Track GPS radio collars to collect long-term location data every five hours from November 14, 2015 to November 21, 2019. The total duration of recording time per individual varied for a number of reasons; mainly, premature collar loss and mortality. Five-hour intervals were chosen to ensure that every hour of the day would be represented in the dataset. Whenever CDFW staff determined that an elk might come in close proximity to the highway, they manually changed the sampling interval from every five hours to every hour. This was done to improve spatial and temporal resolution in this area of interest. Early collar collection occurred when animals lost their collars, died from

natural causes, or were killed by vehicle collisions on the highway. The ultimate fate of each animal in the study was recorded when possible.

To prepare the GPS location data for analysis, I projected all coordinates in ArcGIS 10.6.1 using WGS 1984 UTM Zone 10N, Universal Transverse Mercator. Location points that were clearly erroneous were removed from each dataset (for instance, data points located far from the study site that were recorded after the collar was removed from the individual). Shapefiles were created for each individual and saved for use in the GIS analyses described below.

Home Range

The goals of these analyses were to determine home range size, edge-area ratios, home range overlap between individuals, and whether differences exist between individuals based on sex, month, and proximity to barriers. While most individuals were sampled every five hours, this was not always the case. For these home range-based analyses, I only used individual datasets where five-hour intervals were available in order to standardize the time intervals. In instances where time intervals were changed from five hours to one hour, I used every fifth measurement and omitted the rest of the time points. Furthermore, while most datasets were largely intact, some included large time gaps near the beginning or end. In these cases, I excluded data separated by a gap of more than two days to minimize bias in the calculation of the time-use metrics.

I constructed home ranges for 44 individuals using the R package T-LoCoH version 1.40.07. This R package was designed to construct home ranges and analyze movement patterns with data that include time values. This time local convex hull (T-LoCoH) method is a nonparametric analysis that was designed to use time-stamped GPS location data to form local minimum convex polygons (hulls) that can be combined to construct larger utilization distributions (Lyons et al., 2013). For each location point, the

Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

11

algorithm selects a set of nearest neighbors based on parameters chosen by the analyst to form hulls, which are then merged to form isopleths. I chose to locate nearest neighbors using the k-method, which uses the kth nearest neighbors to form a hull for each point. In T-LoCoH, nearest neighbor selection incorporates a metric called time-scaled distance (TSD), which translates time between points into a measure of distance (Lyons et al., 2013). This allows the analyst to weight the selection of the kth nearest neighbors towards points that are close in time, and away from points that may be near spatially but are far away in time. The equation for TSD involves calculation of the individual's maximum theoretical velocity, which is adjusted by a dimensionless scaling factor, s . The value of s determines how strongly time is weighted in selecting nearest neighbors. When $s = 0$, time has no bearing on nearest neighbor selection. As s increases, time becomes more important in the selection of nearest neighbors. For most tule elk, time and location data were collected for one or more years. Thus, I chose values for s so that 80% of the hulls were time-selected to minimize the number of temporally-distant points used as nearest neighbors. See Appendix A for the metrics used to construct the home range for each individual in this study.

For this particular dataset, data points that landed on daylight saving time hour shifts presented complications when constructing home ranges in R. To avoid inaccuracies in time-space calculations due to shifting hours forward or back, I used GMT rather than local time (PST) since GMT does not incorporate daylight saving time. This suited the goals of this study; however, it should be noted that any study reliant on the ability to reference local time would require a different approach.

Statistical Analysis

I used JMP 16.0 to analyze hull and isopleth metrics according to sex, month, and proximity to the highway. In time-based home ranges, the 95% home range estimates the

12

area in which an animal is likely to be found 95% of the time (Powell & Mitchell, 2012). Its core use area is typically defined as the 50% home range. I defined the percent core area as the ratio of core area to the 95% home range. Edge length refers to the combined perimeters of the home range (since a single home range can include areas that are not joined). I graphically compared percent core area, and home range area, edge length, and edge to area ratio for the 95% and 50% home ranges among males and females, and according to whether elk were adjacent to the highway. Elk were considered adjacent to a highway if any portion of their home range was within 100 meters of a highway. I then used backwards stepwise quadratic discriminant analyses to determine whether these metrics could be used to predict whether elk were male or female, and whether their home range was adjacent to a highway. The quadratic discriminant analysis assumes unequal within-group covariance matrices and that group sample sizes are not small relative to the number of covariates used in the analysis. Since group sample sizes were unequal, I set prior probabilities to equal the proportional occurrence of the existing sample sizes. Finally, I plotted hull visitation rate and visit duration by month to assess these for any potential monthly patterns.

Movement Barriers

I used the ArcMap "Points to Line" tool to convert the five-hour time interval location data points into chronological movement paths for each tule elk. I then used the "Create Fishnet" tool to divide the area used by tule elk in the study into a grid with a total of eight rectangular sections of equal area. The top left (northwest corner) boundary coordinates were 10N -13500865m E 4458230m N, and the bottom right (southeast corner) was 10N -13461420m E 4416580m N.

Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

13

I used Google Earth Pro to identify and characterize potential movement barriers such as roads, fences, human development, geological formations, and bodies of water that accompanied abnormal patterns in location point density and movement paths.

Identifying Potential Wildlife Overcrossing Sites

The goal of these analyses was to identify 3-5 areas along SR 152 that could be suitable sites to construct a highway overcrossing to increase connectivity between the SLR Management Unit to the Cottonwood Creek Wildlife Area.

To construct maps, I used the following publicly available datasets from CDFW: California Lakes, which included the shapefiles for San Luis Reservoir and other bodies of water in the management unit; California Streams; Elk Hunt Zones, which included the boundary file for the San Luis Reservoir Elk Management Unit; Wildlife Movement Barrier Priorities, which included the State Route 152 segment of interest; CDFW Owned and Operated Lands and Conservation Easements, which included the boundary files for the Cottonwood Creek Wildlife Area and the San Luis Wildlife Area.

I used a 1/3 arc-second digital elevation model (DEM) from USGS and projected it with WGS 1984 UTM Zone 10N. I clipped this DEM file to my area of interest and used it to create a triangular irregular network (TIN) and a slope raster in degrees. I used the TIN to create a 3D model of the study site, and I used the slope raster in the least cost path analysis. I acquired TIGER road shapefiles for Merced County (2017) and Santa Clara County (2014) from Data.gov.

Elk Location Hot Spot Analysis

I used tule elk point locations in an optimized hot spot analysis to highlight areas along State Route 152 that were frequented by tule elk. Assuming that elk would be more likely to use a wildlife overcrossing in an already heavily used area, the hot spot analysis should highlight ideal locations for a highway overcrossing. In addition, it should also

14

highlight areas where barriers may need to be implemented to prevent animals from crossing the highway at undesired locations.

The analysis for the optimized hot spot analysis was completed in ArcGIS 10.6.1. In general, this analysis was designed to highlight areas near SR 152 that were heavily frequented by tule elk during the study period. Specifically, this analysis focuses on a section of SR 152 that CDFW has identified as a major habitat connectivity barrier. The hotspot analysis was performed to highlight key areas where tule elk would be likely to take advantage of a future wildlife overcrossing, and to identify sections of the highway where preventative measures may reduce unwanted crossings.

There were 16 collared tule elk with ranges adjacent to the CDFW-defined State Route 152 segment of interest. I used the ArcGIS optimized hotspot analysis to identify location clusters for these whose home ranges were adjacent to the CDFW-defined State Route 152 segment of interest. I ran the hot spot analysis for each individual and grouped them together on one map. The hot spot analysis identified and grouped areas according to the density of elk location data points. Thus, areas that the tule elk frequently visited are clustered together and differentiated from areas with lower rates of elk use.

Least Cost Path Analysis

I used a slope-based least cost path analysis to identify potential locations for one or more highway overcrossings along State Route 152 that would allow tule elk to cross from the San Luis Wildlife Area to the Cottonwood Creek Wildlife Area.

The analysis for the Least Cost Path Analysis was completed using ArcGIS 10.6.1. The least cost path analysis utilized three main inputs: starting locations, a cost backlink raster, and a cost distance raster. For this analysis, I set the path type to determine a least-cost path from each cell that I defined as a starting location. For this analysis, each starting location represents a recorded tule elk location point.

Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

15

The starting location cells for the cost path analysis were generated using elk GPS locations in the San Luis Wildlife Area that were located within 150 meters of State Route 152. There were 126 elk location points that fit these criteria. I converted the location points to raster format so that each elk location point was represented by a cell.

I created the cost backlink raster using the slope raster, and I set the Cottonwood Creek Wildlife Area as the source (destination) location. The slope raster and the Cottonwood Creek Wildlife Area were also used to generate the cost distance raster.

RESULTS

Figure 2 shows the combined 95% and 50% core home ranges of male and female elk in the study area. Overall, there was a high degree of home range overlap among different individuals, especially in areas near the San Luis Reservoir. Most female elk home ranges were clustered near the reservoir, but several male elk ranges extended farther into the interior of the management unit. Most elk in the study were located within the boundaries of the management unit; however, two males occupied areas north of SR 152, within the Cottonwood Creek Wildlife Area.

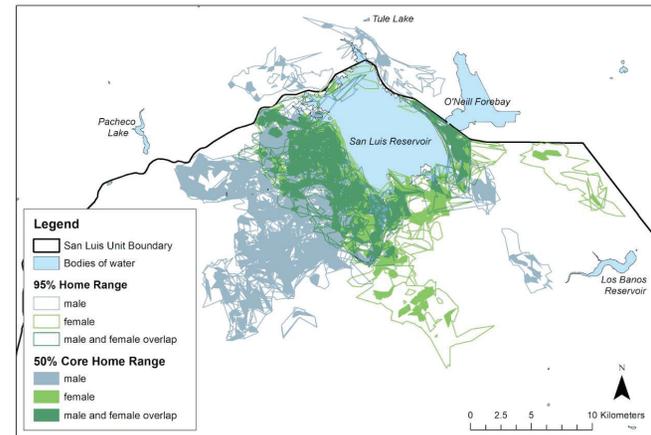


Figure 2. Overlaid 95% and 50% core area home ranges are shown for 24 male (shown in blue) and 17 female (shown in light green) tule elk. Areas where male and female ranges overlapped are dark green. The full bounds of any one individual's home range at any isopleth level are not necessarily contiguous.

Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

17

Home Range Analyses

The mean 95% home range area among all elk was 24.99 km² ($N = 44$, $SD = 14.7$). The mean 95% home range area among female elk was 20.00 km² ($N = 19$, $SD = 9.80$). As shown in Figure 3, female 95% home ranges were slightly smaller than those of male elk 95% home range area ($N = 25$, $M = 28.79$ km², $SD = 16.75$). The mean 50% (core) home range area among all elk was 5.93 km² ($N = 44$, $SD = 4.18$). The mean core home range area among female elk was 4.79 km² ($N = 19$, $M = 4.79$ km², $SD = 2.81$), which was smaller than that of the average male elk ($N = 25$, $M = 6.79$ km², $SD = 4.85$).

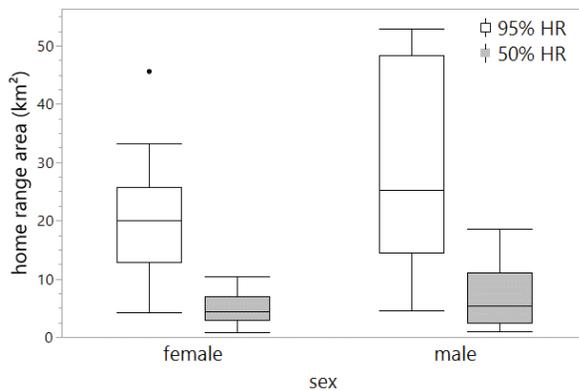


Figure 3. The 95% and 50% home range area among female and male elk.

Core areas made up an average of 23% of the entire 95% home range among all elk ($N = 44$, $SD = 6.93$). As shown in Figure 4, core area percent was similar among female ($N = 19$, $M = 23%$, $SD = 5.73$) and male ($N = 25$, $M = 23%$, $SD = 7.83$) elk.

18

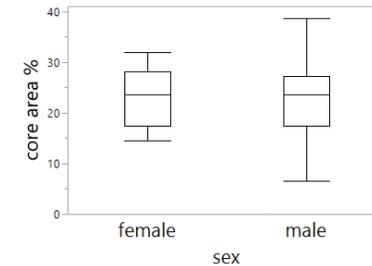


Figure 4. Boxplot showing the proportion of the 95% home range that was identified as 50% core use area for male and female elk.

The total perimeter of each home range was defined as the edge length. Figure 5 shows the 95% and 50% home range edge lengths of male and female elk. The mean 95% home range edge length of 95% was 58.77 km ($N = 44$, $SD = 29.09$). The mean core home range edge length was 41.05 km ($N = 44$, $SD = 23.39$). Mean core home range edge length was larger among males ($N = 25$, $M = 45.89$ km, $SD = 27.13$) than females ($N = 19$, $M = 34.69$ km, $SD = 15.83$).

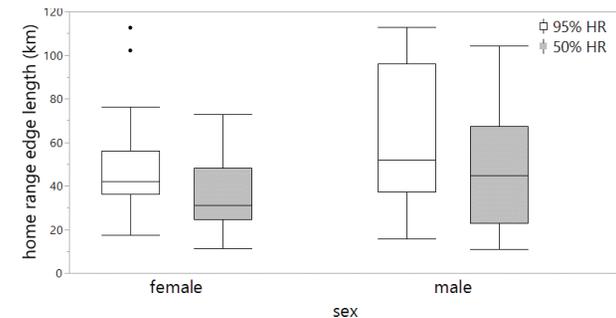


Figure 5. Boxplot showing the edge lengths of 95% and 50% home ranges among male and female elk. Edge length refers to the combined lengths of the boundaries of all areas considered to be part of an individual's home range.

Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

19

Figure 6 shows the edge to area ratios for the 95% and 50% home ranges of male and female elk. The mean edge to area ratio for 95% home ranges among all elk ($N = 44$) was 2.65 km/km² ($SD = 0.92$). This value was similar among females ($N = 19$, $M = 2.78$ km/km², $SD = 1.05$) and males ($N = 25$, $M = 2.54$ km/km², $SD = 0.82$). The mean edge to area ratio for core home ranges among all elk ($N = 44$) was 8.38 ($SD = 3.60$). Core edge to area ratio was also similar among females ($N = 19$, $M = 8.75$ km/km², $SD = 4.38$) and males ($N = 25$, $M = 8.09$ km/km², $SD = 2.94$).

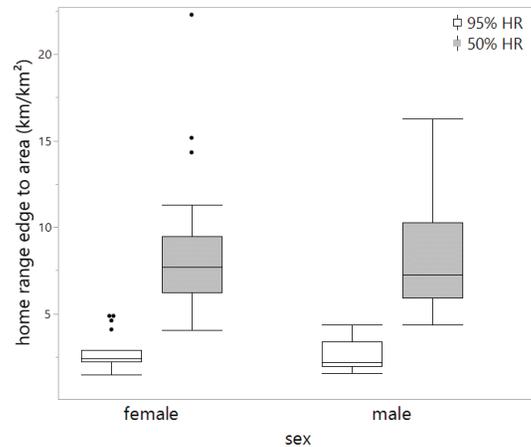


Figure 6. Boxplot of 95% and 50% home range edge to area ratio among female and male elk.

I used the reverse stepwise discriminant analysis (Table 1) to predict whether elk were male or female based on the following home range metrics: percent core area, and 95% and 50% home range area, edge length, and edge to area ratio. Of all metrics, only the 95% home range area was marginally significant ($p = 0.0483$) with an eigenvalue of

20

0.099 when used as a predictor. As seen in Figure 7, there was a moderate degree of overlap in the 50% and 95% confidence intervals when grouping male and female elk. This model correctly identified male and female elk just 59% of the time based on the 95% home range area.

Table 1. Results of reverse stepwise discriminant analysis to predict whether elk were male or female based on the following home range metrics: percent core area (core area %), and 95% and 50% home range area, edge length, and edge to area ratio. Prior probabilities were set to reflect the proportion of elk that were actually in each category (0.43 for female, 0.57 for male).

Variables	F	Wilks' Lambda	df	prob > F	Eigenvalue
area95% + edge95% + edge:area95% + area50% + edge50% + edge:area50% + corearea%	0.6478	0.8881289	7	0.7136	0.12596272
area95% + edge95% + edge:area95% + area50% + edge50% + edge:area50%	0.7764	0.8881767	6	0.5936	0.12590204
area95% + edge95% + edge:area95% + area50% + edge50%	0.9503	0.8888533	5	0.4601	0.12504501
area95% + edge95% + edge:area95% + area50%	1.2037	0.8901131	4	0.3247	0.12345273
area95% + edge95% + area50%	1.4995	0.8989076	3	0.2294	0.11246137
area95% + area50%	2.1599	0.9046808	2	0.1283	0.10536228
area95%	4.1385	0.9103019	1	0.0483	0.0985366

Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

21

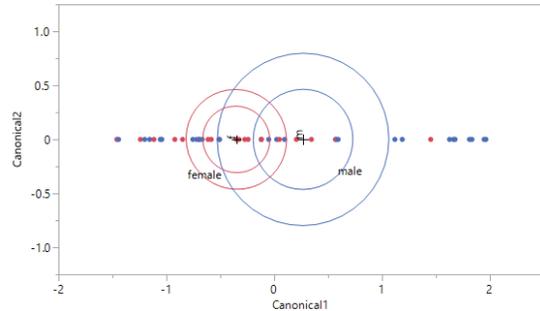


Figure 7. Discriminant analysis to distinguish between female and male elk based on 95% home range area. The outer circles represent 95% confidence groups, and inner circles represent 50% confidence groups.

Hull visitation rate was approximated using the number of separate visits (nsv) per hull. The overall mean nsv per hull was 112.01 ($N = 135993$, $SD = 102.08$). As shown in Figure 8, the variation in visitation rate among months was relatively low and there were many extreme outliers.

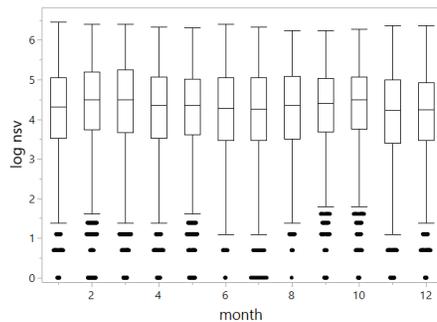


Figure 8. Boxplot showing log scale hull revisitation rates by month. Hull revisitation is represented by the number of separate visits (nsv) per hull given an intervisit gap (ivg) of 12 hours.

22

Hull visit duration was approximated using the mean number of locations per visit (mnlv) for each hull. The overall mnlv per hull was 3.34 ($N = 135993$, $SD = 1.44$). As shown in Figure 9, visit duration was similar each month, with a high number of outliers.

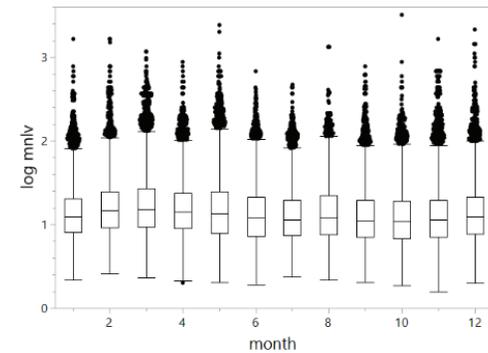


Figure 9. Boxplot showing log scale visit duration per hull by month. Visit duration is represented by the mean number of locations per visit (mnlv) per hull given an intervisit gap (ivg) of 12 hours.

The mean 95% home range area for elk adjacent to the highway was 15.27 km² ($N = 16$, $SD = 10.11$). Elk that were not adjacent to the highway had larger home ranges ($N = 28$, $M = 30.54$ km², $SD = 14.12$) (Figure 10). Elk whose home ranges were not adjacent to the highway also had larger 50% core areas ($N = 28$, $M = 7.23$ km², $SD = 4.16$) when compared to elk with home ranges adjacent to the highway ($N = 16$, $M = 3.65$ km², $SD = 3.18$) (Figure 10).

Figure 11 shows the proportion of core area within the 95% home ranges of elk depending on whether they were adjacent to a highway. The mean core area percent was similar among elk adjacent ($N = 16$, $M = 22\%$, $SD = 5.74$) and not adjacent ($N = 28$, $M = 23\%$, $SD = 7.58$) to the highway.

Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

23

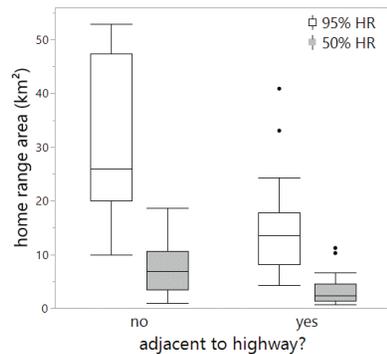


Figure 10. Boxplot showing the areas of the 95% and 50% home ranges according to whether the home range was adjacent to a highway.

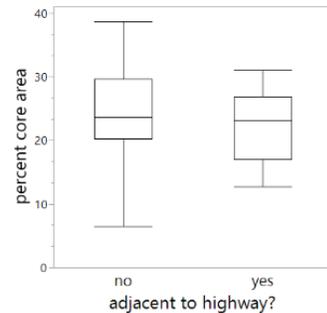


Figure 11. Boxplot comparing the proportion of the 95% home range that was identified as 50% core use area for individuals depending on whether they were adjacent to SR 152 (in addition to other hard barriers).

Figure 12 compares edge lengths among elk according to whether they were adjacent to a highway. The mean 95% home range edge length was 42.29 km ($N = 16$, $SD = 19.75$) among elk adjacent to the highway, which was smaller than that of elk that were not adjacent to the highway ($N = 28$, $M = 68.18$ km, $SD = 29.64$). Elk adjacent to the

24

highway also had smaller core area edge lengths ($N = 16$, $M = 28.16$ km, $SD = 20.79$) when compared to elk who were not adjacent to the highway ($N = 28$, $M = 48.42$ km, $SD = 21.83$).

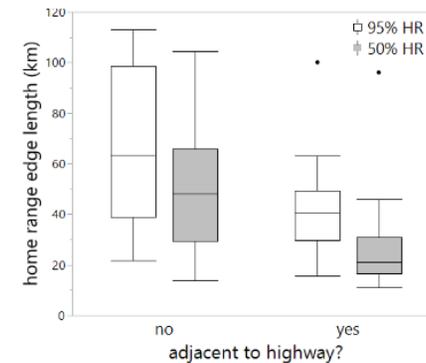


Figure 12. Box plot of 95% and 50% home range edge lengths among elk according to whether their home ranges were adjacent to the highway.

The 95% home range edge to area ratio was higher among elk adjacent to the highway ($N = 16$, $M = 3.19$ km/km², $SD = 0.97$) when compared to elk who were not adjacent to the highway ($N = 28$, $M = 2.34$ km/km², $SD = 0.75$) (Figure 13). This was also the case when comparing the edge to area ratios of the 50% core areas. Elk adjacent to the highway had a mean core area edge to area ratio of 9.69 km/km² ($N = 16$, $SD = 4.45$), while elk who were not adjacent to the highway had a mean edge to area ratio of 7.63 km/km² ($N = 28$, $SD = 2.84$).

Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

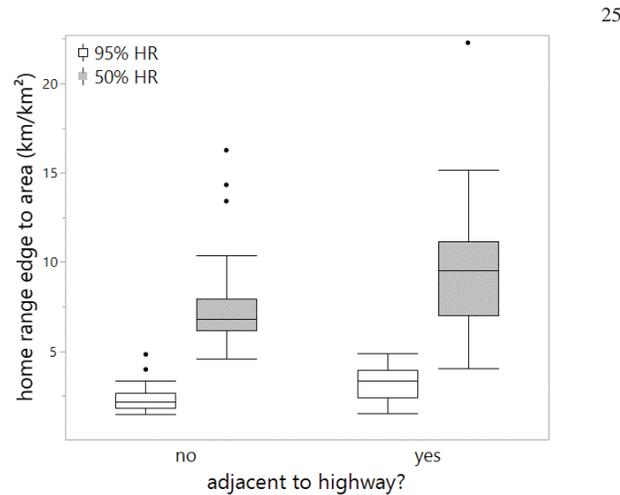


Figure 13. Boxplot of the edge to area ratio of the 95% and 50% home ranges according to whether the home range was adjacent to a highway.

I used the reverse stepwise discriminant analysis (Table 2) to predict whether elk home ranges were adjacent to the highway based on the following home range (HR) metrics: percent core area, and 95% and 50% HR area, edge length, and edge to area ratio.

I chose the model incorporating the following home range (HR) metrics: 95% HR edge length, 95% HR edge to area ratio, 50% HR edge length, and 50% HR edge to area ratio. As shown in Figure 14, there was no overlap between the 50% and 95% confidence intervals when grouping elk based on whether their home ranges were adjacent to the highway. This model correctly predicted whether elk home ranges were adjacent to the highway about 86% of the time.

25

Table 2. Results of reverse stepwise discriminant analysis to predict whether elk home ranges were adjacent to the highway based on the following home range metrics: percent core area (core area %), and 95% and 50% home range area, edge length, and edge to area ratio. Prior probabilities were set to reflect the proportion of elk that were actually in each category.

