

19 STATE AGENCY COMMENTS

19 STATE AGENCY COMMENTS (Part 1)

Submission 1116 (Greg Erickson, California Department of Fish and Wildlife, September 9, 2020)

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San Francisco - San Jose - RECORD #1116 DETAIL

Status : Unread
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Interest As : State Agency
First Name : Greg
Last Name : Erickson
Attachments : California High Speed Rail Project-SF to San Jose-SCH2016052019-Kelly-GARRISON090820.pdf (299 kb)

Stakeholder Comments/Issues :

Mr. Kelly,

Please see the attached memorandum for your records. If you have any questions, please contact Ms. Kristin Garrison, cc'd above.

Debbie Hultman |Assistant to the Regional Manager
 California Department of Fish and Wildlife - Bay Delta Region
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[Let's Stay Safe & Healthy COVID-19 Banner]

State of California
Department of Fish and Wildlife

Memorandum

Date: September 8, 2020

To: Mr. Brian P. Kelly, Chief Executive Officer
 California High-Speed Rail Authority
 City of Santa Clara - Silicon Valley Power
 100 Paseo de San Antonio, Suite 300
 San Jose, CA 95113
san_francisco_san_jose@hsr.ca.gov

DocuSigned by:



From: Mr. Gregg Erickson, Regional Manager
 California Department of Fish and Wildlife-Bay Delta Region, 2825 Cordelia Road, Suite 100, Fairfield, CA 94534

Subject: California High Speed Rail Project - San Francisco to San Jose Project Section, Draft Environmental Impact Report, SCH No. 2016052019, San Francisco, San Mateo and Santa Clara County

The California Department of Fish and Wildlife (CDFW) received the draft Environmental Impact Report (EIR) from the California High-Speed Rail Authority (Authority) for the California High Speed Rail Project - San Francisco to San Jose Project Section (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife resources. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the State [Fish and Game Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)]. CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.



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CDFW is also submitting comments as a Responsible Agency under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish and Game Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish and Game Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

Nesting Birds

CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include, sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

Water Pollution

Pursuant to Fish and Game Code section 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into "Waters of the State" any substance or material deleterious to fish, plant life, or bird life, including non-native species. It is possible that without mitigation measures implementation of the Project could result in pollution of Waters of the State from storm water runoff or construction-related erosion. Potential impacts to the wildlife resources that utilize these watercourses include the following: increased sediment input from road or structure runoff; toxic runoff associated with development activities and implementation; and/or impairment of wildlife movement along riparian corridors.

PROJECT DESCRIPTION SUMMARY

Proponent: California High-Speed Rail Authority

Objective: The Authority plans to construct 800 miles of a high-speed rail system in California from Sacramento to San Diego, including the San Francisco Bay Area. The Project includes high-speed rail construction along 43 to 49 miles from the Salesforce Transit Center in San Francisco to the Diridon Station in San Jose. The Preferred Alternative includes high-speed rail in combination with the existing CalTrain rail system and CalTrain right-of-way. Alternative B would be similar to Alternative A, but would also include 6 miles of Authority passing track and a differing easterly alignment south of the Diridon Station. Both alternatives include track modifications to support higher speeds, station and platform modifications, communication radio towers, and safety and security improvements.

1116-2503

Location: Various locations in San Francisco County, San Mateo County, and Santa Clara County between San Francisco and San Jose.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the Authority in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

Section 3.7 Biological and Aquatic Resources, Page 3.7-104, BIO-MM#24: Provide Compensatory Mitigation for Loss of Active Burrowing Owl Burrows and Habitat

This measure discusses mitigation of impacts for the western burrowing owl (*Athene cunicularia*), a State Species of Special Concern. The BIO-MM#24 measure includes compensatory mitigation for impacts to breeding habitat at a 1:1 ratio and lists characteristics of habitat to be used for compensatory mitigation. The habitat must support at least two breeding adult owls for every breeding adult owl displaced by construction, have short sparse vegetation, include underground burrows or burrow surrogates (e.g. debris piles, culverts, pipes), and there is abundant and accessible prey (e.g. arthropods, small rodents, amphibians, lizards). It is stated that burrows in earthen levees, berms, or canal banks within or along the margins of agricultural fields can be counted as compensatory breeding habitat as long as adjacent fields or pastures are suitable for foraging.