Variables	F	Wilks' Lambda	df	prob > F	Eigenvalue
area95% + edge95% + edge:area95% + area50% + edge50% + edge:area50% + corearea%	4.8077	0.5168387	7	0.0007	0.93483963
area95% + edge95% + edge:area95% + area50% + edge50% + edge:area50%	5.7353	0.5181234	6	0.0003	0.93004204
area95% + edge95% + edge:area95% + edge50% + edge:area50%	6.8266	0.526806	5	0.0001	0.89823213
edge95% + edge:area95% + edge50% + edge:area50%	8.1172	0.545693	4	0.0001	0.83253209
edge95% + edge:area95% + edge:area50%	8.9701	0.5978153	3	0.0001	0.6727574
edge95% + edge:area95%	11.2504	0.6456609	2	0.0001	0.54880054
edge:area95%	10.6777	0.7973018	1	0.0022	0.25423023

26

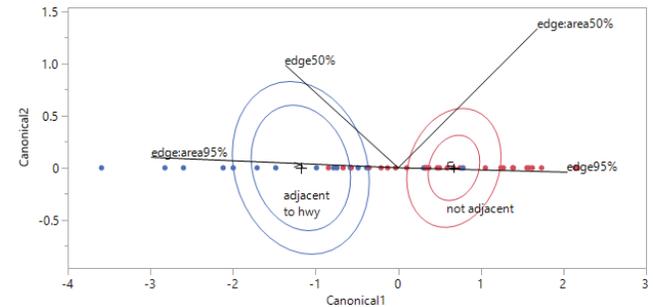


Figure 14. Discriminant analysis to categorize elk by home range metrics according to whether they were adjacent to a highway. The outer ellipses represent 95% confidence groups, and inner ellipses represent 50% confidence groups.

Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

Movement Barriers

According to records kept on the individuals, three collared elk were struck by vehicles on the highway by the end of the study period. However, when using the 5-hour time interval location data to track the movement paths of collared elk, I did not detect any instances where an individual clearly and successfully crossed SR 152, SR 33, or I-5. Figure 15 shows the line paths of each elk within eight numbered grid sections in the study area. In general, secondary roads were crossed at a rate that was comparable to the elk path density in the adjacent areas. However, there were some instances where unmarked access roads appeared to coincide with low crossing rates. Barbed wire fencing was present along many areas where crossing rates diminished; however, some collared elk did appear to cross certain barbed wire fences frequently.

Location point density was highest along the banks of the San Luis Reservoir and decreased in areas farther away. Abrupt point density changes frequently occurred along barbed wire fences, around areas with steep terrain such as Basalt Hill, and along developed areas with fencing. Abrupt shifts also occurred along Los Banos Creek, the crest and downslope areas of San Luis Reservoir Dam, and along certain unmarked access roads. In general, secondary roads did not seem to affect location point density.

Section 1

In grid section 1, there were no confirmed instances of tule elk crossing SR 152 (Figure 16); rather, there appeared to be a buffer zone around much of this region of SR 152 that the elk rarely passed. There were a few areas where elk paths intersected SR 152; however, the location points immediately before and after each intersection occurred on the same side of the road rather than on opposite sides. At the same resolution, secondary roads such as Dinosaur Point Rd. and unmarked roads east of SR 152 appeared to have high crossing rates, while Red Mountain Rd. did not seem to have high crossing rates relative to the number of elk paths nearby.

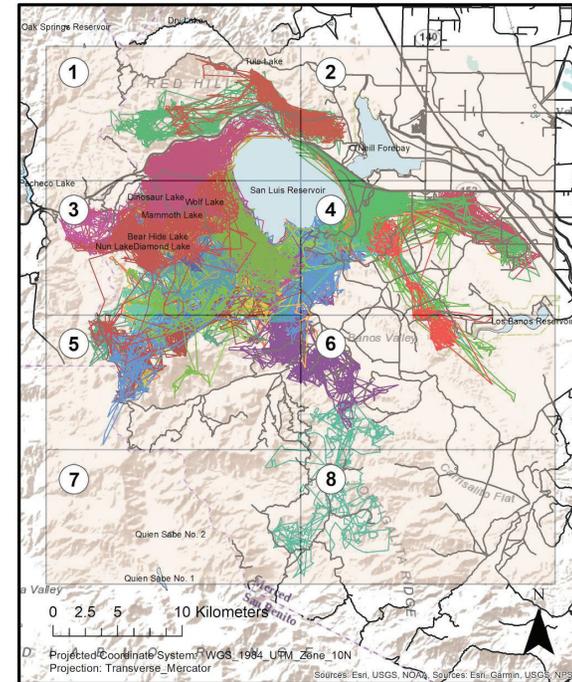


Figure 15. The grid separates the landscape into eight sections of equal area. The colored lines represent the movement paths of radio-collared tule elk.

Dinosaur Point Rd. is a secondary road flanked by barbed wire fencing. Despite the high crossing rate along Dinosaur Point Rd., the map in Figure 17 indicates that the location point density along the road was notably lower than that of the surrounding area. There were also sudden changes in location point density visible in this grid section along barbed wire fences, some secondary roads, and in areas with steep terrain.

Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

29

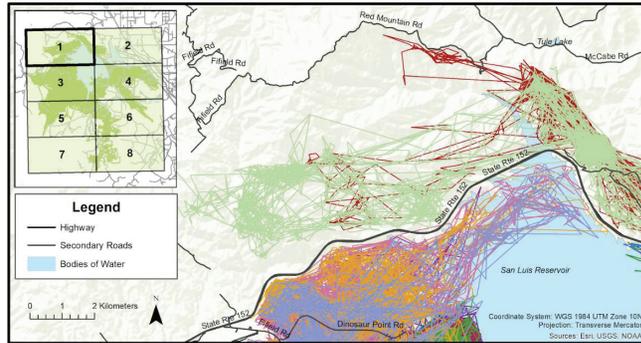


Figure 16. Map of elk paths in grid section 1, which includes the northern region of the San Luis Reservoir, SR 152, and secondary roads. Elk paths are overlaid, with each individual represented by a uniquely colored line. Angles along line paths represent GPS location points.

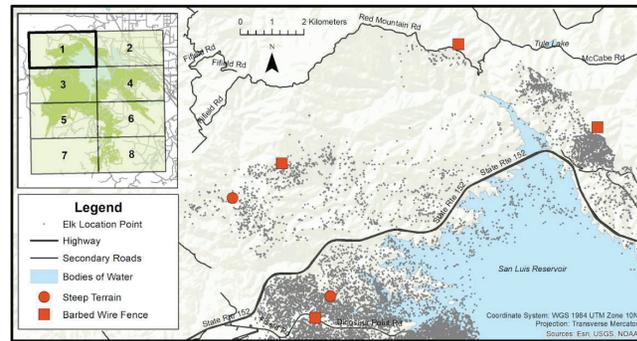


Figure 17. Map of elk location points in grid section 1, which includes the northern region of the San Luis Reservoir, SR 152, and secondary roads. Location points of all individuals in the area are depicted as grey dots.

30

Section 2

There were no confirmed elk crossings over SR 152 in grid section 2 (Figure 18); however, elk location points on the south side of the highway were considerably close to the roadside when compared to the buffer zone along the region of SR 152 in section 1. In contrast, a secondary road to the north of SR had a high rate of crossing by two collared elk, but the location point density near the road was relatively low compared to the surrounding area (Figure 19). The empty area below Gonzaga Rd is shown in Figure 19 as a developed area at the San Luis Reservoir State Recreation Area. It is paved, contains buildings, and is bordered by chain-link fencing. No collared elk were detected in this area.

There were sudden changes in location point density visible in this grid section along barbed wire fences, along the crest of the San Luis Reservoir Dam, around the fences surrounding the developed area, and in areas with steep terrain (Figure 19).



Figure 18. Map of elk paths in grid section 2, which includes the northeastern region of the San Luis Reservoir, the O'Neill Forebay, SR 152, I-5, and secondary roads. Elk paths are overlaid, with each individual represented by a uniquely colored line. Angles along line paths represent GPS location points.

Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

31

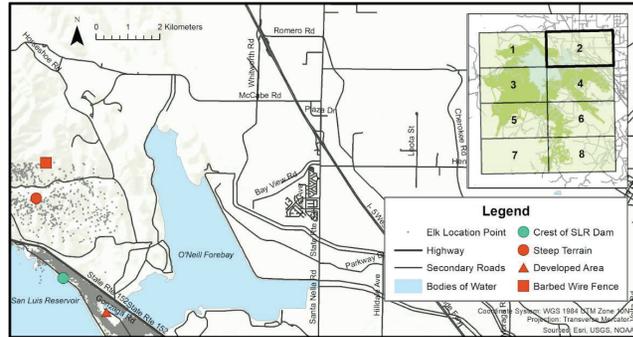


Figure 19. Map of elk location points in grid section 2, which includes the northeastern region of the San Luis Reservoir, the O'Neill Forebay, SR 152, I-5, and secondary roads. Location points of all individuals in the area are depicted as grey dots.

Section 3

As seen in Figure 20, there were no confirmed crossings of collared elk along the region of SR 152 in grid section 3, and there was a wide buffer along this section of the highway that the collared elk did not appear to cross. However, secondary roads such as Windmill Rd. and Whiskey Flat Rd. were frequently crossed at a rate proportionate to the surrounding elk path density. Some elk appeared to avoid crossing some barbed wire fences and areas of steep terrain, but this was not consistent among different individuals.

There were sudden changes in location point density visible in this grid section along barbed wire fences, along barbed wire fences, around the fences surrounding Harris Ranch, along some unmarked access roads, and in areas with steep terrain (Figure 21).

Secondary roads did not seem to strongly affect location point density.

32

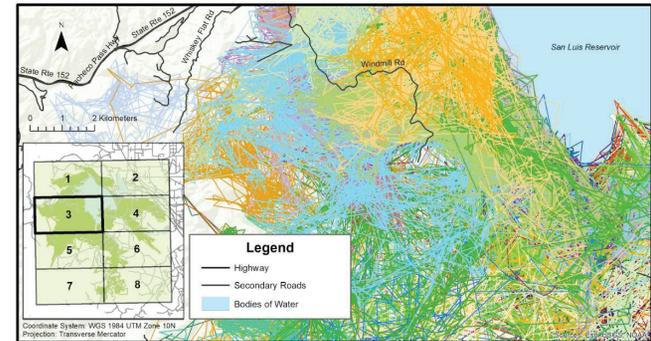


Figure 20. Map of elk paths in grid section 3, which includes the southwestern region of the San Luis Reservoir, SR 152, and secondary roads. Elk paths are overlaid, with each individual represented by a uniquely colored line. Angles along line paths represent GPS location points.

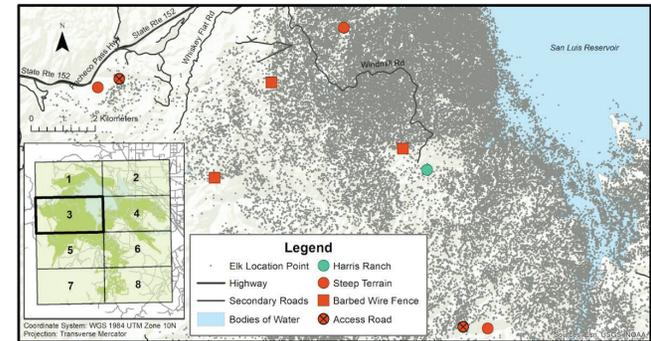


Figure 21. Map of elk location points in grid section 3, which includes the southwestern region of the San Luis Reservoir, SR 152, and secondary roads. Location points of all individuals in the area are depicted as grey dots.

Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

33

Section 4

In grid section 4 there were no confirmed crossings over SR 152, SR 33, or I-5 (Figure 22). Collared elk tended to cross secondary roads at rates that were proportionate to the path densities of the surrounding areas.

As seen in Figure 23, this section had distinct location point density shifts at the downstream slope of the San Luis Reservoir Dam, along barbed wire fences, along an unmarked access road, around a developed area, and around Basalt Hill. The developed area is directly south of SR 33 and has a gas station, a shopping center, a residential area, and an RV park. Most of this area is surrounded by a wide variety of fence types. The collared elk were not detected in this area; however, they did appear to venture close to it (Figure 23). Basalt Hill is a barren area at an elevation of about 520 m. A few collared elk were detected on Basalt Hill, but in general it seemed that elk tended to move around rather than across this hill. Secondary roads did not seem to strongly affect location point density.

The leftmost barbed wire fence shown in grid section 4 had a notable shift in location point density (Figure 23). However, while some individuals seemed to avoid crossing this barrier, others appeared to cross this fence frequently (Figure 22).

34

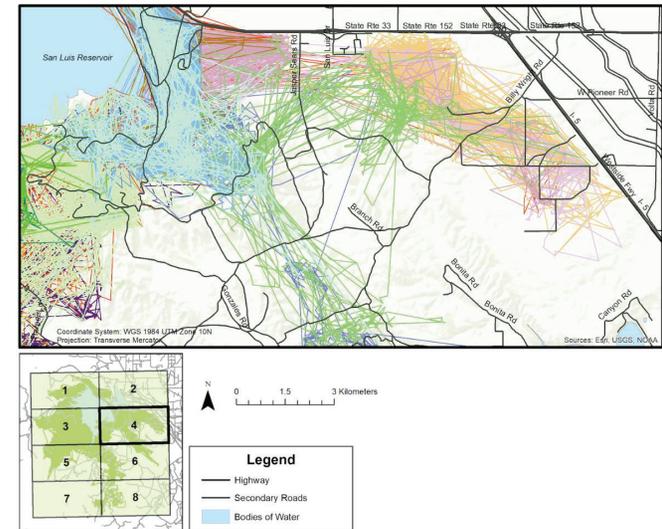


Figure 22. Map of elk paths in grid section 4, which includes the southeastern region of the San Luis Reservoir, SR 152, SR 33, I-5, and secondary roads. Elk paths are overlaid, with each individual represented by a uniquely colored line. Angles along line paths represent GPS location points.

Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

35

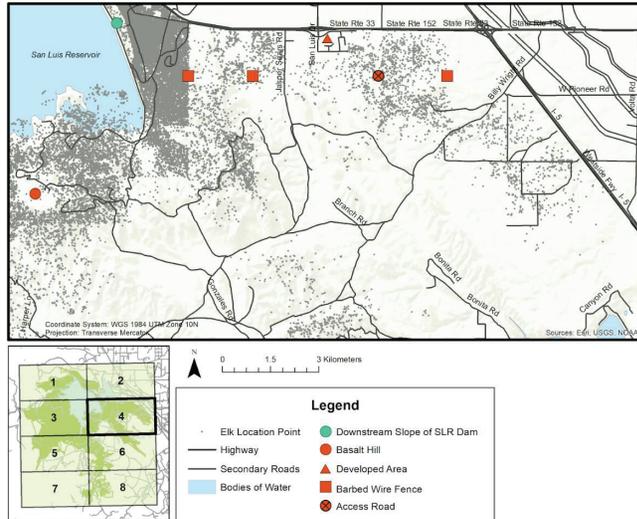


Figure 23. Map of elk location points in grid section 4, which includes the southeastern region of the San Luis Reservoir, SR 152, SR 33, I-5, and secondary roads. Location points of all individuals in the area are depicted as grey dots.

Section 5

In grid section 5, secondary roads were generally crossed at a rate proportionate to the elk path density in the surrounding areas, though the majority of paths in this grid occurred away from known secondary roads (Figure 24). I detected one area where location point density changed abruptly along a barbed wire fence, but secondary roads did not generally show this pattern (Figure 25).

36

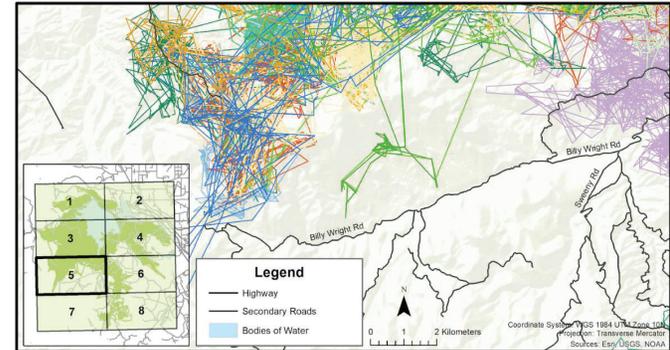


Figure 24. Map of elk paths in grid section 5, which includes the region southwest of the San Luis Reservoir. Only secondary roads are present in this area. Elk paths are overlaid, with each individual represented by a uniquely colored line. Angles along line paths represent GPS location points.

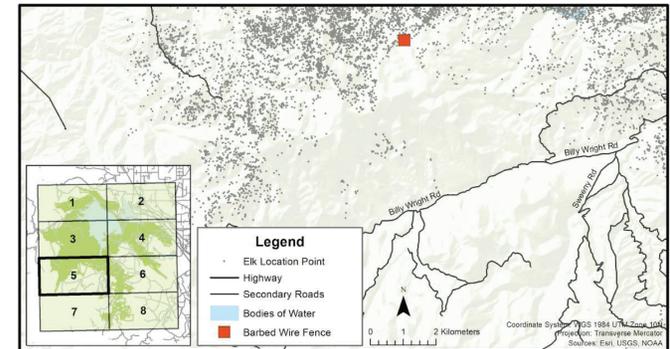


Figure 25. Map of elk location points in grid section 5, which includes the region southwest of the San Luis Reservoir. Only secondary roads are present in this area. Location points of all individuals in the area are depicted as grey dots.

Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

37

Section 6

In grid section 6, crossing rates across secondary roads was generally proportionate to the path densities of the surrounding areas (Figure 26). However, crossing rates were low across Los Banos Creek, which runs parallel to Billy Wright Rd.

As seen in Figure 27, location point densities shifted abruptly along Los Banos Creek and along barbed wire fences, but not along secondary roads.

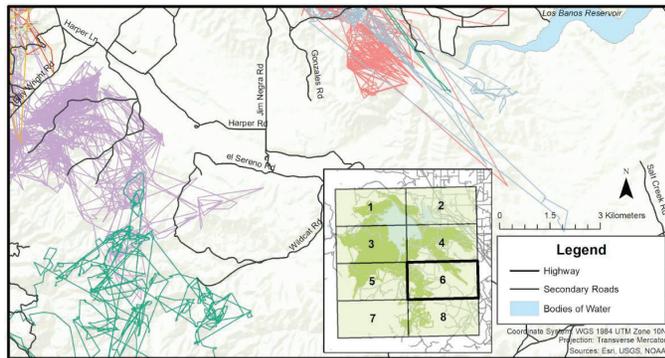


Figure 26. Map of elk paths in grid section 6, which includes the region southeast of the San Luis Reservoir. Only secondary roads are present in this area. Elk paths are overlaid, with each individual represented by a uniquely colored line. Angles along line paths represent GPS location points.

38

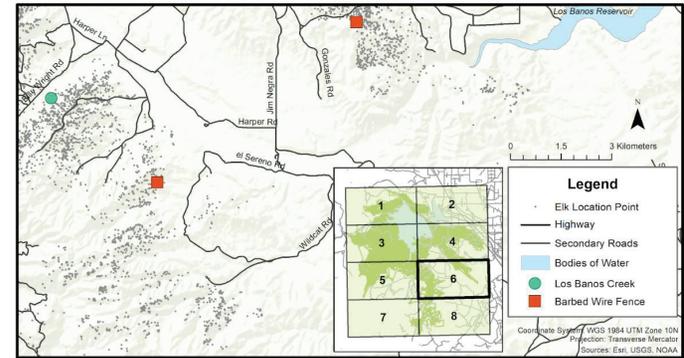


Figure 27. Map of elk location points in grid section 6, which includes the region southeast of the San Luis Reservoir. Only secondary roads are present in this area. Location points of all individuals in the area are depicted as grey dots.

Section 7

As shown in Figure 28, Sweeney Hill Rd. and other secondary roads were crossed at a slightly lower rate when compared to the surrounding path density, though path density in this grid was generally low. There were no discernable patterns with regards to location point density, though the majority of location points in grid section 7 were located within the bounds of a number of secondary roads (Figure 29).

Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

39

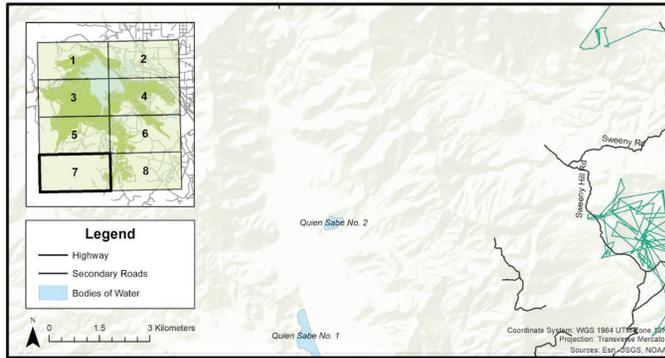


Figure 28. Map of elk paths in grid section 7, which includes the distant region southwest of the San Luis Reservoir. Only secondary roads are present in this area. The path of the only collared individual in this area is represented by a teal-colored line. Angles along line paths represent GPS location points.

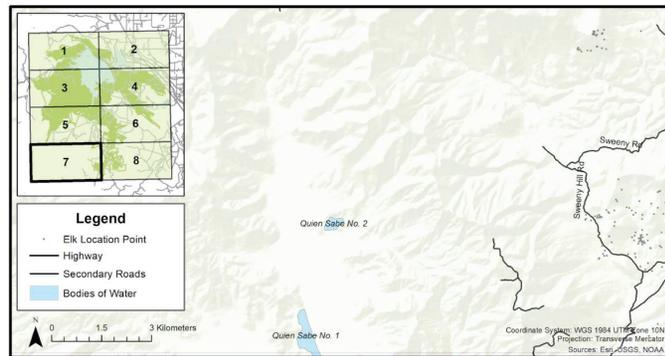


Figure 29. Map of elk location points in grid section 7, which includes the distant region southwest of the San Luis Reservoir. Only secondary roads are present in this area. The location points of the only collared individual in the area are shown as grey dots.

40

Section 8

As shown in Figure 30, secondary roads in grid section 8 were generally crossed at a rate comparable to the surrounding areas. Only one collared elk was detected in this grid section. Location point density was low and diffuse in this grid section, and no clear patterns appeared (Figure 31).

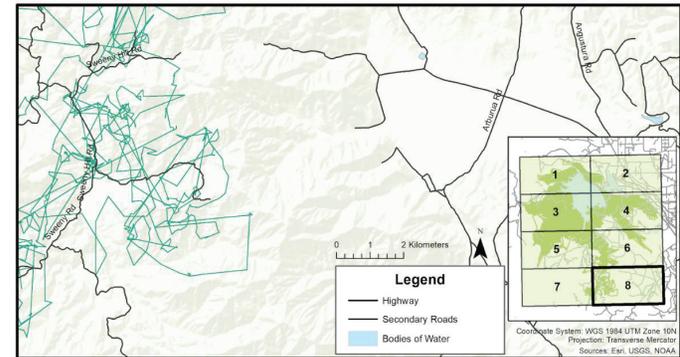


Figure 30. Map of elk paths in grid section 8, which includes the distant region southeast of the San Luis Reservoir. Only secondary roads are present in this area. The path of the only collared individual in this area is represented by a teal-colored line. Angles along line paths represent GPS location points.

Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

41

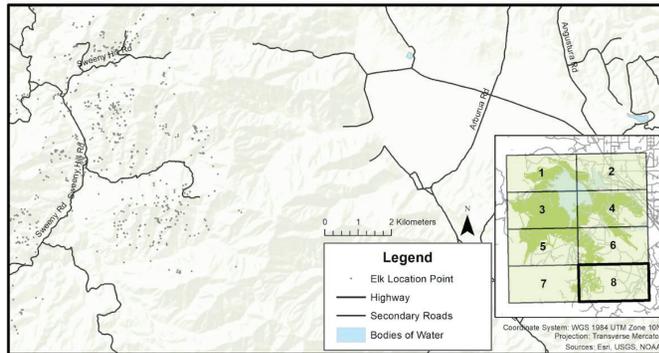


Figure 31. Map of elk location points in grid section 8, which includes the distant region southeast of the San Luis Reservoir. Only secondary roads are present in this area. The location points of the only collared individual in the area are shown as grey dots.

Identifying Potential Wildlife Overcrossing Sites

I detected five areas along SR 152 with relatively high elk use when compared to other regions along the highway. One of these high use areas was located within the San Luis Reservoir Wildlife Area. Within the SLR Wildlife Area, I found about 20 potential elk crossing paths along SR 152 based on 126 recorded elk locations whose paths of least resistance were modeled according to the slope of the terrain that connects the San Luis Reservoir Wildlife Area to the Cottonwood Creek Wildlife Area.

Elk Location Hot Spot Analysis

In the optimized hot spot analysis shown in Figure 32, areas shown in red indicate clusters of high elk use, blue areas indicate low elk use, and yellow indicate intermediate use areas that saw neither significantly high nor low elk use. Hot spot areas located adjacent to the highway could potentially have higher chances of tule elk attempting to cross the highway. The hot spot analysis identified 5 locations along SR 152 with tule elk

42

hot spot clusters (GI score of 90-99% Confidence). These locations could serve as potential wildlife overcrossing locations, or, conversely, as areas that may require measures to prevent tule elk from crossing.

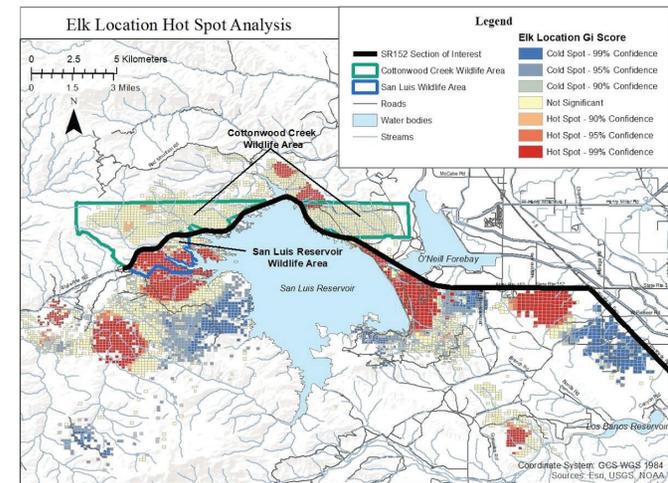


Figure 32. Hot spot analysis using GPS location data. Sixteen individuals whose boundaries were adjacent to the highway boundary were mapped individually and superimposed on one another.

Least Cost Path Analysis

The least cost path analysis identified about 20 locations along the SR 152 section of interest where the 126 elk starting locations in the San Luis Reservoir Wildlife Area converged (Figure 33). The majority of the starting points were located along the southwestern portion of this highway section. Of the 20 potential crossing sites, 14 of them had a relative path cost of 0 at the point of intersection with SR 152.

Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

43

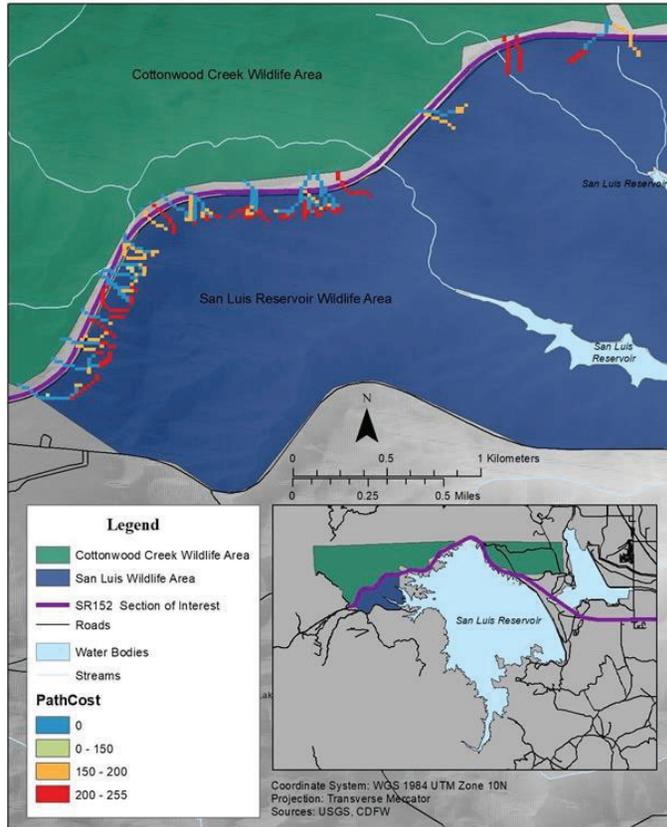


Figure 33. Slope-based least cost path analysis from San Luis Reservoir Wildlife Area to Cottonwood Creek Wildlife Area. SR 152 is shown in purple. This analysis was conducted using the 126 animal location points in San Luis Reservoir Wildlife Area that were within 150 meters of SR 152. Blue paths indicate the least costly path of movement for elk, while red indicates movement paths with the highest cost to an individual crossing SR 152.

44

Figure 34 shows a 3-dimensional rendering of the modeled tule elk crossing paths across SR 152 and highlights the variation in elevation and slope at the study site. This section of highway can be broken into three main sections based on relative location: southwest, middle, and northeast. All sections feature proximity to streams, which could potentially influence each area’s attractiveness to elk.

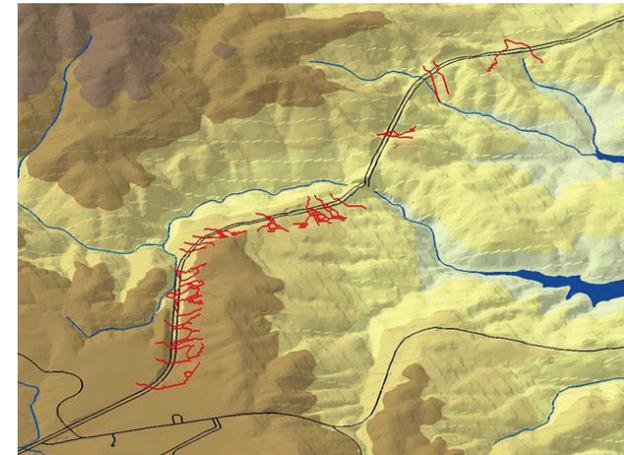


Figure 34. A 3-dimensional rendering of the modeled tule elk crossing paths (shown in red) along the section of SR 152 (shown as a double black line) that is adjacent to the San Luis Reservoir Wildlife Area. The northwestern extremes of the San Luis Reservoir are visible on the right side of the image.

The southwest section is located in the highest elevation (Figure 34) and is located near the western borders of both Wildlife Areas. Part of the high elevation section is relatively close to secondary roads, which provide the benefit of accessibility to the construction equipment required for building a highway overcrossing. However, the potentially negative effect that close proximity to roads might have on tule elk usage

Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

45

should also be considered. Furthermore, the steep terrain in the Cottonwood Creek Wildlife Area to the north of this section and the river gorge to the east could potentially hinder tule elk movement after crossing the highway, but further evaluation is needed to answer this question.

The middle section of highway has less steep terrain and still has a relatively high number of potential crossing paths. It is farther from secondary roads, and again, the river gorge and steep terrain has the potential to hinder tule elk movement. The northeast section of the highway has the fewest least cost paths and is farthest from secondary roads; however, based on topography it appears to allow for the easiest access to the rest of the Cottonwood Creek Wildlife Area.

CONCLUSION

In general, there was a high degree of home range overlap among individuals. Each collared individual is likely to be associated with a small herd during much of the year, so this suggests a high degree of home range overlap among different herds during the duration of this three-year study. Interestingly, female elk home ranges appeared to be clustered around the edges of San Luis Reservoir, while males often extended their home ranges farther into the interior of the management unit. These observations may be related to movements during seasonal rut, calving, and other behaviors (McCullough, 1969) and could warrant further analysis.

To reduce the potential for pseudoreplication among individuals, CDFW biologists ensured each collared elk belonged to a different herd at the time of collar placement. It is possible for elk to occasionally move back and forth between herds, though the extent of this is unknown (CDFW, 2018). Regardless, this could result in herd units containing more than one collared elk. The resulting overlap of individuals' relocation data points could indicate these occurrences; however, it is also possible for herd units to simply have a lot of range overlap. Furthermore, elk could also potentially leave a herd unit and become solitary for some length of time (McCullough, 1969).

Home Range

The mean male 95% home range area was larger than the mean female 95% home range area by about 8.79 km²; however, discriminant analysis indicated that 95% area could be used to differentiate the two groups only about 59% of the time. This suggests that there may be a difference between male and female home ranges, but it may not be a reliably distinguishing factor. There was no significant difference in percent core area, 50% home range area, or perimeter and edge to area ratio for the 95% or 50% home ranges between male and female individuals; however, these metrics varied more among

Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

47

male elk. This seems to be in line with McCorquodale's (2003) finding of similar home range sizes among male and female elk in the Cascade Range.

There was a high degree of variation, and potentially cyclic patterns visible by month for hull visit duration and hull visitation rate; however the mean values for these metrics did not vary significantly by month. A number of studies (Anderson et al., 2005; Seidel & Boyce, 2016; Amor et al., 2019) have found seasonal patterns in habitat use within home ranges in elk. The lack of a significant pattern in this study could be due in part to the fact that this study tested general hull visitation as a whole over time and did not differentiate hulls based on landscape features such as forage, cover, or water sources.

When comparing home range metrics according to whether individuals were adjacent to the highway, the mean 95% and 50% home range areas and edge lengths were lower among elk whose home ranges were adjacent to the highway. In contrast, the mean edge to area ratio for 95% and 50% home range were higher among individuals adjacent to the highway. This suggests that home ranges bounded by barriers tend to be smaller and constrained by hard boundaries. Discriminant analysis suggested that 95% and 50% home range edge lengths, and 95% and 50% home range edge to area ratio could be used to differentiate the two groups about 86% of the time. The percent core area was similar between the two groups. This contrasts somewhat with Dinh et al., (2020), who found that ranches (barrier-confined) and wild deer had similar 25% core use areas. Many of the elk whose home ranges were adjacent to highways were also constrained by the San Luis Reservoir and nearby fences.

Movement Barriers

According to records kept on each individual, at least two females and one male were struck and killed in vehicle collisions on SR 152. However, when using the 5-hour

48

time interval location data to track the movement paths of collared elk, I did not detect any GPS-confirmed highway crossings. In addition, the northwest section of SR 152 appeared to have a wide buffer that corresponded to the highway fence line. Elk seemed to travel much closer to other highway areas, where the fence line was closer to the highway. All sections of highway in this area are flanked by barbed wire fences, so elk proximity along the highway was likely related to the proximity of the fencing. This idea is supported by other studies (Jaegar & Fahrig, 2004; Gagnon et al., 2015) that found decreased permeability for large mammals along fenced roads.

Location point density was highest along the banks of the San Luis Reservoir, and decreased with distance from the reservoir. Abrupt point density changes frequently occurred along barbed wire fences, around steep areas such as Basalt Hill, and along fenced-off developed areas with buildings. Elk location density was also high along one side of Los Banos Creek. Abrupt shifts in density occurred along the crest and downslope areas of San Luis Reservoir Dam, and along certain unmarked access roads. In general, secondary roads did not seem to affect location point density.

There were some instances where unexpected movement patterns occurred. In some areas with significant location point density or movement path irregularities, I was not able to identify any fences, roads, or other obvious barriers other than potentially steep terrain. It is possible that these areas had barriers that I could not detect, but there could be other factors (including highly valued resources or even random chance) that resulted in these irregularities. Furthermore, barbed wire fencing seemed to deter crossing in many areas; however, barbed wire fences did not deter all elk equally. While some elk clearly avoided crossing certain fences, others did so repeatedly. Finally, when compared to barbed wire fences and highways, collared elk did not seem as reluctant to cross secondary roads. However, there were a number of instances where unmarked access roads without confirmed fences did seem to deter crossing.

Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

49

There is also the potential for bias due to not having ground-truthed or other validated maps of all fences and access roads. Only fences and access roads that obviously accompanied elk location point density shifts were recorded in this study because it was not feasible to locate all of them by hand, and appropriate GIS layers were not available. Future analyses would benefit from the ability to map all fences and access roads in the study area. As noted by Jakes et al. (2018), despite their widespread use and their known impacts on wildlife and landscapes, fences are rarely mapped.

Identifying Potential Wildlife Overcrossing Sites

This study highlights several locations along the section of SR 152 adjacent to the San Luis Wildlife Area that could potentially serve as highway overcrossing sites. The hot spot analysis identified 5 areas along SR 152 that tule elk have frequently visited based on overall point density between 2015 and 2019. Some of these sites coincided with barrier-constrained home ranges with high edge to area ratios. High edge to area ratios have been found to correlate with higher emigration, especially when habitats do not have hard boundaries (Stamps et al., 1987), which suggests that a highway overcrossing would likely soften the highway boundary and promote emigration in these areas. However, these high use areas occupied by tule elk with high edge to area home ranges may also need additional measures to discourage tule elk from crossing. Gagnon et al. (2015) found that raising the height of barbed wire fence to 2.4 meters along an interstate highway reduced elk-vehicle collisions by 97%. Similar measures could potentially reduce the permeability of highway stretches along SR 152 and help “guide” tule elk to a designated overcrossing.

There are many factors to consider with regards to the placement of wildlife overcrossings. In this study, the two variables considered were tule elk use density and the slope of the terrain. A more thorough analysis could include other variables such as

50

land cover type, vegetation, season, and aspect. These variables could further refine the evaluation of potential wildlife overcrossing sites, and inform the design of the overcrossings themselves. For instance, Amor et al. (2019) found that elk in North Dakota and Canada favored landscapes with vegetative cover. However, a study of wildlife movement along and across the Trans-Canada Highway at Banff National Park found that slope was a consistent predictor of movement for elk and other species, though other landscape characteristics such as aspect and topographical complexity sometimes played a role in some species (Alexander & Waters, 2000). Furthermore, a map of tule elk vehicle collisions along SR 152 could prove useful, as these would provide concrete evidence of highway crossing attempts.

Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

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Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

53

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Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

55

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APPENDIX: HOME RANGE CONSTRUCTION PARAMETERS

Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

PARAMETERS USED TO CONSTRUCT TULE ELK HOME RANGES*

Elk ID	# of points	Start date	End date	Total days	s value	k
females						
39314 ^x	5619	11/16/2015	3/30/2019	1230	0.0675	15
39315	6804	11/17/2015	11/19/2019	1463.1	0.04975	15
39318 ^t	4462	11/15/2015	8/21/2018	1010	0.0538	15
39319A ^t	2091	11/15/2015	2/2/2017	445.4	0.055	15
39320	5722	11/15/2015	4/2/2019	1234	0.0725	12
39321	5716	11/15/2015	3/30/2019	1231	0.0494	15
39322 ^t	5558	11/15/2015	2/11/2019	1184.2	0.0506	18
39323	5928	11/14/2015	4/2/2019	1234.8	0.0675	12
39325	3605	11/15/2015	12/30/2017	776.5	0.0675	12
39326	5736	11/15/2015	3/29/2019	1230	0.0483	18
39328A	2998	11/16/2015	8/17/2017	640	0.055	12
39328B	1693	3/28/2018	3/22/2019	359.2	0.0725	9
39330	5710	11/15/2015	3/30/2019	1231	0.0658	15
39331A	2234	11/15/2015	3/10/2017	480.7	0.055	15
39332	4381	8/27/2016	3/14/2019	929.4	0.055	10
39381 ^x	2389	12/29/2016	5/18/2018	505	0.0675	14
39383 ^x	1470	8/27/2016	7/5/2017	312.3	0.07	12
males						
39335	4702	11/15/2015	9/30/2018	1050	0.055	11
39336A	1892	11/15/2015	1/13/2017	425	0.103	12
39336B ^x	2755	2/10/2018	9/29/2019	596.6	0.0494	15
39337	4834	11/15/2015	10/24/2018	1074.4	0.07	8
39338A	1571	11/16/2015	10/27/2016	346.2	0.055	12
39338B	1355	5/25/2017	3/30/2018	309	0.0538	15
39339	3526	11/15/2015	1/13/2018	790.2	0.0363	12
39340	2241	11/15/2015	4/6/2017	508.5	0.0675	15
39343	3319	11/16/2015	10/31/2017	715	0.0506	15
39344	4754	11/15/2015	9/12/2018	1032.5	0.0363	12
39345	1791	11/15/2015	12/8/2016	389	0.075	15
39346	2698	11/15/2015	6/21/2017	583.5	0.055	12

39347	3829	11/16/2015	3/6/2018	841	0.0675	12
39350B ^x	2859	2/10/2018	10/21/2019	617.8	0.0517	12
39351A	596	11/16/2015	3/22/2016	127.1	0.0338	12
39351B	1701	8/27/2016	8/23/2017	360.8	0.055	12
39352	3807	11/15/2015	3/6/2018	841.9	0.0338	12
39353	3062	11/16/2015	9/11/2017	665.4	0.055	12
39354	1283	7/23/2016	4/25/2017	276.2	0.0658	18
39355	591	11/15/2015	3/23/2016	129.2	0.101	12
39356	2095	11/16/2015	2/15/2017	457.3	0.0494	12
39379A ^x	791	8/27/2016	2/11/2017	168.4	0.0988	12
39380 ^x	4606	7/22/2016	3/30/2019	980.8	0.0517	12
39382 ^x	3219	5/18/2017	4/3/2019	658.3	0.07	12

* Home ranges were constructed using the R package T-LoCoH with five-hour time intervals between recorded location points.

^x Five-hour intervals were extracted from a data set that included hourly location points.

^t Data was excluded from either the beginning or end of the full data set where gaps in data collection exceeded two days.

Response to Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021)

2126-6431

All comments on the Draft EIR/EIS, including those comments from Grassland Water District (GWD) and related entities, are addressed in the Final EIR/EIS. In addition, the Final EIR/EIS addresses comments on the Revised/Supplemental Draft EIR/EIS. The Revised/Supplemental Draft EIR/EIS was not intended to respond to comments on the Draft EIR/EIS.

The Authority has continued to meet with Grasslands Water District (GWD) throughout the San Jose to Merced section environmental process. The GWD was invited and has participated in the San Jose to Merced Technical Working Group (TWG) meetings. These TWG meetings invite community stakeholders that are focused on technical components of the San Jose to Merced environmental document to facilitate information exchanges. The TWG meetings for San Jose to Merced started in 2016 and have continued throughout the environmental process for a total of twelve meetings. Along with the TWG meetings, individual meetings have been held with GWD to discuss their comments and items of concern. These meetings were held between 2016 and 2020 and are listed in Table 9-4 of the Final EIR/EIS. Additionally, Appendix 9.0-A, Public and Agency Meeting List, shows several meetings with the Grasslands Ecological Area stakeholders including: USFWS, Audubon Society, DWR, Ducks Unlimited, Point Blue, and Grassland Water District that were held between 2018 and 2020.

For all of these types of meetings, coordination is more frequent when there are project updates or the Authority requests additional information from the TWG stakeholders, GWD, or GEA stakeholders. The Authority plans to continue coordination with GWD and GEA stakeholders as the San Jose to Merced Project Section moves through the environmental process and towards project construction.

2126-6432

The commenter incorrectly asserts that the project description has been changed since the Draft EIR/EIS to include operations during nighttime hours and asserts that nighttime operations were not previously proposed or analyzed. Table 2-14 in Chapter 2, Alternatives, of the Draft EIR/EIS presents a summary of daily operations, including the number of daytime trains and the number of proposed nighttime trains. The number of nighttime trains proposed has not changed in the Revised/Supplemental Draft EIR/EIS. Timing for operation of revenue trains during nighttime hours has been clarified in Table 2-14 in Chapter 2 of the Final EIR/EIS to note that no revenue trains would operate between midnight and 6:00 a.m. Responses to the commenter's individual detailed comments are provided below. Regarding the request for consultation, please refer to the response to submission SJM-2126, comment 6431. The Authority has continued to meet with Grasslands Water District (GWD) throughout the San Jose to Merced Project Section environmental process. The Authority plans to continue coordination with GWD as the San Jose to Merced Project Section moves through the environmental process and towards project construction.

Response to Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

2126-6433

Refer to Standard Response SJM-Response-ALT-1: Alternatives Selection and Evaluation Process, SJM-Response-ALT-2: Project-Specific Alternatives Considerations.

The Authority appreciates the comments on the Revised/Supplemental Draft EIR/EIS. In subsequent individual comments, Grassland Water District provided specific detailed comments on the project description, tiering, the baseline, and mitigation. Each of these specific comments is addressed in detail in response to the applicable comment within the submittal from Grassland Water District; however, a general response is provided below.

The comment asserts that the Draft EIR/EIS fails to adequately describe the project. The description of alternatives in Chapter 2, Alternatives, and in Volume 3, Preliminary Engineering for Project Design Record, of the Draft EIR/EIS are legally sufficient, as they provide a “general description of the project’s technical, economic, and environmental characteristics, considering the principal engineering proposals if any and supporting public service facilities.” The project description is stable and sufficient to analyze the effects of the project. The Authority will validate that design refinements are within the scope of the impacts analyzed and disclosed as part of the Final EIR/EIS.

The “least environmentally damaging project alternative,” or LEDPA, relates to selection of the Preferred Alternative. Chapter 8, Preferred Alternative, of the Draft EIR/EIS identifies the Preferred Alternative for the San Jose to Central Valley Wye Project Extent as Alternative 4. It was selected based on a balanced consideration of the environmental information presented in the Draft EIR/EIS in the context of project purpose and need; project objectives; the CEQA, NEPA, and Section 404(b)(1) of the Clean Water Act requirements; local and regional land use plans; community and stakeholder preferences; and costs. Section 8.4.1, Review of Alternative Key Differentiators by Subsection, of the Draft EIR/EIS describes the key community and environmental factors that differentiate the alternatives within each subsection of the project.

The comment expresses concern with the Authority’s environmental review process and expresses concern that alternatives were not appropriately analyzed. Changes to the full

2126-6433

statewide HSR system subsequent to the approval of the 2005 Program EIR/EIS (Authority and FRA 2005, as cited in Chapter 1, Project Purpose, Need, and Objectives, of the Draft EIR/EIS) have been addressed in additional program- and project-level EIR/EISs. The full statewide system is not required to be analyzed in each document, as this has cumulatively been addressed through the Tier 1 documents. The San Jose to Merced Project Section EIR/EIS contains “analysis sufficient to allow informed decision making” (Laurel Heights Improvement Association v. Regents of the University of California (1988), 47 Cal.3d 376, 404) of a reasonable range of alternatives but does not duplicate the analysis provided in previous Tier 1 documents. Connections between the Bay Area and the Central Valley through the Altamont Pass and Pacheco Pass were evaluated by Authority and FRA in the 2008 San Francisco Bay Area to Central Valley High-Speed Train Program Final EIR/EIS (Authority and FRA 2008, as cited in Chapter 1, Project Purpose, Need, and Objectives, of the Draft EIR/EIS) and by the Authority in the 2012 Bay Area to Central Valley High-Speed Train Partially Revised Final Program EIR (Authority 2012b, as cited in Chapter 2, Alternatives, of the Draft EIR/EIS). The Tier 1 environmental review process resulted in the Authority’s decision to select the Pacheco Pass routing for further study. The Authority has elected to break up the statewide system into smaller segments for environmental review, each with independent utility, including the San Jose to Merced Project Section. There is no piecemealing problem where, as here, the project can be implemented independently. (Banning Ranch Conservancy v. City of Newport Beach (2012) 211 Cal.App.4th 1209.)

Specific mitigation commitments have been included in the Final EIR/EIS as mitigation measures. In addition, compensatory mitigation will be determined in coordination with regulatory agencies, including USFWS, in the Compensatory Mitigation Plan. Compensatory mitigation will comply with the requirements included in the Final EIR/EIS and biological opinions and meet the requirements of agency permits.

Response to Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

2126-6434

Refer to Standard Response SJM-Response-BIO-5: Lighting Impacts to Wildlife.

The comment states that the Draft EIR/EIS fails to adequately describe the project. The description of alternatives, including the location of maintenance and related facilities, in Chapter 2, Alternatives, and in Volume 3, Preliminary Engineering for Project Design Record, of the Draft EIR/EIS are legally sufficient, as they provide a “general description of the project’s technical, economic, and environmental characteristics, considering the principal engineering proposals if any and supporting public service facilities.” Additional information has been added in Chapter 2 in the Final EIR/EIS regarding lighting at HSR facilities; also, additional information regarding operational lighting, including on vehicles (trains), has been added in appropriate locations in Chapter 2. Specifically, information on vehicle lighting has been added to Section 2.4.2, Vehicles, of the Final EIR/EIS. Information on station lighting has been added to Section 2.4.3, Stations, of the Final EIR/EIS. For all track profile types, Section 2.4.4, Infrastructure Components, of the Final EIR/EIS clarifies that flood lighting or night lighting would not be installed along the HSR guideway for track operations or maintenance, except for specific facilities, including maintenance and systems sites. Chapter 2 of the Final EIR/EIS also clarifies lighting requirements to meet safety standards for at-grade crossings, traction power facilities, and signaling and train-control elements. The changes to Chapter 2 of the Final EIR/EIS also provide additional information regarding the maintenance of way facility (near Gilroy) and the maintenance of way siding facility (in the San Joaquin Valley), including the type and height of lighting proposed. The fencing around both facilities would be screened, which would help to minimize light spillover outside the facilities. For all essential lighting necessary for safety and security, Chapter 2 of the Final EIR/EIS clarifies that lighting would incorporate motion sensors, height limits, shielding, and downward-facing orientation where feasible and consistent with safety and security. The Authority has revised BIO-IAMF#12 slightly in Volume 2, Appendix 2-E, Project Impact Avoidance and Minimization Features, in the Final EIR/EIS to clarify the use of bird-friendly lighting (i.e., lighting with shorter wavelengths toward the blue and green spectrum) on all stationary light sources within the GEA. Impact BIO#47 in Section 3.7, Biological and Aquatic Resources, has been revised in the Final EIR/EIS to provide additional analysis and discussion regarding operational lighting, and information regarding the type and extent of lighting within the GEA has been added to the impact discussion. AVQ-IAMF#1 in Section 3.16, Aesthetics and Visual Quality, of

2126-6434

the Draft EIR/EIS also describes project features related to lighting. Detailed descriptions of locations, heights, abundances, and types of bulbs, luminosity/brightness, illumination (light incident per unit area), intensity (number of photons per unit area), and spectral content (expressed by wavelength) are not required for the analysis of impacts due to light. The Draft EIR/EIS analyzes the maximum lighting scenario that could occur during construction and operations because the location and number of lighting fixtures has not been finalized. BIO-MM#76 would require shielding of nighttime light during construction, and BIO-MM#3 would establish environmentally sensitive areas and nondisturbance zones, where lighting would be limited if necessary to avoid impacts on the environmentally sensitive area. BIO-MM#80 would mitigate operational impacts due to lighting within the GEA. Train lights would be limited to the tracks within the extent of the noise barrier and enclosed track. There would be no daytime glare or reflection visible within the extent of the noise barrier and track enclosure. The project description is stable and sufficient to analyze the effects of the project. Specific locations, types, and number of lighting fixtures would be determined as part of Detailed Design Post-ROD. The Authority will validate that design refinements are within the scope of the impacts analyzed and disclosed as part of the Final EIR/EIS. The request for a project lighting plan is noted. Lighting commitments are provided in project features and mitigation measures.