To reduce impacts to less-than-significant levels, CDFW recommends the following changes and additions to BIO-MM#24 be included in the EIR:

1. Relocation and Mitigation Plan: A burrowing owl relocation and mitigation plan should be provided to CDFW for review and approval at least 30 days prior to impacting burrowing owl habitat. If permanent removal of burrows cannot be avoided, the relocation and mitigation plan should include measures to minimize the impacts of construction on the burrowing owl, such as passive relocation, and mitigation measures to compensate for habitat loss. The relocation and mitigation plan should include the information as described in the measures below.
2. Compensatory Mitigation Ratio: Compensatory mitigation at a 3:1 ratio should be provided for burrowing owl-occupied burrows that are permanently removed.
3. Compensatory Mitigation Location, Protection, and Maintenance: Mitigation land should be located as close to the impact location as feasible and close to existing western burrowing owl occupied habitat. The land should be held in fee title or conservation easement to avoid potential future development impacts. The Authority should provide personnel and equipment necessary to maintain burrowing owl habitat, and an endowment to fund management actions in perpetuity.
4. Compensatory Mitigation Habitat Characteristics: Mitigation habitat should include an appropriate mix of short grassland for burrowing owl nesting and tall grassland

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to support small mammal prey. Mitigation habitat should contain a sufficient population of ground squirrels or other fossorial mammals to provide burrows for potential burrowing owl use.

1116-2504

Section 3.7 Biological and Aquatic Resources, Page 3.7-101, BIO-MM#16: Prepare and Implement an Underwater Sound Control Plan

Pile driving may be required for bridge widening at Guadalupe Valley Creek. At the Guadalupe River, pile driving may be necessary to widen the existing bridge under Alternative A and build a new bridge under Alternative B. Measure BIO-MM#16 states that the Authority would develop an underwater sound control plan to avoid and minimize potential adverse impacts from in-water pile-driving activities on federally listed salmonid species. The measure includes a list of information and actions that would be a part of the Underwater Sound Control plan such as sound pressure thresholds, underwater sound monitoring, biological oversight, use of vibratory or non-impact methods (i.e. hydraulic) to drive sheet piling, restriction of pile driving to daytime hours, and slow start driving.

To reduce impacts to less-than-significant levels, CDFW recommends the following changes and additions to BIO-MM#16 be included in the EIR:

1. Species to be included in Underwater Sound Control Plan: All native special-status fish species that may be present should be included in the Underwater Sound Control Plan, including those listed under the Endangered Species Act, California Endangered Species Act, and Species of Special Concern.
2. Agency Review of Underwater Sound Control Plan: The Underwater Sound Control Plan should be provided for CDFW review and approval a minimum of 30 days prior to starting work. CDFW recommends that the Underwater Sound Control Plan also be provided in consultation with National Marine Fisheries Service for federally-listed fish species.
3. Work Location, Plans, and Pile Driving Details: The Underwater Sound Control Plan should include specific information on the work location and timing, a summary of engineering plans, and details on pile driving methods. The summary of engineering plans should include the number of piles and size of piles to be installed. The timing of work should include a specific schedule and information as to whether work will be completed in one season or more seasons. Details should be provided regarding pile driving including if hammer and/or pile driving will be used, the number of strikes per pile, if vibratory methods will require proofing via impact driving, and information regarding the substrate in which piles will be installed.
4. Isoleth Map and Impact Summary: The Underwater Sound Control Plan should include an isopleth map that delineates the estimated sound level outputs and the projected area over which they may occur from the point of impact pile installation(s). The Plan should also delineate where injurious sound will occur, and a summary of the impact area and species to be impacted.