Response to Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

2126-6435

Refer to Standard Response SJM-Response-ALT-1: Alternatives Selection and Evaluation Process, SJM-Response-ALT-2: Project-Specific Alternatives Considerations.

A reasonable range of feasible alternatives was analyzed in the Draft EIR/EIS, including options for the San Joaquin Valley Subsection portion of the alignment. Factors taken into consideration included aquatic resources, wildlife, and state park resources. As identified in Table 2-3 in Chapter 2, Alternatives, of the Draft EIR/EIS, options to go around the GEA (i.e., GEA North/Merced and South of GEA) were withdrawn. Several vertical design options were also considered by the Authority for the San Joaquin Valley Subsection during preliminary engineering.

The Draft EIR/EIS does not include an analysis of design alternatives that would entirely avoid impacts through the GEA, including a below-grade design or an above-grade enclosure. All four alternatives are in the same vertical and horizontal alignment through the GEA. As a result of the significant impacts associated with train noise, visual disturbance, light, and train strike, the Authority developed BIO-MM#80, which includes noise barriers and a 3.4-mile-long enclosure enveloping the train's operating envelope to minimize or avoid such impacts. Incorporation of this mitigation measure, in combination with the other mitigation measures included in the EIR/EIS, satisfies the duty of the Authority to incorporate all reasonable and feasible mitigation measures to reduce project impacts. The comment further stated that the Draft EIR/EIS does not fully evaluate impacts on CDFW's properties under Section 4(f). Please refer to Table 4-3 in Section 4.5.1, Parks, Recreation, and Wildlife and Waterfowl Refuges, of the Final EIR/EIS for the CDFW-owned properties that are included in this analysis. In addition, please see Sections 4.6.1.27, Volta Wildlife Area Use Assessment (Resource #41), and 4.6.1.28, Los Banos Wildlife Area Use Assessment (Resource #42), of the Draft EIR/EIS for the Section 4(f) use assessments for Los Banos Wildlife Area and Volta Wildlife Area. These use assessments fully evaluate the potential effects on Los Banos Wildlife Area and Volta Wildlife Area by examining the potential for permanent use, temporary occupancy, and constructive use. Lastly, economic effects are not a consideration under Section 4(f) and are not discussed in Chapter 4, Section 4(f)/6(f) Evaluation, of the Draft EIR/EIS; however, economic effects are discussed in Section 3.12, Socioeconomics and Communities, of the Draft EIR/EIS.

2126-6436

The Authority has committed to completing an appropriate biological field survey, and has completed project-level analysis of impacts on biological resources. In the Final EIR/EIS, mitigation (BIO-MM#7, BIO-MM#17, BIO-MM#23, BIO-MM#29, BIO-MM#32, BIO-MM#34, BIO-MM#36, BIO-MM#38, BIO-MM#41, BIO-MM#43, BIO-MM#45, BIO-MM#48, BIO-MM#52, BIO-MM#53, BIO-MM#56, BIO-MM#59, BIO-MM#64, BIO-MM#65, BIO-MM#66, BIO-MM#67, and BIO-MM#87) requires surveys for protected species. The Draft EIR/EIS completed a project-level analysis for impacts on biological resources within the project footprint utilizing aerial mapping, GIS-based species habitat modeling, and other resources. Since portions of the project footprint have not yet been surveyed and the project footprint is anticipated to be refined and reduced as project designs progress, the Authority has taken a conservative approach and designated areas of habitat based on potential occupancy by species.

With respect to minimization of project facility footprints and impacts, the Authority notes that for purposes of environmental analysis in the EIR/EIS, the project footprint is assumed to be the maximum amount of disturbance area. However, disturbance may be minimized as additional information is collected to facilitate final designs. For example, the Authority must conduct detailed geotechnical analysis, which will be used to minimize disturbance areas, project facility footprints, and impacts to the extent feasible.

With respect to the analysis of the timing of construction activities to minimize disturbance, the Authority notes that numerous mitigation measures have been designed with timing requirements to avoid and minimize impacts on biological resources. For example, BIO-MM#18 would implement seasonal vernal pool work restrictions during the rainy season, pre-construction surveys such as BIO-MM#23 for Crotch bumble bee have specific timing restrictions identified to maximize the observation potential for the species and potential for avoidance, and BIO-MM#27b would require work windows for fish based on date, channel inundation, and water temperature. Numerous other mitigation measures have timing requirements to avoid and minimize impacts on sensitive biological resources. With respect to minimizing potential impacts from lighting, the Authority conducted additional analysis in the Revised/Supplemental Draft EIR/EIS and included new mitigation to minimize the impacts of operational lighting on wildlife species (BIO-MM#89). In addition, mitigation measures (BIO-MM#77a and BIO-MM#80) include treatments related to minimizing

Response to Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

2126-6436

lighting near wildlife movement areas such as proposed wildlife crossings and habitat areas in the Grasslands Ecological Area.

Lastly, with respect to the program-level commitment to acquire 10,000 acres of easements for habitat protection, the Draft EIR/EIS has been revised to reference commitments included in the Authority's San Francisco Bay Area to Central Valley High-Speed Train Program Final EIR/EIS (Authority 2008, as cited in Chapter 1, Project Purpose, Need, and Objectives, of the Draft EIR/EIS) and Bay Area to Central Valley High-Speed Train Partially Revised Final Program EIR (Authority 2012a, as cited in Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS). This is included in the Final EIR/EIS as BIO-MM#P1: Provide Compensatory Mitigation for Impacts on the Grasslands Ecological Area. This Program EIR commitment provides additional detail to the 10,000-acre commitment that would be protected under easements for the San Jose to Merced Project Section to preserve habitat and open space. The Authority will coordinate securing 10,000 acres of land by agricultural, conservation, or open space easements on land generally located within or adjacent to the Grasslands Ecological Area. BIO-MM#10 has also been revised in the Final EIR/EIS to reference and incorporate the requirements under BIO-MM#P1. In summary, the San Jose to Merced Project Section EIR/EIS appropriately tiers from the Program EIR.

2126-6437

Refer to Standard Response SJM-Response-BIO-4: Grasslands Ecological Area Boundary.

The commenter made a similar set of comments on the Draft EIR/EIS. Please see response to submission SJM-1678, comment 2199 on the Draft EIR/EIS regarding the GEA and its boundaries and response to submission SJM-1678, comment 2205 regarding the use of modeling to describe biological resources. Please also see response to submission SJM-1678, comment 2204 regarding the Merced County General Plan. Lastly, the Final EIR/EIS includes an additional description of the GEA, including its designated and administrative boundaries.

2126-6438

Refer to Standard Response SJM-Response-BIO-4: Grasslands Ecological Area Boundary, SJM-Response-BIO-5: Lighting Impacts to Wildlife, SJM-Response-BIO-6: Noise Impacts on Wildlife.

The commenter again asserts that the analysis is generally inadequate or inaccurate because the incorrect GEA boundary was used. The Final EIR/EIS includes an additional description of the GEA, including its designated and administrative boundaries. The commenter made comments on the Draft EIR/EIS regarding the use of biological models instead of field surveys. Please see response to submission SJM-1678, comments 2205 and 2208 on the Draft EIR/EIS, which dispute the commenter's assertions that the use of models underestimates impacts. Lastly, the commenter very generally notes that impacts on wildlife from noise, vibration, lighting, and glare are inaccurate and impacts on rare plants and eagles are unmitigated. The commenter does not make specific assertions or comments regarding how the impact analysis or conclusions are inaccurate. The Authority notes that the commenter provided extensive comments on these topics on the Draft EIR/EIS and refers the commenter to numerous responses on those topics.

With regard to recreational hunting and fishing, please see response to submission SJM-1678, comment 2217 on the Draft EIR/EIS.

2126-6439

Please see response to submission SJM-1678, comment 2225 on the Draft EIR/EIS, which discusses the commenter's assertions regarding the adequacy and enforceability of mitigation measures.

2126-6440

Please see response to submission SJM-1678, comments 2226 and 2227 on the Draft EIR/EIS, which discuss the commenter's assertions regarding deferred mitigation.

Response to Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

2126-6441

The Authority recognizes the benefit and valued input received from the GEA Working Group meetings over many years. That input informed the development of the Draft EIR/EIS and the Revised/Supplemental Draft EIR/EIS.

The commenter suggests that the detailed comments submitted on the Draft EIR/EIS were ignored. The Authority has reviewed and considered every comment received on the Draft EIR/EIS, and each comment is responded to within Volume 4 of this Final EIR/EIS.

2126-6442

Refer to Standard Response SJM-Response-BIO-4: Grasslands Ecological Area Boundary, SJM-Response-BIO-5: Lighting Impacts to Wildlife, SJM-Response-BIO-6: Noise Impacts on Wildlife.

The commenter asserts that the Revised/Supplemental Draft EIR/EIS does not provide information about the project. The Authority notes that the proposed project is as described in Chapter 2, Alternatives, of the Draft EIR/EIS. The Authority has made several small clarifications, including the description of operational lighting, in Chapter 2 of the Final EIR/EIS to further clarify the proposed project. The commenter generally asserts that the supplemental nighttime lighting analysis and mitigation are inadequate but does not state any rationale for why these are inadequate nor does the commenter provide any additional evidence to this effect.

2126-6443

Please see response to submission SJM-2135, comment 6355, which clarifies operation of trains as well as the number of intermittent maintenance trains. 24-hour train operation is not proposed and the project description has not changed in this regard in the Revised/Supplemental Draft EIR/EIS. With respect to the notes cited by the commenter in Appendix 3.7-E, Supplemental Noise Analysis on Terrestrial Wildlife Species, of the Revised/Supplemental Draft EIR/EIS on page 9, the Authority notes that the text referenced by the commenter is discussing the findings on an adjacent HSR Section. That text is referencing findings made by the USFWS in its biological opinion for the Merced to Fresno Project Section of the HSR. The analysis for the proposed project is clear with respect to nighttime operations and is consistent with Chapter 2 in the Draft EIR/EIS.

2126-6444

Refer to Standard Response SJM-Response-BIO-5: Lighting Impacts to Wildlife.

The commenter asserts that the EIR/EIS does not provide information regarding nighttime lighting during construction or operations and that a lighting plan has not been developed. The commenter refers the Authority to detailed comments on pages 10–11 of their comment letter on the Draft EIR/EIS. Please see response to submission SJM-1678, comment 2195, and to Standard Response SJM-Response-BIO-5 for a response regarding nighttime lighting. Also, additional detail on lighting appears in Chapter 2, Alternatives, of the Final EIR/EIS. Overall, the Authority notes that the comments and input from the Grasslands Water District have been considered and that the Authority has adopted several of these suggestions where feasible.

2126-6445

The commenter notes that the Authority has not updated its Technical Reports to reflect new analysis. The Authority disagrees and notes that, although previously published technical reports have not been revised, the Revised/Supplemental Draft EIR/EIS included new and supplemental technical analysis in Appendix 3.7-D, Supplemental Species Habitat Model Descriptions; Appendix 3.7-E, Supplemental Noise Analysis on Terrestrial Wildlife Species; and Appendix 3.7-F, Supplemental Artificial Light Analysis on Terrestrial Wildlife Species.

2126-6446

Refer to Standard Response SJM-Response-BIO-5: Lighting Impacts to Wildlife.

The Authority has clarified in Section 3.7 of the Final EIR/EIS under Impact BIO#42 that construction would not occur at night within the GEA.

Response to Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

2126-6447

Refer to Standard Response SJM-Response-BIO-5: Lighting Impacts to Wildlife.

In order to select facility siting locations that meet the project's operational needs while minimizing environmental impacts, the Authority considers safety, security, and operational design requirements, adjacent land uses, and environmental resources including nearby wetland habitat and wildlife areas. Chapter 8, Preferred Alternative, of the EIR/EIS includes information about these facilities. Specifically, it indicates that, conservatively, the Final EIR/EIS analyzes two locations for many of the system sites required for the project; however, the Preferred Alternative for the Final EIR/EIS includes the preferred system sites listed in Table 8-3 with specific stationing locations and selection rationales. Several systems sites were selected with the rationale that the location would minimize loss of prime agricultural land and impacts on biological and aquatic resources.

The Authority notes that specific information regarding which facilities (including ancillary facilities) would be lighted and how they would be lighted has been added to Chapter 2, Alternatives, of the Final EIR/EIS. The analysis in the Revised/Supplemental Draft EIR/EIS considers the location of facilities that would be lighted, as well as the measures included to minimize impacts, such as shielding lights and using the minimum lighting necessary.

2126-6448

Refer to Standard Response SJM-Response-BIO-5: Lighting Impacts to Wildlife.

The commenter does not make a specific comment on the Revised/Supplemental Draft EIR/EIS but references all other comments related to lighting submitted by the commenter on the Draft EIR/EIS. Please see individual responses to the commenter's comments under SJM-1678, comments 2195, 2196, and 2197.

2126-6449

Refer to Standard Response SJM-Response-BIO-5: Lighting Impacts to Wildlife.

The commenter asserts that the conclusions in the Revised/Supplemental Draft EIR/EIS related to the impacts of nighttime lighting are not clear or are contradictory. As noted by the commenter, the Authority analyzed impacts in the Draft EIR/EIS from nighttime lighting and found them to be less than significant. In the Revised/Supplemental Draft EIR/EIS, the Authority conducted additional analysis of nighttime lighting and found potentially significant impacts from nighttime lighting. The CEQA conclusion in Impact BIO#47 clearly states that the level of significance before mitigation under CEQA would be significant for all four alternatives. In summary, the Authority changed the pre-mitigation impact conclusion based on the new information and analysis presented in the Revised/Supplemental Draft EIR/EIS. Note that with the application of Mitigation Measures BIO-MM#80 and BIO-MM#89, the significance under CEQA of Impact BIO#47 is reduced to less than significant. Additionally, the Authority notes that Impact BIO#42 addresses impacts from nighttime lighting during construction and the Draft EIR/EIS states that the level of significance before mitigation for all four alternatives would be significant before mitigation. This conclusion is unchanged in the Revised/Supplemental Draft EIR/EIS.

2126-6450

Refer to Standard Response SJM-Response-BIO-5: Lighting Impacts to Wildlife.

The measures described in Appendix 3.7-F, Supplemental Artificial Light Analysis on Terrestrial Wildlife Species, to the Revised/Supplemental Draft EIR/EIS and noted by the commenter are the technical analysis and recommendations resulting from that technical analysis. The Revised/Supplemental Draft EIR/EIS incorporates these measures as mitigation. BIO-MM#89 provides additional mitigation, considering the recommendations from the technical analysis. Each of the recommendations is addressed in BIO-MM#89.

Response to Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

2126-6451

Refer to Standard Response SJM-Response-BIO-5: Lighting Impacts to Wildlife.

The Authority acknowledges that the commenter disagrees with the findings in the Revised/Supplemental Draft EIR/EIS related to nighttime lighting. The requirements outlined under BIO-IAMF#12 as well as other IAMF requirements are enforceable requirements and would be included in the Mitigation Monitoring and Enforcement Plan for the project and thus must be implemented. BIO-IAMF#12 sets forth standards to be included in the design of HSR ancillary facilities, such that those facilities are bird- and raptor-safe. With regard to measures suggested by the commenter in comments on the Draft EIR/EIS related to nighttime lighting, please also refer to the response to submission SJM-1678, comments 2197 and 2214, which discuss the analysis of artificial lighting and the potential measures proposed by the commenter, as well as the standard response regarding lighting impacts on wildlife.

2126-6452

The Authority disagrees with this comment. The technical analysis supporting the Revised/Supplemental Draft EIR/EIS in Appendix 3.7-F, Supplemental Artificial Light Analysis on Terrestrial Wildlife Species, recommends additional measures to avoid and minimize effects. These recommendations were considered and incorporated into the Revised/Supplemental Draft EIR/EIS in BIO-MM#89 and thus are appropriate and enforceable.

2126-6453

Please see responses to submission SJM-2126, comments 6450 and 6452. The Authority also notes that the commenter made similar comments on the Draft EIR/EIS. Please see response to submission SJM-1678, comment 2225, which discusses the oversight and binding enforcement mechanisms in place for the project.

2126-6454

The Authority has continued to meet with and work with the GEA working group for many years in good faith and will continue to do so. The analysis in the Revised/Supplemental Draft EIR/EIS found that with the application of mitigation, there are not significant impacts under CEQA on the GEA from artificial lighting at night. Overall, lighted facilities are few and are widely spaced within the GEA. The project includes features to avoid and minimize lighting impacts (e.g., shielding of lighting, use of the minimum lighting necessary), as well as BIO-IAMF#12, which further minimizes lighting impacts. Mitigation Measure BIO-MM#89 would reduce artificial lighting impacts further to a level that is less than significant under CEQA. Consequently, additional mitigation along the lines suggested by the commenter is not necessary or required.

2126-6455

The commenter makes a general statement regarding the approval of the project and notes that the Draft EIR/EIS must be revised and recirculated, including addressing the comments made by members of the GEA Working Group. The Authority notes that the Draft EIR/EIS was revised and recirculated in response to the recent listing of the mountain lion as a candidate under CESA and the recent listing of the monarch butterfly as a candidate under FESA. The Final EIR/EIS considers all comments received on the Draft EIR/EIS as well as the Revised/Supplemental Draft EIR/EIS and responds to each comment, and the Authority has made changes to the Final EIR/EIS where appropriate.

2126-6456

Refer to Standard Response SJM-Response-BIO-8: Impact on Wildlife Movement in the Western Pacheco Pass Region.

The commenter is correct in that there is new data that show Tule elk north of SR 152. In response to this comment and the new data, Section 3.7.7.7, Wildlife Movement, of the Final EIR/EIS has been modified regarding its discussion of the location of Tule elk near the alignment. No changes to the impact conclusions have resulted from this revision. However, the Authority also notes that in response to numerous other comments regarding wildlife movement in the western Pacheco Pass region, the Authority has further modified its mitigation approach regarding wildlife movement issues in the region, as explained in the standard response.

Response to Submission 2126 (Ellen Wehr, Grassland Water District, June 8, 2021) - Continued

2126-6457

Refer to Standard Response SJM-Response-BIO-8: Impact on Wildlife Movement in the Western Pacheco Pass Region.

The Authority has reviewed the new data and information contained in the thesis. It is understood from that thesis that, while there are individuals north of SR 152, the highway is still seen as a barrier based on the lack of 5-hour collar data (from the thesis) showing movement across SR 152; CDFW has prioritized SR 152 as a wildlife barrier (CDFW 2020) to be addressed if possible in the future through one or more wildlife movement improvements. Please note that the Authority has prepared a standard response regarding wildlife movement in the western Pacheco Pass region that addresses movement of mountain lion as well as other large species such as elk. The approach does include additional mitigation addressing wildlife movement enhancements in the region.

2126-6458

Please see the response to submission SJM-2126, comment 6456, which discusses new information regarding Tule elk range.

2126-6459

The Authority appreciates the suggestion regarding monarch mitigation and has incorporated it into BIO-MM#86 in the Final EIR/EIS.

2126-6460

Please see response to submission SJM-2126, comment 6459. The Authority has revised BIO-MM#86 in the Final EIR/EIS to note that contribution to monarch conservation and/or restoration efforts in the project region are one additional type of compensatory mitigation that would be acceptable.

2126-6461

The Authority has continued to meet with Grasslands Water District (GWD) throughout the San Jose to Merced Project Section environmental process. The Authority plans to continue coordination with GWD as the San Jose to Merced Project Section moves through the environmental process and towards project construction.

Submission 2134 (Neal Sharma, Peninsula Open Space Trust (POST), June 9, 2021)

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San Jose - Merced - RECORD #2134 DETAIL	
Status :	Unread
Record Date :	6/9/2021
Submission Date :	6/9/2021
Interest As :	Business and/or Organization
First Name :	Neal
Last Name :	Sharma
Attachments :	HSR RDEIR_SDEIS Comment Letter San Jose to Merced POST_OSA_TNC June 9 2021.pdf (441 kb)

Stakeholder Comments/Issues :

Hello,

Please accept the attached comment letter regarding the High-Speed Rail San Jose to Merced Project Revised Draft EIR/Supplemental Draft EIS. Thank you for the opportunity to comment.

Sincerely,
Neal Sharma

Neal Sharma
Wildlife Linkages Program Manager
Peninsula Open Space Trust (POST)
222 High Street
Palo Alto, CA 94301
Office: (650) 854-7696
Direct: (650) 352-6320
openspacetrust.org



June 9, 2021

Brian P. Kelly, CEO
California High-Speed Rail Authority
770 L Street, Suite 620
Sacramento, CA 95814

RE: San Jose to Merced Project Section: Revised Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement, Biological Resources Analysis

Dear Mr. Kelly:

Peninsula Open Space Trust (POST), Santa Clara Valley Open Space Authority (Open Space Authority), and the Nature Conservancy (TNC) submit the following comments on the Revised Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement, Biological Resources Analysis (RDEIR/SDEIS) for the San Jose to Merced Project Section (Project) of the California High Speed Rail (HSR). POST, TNC, and the Open Space Authority previously submitted comments on June 23, 2020.

We appreciate the effort that has gone into the RDEIR/SDEIS. However, our organizations remain gravely concerned with the Project's negative and potentially irreversible impacts on the biodiversity in this region, and in particular on the critical natural resources in the Coyote Valley, Upper Pajaro/Soap Lake, and Pacheco Pass areas. The RDEIR/SDEIS falls short in its analysis of existing, readily available science relevant to these ecosystems, and in analyzing the benefits of substantial investments made – by our organizations and the state – in the conservation of land, water, and wildlife therein. These analytical shortcomings are then reflected in the RDEIR/SDEIS's inadequate mitigation proposals. HSR must ensure that both the Project's site-specific and cumulative impacts on sensitive species in this region are adequately addressed.

Given the complexity of the Project and the short timeframe for review and public comment, the feedback included herein is preliminary in nature, and we expect to submit additional feedback at a later date after we are able to more thoroughly evaluate the Project.

In addition to addressing the specific comments below – TNC, POST, and the Open Space Authority request HSR immediately reinstate work with our organizations and qualified local biologists to refine the Project's design in order to ensure it will improve – and not hinder – the recovery of puma and monarch butterfly populations.

We stand ready to work collaboratively with HSR to reverse this outcome.

Sincerely,

DocuSigned by:
Noelle Chambers
Noelle Chambers
Vice President of Conservation
Peninsula Open Space Trust

Andrea Mackenzie
Andrea Mackenzie
General Manager
Santa Clara Valley Open Space
Authority

DocuSigned by:
Abigail Ramsden
Abigail Ramsden
Project Director
The Nature Conservancy

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2134-6241

2134-6242

Submission 2134 (Neal Sharma, Peninsula Open Space Trust (POST), June 9, 2021) - Continued

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**High-Speed Rail San Jose to Merced SDEIR/EIS
POST, Open Space Authority, and TNC Comments**

June 9, 2021

**High-Speed Rail San Jose to Merced SDEIR/EIS
POST, Open Space Authority, and TNC Comments**

June 9, 2021

General Comments

2134-6243

- Cumulative Regional Impacts on the Puma Population

As we discussed in our previous letter sent June 23, 2020, the Coyote Valley, Upper Pajaro/Soap Lake, and Pacheco Pass areas are essential landscapes for supporting wildlife in the Project area, including puma, elk, deer, and many other species. These lands and waters provide the connectivity necessary for ensuring the Santa Cruz Mountains and Diablo Range remain linked ecosystems where animal movement sustains gene-flow for population health and climate adaptation.

The installation of practically impermeable linear infrastructure through all three of these linkages could have a devastating cumulative effect on wildlife in the region, and especially on the Santa Cruz Mountain puma population. The proposed mitigation measures are insufficient to ensure genetic connectivity and the health of puma populations in this area (see letter submitted by Christopher Wilmers to HSRA dated May 17, 2021; attached). HSR needs to evaluate additional mitigation measures that will guarantee safe passage of pumas and other wildlife between mountain ranges via Coyote Valley, Upper Pajaro/Soap Lake, and Pacheco Pass.

2134-6244

- Light, Noise, and Vibration Impacts to Pumas

It is unclear whether sound walls will be effective in reducing noise and thereby promoting wildlife use of crossing structures, which if not properly designed will undermine the purpose of the proposed mitigation. Our understanding is that the UC Davis Road Ecology Center is evaluating the adequacy of the Project's assessment of light, noise, and vibration impacts and the appropriateness of proposed mitigation measures. We recommend that the HSR work with local stakeholders, qualified biologists, and the California Department of Fish and Wildlife (CDFW), United States Fish and Wildlife Service (USFWS), and National Marine Fisheries Service (NMFS) to develop integrated designs for wildlife crossing infrastructure – and that such mitigation measures should be approved by CDFW, USFWS, and NMFS prior to project approval. We also recommend that HSR assess additional mitigation measures such as light and noise barriers (e.g. use of enclosure[s] as part of integrated wildlife crossing designs that are site-specific and include considerations for the interrelationship between light, noise, vibration, landscape features (e.g. topography, habitat type), directional fencing (including wildlife escape ramps, where appropriate), and life history/ecological characteristics of target species and/or guilds.

2134-6245

- Mitigation Ratios

The RDEIR/SDEIS analysis does not adequately assess the permanent, temporary, direct, and indirect impacts on breeding, foraging, or dispersal habitats for pumas.

Given the trajectory of genetic isolation experienced by the Santa Cruz mountains subpopulation of puma and the large amount of public and private investments made to conserve and enhance puma habitat, we recommend that at a minimum, habitat areas with direct impacts are mitigated at a ratio of 2:1, and that direct impacts to protected areas – lands and waters owned and/or managed by natural resource agencies or nonprofit organizations – are mitigated at a ratio of 4:1. We also recommend a ratio of 4:1 for impacts to lands and waters identified by CDFW, by the Santa Clara Valley Habitat Agency, and in the Metropolitan Transportation Agency's Plan Bay Area (the Sustainable Communities Strategy under SB375) as high priority for conservation.

Page 2 of 5

2134-6245

Mitigating for the loss of essential connectivity and puma habitats is highly challenging at best, and nearly impossible at worst, in areas where urban development has pinched available habitat down to the narrowest thresholds that sustain wildlife, as is the case in the Project area. These ratios will help support the persistence of pumas regionally when limited breeding, foraging, or dispersal habitats are impacted by the Project.

2134-6246

- Support State Conservation Goals

Implementation of the Project presents a unique opportunity to implement the State's documented conservation goals for the Coyote Valley, Upper Pajaro/Soap Lake, and Pacheco Pass areas. We recommend HSR work with CDFW, the Wildlife Conservation Board, and the State Coastal Conservancy to develop a Project design that will meet the State's goals identified in those agencies' strategic plans, the Santa Clara Valley Habitat Conservation Plan (HCP/NCCP), Plan Bay Area, and the Coyote Valley Conservation Program established in September 2019 (Public Resources Code Division 26, Chapter 6 (Sections 35280-35186), which requires Coyote Valley be acknowledged as an area of statewide significance in local planning documents developed or updated on or after January 1, 2020, affecting land use within Coyote Valley.

The State's commitment to conservation of these landscapes is further evidenced by the tens of millions of dollars in State funds that have been invested in their conservation, including the Sobrato South project in Coyote Valley, state-funded implementation of wildlife connectivity enhancements in Pacheco Pass, and many others. For example, as noted in the staff report for the Wildlife Conservation Board's May 2020 meeting at which the Board approved \$10,000,000 in State funds to protect property in Coyote Valley:

Coyote Valley is identified as a unique opportunity to connect the biodiversity of the Santa Cruz Mountains and the Diablo Range which form the California Coastal Range. The Santa Clara Valley Habitat Conservation Plan and Natural Community Conservation Plan (Habitat Plan) adopted in 2013, states that linking the Santa Cruz Mountains and Diablo Range via the Santa Clara Valley is one of its main landscape-level goals to ensure long-term protection of wildlife and rare and endangered species. The California State Wildlife Action Plan states that establishing connectivity among these ecosystems is a "key ecological attribute" for all conservation targets within the Bay Delta and Central Coast Province. Additionally, the Property was identified as a top conservation priority in CDFW's Santa Cruz Mountains Conceptual Area Protection Plan. (page 91)

Detailed Comments

Page Comment

3.7-5 Pacheco Pass and Soap Lake should be noted as important conservation areas, including for regional ecological connectivity (see plans cited in previous comment letter). Pacheco Pass must be included in the assessment due to the potential cumulative impacts for puma populations (and the wide variety of other species and communities known to occur in the area). If the Diablo Range population north of Pacheco Pass becomes genetically isolated, there are serious implications for puma in the Santa Cruz Mountains, and potential trophic cascades if inbreeding depression leads to extirpation.

2134-6248

3.7-11 We recommend that herbicide use be determined in consultation with CDFW and applied by a Qualified Applicator per Department of Pesticide Regulation. Use of herbicide should be

Page 3 of 5

Submission 2134 (Neal Sharma, Peninsula Open Space Trust (POST), June 9, 2021) - Continued

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High-Speed Rail San Jose to Merced SDEIR/EIS POST, Open Space Authority, and TNC Comments		June 9, 2021
2134-6248		limited to substances and practices where the bioaccumulated cumulative toxicity is proven to be minimal.
2134-6249	3.7-15	<p>The proposal in Alternative 4 for breaks in fencing to maintain permeability at road crossings is not a safe or effective concept for long-term mitigation in Coyote Valley, and may encourage entrapment of wildlife on fenced or walled portions of the Project. While breaks in the fence and median may maintain existing structural permeability, operational impacts from the rail and new infrastructure (fencing, etc.) will likely increase wildlife mortality and reduce functional connectivity.</p> <p>Recommendations for additional options to improve permeability can be found in the published report <i>“Recommendations to reduce wildlife-vehicle collisions on the Monterey Road corridor in Coyote Valley, Santa Clara County”</i> available at: https://openspacetrust.org/downloads/MontereyRoadReport.pdf.</p> <p>Conservation efforts are in progress to improve permeability of the Monterey Road corridor for wildlife, particularly between Richmond Avenue and Tulare Hill/Metcalf Road, and should be noted. The Project should support and add to these existing efforts, and we recommend HSR explore early implementation of wildlife crossing enhancements in coordination with the Open Space Authority, POST, the Santa Clara Valley Habitat Agency, and the Santa Clara County Parks and Recreation Department.</p>
2134-6250	3.7-25	Directional fencing is critical for safe wildlife passage and must occur on both sides of the railway (unless a wall or enclosure serves that purpose on one or both sides of the rail). Directional fencing and/or sound barrier features should be integrated with optimization of wildlife crossing structures in mind.
2134-6251	3.7-11	<p>BIO-MM#32 (Significant Impact) -- Despite the finding of a significant impact, we request additional detail and analysis about the design and operation of accessory/construction/maintenance roads and considerations to mitigate impacts particularly on amphibians, reptiles, and their habitats, as even following construction-related disturbance, the presence of features such as curbs, drain systems, and runoff/pollutants may present ongoing hazards. Suggested resources:</p> <p>Brehme, CS and RN. Fisher. 2021. Research to Inform Caltrans Best Management Practices for Reptile and Amphibian Road Crossings. USGS Cooperator Report to California Department of Transportation, Division of Research, Innovation and System Information, 65A0553.</p> <p>Langton, T.E.S. and A.P. Clevenger. 2021. Measures to Reduce Road Impacts on Amphibians and Reptiles in California. Best Management Practices and Technical Guidance. Prepared by Western Transportation Institute for California Department of Transportation, Division of Research, Innovation and System Information.</p>
2134-6252	3.7-25	For BIO-MM#77b, we recommend beginning effectiveness monitoring upon completion of construction. While studies of wildlife crossing structures indicate that a period for habituation may influence the use of structures by target species, there is also evidence for use of structures less than two years after construction (see Kintsch, Cramer, Singer, and Cowardin 2021 https://www.codot.gov/programs/research/pdfs/2021-research-reports/state-highway-9-wildlife-mitigation-monitoring/cdot-2021-01.pdf).
2134-6253	3.19-2	Pacheco Pass and Soap Lake should be noted as important conservation areas, including for regional ecological connectivity (see plans cited in previous comment letter). Pacheco Pass

High-Speed Rail San Jose to Merced SDEIR/EIS POST, Open Space Authority, and TNC Comments		June 9, 2021
2134-6253		must be included in the assessment due to the potential cumulative impacts for puma populations.
2134-6254	NA	Proposed 5' x 5' wildlife crossing in Coyote Valley, north of Kalana Avenue, near station B950+56 overlaps with a water delivery pipeline that will be constructed by Valley Water. It is likely that this pipeline is too shallow to allow for construction of this undercrossing. Alternative mitigation measure should be considered for impacts to permeability in this area.
2134-6255	3.19-3	<p>The section states “Project operations, in combination with planned projects in the cumulative RSA, would result in a significant cumulative impact under CEQA with respect to wildlife movement because the project would cause intermittent but permanent disturbance of migratory waterfowl and shorebirds in the GEA and would interfere with the movement and dispersal of mountain lions from noise, artificial light, and other factors, including considerations of gene flow between subpopulations. The HSR project is the sole contributor to this impact, which would therefore be considerable. While mitigation measures are proposed to reduce this impact, they would not entirely eliminate the impact in some of the most important migratory and wintering habitat for waterfowl and shorebirds in western North America and within important genetic dispersal areas for mountain lion. There is no additional feasible mitigation.”</p> <p>The Project should consider the feasibility of additional mitigation measures, such as the construction of land bridges to complement undercrossings, construction of directional fencing outside of the project right of way to guide wildlife to crossings, acquisition of additional land to ensure long term connectivity to proposed wildlife crossing locations, different alternatives to mask light and noise such as track enclosures, modifying adjacent transportation corridors to support wildlife movement under all alternatives, and the expansion of BIO-MM#77B to include construction of additional undercrossings and land bridges if the Project’s mitigation measures are not meeting success criteria within a specified timeframe.</p>

Submission 2134 (Neal Sharma, Peninsula Open Space Trust (POST), June 9, 2021) - Continued

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UNIVERSITY OF CALIFORNIA, SANTA CRUZ

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SANTA BARBARA • SANTA CRUZ

May 17, 2021

Dear High Speed Rail Authority,

I am writing to comment on the recently revised mountain lion EIR for the high speed rail section crossing the Pacheco Pass and Coyote Valley. These areas are important habitat for mountain lions providing genetic connectivity for mountain lions. This is especially important given the low genetic heterozygosity of mountain lions in this area and their recent proposed listing as a threatened species in California. The proposed mitigation measures are insufficient to insure genetic connectivity and the health of mountain lion populations in this area.

In particular measure BIO-MM#87 is insufficient to finding and mitigating the impact on mountain lion nursery sites (i.e. dens). Finding mountain lion nursery sites is like finding a needle in a haystack. The only scientifically substantiated way of finding nursery sites is to use tracking data from female mountain lions fitted with GPS collars. Even with GPS location data indicating that a nursery site might exist within a 10 meter diameter circle, it can take trained biologists up to half an hour to locate the den. Scaling this up to the tens of square kilometers that you are proposing, without the aid of GPS instrumented animals, would be a fool's errand.

Additionally, I would like to request that adequately sized over- or under-crossings be provided in order to allow safe passage of mountain lions across the rail lines. The current proposed culverts are too long and narrow to be suitable as a mountain lion crossing.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Wilmers".

Christopher Wilmers
Professor

Response to Submission 2134 (Neal Sharma, Peninsula Open Space Trust (POST), June 9, 2021)

2134-6241

The Authority appreciates your comments on the Revised/Supplemental Draft EIR/EIS. In subsequent individual comments, commenter provided specific detailed comments. Each of these specific comments is addressed below.

2134-6242

The Authority has coordinated with these groups throughout the duration of the project, as noted in Chapter 9, Public and Agency Involvement, in the Final EIR/EIS. Most recently, the Authority held several meetings with these stakeholders during the comment period for the Revised/Supplemental Draft EIR/EIS, and the supplemental analysis and revised mitigation measures in Section 3.7, Biological and Aquatic Resources, in the Final EIR/EIS are reflective of this coordination. The Authority is committed to continuing engagement with local stakeholders as the project progresses.

2134-6243

Refer to Standard Response SJM-Response-BIO-8: Impact on Wildlife Movement in the Western Pacheco Pass Region.

2134-6244

As noted in Standard Response SJM-Response-BIO-8, the Authority has included revised mitigation in the Final EIR/EIS which further addresses impacts on mountain lions.

With respect to light, noise, and vibration impacts on mountain lions and the commenter's suggestions to develop "integrated designs for wildlife crossing infrastructure", as well as approvals by wildlife agencies to address these concerns, the Authority believes that the Final EIR/EIS addresses this concern. Mitigation Measure BIO-MM#77a already requires the Authority to prepare a Wildlife Crossing Design, Inspection, and Maintenance Plan. As noted in the measure, the plan must be developed in coordination with the wildlife agencies, CDFW, USFWS, and NMFS, as well as other local wildlife movement stakeholders (including POST). In this way, the Authority believes that POST and other stakeholders will have substantial input into the design of the crossings, including the additional measures or design considerations suggested in the comment.

Response to Submission 2134 (Neal Sharma, Peninsula Open Space Trust (POST), June 9, 2021) - Continued

2134-6245

Refer to Standard Response SJM-Response-BIO-8: Impact on Wildlife Movement in the Western Pacheco Pass Region.

The Authority has evaluated the comments from POST and others regarding mitigation ratios (i.e., the suggested increase in the compensatory mitigation ratio from 2:1 to a 4:1 ratio) and the overall mitigation approach for mountain lion. Based on the comments received from CDFW and others, it is clear that while habitat mitigation is important, mitigation focused on maintaining genetic connectivity/wildlife movement (i.e., facilitating or improving wildlife movement through other actions) is also an extremely important mitigation strategy for mountain lion subpopulations. Consequently, as noted in Standard Response SJM-Response-BIO-8, the Authority has added BIO-MM#79b: Provide Wildlife Movement between the Diablo Range and Inner Coast Range, to the Final EIR/EIS. Under this measure, the Authority would work with stakeholders and agencies to implement an additional overcrossing in the region to further improve movement and permeability. The Authority believes the combination of habitat mitigation as well as wildlife movement connectivity improvements in the region is an appropriate and adequate mitigation approach for project impacts. The mitigation ratio identified under BIO-MM#88 is an appropriate ratio.

2134-6246

The comment suggests coordination with CDFW, the Wildlife Conservation Board, and the State Coastal Conservancy to develop a project design that meets the State's goals as well as goals of other regional plans. Additionally, the commenter mentions the Coyote Valley Conservation Program and its role in local planning documents after January 2020. The Authority has worked closely with CDFW, local agencies, and numerous wildlife stakeholders throughout project planning and design. As a result of this coordination, the project includes design features and mitigation measures to address significant impacts on wildlife connectivity and movement, including in Coyote Valley. Specifically, to address Impact BIO#42, Temporary Disruption of Wildlife Movement, the Authority would implement mitigation measures to reduce temporary impacts on wildlife movement during construction. BIO-MM#3 would require the project biologist to establish ESAs and nondisturbance zones prior to ground-disturbing activity. BIO-MM#25 would require the Project Biologist to conduct pre-activity surveys for and relocate (consistent with regulatory authorizations) any special-status wildlife occurring in waterbodies affected by dewatering or water diversion activities. Additionally, BIO-MM#76 would require the Authority to avoid placing temporary fencing within known wildlife corridors in portions of the project footprint where the tracks are elevated and would require the design to consider methods that would facilitate wildlife use of crossings. It would also minimize the effects of noise, light, and vibration on individuals moving through or near the project footprint. The purpose of the legislation mentioned in the comment is to protect the resource and agricultural goals of the Coyote Valley. It does not designate the area as a conservation easement specifically and as defined in the EIR/EIS. As such, it is not included in Section 3.7.6.2, Biological Conditions. However, the Final EIR/EIS acknowledges the importance of the Coyote Valley area, and its constituent resources are addressed across several sections, including biological resources; wildlife movement; agricultural farmland; and parks, recreation, and open space. In response to this comment, Section 3.15, Parks, Recreation, and Open Space, has been updated in the Final EIR/EIS to acknowledge Assembly Bill 948, Coyote Valley Conservation Program.

Response to Submission 2134 (Neal Sharma, Peninsula Open Space Trust (POST), June 9, 2021) - Continued

2134-6247

Refer to Standard Response SJM-Response-BIO-8: Impact on Wildlife Movement in the Western Pacheco Pass Region.

The Authority acknowledges the importance of the Pacheco Pass and Soap Lake areas for wildlife movement and connectivity; there are no specific boundaries that define them or allow a specific analysis similar to the other conservation areas identified in the EIR/EIS, but nevertheless, the Authority has analyzed (and proposed mitigation for) wildlife movement in those areas. Mitigation for wildlife movement impacts would therefore occur regardless of whether or not those areas are specifically identified as “conservation areas.”

2134-6248

The Authority cannot commit to avoiding the use of herbicides because they may be necessary in some instances to control vegetation. As described in Section 2.11.2.1, Operational Right-of-Way, of the Draft EIR/EIS, herbicides may be used during operations for vegetation management purposes. As described there, only approved herbicides would be used, and all herbicide application would be conducted in a manner consistent with product labeling and applicable laws, including application by a licensed Pest Control Advisor where appropriate.

2134-6249

The Authority agrees that the breaks in HSR fencing along Monterey Road in Coyote Valley are not a safe or effective mitigation method. The breaks in fencing are not a mitigation measure to improve wildlife movement but a project component to maintain traffic movement across the railway.

The commenter is correct that the project would further degrade permeability to wildlife and increase the potential for vehicle strike. To minimize and offset these effects, the Authority modified the project to include wildlife crossings and committed to measures that minimize wildlife entry into the railway and onto the roadway (thus reducing the potential for vehicle strike). These commitments were developed in coordination with local wildlife movement stakeholders (including the commenter) and are consistent with, the Recommendations to Reduce Wildlife-Vehicle Collisions on the Monterey Road Corridor in Coyote Valley, Santa Clara County authored by the Santa Clara County Wildlife Corridor Technical Working Group Coyote Valley Subcommittee (2019) as described below.

To minimize the potential for wildlife to enter the railway at at-grade road crossings where there is a break in the fencing surrounding the rail, BIO-MM#81 requires Rosehill anti-trespass panels be put at each intersection. To facilitate escape if wildlife enters the railway fencing, BIO-MM#81 requires one-way exit doors be placed along the lower edge of the four fence sections closest to the intersection for small- and medium-sized mammals and requires jump outs be placed inside the railway so larger mammals can escape.

To offset the impact of the railway fencing on permeability and to further minimize the potential for vehicle strike, wildlife crossings were added to the project design consistent with the Recommendations to Reduce Wildlife-Vehicle Collisions on the Monterey Road Corridor in Coyote Valley, Santa Clara County (Santa Clara County Wildlife Corridor Technical Working Group Coyote Valley Subcommittee 2019). To increase the potential for the wildlife crossings to be used, BIO-MM#77a requires wildlife funnel fencing be constructed around wildlife crossings, to the maximum feasible (since the Authority does not have control of all parcels needed to implement the action). This measure also requires a Wildlife Crossing Design, Inspection, and Maintenance Plan be written in coordination with wildlife agencies and local wildlife movement stakeholders (see response to submission SJM-2134, comment 6250) so that the siting, design, and construction of the crossings can be maximized for the greatest benefit to wildlife movement. This wildlife crossing plan must include a directional fencing plan that would

Response to Submission 2134 (Neal Sharma, Peninsula Open Space Trust (POST), June 9, 2021) - Continued

2134-6249

improve use and function of the crossings.

As for a contribution to early implementation of the Recommendations to Reduce Wildlife-Vehicle Collisions on the Monterey Road Corridor in Coyote Valley, Santa Clara County (Santa Clara County Wildlife Corridor Technical Working Group Coyote Valley Subcommittee 2019), the Authority has committed to the following three of the four recommendations listed in the executive summary either through project modification or mitigation measures: modify the Monterey Road median barrier, improve the Fisher Creek culvert, and create wildlife crossing infrastructure. However, these measures can only be implemented during project construction. That said, the Authority has made a commitment to work with organizations like the Santa Clara Valley Habitat Agency to discuss potential early implementation of other mitigation measures such as habitat preservation and restoration.

2134-6250

The Authority appreciates the comment and has modified BIO-MM#77a in the Final EIR/EIS to require directional fencing on both sides of the rail (rather than just on the eastern side) as necessary to facilitate wildlife movement. As required under BIO-MM#77a, the Authority would prepare a Wildlife Crossing Design, Inspection, and Maintenance Plan in coordination with agency and stakeholder partners, including the commenter, to improve the siting and design of wildlife crossings and directional fencing.

2134-6251

Measures to address stormwater drainage, including runoff and pollutants, are described under Impacts HYD#1, HYD#2, and HYD#3 for construction and operations in Section 3.8.6.2, Surface Water Hydrology, of the Final EIR/EIS. The stormwater management and treatment plan (HYD-IAMF#1) would evaluate the capacity of receiving stormwater drainage systems, determine improvements and/or upgrades required to maintain or improve existing drainage capacity, and specify BMPs for infiltration, retention, or detention from new and reconstructed impervious surfaces. The project design would also include a flood protection plan that incorporates design standards to minimize impacts of culverts and bridges on existing drainage patterns and stream flow (HYD-IAMF#2). Additionally, the Authority has reviewed Brehme and Fisher (2021) and Langton and Clevenger (2021, as cited in Section 3.7, Biological and Aquatic Resources, of the Final EIR/EIS), which address best practices for reptile and amphibian road crossings to minimize ongoing effects from road infrastructure. In response to the comment and consistent with the guidance documents suggested, BIO-MM#81 was revised in the Final EIR/EIS to require escape tubes or ladders in drainage culvert drop ins, as well as to require curbs be designed with angles and/or include escape gaps.

2134-6252

The Authority appreciates the suggested revision to BIO-MM#77b and has made this change to the mitigation measure in the Final EIR/EIS.

2134-6253

Refer to Standard Response SJM-Response-BIO-8: Impact on Wildlife Movement in the Western Pacheco Pass Region.

Please see response to submission SJM-2134, comment 6247. The Authority notes that Pacheco Pass was included in the assessment of potential cumulative impacts on mountain lions in general; within the analysis of cumulative impacts (Section 3.19 of the Draft EIR/EIS). Additionally, in response to comments on the Draft EIR/EIS, the Authority considered and incorporated additional mitigation related to the movement of mountain lions (and other species) suggested by commenters. Consequently, the Authority has revised the analysis of cumulative impacts on wildlife movement (including mountain lion) within Section 3.19 of the Final EIR/EIS and has concluded that impacts on wildlife movement are not cumulatively considerable..

Response to Submission 2134 (Neal Sharma, Peninsula Open Space Trust (POST), June 9, 2021) - Continued

2134-6254

The Authority appreciates the comment and information. We are aware that, because the project design is not yet final, the optimization of some wildlife crossings will likely be necessary to account for land use changes or other factors such as those noted by the commenter. Consequently, the Authority has included language in BIO-MM#77a in the Final EIR/EIS that would require the Authority to work with agency and stakeholder partners to optimize wildlife crossing locations. As noted in the measure, this may include the adjustment of some crossing locations and adjustment of the spacing of crossings to ensure they are located in the most effective locations.

2134-6255

Refer to Standard Response SJM-Response-BIO-8: Impact on Wildlife Movement in the Western Pacheco Pass Region.

The commenter asserts that the Authority should consider additional feasible mitigation to further reduce impacts on wildlife movement. Standard Response SJM-Response-BIO-8 addresses the commenter's suggestions for the construction of a land bridge and the construction of directional fencing outside the project right-of-way to guide or "funnel" wildlife to crossings. The Authority also evaluated the commenter's suggestions of different alternatives to mask light and noise and determined that the methods used under BIO-MM#80 were feasible and would reduce impacts to a less-than-significant level. With respect to modifying adjacent transportation corridors as suggested by the commenter, the intent of the suggestion is unclear. However, the Authority again notes that Standard Response SJM-Response-BIO-8 explains that the Authority would effectively "modify adjacent transportation corridors" through new mitigation measure BIO-MM79b to improve wildlife movement and permeability in the region. With respect to the commenter's suggestion to acquire additional land to ensure long-term connectivity to proposed wildlife crossing locations, the Authority notes that the acquisition of lands may or may not be feasible; however, the Authority has committed to prioritizing crossings oriented to existing open space and to prioritizing mitigation land acquisition at or near crossing locations under BIO-MM#77a in the Final EIR/EIS. Lastly, the commenter suggests changes to BIO-MM#77b to include construction of additional undercrossings and land bridges if the project's mitigation measures are not meeting success criteria within a specified timeframe. The Authority notes that BIO-MM#77b does identify monitoring requirements and the timeline required to meet success criteria (5 years) before triggering adaptive management. As outlined in BIO-MM#77b, adaptive management may include modifications to design features, use of new technologies, fencing, land management changes, or other measures that may be determined to be feasible in the future.

Submission 2128 (Tammy Ross, STOEL RIVES LLP Re: Liberty Packing Company, June 9, 2021)



San Jose - Merced - RECORD #2128 DETAIL

Status : Unread
Record Date : 6/9/2021
Submission Date : 6/9/2021
Interest As : Business and/or Organization
First Name : Tammy
Last Name : Ross
Attachments : Comment Letter to CHSRA re San Jose to Merced Revised DEIR_EIS(111160619.2).pdf (186 kb)

Stakeholder Comments/Issues :

To whom it may concern:

Please see the attached comment letter submitted on behalf of our client, Liberty Packing Company. The original will also follow by first-class mail.