1116-2504

5. Sound Pressure Thresholds: The *2008 Agreement in Principle for Interim Criteria for Injury to Fish from Pile Driving Activities* (<https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser/other-guidance>) should be used to set sound pressure thresholds. CDFW agrees with the peak pressure of 206 decibels (db) and accumulated sound exposure levels of 183 decibels. However, there should also be a cumulative 187db limit for fish over two grams and a cumulative 183db for fish under 2 grams.
6. Sound Attenuation System: The Underwater Sound Control Plan should include a sound attenuation system for impact-driven piles. Sound attenuation systems may include, but is not limited to, a confined bubble curtain, an unconfined bubble curtain, isolation casings, and wooden pile cushions.
7. Hydroacoustic Monitoring: Hydroacoustic monitoring and construction oversight should be conducted by a hydroacoustic monitoring specialist. The resumes of the hydroacoustic monitoring specialist should be provided to CDFW a minimum of 30 days prior to starting work.

ENVIRONMENTAL DATA

CEQA requires that information developed in draft environmental impact reports be incorporated into a data base which may be used to make subsequent or supplemental environmental determinations. [Pub. Resources Code, § 21003, subd. (e)]. Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form, online field survey form, and contact information for CNDDDB staff can be found at the following link: <https://wildlife.ca.gov/data/CNDDDB/submitted-data>.

FILING FEES

CDFW anticipates that the Project will have an impact on fish and/or wildlife, and assessment of filing fees is necessary (Fish and Game Code, § 711.4; Pub. Resources Code, § 21089). Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW.

CONCLUSION

CDFW appreciates the opportunity to comment on the draft EIR to assist the California High-Speed Rail Authority in identifying and mitigating Project impacts on biological resources. Questions regarding this memorandum or further coordination should be directed to Ms. Kristin Garrison, Environmental Scientist, at (707) 944-5534 or by email at Kristin.Garrison@wildlife.ca.gov; or Ms. Brenda Blinn, Senior Environmental Scientist (Supervisory), at (707) 944-5541 or by email at Brenda.Blinn@wildlife.ca.gov.

cc: Office of Planning and Research, State Clearinghouse, Sacramento
Primavera Parker, CDFW Region 4 – Primavera.Parker@wildlife.ca.gov

Response to Submission 1116 (Greg Erickson, California Department of Fish and Wildlife, September 9, 2020)

1116-2503

The comment requests that the Draft EIR/EIS incorporate specific changes and additions to BIO-MM#24. The Authority has modified the mitigation measures for burrowing owl under BIO-MM#22, BIO-MM#23, and BIO-MM#24 in the Final EIR/EIS in response to this comment.

The Authority has determined, however, based on the assessment in the Draft EIR/EIS, that the compensatory mitigation ratio outlined in BIO-MM#24 will be sufficient to reduce effects on burrowing owls to a less-than-significant level. In general, burrowing owl habitat in the project footprint is limited to the Brisbane LMF, and as stated in the Draft EIR/EIS under Impact BIO#6, “nesting is not expected in Brisbane due to the lack of recent or historical nesting occurrences and low habitat quality”. The only known occupied breeding habitat near the project footprint is the San Jose International Airport, which will not be affected by the project. The ratio provided in the Draft EIR/EIS would compensate for the impact by protecting habitat in perpetuity, where impacted habitat currently has no protections.

1116-2504

The comment requests that the Draft EIR/EIS incorporate specific changes and additions to BIO-MM#16. The Authority has modified the mitigation measures for the Underwater Sound Control Plan under BIO-MM#16 in the Final EIR/EIS in response to this comment. This included adding all native special-status fish species to the underwater sound control plan, adding 30-day agency review of the underwater sound control plan, adding details regarding work location, plans, and pile driving details, and adding the sound pressure thresholds identified in the comment.

Submission 1160 (Felix Ko, California Public Utilities Commission, September 9, 2020)

STATE OF CALIFORNIA

Govin Newsom, Governor

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102



September 8, 2020

Mark McLoughlin
California High Speed Rail Authority
770 L Street, Suite 620 MS-1
Sacramento, CA 95814

Re: Draft Environmental Impact Report (DEIR)
San Francisco to San Jose High-Speed Train Project DEIR/EIS
SCH# 2016052019

Dear Mr. McLoughlin:

The California Public Utilities Commission's (Commission) Rail Crossing Engineering Branch (RCEB) is taking this opportunity to address the California High-Speed Rail Authority's (CHSRA) Draft Environmental Impact Report/Environmental Impact Statement (DEIR) for the San Francisco to San Jose High Speed Train (HST) project. RCEB staff offers the following comments.