Tammy L. Ross | Practice Assistant
 STOEL RIVES LLP | 500 Capitol Mall, Suite 1600 | Sacramento, CA 95814
 Direct: (916) 319-4656
 tammy.ross@stoel.com<mailto:tammy.ross@stoel.com> | www.stoel.com<https://www.stoel.com>
 [https://link.stoel.com/reaction/emsimages/Logos/SR_Logo_60w.png]

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June 9, 2021

Michael N. Mills
 500 Capitol Mall, Suite 1600
 Sacramento, CA 95814
 D. 916.319.4642
 michael.mills@stoel.com

Sent Via Email to San.Jose_Merced@hsr.ca.gov and Via First-Class Mail

Attn: Final San Jose to Merced Project Section
 Revised/Supplemental Draft EIR/EIS Comment
 100 Paseo de San Antonio, Suite 300
 San Jose, CA 95113

Re: Comment Letter re Revised/Supplemental San Jose to Merced Project Section Draft EIR/EIS

Dear Sir/Madam:

Stoel Rives LLP is counsel to Liberty Packing Company (“Liberty Packing”) in Santa Nella, California, just outside of Los Banos, California. Stoel Rives LLP submits this letter commenting on the California High Speed Rail Authority’s (“Authority”) Revised/Supplemental Draft Environmental Impact Report/Environmental Impact Statement (“Revised Draft EIR/EIS”) for the San Jose to Merced Project Section of the High Speed Rail (“HSR Project”) on behalf of Liberty Packing. These comments supplement Liberty Packing’s prior comments on June 23, 2020 related to the Draft Environmental Impact Report/Environmental Impact Statement (“Original Draft EIR/EIS”). As set out below, the Revised Draft EIR/EIS retains the same fundamental flaws as the Original Draft EIR/EIS, such that certification of the Revised Draft EIR/EIS in its current condition would, as a matter of law, violate the California Environmental Quality Act (“CEQA”). (Pub. Resources Code § 21000 *et seq.*) For the following reasons, the Revised Draft EIR/EIR must be further revised to address the issues outlined below and recirculated. (CEQA Guidelines, § 15088.5.)

I. Liberty Packing and Its Business

Liberty Packing is a leading agricultural products facility on the west side of the San Joaquin Valley in Merced County, California. Founded in 2002 by owners of The Morning Star Company, Liberty Packing’s Santa Nella facility processes approximately 1/7 of the entire U.S. crop of processing tomatoes, accounting for \$400-500 million in sales per year,¹ and employing 800 full and part-time employees. Liberty Packing accounts for 75 percent of the U.S. production of diced tomatoes, which are used in all spaghetti sauce and salsa products, 16 percent of the U.S. production of tomato paste, and 6 percent of U.S. food service tomato products. In addition, Liberty Packing is the exclusive tomato supplier for several international branded companies.

¹This amount includes the businesses that supply Liberty Packing.

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2128-6314

2128-6315

Submission 2128 (Tammy Ross, STOEL RIVES LLP Re: Liberty Packing Company, June 9, 2021) - Continued

Attn: Final San Jose to Merced Project Section EIR/EIS
June 9, 2021
Page 2

Attn: Final San Jose to Merced Project Section EIR/EIS
June 9, 2021
Page 3

2128-6315

Liberty Packing's 840-acre facility lies directly in the potential path of the San Jose to Merced segment of the HSR Project. As a result of the catastrophic disruption the HSR Project will wreak on the West Side of Merced County, surrounding businesses and productive agricultural areas on which Liberty Packing depends for its survival, as well as Liberty Packing's employees and their families, Liberty Packing has been a staunch opponent of the HSR Project. This letter will serve as an additional statement of Liberty Packing's opposition to this ill-conceived project that literally will cut Merced County in two and render our vibrant facility shuttered.

2128-6316

II. The HSR Project as Described in the Original and Revised Draft EIR/EIS Will Harm Liberty Packing, Its Surroundings and the Environment

The HSR Project as described in the Original Draft EIR/EIS could cause detrimental impacts to Liberty Packing and its environs in two discrete ways, which are set out below. The Revised Draft EIR/EIS takes no action to address or mitigate these impacts.

1. Liberty Packing currently uses the land surrounding to its Santa Nella facility for the land application and disposal of produced water. This process serves to both dispose of the produced water generated at the facility and to recharge the underlying groundwater basin. The HSR Project's path as described in the Original Draft EIR/EIS cuts across the land Liberty Packing uses for the land application of produced water. The proposed path for the HSR Project was not altered in the Revised Draft EIR/EIS. If the HSR Project is built as proposed, Liberty Packing will be forced to find a new way to dispose of its produced water, as its ability to engage in this land application will be either foreclosed completely or significantly reduced. It is estimated that replacing Liberty Packing's existing business and facilities, including its current land application and disposal process, will cost approximately \$400 million.

2128-6317

2. The Original Draft EIR/EIS identified subsidence as a concern that must be monitored. (*See e.g.* Original Draft EIR/EIS Section 3.9.3.1; Section 3.9.5.2.) This aspect of the Original Draft EIR/EIS was not revised. To the extent that subsidence control measures taken by the Authority would impact groundwater wells, Liberty Packing objects to any interference with its use of three groundwater supply wells integral to Liberty Packing's operations. It is imperative that Liberty Packing maintain full control over and use of its groundwater supply wells.

2128-6318

With the Revised Draft EIR/EIS, the Authority chose to respond to comments received with respect to biological resources, including the impact of noise and lighting on wildlife. The Revised Draft EIR/EIS includes not only additional analysis related to these potential impacts, but also additional mitigation to lessen the significance of impacts to biological resources. However, the Authority ignored the concerns and comments of Liberty Packing submitted on the Original Draft EIR/EIS and failed to revise the Original Draft EIR/EIS to address them. The Authority should (1) revise the Original Draft EIR/EIS further to consider the impacts of the

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2128-6318

Project on Liberty Packing's operations, in particular interference with its land disposal of production water for groundwater recharge, and (2) propose appropriate mitigation for these impacts.

2128-6319

III. To Avoid Impacts to Liberty Packing and Other Local Businesses, the Authority Should Consider Project Alternatives

To the extent that they have not been evaluated by the Authority, Liberty Packing recommends consideration of the following project alternatives. Liberty Packing believes these suggested alternatives are superior to the planned HSR Project alignment because they will not result in impacts to Liberty Packing's Santa Nella Facility.

2128-6320

1. The Authority should relocate the HSR Project's proposed alignment to run adjacent to Highway 140. This realignment would achieve the goals of the HSR Project without creating any impacts to Liberty Packing's operations or its surrounding environment.

2128-6321

2. If the Authority decides to pursue the proposed track alignment, the Authority should continue the planned elevated track at the Ingomar Grade in the vicinity of Liberty Packing's Santa Nella facility. Elevated track would prevent interference with Liberty Packing's land application and disposal processes and help mitigate the impacts to groundwater elevations described above.

2128-6322

IV. Conclusion

The proposed HSR Project's impacts on Liberty Packing and other local businesses have not been adequately addressed in the Draft EIR/EIS. Mitigation measures or alternatives have not been proposed that would substantially lessen these impacts. For these reasons, the Original Draft EIR/EIS must be further revised and recirculated.²

Very truly yours,



Michael N. Mills

MNM:tlr

cc: Liberty Packing Company

² Despite requesting notices about this project from the High Speed Rail Authority, neither Liberty Packing, nor its counsel, received notice of the availability of Original Draft EIR/EIS or the Revised Draft EIR/EIS.

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Response to Submission 2128 (Tammy Ross, STOEL RIVES LLP Re: Liberty Packing Company, June 9, 2021)

2128-6314

The Authority appreciates your comments on the Revised/Supplemental Draft EIR/EIS. The Revised/Supplemental Draft EIR/EIS was not intended to respond to comments on the Draft EIR/EIS. Those comments are addressed in the Final EIR/EIS. In subsequent individual comments, Stoel Rives LLP provided specific detailed comments. Each of these specific comments is addressed below.

2128-6315

Please refer to response to submission SJM-1645, comment 2423 on the Draft EIR/EIS. Construction of any of the project alternatives would require both temporary and permanent acquisition of land owned by Liberty Packing Company for construction and operation of the rail right-of-way. The proposed alignment would be on viaduct across Liberty Packing's property and would not necessarily prohibit the current uses of the affected land. If necessary, the Authority would acquire land from property owners whose land is directly affected by the project in accordance with the Uniform Relocation Act (42 U.S.C. Chapter 61). Parcel-specific analysis would take place during the appraisal process before property acquisition, consistent with the Uniform Relocation Act, which establishes minimum standards for the treatment of and compensation to individuals whose real property is acquired for a federally funded project. Information about acquisition, compensation, and relocation assistance is also available on the Authority's website:

http://www.hsr.ca.gov/Programs/private_property.html. In addition, the Authority has committed to maintaining a permit bureau to help businesses overcome the regulatory disruptions caused by the project, including those related to changes in wastewater management.

2128-6316

The Revised/Supplemental Draft EIR/EIS was not intended to respond to comments on the Draft EIR/EIS. Those comments are addressed in the Final EIR/EIS. Please refer to response to submission SJM-1645, comment 2423 on the Draft EIR/EIS. The Authority has committed to maintaining a permit bureau to help businesses overcome the regulatory disruptions caused by the project, including those related to changes in wastewater management.

2128-6317

The Revised/Supplemental Draft EIR/EIS was not intended to respond to comments on the Draft EIR/EIS. Those comments are addressed in the Final EIR/EIS. Please refer to response to submission SJM-1645, comment 2424 on the Draft EIR/EIS. The Authority does not expect that any subsidence control measures would adversely affect wells or alter existing groundwater pumping regulations, including wells owned by Liberty Packing. The Authority has incorporated features into the project that would require monitoring ground elevations to ensure that any construction-related dewatering operations would not accelerate ground subsidence. This would include, as needed, reducing the amount of construction dewatering to avoid or minimize any detected subsidence. The Authority expects that any dewatering that is necessary in the vicinity of Liberty Packing would be relatively shallow, such that it would not affect the productivity of nearby wells. Furthermore, the subsidence control measures would reduce any potential impacts on wells by minimizing groundwater withdrawal. A review of DWR's Well Completion Report Map Application indicates that wells in the vicinity of Liberty Packing, on average, draw groundwater from deeper portions of the aquifer that should not be affected by project construction. However, if one or more of Liberty Packing's wells and/or associated surface equipment is located within the permanent HSR right-of-way, the State would pay for the cost of the replacement well and ensure that a functioning replacement well has been provided and is fully operational before the existing well is abandoned.

Response to Submission 2128 (Tammy Ross, STOEL RIVES LLP Re: Liberty Packing Company, June 9, 2021) - Continued

2128-6318

The Authority does not expect that any subsidence control measures would adversely affect wells or alter existing groundwater pumping regulations, including wells owned by Liberty Packing. The Authority has incorporated features into the project that would require monitoring ground elevations to ensure that any construction-related dewatering operations would not accelerate ground subsidence. This would include, as needed, reducing the amount of construction dewatering to avoid or minimize any detected subsidence. The Authority expects that any dewatering that is necessary in the vicinity of Liberty Packing would be relatively shallow, such that it would not affect the productivity of nearby wells. Furthermore, the subsidence control measures would reduce any potential impacts on wells by minimizing groundwater withdrawal. A review of DWR's Well Completion Report Map Application indicates that wells in the vicinity of Liberty Packing, on average, draw groundwater from deeper portions of the aquifer that should not be affected by project construction. However, if one or more of Liberty Packing's wells and/or associated surface equipment is located within the permanent HSR right-of-way, the State would pay for the cost of the replacement well and ensure that a functioning replacement well has been provided and is fully operational before the existing well is abandoned.

2128-6319

Refer to Standard Response SJM-Response-ALT-1: Alternatives Selection and Evaluation Process, SJM-Response-ALT-2: Project-Specific Alternatives Considerations.

2128-6320

Refer to Standard Response SJM-Response-ALT-1: Alternatives Selection and Evaluation Process, SJM-Response-ALT-2: Project-Specific Alternatives Considerations.

2128-6321

Please see the response to submission SJM-1645, comment 2426 on the Draft EIR/EIS. The commenter's preferences for an elevated track, if the current alignment is selected, is noted. The submission did not provide the parcels or other specific geographic boundaries associated with the Liberty Packing's Santa Nella facility, so the extent of viaduct in relation to the facility could not be evaluated. However, as shown on Sheet TT-D1603 in Book 4B of Volume 3, Preliminary Engineering for Project Design Record, of the Draft EIR/EIS, HSR is on viaduct from Stations 4545+10 to 4618+00 in the vicinity of Liberty Packing's Santa Nella facility. The Authority would implement SOCIO-IAMF#2 and SOCIO-IAMF#3 if property acquisition or displacements occur.

2128-6322

Please see the response to submission SJM-1645, comment 2427 on the Draft EIR/EIS. Section 3.12, Socioeconomics and Communities, of the Draft EIR/EIS discloses the residential, commercial/industrial businesses, agricultural, and community and public facility displacements that would result from construction of the project alternatives and provides information about relocation resources. Parcel-specific analysis would take place during the appraisal process before property acquisition, consistent with the Uniform Relocation Act, and businesses would be compensated at fair market value for the purchase of property and any related damages. Refer to the responses to comments 1645-2422 through 1645-2426 for additional detailed responses. No additional measures to avoid or minimize effects are warranted.

Submission 2130 (Fraser Shilling, University of California, Davis, June 9, 2021)

San Jose - Merced - RECORD #2130 DETAIL

Status : Unread
Record Date : 6/9/2021
Submission Date : 6/9/2021
Interest As : Business and/or Organization
First Name : Fraser
Last Name : Shilling
Attachments : 47563_Shilling_HSR_revsd_DEIR_Comment_Letter_62021.pdf (1 mb)

Stakeholder Comments/Issues :

Please find attached my comment letter for the revised DEIR for the San Jose to Merced segment of the HSR. The materials cited within the letter are available upon request as when I included them, the file size was too big to upload.

Fraser Shilling, PhD



UNIVERSITY OF CALIFORNIA, DAVIS

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• SANTA BARBARA • SANTA CRUZ

6/9/2021

Re: Revised DEIR/Suppl. DEIS Adequacy of new mitigations for sound and light pollution from HSR

Dear Responsible Parties and Others:

The letter below responds to the revised DEIR and supplemental DEIS ad Biological Resource Analysis addressing impacts of the High-Speed Rail (HSR) based upon its construction and operation. The comments relate to Revised Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement, Biological Resources Analysis found at <https://hsr.ca.gov/programs/environmental-planning/project-section-environmental-documents-tier-2/san-jose-to-merced-project-section-draft-environmental-impact-report-environmental-impact-statement/>.

I am co-director of the Road Ecology Center at UC Davis and have ~20 years' experience in field and geographic information system analysis and modeling related to wildlife connectivity and impacts of human actions on connectivity. I have attached my updated curriculum vitae (Appendix B) which provides more detail about my expertise. My research center is the oldest and one of the largest research centers specializing in studies of how transportation systems impact ecosystems, including wildlife, aquatic systems, shorelines, and human communities. I am also Lead Organizer of the International Conference on Ecology and Transportation, the last conference of which was in Sacramento (2019) and featured HSR Chief Executive Officer Brian Kelly as one of our plenary speakers. I am member of the Standing Committee on Environmental Analysis and Ecology (AEP70) of the Transportation Research Board (National Academies of Science Engineering and Medicine), a national body that provides guidance on how to study and resolve animal-vehicle conflicts, such as between wildlife and trains. I am therefore expert in the areas I comment on below, including carrying out field and computational research on noise and light impacts, impacts of infrastructure on wildlife connectivity, and mitigation of these impacts.

Sincerely,

Fraser Shilling, Ph.D.
Department of Environmental Science & Policy
University of California, Davis

1

Submission 2130 (Fraser Shilling, University of California, Davis, June 9, 2021) - Continued

fmshilling@ucdavis.edu; 530-219-3282

Summary of Comments

In a previous letter I addressed many of the impacts from noise and light on wildlife occupancy and movement and ways to mitigate these impacts. I have attached that letter to this comment letter for convenience and reference. I have additional comments below on the revised DEIR, especially findings about noise, light, and wildlife movement.

Additional Background and Literature Review

2130-6290

Large mammals may be attracted to rail alignments (Pollock and St Clair, 2020) which could lead to being struck by trains. In the case of the HRS, 8-foot chain links, especially with openings, are unlikely to thwart animals capable of climbing. Wildlife of various sizes may be hit by trains (Dasoler et al., 2020; Lukes`ova et al., 2021; Decker, 2021).

2130-6291

Anthropogenic noise and light, including from vehicles, acts differently in natural environments and must be measured and mitigated separately (Buxton et al., 2020). These differences between light and noise and between adjacent areas may be very localized, with dark and quiet areas near noisy and bright areas. These differences may also be regional, depending on climatic, topographic and vegetation conditions. Because of these complexities, understanding and mitigating combined and noise light effects must be considered both separately AND together.

Revised DEIR Proposed Mitigation Actions

Table 3.7-2 Mitigation Measures for Impacts on Biological and Aquatic Resources by Alternative

	Alt 1	Alt 2	Alt 3	Alt 4
BIO-MM#76: Minimize Impacts on Wildlife Movement during Construction	X	X	X	X
BIO-MM#77a: Design Wildlife Crossings to Facilitate Wildlife Movement	X	X	X	X
BIO-MM#77b: Monitoring and Adaptive Management of Wildlife Crossings	X	X	X	X
BIO-MM#80: Minimize Permanent Intermittent Noise, Visual, and Train Strike Impacts on Wildlife Movement	X	X	X	X
BIO-MM#81: Minimize Permanent Intermittent Impacts on Terrestrial Species Wildlife Movement	X	X	X	X
BIO-MM#86: Provide Compensatory Mitigation for Impacts on Monarch Butterfly Habitat	X	X	X	X
BIO-MM#87: Conduct Pre-Construction Surveys and Implement Avoidance and Minimization Measure for Mountain Lion Dens	X	X	X	X
BIO-MM#88: Provide Compensatory Mitigation for Impacts on Mountain Lion Habitat	X	X	X	X
BIO-MM#89: Minimize the Impacts of Operational Lighting on Wildlife Species	X	X	X	X

2

Noise Impacts and Mitigation

Relevant sections of the revised DEIR considered in my comments are listed here in "quotes" and associated with specific comments, in **bold**.

DEIR 3.7-6 – 7 "The additional noise analysis in Appendix 3.7-E indicates that along much of the alignment, noise exposures from the project would be reduced due to masking effects. Masking effects would occur in areas where a competing noise source (vehicular traffic, usually associated with a major highway or an urban core area) would mask the noise of the HSR trains. As noted in Appendix 3.7-E, the entire project extent located north of Station B665+00 is located in the San Jose urban area, with numerous arterial roads that support traffic much of the day, and the alignment is also collocated with Caltrain and freight rail traffic. Therefore, noise generated by HSR would be masked on both sides of the project alignment through much of the day. Southwards, to approximately Station B1025+00, the project is still collocated with Caltrain and freight rail. Immediately to the east is arterial traffic on Monterey Road, and approximately 1 mile farther east is U.S. Highway 101, a major freeway. Thus, noise impacts are partially masked between the alignment and Coyote Creek and are substantially masked east of U.S. Highway 101; however, there are few and minor masking features west of the alignment, except that some topographic masking would occur in areas west of the valley floor. Continuing south, urban area masking would occur through the cities of Morgan Hill and Gilroy, down to Station B1730+00 where the rail alignment intersects

U.S. Highway 101. South of there, however, the line turns east and transits open agricultural lands across the valley floor to about Station B2250+00; throughout this area, there are no major sources of masking noise on the landscape. Eastward to Station B2350+00, the alignment crosses SR 152, then passes through a tunnel, and then crosses SR 152 again. The busy highway would provide some masking effect to reduce noise effects in the hills north of SR 152, while the tunnel would mask all train noise. From Station B2350+00 to B3330+00, the alignment would follow the valley of Pacheco Creek. Throughout this area, SR 152 is never more than 0.5 mile north of the alignment, and it would provide substantial masking in that direction. To the south, however, there are no sources of masking noise, except that some topographic masking would occur in areas on the slopes west of Pacheco Peak. From Station B3330+00 to Station B4030+00, the alignment is in a tunnel, and noise effects on wildlife would not be a concern. East from there to Volta, Station B4630+00, the alignment traverses rural and agricultural lands with little masking except locally where the alignment crosses I-5 at nearly a perpendicular angle. From Volta to the project's eastern limit at Station B5330+00, however, the alignment traverses agricultural and wildlife lands on the south side of Henry Miller Road, a moderately

3

Submission 2130 (Fraser Shilling, University of California, Davis, June 9, 2021) - Continued

busy arterial, which provides some masking for lands north of the alignment but no masking for lands south of the alignment. Additional information regarding existing conditions and the noise analysis is located in Appendix 3.7-E.”

DEIR 3.7-13 “The Authority has incorporated BIO-IAMF#1, BIO-IAMF#3, BIO-IAMF#5, and BIO-IAMF#8 (described in Impact BIO#1) into project design to avoid and minimize impacts on wildlife movement. In addition, during construction, the contractor would minimize noise disturbance of wildlife by implementing such measures as construction of noise barriers, careful routing of truck traffic, construction of walled enclosures, scheduling noisy operations into the same period, and phased construction (NV-IAMF#1).”

2130-6292

Supplemental Impact Analysis: Noise

DEIR APP E 3.7-E-3 “A train moving past a given point would take 2.05 seconds to pass at a speed of 220 mph or 4.10 seconds at 110 mph; thus, maximum noise levels would be experienced for 5.8 minutes per day along parts of the alignment where trains were moving 220 mph or 11.6 minutes per day where trains were moving 110 mph. Train noise is also propagated forward and backward along the track, so lower noise levels would be experienced for longer durations.”

This cursory impact analysis and summation of noise (i.e., 5.8 minutes of excess noise) ignores the fact that the sensitive responders (wildlife) may incur long-term responses to noise beyond the immediate the occurrence of the noise.

2130-6293

DEIR APP E 3.7-E-3 “Along much of the alignment, noise exposures would be reduced due to masking effects or due to mitigation in the form of noise barriers. Masking is defined as reduced perception of one sound due to the introduction of another sound. In this case, noise produced by an HSR train may be masked by the presence of another, louder noise source such as a highway or non-HSR railway. These factors are difficult to quantify. Masking effects would occur in areas where a competing noise source (vehicular traffic, usually associated with a major highway or an urban core area) would mask the noise of the HSR trains. Masking effects would be variable due to variation in the noise level produced by the masking source, as well as variation in the HSR noise levels. In general, though, the times of day with heavy HSR traffic coincide with the times of day having heavy vehicular traffic, and light HSR traffic tends to

4

2130-6293

coincide with light vehicular traffic. Thus, masking would reduce the effects of HSR noise during the hours of peak activity, while having relatively little effect on HSR noise during the late night and early morning hours of minimum traffic.”

There is no evidence cited, nor is there any possible physical way that nearby or distant traffic or urban noise could mask train noise when train noise is far louder than road, highway, or urban noise (as cited in DEIR APP E). This is akin to saying that while standing near an airport runway, car traffic on a nearby road would mask the sound of an airplane passing overhead or taking off. Sound masking is possible if the “background noise” complements the disturbing noise and either cancels it out through wavelength interference (e.g., sound-canceling headphones) or through perception interference (e.g., peoples’ voices lost in background noise). It’s not reasonable to suppose that randomly sourced traffic and urban noises will match and reduce the perceived intensity of train noise to wildlife.

2130-6294

DEIR APP E 3.7-E-4 “The Draft EIR/EIS proposed mitigation features to reduce noise impacts on humans and birds. These features in most locations consist of noise barriers, approximately 14 to 17 feet high, erected on both sides of the alignment. These noise barriers would attenuate noise by an average of 10 dBA for an observer located 100 feet from the alignment, with greater effect at lesser distances and reduced effect at greater distances. At greater distances, the attenuation effect is reduced due to reflection and refraction effects on sound waves emerging from between the barrier walls. Noise barriers are proposed in areas having sensitive human receptors (in accordance with the analysis in Section 3.4, Noise and Vibration, of the Draft EIR/EIS) and within the Pajaro River and Grasslands Ecological Area IBAs (as specified in Section 3.7, BIO-MM#80, Minimize Permanent Intermittent Noise, Visual, and Train Strike Impacts on Wildlife Movement, of the Draft EIR/EIS). Noise barriers protecting sensitive human receptors are predominantly located in urban areas, where they offer little benefit for wildlife. The locations of noise barriers proposed to protect wildlife, however, are listed in Table 2. In these areas, the noise exposure distances shown in Table 1 would be reduced by approximately two-thirds, with a smaller reduction (approximately one-third) for distances greater than about 5,000 feet.”

As I stated in my previous letter, the benefit of noise-attenuation structures would be limited and as proposed would still result in a “noise-wall” across the Diablo Range, separating wildlife along the alignment. In addition, although this paragraph states that Table 2 will list locations of noise barriers, this not apparent in the Table, making an evaluation of their likely effectiveness impossible.

[FROM SHILLING COMMENT LETTER, 6/2020] “There are two problems with this approach: 1) the walls would inhibit wildlife movement for the entire length of the walled area,

5

Submission 2130 (Fraser Shilling, University of California, Davis, June 9, 2021) - Continued

2130-6294

preventing their crossing at-grade, even when no trains were present; and 2) It is very difficult to build sound walls that have a true noise attenuation of 10 dBA for more than a few hundred yards beyond the wall footprint. This is because sound diffracts around any barrier due to its waveform characteristics, can reflect from non-absorbent walls, and be transmitted through the wall itself, or through the ground as low-frequency vibration (Kerby, 1973). Even if the noise wall were a perfect barrier reducing sound intensity by 10 dBA the effect of this reduction on the impact area would be minimal. Instead of 65 dBA and 55 dBA train noise extending 600 and 200 meters, respectively from the alignment, the distance would be 400 m and 1,200 m (Figure 5). The final return to background/no disturbance would be 4,000 m instead of 6,200 m. Even these reduced distances mean that wildlife would be faced with highly disturbing noise levels if they attempted to approach the alignment. If they remained averse to approaching the HSR alignment, then the fragmentation and isolation impacts on wildlife populations would continue and remain un-mitigated.”

DEIR 3.7-E-2 Table 1 Modeled Unshielded Distance to Lmax Noise Contour for a Train Moving at 220 mph

L _{max}	Rail Alignment Type	
	Aerial (feet)	Embankment (feet)
93 dBA	93	138
87 dBA	278	320
81 dBA	555	760
75 dBA	1,100	1,580
69 dBA	2,200	3,180
63 dBA	4,400	6,350
57 dBA	8,800	12,700
51 dBA	17,600	25,400
45 dBA	35,200	50,800
39 dBA	70,400	101,600

dBA = A-weighted decibel

2130-6295

DEIR 3.7-E-4 “At greater distances, the attenuation effect is reduced due to reflection and refraction effects on sound waves emerging from between the barrier walls... The locations of noise barriers proposed to protect wildlife, however, are listed in Table 2. In these areas, the

2130-6295

noise exposure distances shown in Table 1 would be reduced by approximately two-thirds, with a smaller reduction (approximately one-third) for distances greater than about 5,000 feet.”

The two statements in this paragraph contradict each other and point to a fundamental weakness in the proposed mitigation for noise impacts on wildlife through the Pacheco Pass and Coyote Valley – that the noise barriers will only reduce noise for the immediately adjacent habitat and that excess noise will still propagate into habitat further away. For example, L_{max} of 63 – 69 dBA will propagate 2,200 – 4,400 feet beyond the alignment. We have demonstrated that these noise levels will deter bobcat or occupying an area (Shilling et al, 2018) and are higher than thresholds proposed by Dooling and Popper (2008) for occupancy by most wildlife. The topography through the Pacheco Pass area means that there will be large areas exposed through direct line of sight ABOVE the noise barriers (i.e., on adjacent hillsides) to noise levels >65 dBA. The absence in the DEIR from 2020 or the supplement in 2021 of an accurate noise model representing noise conditions on the wildlife habitat landscape mean that it is not possible to accurately assess the likely noise impacts. This is despite this modeling approach being commonly available and used in transportation planning and assessment (e.g., FHWA Traffic Noise Model 3.0).

2130-6296

DEIR 3.7-E-11 (Kit Fox Noise Mitigation) “Noise barriers at crossing structures would be most beneficial if located on both sides of the track and extending at least 550 feet in each direction from the crossing if the crossing is beneath a viaduct”

The proposed noise mitigation for kit fox crossing structures assumes that train noise passing over the viaduct would be attenuated sufficiently and that the viaduct itself would not transmit noise to the inside of the crossing structure, within the viaduct. Also, although the wording is vague, it sounds like the noise barriers would extend from the end of the viaduct outward, leaving the landscape adjacent to the viaduct exposed to train noise (because of the absence of barriers on the viaduct itself). In either case, as discussed elsewhere in this letter, even if noise levels are reduced by 10 dBA in the lands immediately outside the wall, this leaves two fundamental and mitigated problems: 1) that noise levels outside the limited effective range of the barriers would still exceed thresholds for sensitive wildlife and 2) that noise levels immediately on the other side of the barriers and adjacent to crossing structure openings would be >80 dBA, which is very loud for any wildlife (Dooling and Popper 2007; Francis and Barber, 2013).

2130-6297

DEIR 3.7-E-12 (Mitigation of noise impacts to mountain lions) “The addition of noise barriers would reduce impacts on mountain lion by facilitating movements across the rail alignment and by reducing the extent and severity of impacts on mountain lion foraging behavior....” [and remainder of paragraph]

Submission 2130 (Fraser Shilling, University of California, Davis, June 9, 2021) - Continued

2130-6297

The term reduce is used accurately here, but the reduction would not be sufficient to reduce noise in adjacent habitat and most critically at crossing structures to levels low enough to facilitate mountain lion movement. The failure of noise OR light mitigation for mountain lion movement means that populations will be separated that are currently not separated and that the northern (Diablo Range) population will become genetically isolated from other populations to the south and west.

Noise and Vibration Mitigation

2130-6298

NV-IAMF#1: Noise and Vibration (San Jose to Merced Project Section Draft EIR/EIS, APP 2-E-28)

“Prior to Construction, the Contractor shall prepare and submit to the Authority a noise and vibration technical memorandum documenting how the FTA and FRA guidelines for minimizing construction noise and vibration impacts would be employed when work is being conducted within 1,000 feet of sensitive receptors. Typical construction practices contained in the FTA and FRA guidelines for minimizing construction noise and vibration impacts include the following:

- Construct noise barriers, such as temporary walls or piles on excavated material, between noisy activities and noise sensitive resources.
- Route truck traffic away from residential streets, when possible.
- Construct walled enclosures around especially noisy activities or around clusters or noise equipment.
- Combine noisy operations so that they occur in the same period.
- Phase demolition, earthmoving, and ground impacting operations so as not to occur in the same time period.
- Avoid impact pile driving where possible in vibration sensitive areas.”

None of these mitigations will be sufficient or contribute appreciably to offsetting/mitigating for the various noise impacts on wildlife occurrence and movement through the alignment.

Light Impacts and Mitigation

Light

2130-6299

DEIR 3.7-7 “The artificial lighting analysis in Appendix 3.7-F provides background on ALAN, which is defined for the proposed project as all exterior artificial light sources used during

2130-6299

construction and operations to light the site, as well as vehicle-mounted lighting. The additional analysis of lighting impacts in Appendix 3.7-F indicates that the region generally has a high level of existing light exposure from San Jose to the southern outskirts of Gilroy (with appreciably lower levels in the Coyote Valley area). South and east of Gilroy, ALAN levels are generally low throughout most of the remaining alignment. The analysis focuses on three forms of project-related ALAN: continuous lighting directed onto the project site that is visible to wildlife located outside the project site, intermittent lighting from vehicle or train headlights that is directed toward wildlife habitat, and lighting from all project sources that contributes to skyglow. No research appears to have assessed the effects of light from high speed trains in other countries or locations.”

This paragraph indicates a basic misunderstanding or misinterpretation of available light intensity data for regional analyses such as that for this HSR segment. There are very dark areas along the alignment through the Pacheco Pass area and through portions of Coyote Valley (Figure 1). The train headlight brightness will be similar to night-time urban area brightness, seen here around urban areas. This the trains will bring levels of surface light intensity similar to the white areas seen in Figure 1 to areas that have heretofore been dark.

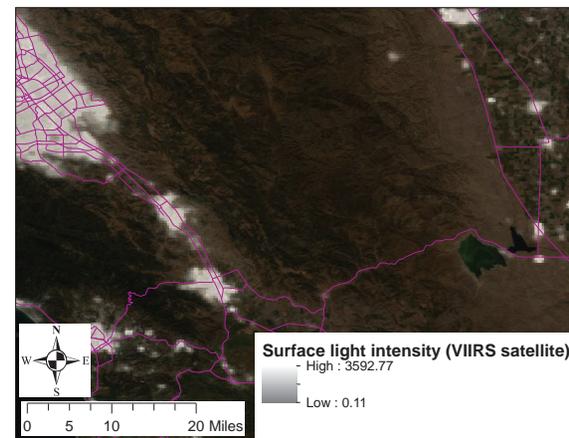


Figure 1. Ground surface light intensity as measured by satellite Visible Infrared Imaging Radiometer Suite (VIIRS) Day/Night Band (DNB) (Cao and Bai, 2014; Elvidge et al., 2017)

Submission 2130 (Fraser Shilling, University of California, Davis, June 9, 2021) - Continued

2130-6300

DEIR APP F 3.7-F-9 “Exposures would be brief but could potentially last for periods of minutes in the case of construction lighting and up to 10 seconds in the case of operational train lighting. These exposures would be minimized due to the installation of noise/light barriers at critical wildlife crossings in Coyote Valley and Pacheco Pass; thus, effects on mountain lion passage corridors would be minor. Elsewhere, areas affected at each exposure to intermittent lighting would be on the order of up to 9,716 m² (2.4 acres). Exposure to intermittent light has been found to potentially affect melatonin metabolism and to elicit avoidance responses, as discussed in Section 1.3.2, Intermittent Lighting Effects, although no literature has been found addressing intermittent light effects on mountain lion or, indeed, upon any large mammals. Nonetheless, there is a clear potential for adverse behavioral and physiological effects resulting from intermittent light exposure from both construction and operations sources.”

The statement glosses over the fact that the 2.4 acre estimate (underlined would be IF the lighting variance was granted and represents the instantaneous lit area. In other words, it is a moving window of illumination covering 2.4 acres, but moving along the alignment. Assuming the window was 1000 meters wide (no dimensions are given in the DEIR), then the area illuminated by each train would be ~98 km (San Jose to I-5) times 1,000 m, which equals 98 km² of light-disturbed area, most of which is wildlife habitat. There is speculation that there is no evidence of effects of intermittent light on large mammal behavior. Shilling et al. (2018) shows that intermittent traffic disturbance (which includes noise and light) cause greater behavioral change in wildlife than continuous disturbance or no disturbance.

2130-6301

DEIR APP F 3.7-F-9 (San Joaquin Kit Fox) “Within this area, effects could occur, except that nighttime construction would not occur in this area, and operational lighting would be hidden at locations with noise/light barrier walls; these walls are located at a critical wildlife crossing east of Pacheco Pass and would serve to minimize effects on kit fox movement corridors. Continuous sources of operations lighting would minimize lighting of modeled habitat and thus have little potential to affect kit fox. Intermittent sources of operations lighting would at times be directed toward modeled habitat. Exposures would be brief, lasting up to 10 seconds in the case of operational train lighting. Areas affected at each exposure would be on the order of up to 9,716 m² (2.4 acres). Exposure to intermittent light has been found to potentially affect melatonin metabolism and to elicit avoidance responses, as discussed in Section 1.3.2, although no literature has been found addressing intermittent light effects on kit fox or, indeed, upon any large mammals. Nonetheless, there is a clear potential for adverse behavioral and physiological effects resulting from intermittent light exposure from both construction and operations sources.”

2130-6301

This section includes a similar under-representation of disturbed area (2.4 acres).

2130-6302

DEIR APP F 3.7-F-10 (Tule Elk)

“Because the project would minimize lighting of modeled habitat from continuous sources of construction lighting and operations lighting, this lighting would have little potential to affect Tule elk. Intermittent sources of both construction and operations lighting would at times be directed toward modeled habitat. Exposures would be brief but could potentially last for periods of minutes in the case of construction lighting and up to 10 seconds in the case of operational train lighting. Areas affected at each exposure would be on the order of up to 9,716 m² (2.4 acres). Exposure to intermittent light has been found to potentially affect melatonin metabolism and to elicit avoidance responses, as discussed in Section 1.3.2, although no literature has been found addressing intermittent light effects on Tule elk or, indeed, upon any large mammals. Nonetheless, there is a clear potential for adverse behavioral and physiological effects resulting from intermittent light exposure from both construction and operations sources.”

This section includes a similar under-representation of disturbed area (2.4 acres).

2130-6303

DEIR 3.7-F-12 (Mitigation of light) “The project incorporates BIO-IAMF#12 to minimize ALAN effects on wildlife by avoiding directing continuous light sources toward wildlife habitat, avoiding use of high-intensity lights to the extent allowable (the sole exception being train headlights, which are required to be of high intensity), minimizing directing light upward or laterally, and avoiding illumination of wildlife crossings or of streams or areas of riparian habitat.

In consideration of this IAMF and other relevant mitigation measures in the Draft EIR/EIS, lighting effects remain from the use of continuous lighting that may serve as an attractant to wildlife occupying nearby habitat, and the use of intermittent lighting associated with vehicles used for construction, maintenance, or operations.

There are five types of mitigation measures to address ALAN impacts (Gaston et al. 2012; Schroer and Holker 2017): (1) maintaining and creating dark areas; (2) reducing light trespass so as to direct ALAN where it is needed and to prevent it from being directed elsewhere; (3) reducing the intensity of ALAN; (4) reducing the duration of ALAN by switching off lighting sources when they are not needed; and (e) reducing biological impacts of ALAN by using illumination sources that provide sufficient human benefit while minimizing wavelengths having high biological activity. The first two of these measures have been addressed to the extent

Submission 2130 (Fraser Shilling, University of California, Davis, June 9, 2021) - Continued

2130-6303

feasible, using the measures named above. The following additional measures are recommended to further reduce lighting impacts within the areas identified in Table 1.

2130-6303

- **Minimize intensity and duration of construction lighting:** Design construction lighting to be consistent with the minimum lighting levels approved by OSHA for general construction—5 foot-candles (54 lux; 29 C.F.R. § 1926.56). When performing construction in or adjoining habitat for special-status species, notify wildlife agencies of planned activities and discuss means to minimize construction effects at the proposed site. To the extent feasible, minimize duration of lighting, for example by using methods other than lighting to ensure security of the construction site during the hours it is not in use.

- **Minimize intermittent construction lighting:** Minimize direction of construction vehicle headlights towards offsite locations. Use low beams or turn off headlights when safety considerations permit.

- **Minimize intensity and duration of operational lighting:** Provide operational facility outdoor lighting consistent with minimum OSHA requirements established by 29 C.F.R. Section 1926.56. To the extent feasible, minimize duration of lighting, for example by using methods other than lighting to ensure security of facilities during hours they are not in use.

- **Minimize intensity of train lighting:** Provide headlights consistent with the minimum standard allowed under 49 C.F.R. Section 229.125, that is a single-lamp headlight of at least 200,000 candelas. Off-axis performance of the headlight should likewise conform to regulatory minimum standards. Obtain an FRA variance to allow use of a single headlight except near at-grade crossings.

- **Minimize use of lighting at short wavelengths:** A variety of studies have shown that shorter (blue) wavelengths have deleterious effects on bats. These can be eliminated, particularly if LED lighting is used and intensities are minimized (Kerbiou et al. 2020; Lewanzik and Voight 2017). Lamps should have the lowest color temperature feasible for the desired application; green and red lighting appears to have the least wildlife impact and will be appropriate for some applications, such as security lighting (Longcore and Rich 2016). To the extent feasible, filter or specify all lamps to remove wavelengths shorter than 530 nanometers; this will avoid the wavelengths shown to cause melatonin disruption in humans and many other vertebrates (Kayumov et al. 2005).

- **Implement noise/visual barriers to shield view of the operational train at essential wildlife crossings.**

The proposed mitigations are either unknown (e.g., variance for headlighting) or speculative (e.g., light screening using noise barriers at wildlife crossing structures). Because of this, there is no way to assess the adequacy of the mitigations, either by consultant or

2130-6303

reviewer. Even given the proposed mitigations, these are inadequate to protect sensitive wildlife from disturbance, including special status species, which will inhibit their approach of the alignment and thus use of the wildlife crossing structures, the only mitigation proposed to wildlife connectivity and fragmentation.

2130-6304

Wildlife Movement and Mitigation

Mountain Lion

DEIR 3.7-4 “The CC-N subpopulation was found to have an effective population size of 17 (16.6) and an estimated total adult population of 33–66 individuals. The CC-C subpopulation has slightly higher estimates and was estimated to have an effective population size of 57 (56.6) and an estimated total adult population of 113–226; however, the petition notes this is still close to the lowest effective population size metric.”

DEIR 3.7-5 “Consequently, the petition notes that there is a high risk of inbreeding depression due to genetic isolation and high mortality rates, and habitat connectivity and habitat protection are needed to assure viable populations.”

DEIR 3.7-7 “CEQA Conclusion

The impact under CEQA would be significant for all four alternatives because the project could result in a substantial adverse effect, through both direct mortality or disturbance of individuals and habitat modification, on mountain lion. While actions would be implemented before and during construction to reduce the potential for direct harm to individuals and to minimize the loss of habitat, the project would result in a considerable loss and degradation of breeding and foraging and high-priority foraging and dispersal habitat; could result in injury or mortality of individuals in the construction footprint; and could cause noise- and vibration-related disturbance beyond the project footprint. These impacts could reduce the viability of local populations and contribute to the rangewide decline of this species. Mitigation measures to address this impact are identified in Section 3.7.10, CEQA Significance Conclusions. Section 3.7.8, Mitigation Measures, describes these measures in detail.”

DEIR 3.7-5 “The project extent crosses several wildlife corridors of regional importance. Although corridors occur in all subsections, those in the Santa Clara Valley (specifically, the Coyote Valley) and San Joaquin Valley (GEA) have been identified by the CDFW and local stakeholders as particularly important to wildlife movement and habitat connectivity at the regional and state scale.”

Submission 2130 (Fraser Shilling, University of California, Davis, June 9, 2021) - Continued

2130-6304

DEIR 3.7-6 “The WCA synthesized existing information, and quantitative GIS-based modeling methods were used to evaluate the changes in wildlife movement that would result from project construction. The methods used were adapted from similar analytic efforts conducted by other wildlife movement experts in the region (i.e., Penrod et al. 2013). The quantitative results of the analysis were evaluated using criteria to discern where permeability reductions would be likely to have an effect on the movement of focal species. Where moderate or high potential effects were identified, recommendations to facilitate wildlife movement were made in the WCA and were subsequently incorporated into the proposed project to the extent feasible.³ Recommendations included minimum and recommended crossing dimensions for mountain lion (and other species), as well as recommended design features and other measures to facilitate use by focal species.”

DEIR 3.7-12 “Because operations would potentially affect a wide array of wildlife taxa and because such impacts are primarily associated with wildlife moving across or near the project footprint, these impacts are collectively addressed in Section 3.7.7.7, Wildlife Movement.”

DEIR 3.7-12 “In addition to addressing impacts on known or mapped wildlife corridors, this analysis more broadly addresses impacts on wildlife movement throughout the project extent. Similarly, although the primary focus of the analysis concerns wildlife movement, some of the nonphysical impact mechanisms that can interfere with movement (e.g., noise, visual disturbance, lighting) pertain equally to disturbance of resident individuals or populations (e.g., breeding, nesting, and foraging waterbirds). Because mapped corridors and other undeveloped areas are more hospitable to wildlife, such areas are likelier than more developed areas to support wildlife movement as well as resident individuals and species. Accordingly, this analysis addresses these impacts for both resident and transient wildlife.”

The preceding quoted sections rely on the un-proven assertion that wildlife use “corridors” to move across landscapes, where the term implies a narrow and predictable pathway for movement. My previous letter addressed this point, including the conclusion supported in the literature that there is no evidence that any wildlife in the study area migrate at all, let alone on narrow and predictable pathways, including ungulates that migrate elsewhere in California (elk and mule deer). This hypothetical claim is not use of the “best science” because science involves testing hypotheses, not using them as fact. Considering that a large portion of the proposed mitigation is based on erroneous, or at least speculative assertions about wildlife movement, it is unlikely to be effective. Finally, it is not difficult to test the hypothetical corridors” for evidence that they are used and that mitigation involving them will be sufficient for listed and non-listed species impacted by the HSR alignment and trains.

14

2130-6305

DEIR 3.7-E-8 “It is also possible that noise may affect wildlife movement corridors by deterring mammalian wildlife from crossing the rail alignment.... Based on this evidence, it is clear that despite the presence of existing noise sources in the form of major highways, both common and sensitive wildlife do successfully use existing passage routes in the study area.”

The studies cited in this paragraph are unpublished, non-peer-reviewed reports and do not constitute evidence that wildlife may use crossing structures exposed to vehicle noise. In addition, highway noise and light is of much lower intensity than high-speed rail noise, with expected maximum noise levels of <80 dBA, compared to >90 dBA (10-times louder) for HSR trains. We found (Shilling et al., 2018) that highway traffic noise levels of ~70-75 dBA reduced wildlife species diversity by ~50% compared to background.

2130-6306

DEIR 3.7-E-10 “In Coyote Valley, train noise would be masked by Monterey Road and U.S. Highway 101 along the alignment north of Morgan Hill,”

As stated elsewhere in this letter, there is no evidence in the literature or presented in the DEIR that lower noise levels from roads and highways would mask the noise from passing HSR trains.

2130-6307

DEIR 3.7-E-10 “Tracking collar data for Tule elk in the study area (Hobbs 2017) indicate that their activity is mainly in the vicinity of San Luis Reservoir and that SR 152 constitutes a barrier to further movement northwards.”

An adult male elk was photographed in 2019 at the intersection of highways 84 and 680, well north of SR 152, suggesting that elk are able to move beyond the highway. Given traffic volumes on 152 (low to moderate) and the fact that elk have been hit on 152, there is no reason to think that 152 is a barrier preventing elk movement northward and no compelling evidence has been presented in the DEIR to lead to that conclusion.

2130-6308

DEIR 3.7-E-10 “all of the common carnivores and ungulates are distinguished by their tolerance for human activity. As detailed above in Section 3, Mammalian Wildlife Responses to Noise, existing studies of mammal use of crossings in Coyote Valley and upper Pacheco Creek have all documented frequent use of crossings at U.S. Highway 101 and SR 152 by common wildlife (Phillips et al. 2012; Pathways for Wildlife et al. 2016; Pathways for Wildlife 2020). These mammals are common because they are able to forage, evade predators, breed, and move about on the landscape despite the presence of human disturbances in the form of light, noise, and activity. Their primary vulnerability to humans is related to possible loss of habitat through conversion to other cover types, an impact that is not relevant to this analysis of noise effects. In summary, there would not be a considerable potential for operational noise to affect non-special-status mammals.”

15

Submission 2130 (Fraser Shilling, University of California, Davis, June 9, 2021) - Continued

2130-6308 | **The DEIR does not provide evidence, nor as there evidence in the published literature that train noise and light as would expected by the HSR vehicles would be tolerable to wildlife attempting to approach and cross the alignment surface, or through crossing structures. The unpublished reports cited are potential evidence of the occasional individual of a species using a crossing under a highway, which is a different (lower) level of disturbance than HSR. In addition, the standard for protection of non-listed wildlife is not that mitigation is successful if as few as one individual of a species benefits from the mitigation. Therefore there is considerable potential for operational noise to affect non-special-status species.**

2130-6309 | **IN THE SECTION BELOW, I ADDRESS EACH RELEVANT MITIGATION OPTION**
 BIO-MM#77a: Design Wildlife Crossings to Facilitate Wildlife Movement

“To the extent feasible, the Authority would design all wildlife crossings created specifically for terrestrial species consistent with the guidelines and recommendations in the WCA (Authority 2020a: Appendix C). The guidelines and recommendations include the following features:

- Under Alternatives 1 and 3 and for those wildlife crossing entrances on the east side of Monterey Road under Alternatives 2 and 4, install wildlife funnel fencing for the maximum feasible distance from each side of the crossing entrance/exit. Funnel fencing would be designed to benefit the greatest number of movement guilds feasible.

There is no evidence that fencing adjacent to crossing structures have any funneling effect and there is evidence that wildlife will walk “the wrong way” away from the crossing and toward the fence end.

2130-6310 | • Wildlife crossing width and height would be maximized and length minimized to the extent feasible

This is a critical aspect of structure effectiveness and dimensions must meet openness requirements for a crossing to be effective.

- 2130-6311 |
- Native earthen bottom
 - Avoid metal walls
 - Unobstructed entrances (e.g., no riprap, energy dissipaters, grates), although vegetative cover, adjacent to and near the entrances of crossings, is permissible
 - Openness and a clear line of sight from end to end

2130-6311 | • Design entrances to minimize light reflection from train lights

This is critical as sudden appearance of bright light will deter all wildlife discussed here.

- 2130-6312 |
- Cover materials within the crossing such as rock or brush piles where smaller animals can take cover
 - Year-round absence of water for a portion of the width of the crossing (i.e., no flowing water)
 - Where water is likely to be present within a crossing as a result of a high groundwater table or proximity to an existing floodplain, wildlife crossing design would include features to minimize water entry into the crossing (e.g., impermeable groundwater barriers, berms) and to maximize drainage and drying time (e.g., slopes, sump pumps or permeable soils)
 - Where hydrologic flow balancing features (culverts) provide wildlife connectivity, “shelves” would be constructed, where feasible, to allow small and medium animals to pass through the structure when it is flooded
 - Slight grade at approaches to prevent flooding
 - Hydrologic designs (ledges, cross slopes, water detention features, infiltration features, water proofing, or other features) to maintain crossing functionality (a dry crossing path) up to and including 100-year storm events for 95 percent of the year (347 days)
 - Limited open space distance and absence of permanent physical obstacles between crossing and cover/habitat
 - Separation from human use areas (e.g., trails, multiuse undercrossings, development)
 - Avoidance of artificial light at approaches to wildlife crossings
 - The addition of wildlife fencing to funnel wildlife to crossing structures

No evidence in scientific literature that associated fencing has a “funneling effect.”

- 2130-6313 |
- Consideration of habitat modification and/or habitat restoration at crossings to facilitate cover for crossing animals
 - To mitigate impenetrable barriers caused by construction of concrete vehicle barriers beneath viaducts in the Monterey Corridor and Morgan Hill and Gilroy Subsections (Alternatives 1 and 3), install Type L Concrete Barrier Wildlife Passageways at stations 718, 735, 755, 846, and 875

There is no evidence in the scientific, peer-reviewed literature that wildlife crossing structures are sufficient to mitigate for population and genetic fragmentation by high-speed rail, or similar high-intensity infrastructure. There is evidence that structures in loud

Submission 2130 (Fraser Shilling, University of California, Davis, June 9, 2021) - Continued

2130-6313

and bright conditions will not pass wildlife. There is no evidence in the scientific literature that placement of crossing structures according to hypothetical “corridors” will result in wildlife use, or mitigate impacts of high-intensity infrastructure. There is evidence that GIS-modeled “corridors” and “linkages” do not predict wildlife occurrence and movement. Because of this, there is no way to determine of wildlife crossings placed according to modeled habitat or “corridors” will be used by target species.

Citations

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18

Curriculum Vitae

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RESEARCH INTERESTS

Mr. Shilling’s current work focuses on three research areas: landscape and transportation ecology, indicators of ecosystem performance, and wildlife ecology. He collaborates with social scientists, natural scientists, and humanities professors in inter-disciplinary investigations of land-use, water policy, and transportation policy implications. Mr. Shilling is co-Director of the UC Davis Road Ecology Center and the China-US Land Ecology Center and a research scientist in the Department of Environmental Science and Policy. He practices at the interface between science and policy, requiring that he collaborate and interact with regulatory agencies, resource management agencies, community organizations, and academics of many disciplines

EDUCATION

Ph.D. in Biological Sciences, University of Southern California, 1991
 B.Sc. in Biological Sciences, University of Southern California, 1986

PROFESSIONAL RESEARCH EXPERIENCE

- | | |
|--------------|--|
| 2017-present | Co-Director, China-US Land Ecology Center, UC Davis |
| 2015-present | Academic Coordinator II, Department of Environmental Science and Policy |
| 2004-present | Co-Director, UC Davis Road Ecology Center |
| 2000-2014 | Staff Researcher, Department of Environmental Science and Policy |
| 1998-2000 | Research Coordinator, Sierra Nevada Network for Education and Research, UC Center for Water and Wildlands Resources |
| 1995-1998 | Postdoctoral Fellow, Division of Biological Sciences and the Institute of Theoretical Dynamics, University of California, Davis (NIH and ITD-funded) |
| 1991-1994 | Postdoctoral Fellow, University of Connecticut (NIH-funded) |

SUPERVISORY AND TEACHING EXPERIENCE

- | | |
|-----------------|--|
| Course Director | <p>“General Ecology” (4-unit undergraduate class) at the Thai Nguyen University for Agriculture and Forestry, Vietnam, Fall, 2013. “Social Surveying Methods” (2 & 4-unit graduate course), for CRD and GGG methods credit, UC Davis, Spring, 2011. “Improving Community and Landscape Connectivity” (2-unit graduate seminar), Transportation Studies Program, UC Davis, Fall, 2009. “Road Ecology: Road Effect Zone” (2-unit graduate seminar), Transportation Studies Program, UC Davis, Winter, 2008. “Road Ecology” (4-unit graduate course),</p> |
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19

Submission 2130 (Fraser Shilling, University of California, Davis, June 9, 2021) - Continued

Transportation Studies Program, UC Davis, Spring, 2007. "Modeling Reserve Design" (2-unit graduate seminar) Department of Environmental Science and Policy, UC Davis, 1995-96.

Guest Lecturer "California Indian Environmental Policy II" (NAS 162), UC Davis, 2014; "Water Policy", UC Davis, 2005, 2006, 2007, 2008, 2010.

Scientific Leadership Lead Organizer for the International Conference on Ecology and Transportation, (2019 & 2021). Co-Organizer of the Global Congress on Linear Infrastructure and Environment. Coordinated the 3rd California Connectivity Forum (2012). Designed and co-coordinated the California Sustainability Indicators Symposium (2011) in Sacramento and Los Angeles. Designed and coordinated the 2nd California Connectivity Forum (2010). Co-designed and coordinated the Best Science in Connectivity Workshop sponsored by the Wildlife Conservation Society (2009). Co-designed and coordinated the California Connectivity Forum (2008). Designed and directed 3 Road Ecology Center workshops on road effects; integrated land-use, conservation, and transportation planning; and habitat connectivity. Designed and conducted a 2-day workshop for Washington Department of Natural Resources on Developing Decision-Support Systems for Forested Landscapes. Designed and directed 5 regional workshops on watershed assessment throughout California (2004-2006). Organized California's first Road Ecology Conference (1999).

ACADEMIC COMMUNITY AND PUBLIC SERVICE

Journal Editor: Korean Journal of Civil Engineering (former Associate Editor)

Journal Reviewer: Ecological Indicators, Landscape Ecology, Conservation Biology, Biological Conservation, Environmental Management, Landscape and Urban Planning, Transportation Research Record, Ecoscience, Environmental Modeling and Software, Ecological Engineering, Land Degradation and Development, Environmental Science and Pollution Research, Open Urban Studies and Demography Journal, Biological Bulletin (past reviewer), Developmental Biology (past reviewer)

Transportation Research Board: Co-chair TRB Animal Vehicle Collision Subcommittee (ANB20-2, current); member TRB Ecology and Transportation Committee (ADC30, current); Strategic Highway Research Program 2: Expert Task Group (2007-2009); member TRB Sustainable Transportation Indicators Subcommittee (current).

Federal Highways Administration: Eco-Logical Champion, providing on-call technical assistance to state DOTs and MPOs (2014-present)

IENE 2016: Member of Programme Committee

Review Panelist: Water Research Foundation (2015-16)

CALFED: Member of Watershed Program Sub-Committee (2002-2006)

City of Davis Open Space Commission: Member (2000-2003) and Chair (2000-2002)

University of California, Davis: Diversity Award (1996)

American Society of Zoologists/Society for Integrative & Comparative Biology: Conservation Chair (1992-1997)

20

ENVIRONMENTAL SCIENCE & POLICY PUBLICATIONS

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21

Submission 2130 (Fraser Shilling, University of California, Davis, June 9, 2021) - Continued

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Submission 2130 (Fraser Shilling, University of California, Davis, June 9, 2021) - Continued

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Submission 2130 (Fraser Shilling, University of California, Davis, June 9, 2021) - Continued

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CONFERENCE and INVITED PRESENTATIONS

Dr. Shilling has prepared and delivered presentations at conferences of the: American Planning Association, American Society of Limnology and Oceanography, American Society of Zoologists/Society for Integrative and Comparative Biology, American Society for Cell Biology, Gordon Conferences, Ecological Society of America, International Conference on Ecology and Transportation, Transportation Research Board, Infra Eco-Network Europe, Life Strade Project (Italy), National Congress of American Indians, National Water Quality Monitoring Council, Bay-Delta Science Conference, Marine Biological Laboratory, The Wildlife Society, Sierra Nevada Alliance, California Aquatic Bioassessment Workgroup, Great Valley Center, California Rangeland Coalition, Salmon Restoration Federation, California Association of Resource Conservation Districts, Korea Institute for Construction Technology, and other regional symposia, conferences, and workshops.

Response to Submission 2130 (Fraser Shilling, University of California, Davis, June 9, 2021)

2130-6290

Train strike risks to wildlife are assessed in Draft EIR/EIS Section 3.7, Biological and Aquatic Resources, Impact BIO#48, which details the extent to which the chain-link fence might not avoid this impact. Impacts would be significant, and mitigation measures are required.

2130-6291

The commenter asserts that noise and light effects should be considered both separately and together. These impacts are discussed and addressed in the Draft EIR/EIS and in the Revised/Supplemental Draft EIR/EIS Section 3.7, Biological and Aquatic Resources, Impacts BIO#44 (noise) and BIO#47 (light). See also Standard Responses SJM-Response-BIO-5: Lighting Impacts on Wildlife and SJM-Response-BIO-6: Noise Impacts on Wildlife. While these effects are largely considered separately in the EIR/EIS because of the factors noted by the commenter, the Authority notes that mitigation is considered in the context of multiple effects. For example, BIO-MM#80 in the Revised/Supplemental Draft EIR/EIS includes new measures to construct noise/visual barriers. These barriers serve a dual purpose, reducing the propagation of noise on the landscape, as well as reducing the amount of light and associated visual disturbances into the surrounding landscape.

2130-6292

Commenter states that wildlife “may incur long-term responses to noise beyond the immediate the occurrence of the noise.” Section 4 of the Revised/Supplemental Draft EIR/EIS Appendix 3.7-E, Supplemental Noise Analysis on Terrestrial Wildlife Species, addresses noise impacts on 11 special-status mammal species, as well as an evaluation of impacts on non-special-status terrestrial mammals.

2130-6293

The commenter provides assertions regarding the masking effects of nearby noise sources. The Authority notes that masking is physical fact. A louder noise (in this case, a nearby freeway) largely masks a quieter noise (in this case, a distant train). Commenter is referred to basic texts on decibel addition (e.g., Engineering ToolBox 2003). Commenter’s example, citing a person next to an airport who cannot hear a distant freeway, reverses the situation described in the cited text.

2130-6294

Refer to Standard Response SJM-Response-BIO-6: Noise Impacts on Wildlife.

The comment asserts the benefit of noise barriers would be limited, the location of the barriers is not clear, and the barriers would inhibit wildlife movement even when no trains were present. The comment references a prior comment letter on these topics. The commenter’s detailed assertions regarding noise attenuation appear to state that because noise barriers are not effective at reducing noise levels to zero, they will have no mitigating effect. The Authority disagrees; the noise barriers would be effective at reducing the peak noise to which wildlife are exposed, especially at crossing structures, and thereby reduce behavioral disruption that may result from noise exposure. The analysis in Appendix 3.7-E, Supplemental Noise Analysis on Terrestrial Wildlife Species, of the Revised/Supplemental Draft EIR/EIS does not conclude that the proposed noise barriers would eliminate acoustic impacts but that the mitigation provided in the EIR/EIS would reduce noise impacts to a less-than-significant level. For the precise locations of noise barriers, please refer to Appendix 3.7-E, Table 2, columns labeled “Station Start” and “Station End” and to BIO-MM#80 in the Revised/Supplemental Draft EIR/EIS. With regard to the comment that noise barriers inhibit wildlife movement, please refer to Standard Response: SJM-Response-BIO-6: Noise Impacts on Wildlife. Additionally, the Authority notes that noise walls proposed within the Diablo Range, as noted by commenter, would be located on viaduct structures and thus would not be located at ground level and would not inhibit terrestrial wildlife movement.

Response to Submission 2130 (Fraser Shilling, University of California, Davis, June 9, 2021) - Continued

2130-6295

The Authority disagrees that the quoted language from Appendix 3.7-E, Supplemental Noise Analysis on Terrestrial Wildlife Species, of the Revised/Supplemental Draft EIR/EIS includes contradictory statements. In fact, the statements in Appendix 3.7-E are consistent; the first statement is that noise attenuation by a barrier is reduced with increasing distance from the barrier, and the second provides some quantification, indicating that the reduced effect is likely at distances of more than approximately 5,000 feet. The commenter references “Shilling et al.2018,” which is a 2020 report by the commenter cited in the Revised/Supplemental Draft EIR/EIS. It appears that commenter’s reference to bobcat avoidance is a reference to Figure 16 in that report, which indicates that bobcats were not recorded at crossing structures when noise levels exceeded approximately 67 dBA. As noted by commenter (submission SJM-2130, comment 6292), such noise levels would be exceeded for only a few minutes per day. Commenter states that large areas would be exposed through line of sight above noise barriers. In response to this comment, this has been evaluated further by the Authority. There are modeling complexities such that it is uncertain how large an area would be exposed to noise levels above a given value. However, it is apparent that exposures to the north of the noise barrier proposed in the Pacheco Pass area would occur at distances of more than 0.25 mile from the barrier, and only a small area of oak woodland to the south of the noise barrier would be affected at shorter distances. The low-lying riparian corridors of principal utility to animal movement would not be exposed through line of sight above the barrier, and associated impacts from this effect would be minor, especially when considering the brief exposure times. Lastly, the commenter’s reference to FHWA traffic noise models is noted. Such a model, designed for automotive traffic, is not considered appropriate for this application due to numerous differences in the source, amplitude, and duration of noise compared to HSR trains. The Authority notes that the FHWA traffic noise model was not used for the analysis in the Revised/Supplemental Draft EIR/EIS. Please see the Revised/Supplemental Draft EIR/EIS Appendix 3.7-E for discussion of the acoustic modeling used..

2130-6296

Commenter asserts that noise levels outside the noise barriers would exceed thresholds for sensitive wildlife and that noise levels immediately outside the barriers and adjacent to crossing structure openings would exceed 80 dBA. It is not clear what thresholds for sensitive wildlife the commenter is referring to. The topic of how noise may elicit behavioral responses in wildlife is discussed in the Revised/Supplemental Draft EIR/EIS, Appendix 3.7-E, Supplemental Noise Analysis on Terrestrial Wildlife Species. Appendix 3.7-E explains that mammalian wildlife response to noise generally cannot be described in quantitative terms and must be inferred from published studies that consider different noise sources, different animals, and different locations compared to those that occur in the study area. The analysis in the Draft EIR/EIS and Revised/Supplemental Draft EIR/EIS applied a significance threshold for purpose of CEQA noise impacts based on whether the project noise would either (1) have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service or (2) interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.

The Authority believes the commenter has misinterpreted the design of the wildlife crossing structure. No culvert, tunnel, fence, or other crossing structure would be installed at locations where the rail line is on viaduct. All terrestrial wildlife evaluated, including kit fox, can readily pass beneath the alignment in areas where it is on viaduct. All viaducts are designed with at least 15 feet of clearance and are often much higher than this. The purpose of a noise barrier in certain locations is to reduce the noise exposure of animals that pass beneath the viaduct in those locations. Barriers would be incorporated in viaduct construction at locations where modeling has indicated a high probability of kit fox movement, thereby mitigating noise exposure at high value locations.

Response to Submission 2130 (Fraser Shilling, University of California, Davis, June 9, 2021) - Continued

2130-6297

Refer to Standard Response SJM-Response-BIO-8: Impact on Wildlife Movement in the Western Pacheco Pass Region.

Commenter states that the noise mitigation would not be sufficient to reduce noise in adjacent habitat and at crossing structures to levels low enough to facilitate mountain lion movement and that populations would become genetically isolated. However, Mitigation Measures BIO-MM#77a, BIO-MM#77b, BIO-MM#78, and BIO-MM#79 are intended to facilitate wildlife passage, including passage by mountain lions, by facilitating transits through areas where lions are already known to cross existing rail and automotive corridors. Commenter's assertions about the adequacy and effectiveness of project design and mitigation to address impacts of noise at wildlife crossing structures are addressed in the responses to submission SJM-2130, comments 6292, 6294, 6295, and 6296. Mitigation Measure BIO-MM#77a further contains provisions to avoid artificial light at wildlife crossings. Commenter provides no evidence that these mitigation measures would be unsuccessful.

Regarding the commenter's notes regarding the facilitation of continued gene flow between mountain lion populations, additional mitigation has been included in BIO-MM#79b in the Final EIR/EIS to address this concern, as explained in the standard response referenced above.

2130-6298

Commenter notes requirements from NV-IAMF#1, but that measure is only designed for and applicable to human receptors; it would be applied in areas where sensitive human receptors are located, and for the most part these are urbanized areas having little wildlife habitat value. In most modeled wildlife habitat, NV-IAMF#1 would not be implemented. Please see Revised/Supplemental Draft EIR/EIS Appendix 3.7-E, Supplemental Noise Analysis on Terrestrial Wildlife Species, for discussion of how project noise could impact wildlife, and see Mitigation Measures BIO-MM#58 and BIO-MM#80 describing how the Authority would minimize noise impacts on wildlife. For further detail, see the responses to commenter's earlier remarks about noise impacts on wildlife (submission SJM-2130, comments 6292 to 6297).

2130-6299

Commenter asserts that ALAN from train headlights is comparable to brightness around urban areas, and therefore the project will introduce ALAN similar to that which is present in urban areas to areas that are currently dark. The Authority disagrees with this assertion. Although train headlights are brighter than most individual light sources in an urban environment, their duration is much shorter, they are highly directional rather than omnidirectional, and they are horizontally projected. Consequently, they do not result in the same lighting conditions as numerous lighting sources in an urban environment, many of which are unshielded and are not directional. Although ALAN from train headlights is different from urban environments, the Authority evaluated the effects of train headlights on wildlife and wildlife movement in Appendix 3.7-E, Supplemental Noise Analysis on Terrestrial Wildlife Species, to the Revised/Supplemental Draft EIR/EIS. Impacts from train headlights were found to be potentially significant and BIO-MM#80 was revised to include additional noise/visual barriers within sensitive regions, and BIO-MM#89 was included to reduce the impacts of operational lighting by reducing the intensity of train headlights within sensitive areas.

2130-6300

Commenter quotes Revised/Supplemental Draft EIR/EIS Appendix 3.7-F, Supplemental Artificial Light Analysis on Terrestrial Wildlife Species, page F-9, while omitting to quote page F-7, which states that lighting effects extend to 26.5 meters from the fence line; commenter instead assumes they extend to almost 500 meters from the fence line and thus overestimates the area of habitat affected by approximately 95 percent. Commenter notes that intermittent lighting effects can result in impacts on wildlife; this is discussed at length in Appendix 3.7-F, pages F-6 to F-12, which details those impacts for many wildlife species, including a section specifically addressing the mountain lion. Commenter provides no new information.

2130-6301

Commenter quotes from Revised/Supplemental Draft EIR/EIS Appendix 3.7-F, Supplemental Artificial Light Analysis on Terrestrial Wildlife Species, and then refers to their prior comment (submission SJM-2130, comment 6300). Please see response to submission SJM-2130, comment 6300.

Response to Submission 2130 (Fraser Shilling, University of California, Davis, June 9, 2021) - Continued

2130-6302

Commenter quotes from Revised/Supplemental Draft EIR/EIS Appendix 3.7-F, Supplemental Artificial Light Analysis on Terrestrial Wildlife Species, and then refers to their prior comment (submission SJM-2130, comment 6300). Please see response to submission SJM-2130, comment 6300.

2130-6303

The commenter quotes at length from Appendix 3.7-F, Supplemental Artificial Light Analysis on Terrestrial Wildlife Species, from the Revised/Supplemental Draft EIR/EIS and then asserts that the Authority's mitigations for potential lighting impacts on wildlife are inadequate to protect sensitive wildlife. The Revised/Supplemental Draft EIR/EIS Section 3.7, Biological and Aquatic Resources, describes how BIO-IAMF#12 is incorporated into the project to minimize lighting effect, and how Mitigation Measures BIO-MM#76a, BIO-MM#80, and BIO-MM#89 operate to further reduce these impacts on wildlife. The scientific basis for the effectiveness of this IAMF and these mitigation measures is provided in Revised/Supplemental Draft EIR/EIS Appendix 3.7-F. That analysis identifies the mechanisms by which artificial light may affect wildlife and the methods that have been advanced in peer-reviewed literature to avoid or minimize those effects. Commenter provides no evidence contrary to that literature used in the analysis in the Final EIR/EIS.

2130-6304

The commenter asserts that there is no support for the use of "corridors" by wildlife. Please see response to submission SJM-1691, comment 3601, where commenter made a similar comment on the Draft EIR/EIS. The Authority disagrees with the commenter's assertion. As described in the WCA (Appendix C of Authority 2020a, as cited in Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS), "wildlife corridors" are landscape features that provide for the movement of wildlife between two or more habitat patches and often provide the shortest, most direct linkage between two patches of suitable habitat. While movement outside of corridors does happen, such movement in the context of the specific project region with substantial human development is more limited. Overall, the goal of the assessment and mitigation is to maintain or improve the movement of wildlife between habitat patches. Numerous researchers, including Penrod et al. (2013, as cited in Section 3.7 of the Draft EIR/EIS), support this approach. As noted in numerous other comments received on the Revised/Supplemental Draft EIR/EIS, wildlife movement stakeholders in the region have been monitoring the use of wildlife undercrossings using camera stations and other methods and have documented substantial use of wildlife crossings in particular areas, which serve as corridors for wildlife to travel under local infrastructure. Local stakeholders have invested significant time and financial resources into monitoring and planning for the maintenance and improvement of these wildlife corridors in the region. Consequently, although wildlife movement outside of corridors does happen, as acknowledged above, wildlife movement in the region of the proposed project indicates that planning for wildlife corridors for the proposed project is the best available science.

Response to Submission 2130 (Fraser Shilling, University of California, Davis, June 9, 2021) - Continued

2130-6305

Commenter's attempt to discredit Pathways for Wildlife by claiming that their published, peer-reviewed reports are neither, is noted. Those reports nonetheless represent the best available source of information on wildlife use of existing highway crossings in the study area, and commenter cites no other sources, instead attempting to refute these published findings with an unsupported statement of opinion. Commenter states that "highway noise and light is of much lower intensity than high-speed rail noise, with expected maximum noise levels of <80 dBA, compared to >90 dBA (10-times louder) for HSR trains," while offering no support for this statement. Revised/Supplemental Draft EIR/EIS Appendix 3.7-E, Supplemental Noise Analysis on Terrestrial Wildlife Species, pages E-2 to E-4, provides factual information regarding noise that would be produced by HSR trains, including both amplitude and duration of the noise. No generalizations about amplitude and duration of highway noise can be made due to the very wide variation in amplitude and duration of the noise, but Dooling and Popper (2016, page 16) offer data indicating values of 77 dBA (four-lane highway, comparable to SR 152 in the study area) to 85 dBA (eight-lane highway, comparable to US 101 in the study area), measured at 100 feet. It is true that these peak levels are lower than peak levels for the proposed project; it is also true that the associated durations are very long (hours for each exposure) compared to HSR trains (seconds for each exposure). Commenter's assertion that adverse noise effects occur when compared to a noiseless environment is accurate, a point made in the Revised/Supplemental Draft EIR/EIS analysis.

2130-6306

Commenter again states, inaccurately and without supporting evidence, that the noise from a distant train is greater than the noise from an intervening freeway. See response to submission SJM-2130, comment 6293.

2130-6307

Commenter is correct that Tule elk have been observed both north and south of SR 152, although the number of observations on the south side is greater by several orders of magnitude (Dziegiel 2021). And, while there is likely some movement across SR 152 (as evidenced by roadkill and the presence of elk north SR 152), it is assumed that elk movement occurs infrequently and that SR 152 poses a significant barrier to movement. This is supported by Dziegiel's 2021 thesis which found no evidence of elk crossing SR 152, SR 33, or I-5 in the CDFW 5-hour interval radio collar data collected between 2015 and 2019. This is also evidenced by SR 152 being prioritized as one of the top 10 segments of infrastructure that currently present barriers to wildlife populations, including elk, for both Regions 3 and 4 of the CDFW (CDFW 2020[). The priority of this region as a barrier to wildlife movement is also recognized by the fact that the Santa Clara Valley Habitat Agency received a grant from CDFW in February 2021 to alter transportation infrastructure (among other things) to improve wildlife movement.

2130-6308

Commenter's conclusion that operational noise may affect non-special-status species is consistent with the conclusions of the analysis in Revised/Supplemental Draft EIR/EIS Appendix 3.7-E, Supplemental Noise Analysis on Terrestrial Wildlife Species. Note that Revised/Supplemental Draft EIR/EIS Section 3.7, Biological and Aquatic Resources, includes mitigation measures, chiefly BIO-MM#80, to minimize those impacts.

Response to Submission 2130 (Fraser Shilling, University of California, Davis, June 9, 2021) - Continued

2130-6309

Commenter states there is no evidence that fencing adjacent to crossing structures has any funneling effect, and there is evidence that wildlife will walk “the wrong way” away from the crossing and toward the fence end. While it is accurate that wildlife may walk away from a wildlife crossing, this does not alter the fact that wildlife that walk toward the crossing may use it. Thus, the crossing helps to relieve a barrier. Commenter’s assertion that fencing adjacent to crossing structures does not have any funneling effect is not supported, and the Authority disagrees with this assertion. For example, the Wildlife Crossing Structure Handbook (FHWA 2011, Appendix C, Hot Sheet 6, as cited by Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS) recommends use of wildlife fencing to direct large animals toward undercrossing structures; a detailed review of such fencing and its effectiveness is provided by the Arizona Department of Transportation (2019). Wildlife crossings are widely used on highways, and there is abundant monitoring data documenting their use by wildlife; several such studies are cited both in the Revised/Supplemental Draft EIR/EIS and in commenter’s own statements.

2130-6310

Commenter is correct, and openness is a design parameter required in BIO-MM#77a.

2130-6311

Commenter cites requirements of BIO-MM#77a but does not make a comment regarding the measure or the adequacy of the measure.

2130-6312

Commenter cites requirements of BIO-MM#77a and states there is no evidence in scientific literature that associated fencing has a funneling effect. See response to submission SJM-2130, comment 6309.

2130-6313

Commenter asserts that there is no evidence to support that wildlife crossings placed according to modeled habitat or corridors will be used by target species or will be sufficient to mitigate for population and genetic fragmentation by high-speed rail. The Authority disagrees. While the Authority did not locate any investigations of how high-speed rail systems affect population and genetic fragmentation, and commenter cites none, the concept of wildlife movement corridors is long established in the literature (cf. Soule and Gilpin 1991, as cited in Section 3.7, Biological and Aquatic Resources, of the Draft EIR/EIS), and corridors are frequently evaluated for utility in wildlife passage (e.g., Ng et al. 2004, a case study in southern California, and Jensen 2018, a study focused on US 101 near San Luis Obispo). Based on these studies cited and other sources presented in the Wildlife Corridor Analysis (WCA; Appendix C of Authority 2020a, as cited in Section 3.7 of the Draft EIR/EIS), there is abundant evidence that such corridors exist and are widely used in the study area. Commenter also states, “There is evidence that structures in loud and bright conditions will not pass wildlife” but cites no evidence or studies to support this assertion. The proposed wildlife crossings include many features designed to avoid such conditions, including (but not limited to) requirements to minimize both noise and artificial light at crossings.