Commission Requirements and Policy

The Commission has jurisdiction over the safety of highway-rail crossings (crossings) in California. The Commission has exclusive power over the design, alteration, and closure of crossings, pursuant to Public Utilities Code Section 1201 et al . Based on Commission Rules of Practice and Procedure, Rule 3.9, an application to the Commission is required to construct a railroad across a public road. The HST project is subject to a number of other rules and regulations involving the Commission. The design criteria of the proposed project will need to comply with the California Manual on Uniform Traffic Control Devices (MUTCD) and Commission General Orders (GO's). The following GO's, among others, may be applicable:

- GO 26-D (regulations governing clearances on railroads and street railroads with reference to side and overhead structures, parallel tracks, crossing of public roads, highways and streets)
- GO 72-B (rules governing the construction and maintenance of crossings at grade of railroads with public streets, roads and highways)
- GO 75-D (regulations governing standards for warning devices for at-grade highway-rail crossings)
- GO 88-B (rules for altering public highway-rail crossings)
- GO 95 (rules for overhead electric line construction)

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- GO 118 (regulations governing the construction, reconstruction, and maintenance of walkways adjacent to railroad trackage and the control of vegetation adjacent thereto)
- GO 176 (Rules for Overhead 25 kV Railroad Electrification Systems for a High-Speed Rail System)

Specific Project Comments

1160-2543

- RCEB recommends the entire High Speed Rail corridor be grade separated with no at-grade highway-rail crossings. Grade separated crossings provide a greater level of safety, for both the roadway users as well as railroad employees, than at-grade highway-rail crossings.

1160-2544

- The Peninsula Corridor Joint Powers Board (Caltrain) owns the rail corridor in the project area. Caltrain concurrence is required for all modifications.

1160-2545

- High Speed Rail platforms within the station are required to comply with GO 26-D clearance requirements.

1160-2546

- RCEB recommends all pedestrian underpasses have a minimum vertical clearance of 10 feet.

1160-2547

- At-Grade Crossing General Concerns:
 - There have been 59 train incidents at at-grade crossings and 50 trespassing incidents on the Right of Way along the corridor between San Francisco and San Jose between January 1, 2014 and December 31, 2019. Adding high speed trains traveling at 110 mph at-grade along this corridor will likely lead to detrimental impacts to safety.

1160-2548

- Caltrain's proposed electrified train detection system potentially leads to longer gate down times for at-grade crossings. Longer gate down times commonly lead to motorist and pedestrian frustration resulting in questionable behavior including, but not limited to, gate drive-around, bypassing lowered gates, and rushing through the crossing to beat a train.

1160-2549

- An increased volume of trains along the rail corridor due to electrification will lead to increased train horn noise. The train engineers will begin sounding the train horns earlier on approach to rail crossings due to the much higher proposed train speeds to comply with FRA train horn requirements, resulting in more noise pollution throughout the rail corridor. RCEB does not support quiet zones and believes train horns provide a substantial rail crossing safety benefit.

1160-2550

- Proposed 4 quad gate systems are required to comply with GO 75-D, including vehicle detection within the crossing.

1160-2551

- Much of the rail corridor travels adjacent to major roadways. The close proximity leads to motorists queuing onto the tracks regularly. Required mitigation measures would include:

1160-2542

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1160-2551

- Advance railroad preemption with gate down detection circuit, supervised circuit, and advance pedestrian clearance phase.
- Pre-signals. Installing pre-signals likely eliminates right turn on red movements over the railroad crossings. The design of pre-signals will be required to accommodate proposed exit gates in a 4 quadrant gate system.

1160-2552

- Caltrain currently experiences numerous motorists accidentally turning onto the crossing surface, driving off the crossing and getting stuck on the tracks. RCEB recommends reflective delineators be installed along the edge of the roadway at the crossing to provide a visual indicator to motorists of the roadway path. Please refer to figure 1 in use on LA Metro crossings.

Figure 1:



1160-2553

- RCEB recommends pedestrian approaches travel over the tracks at a 90 degree angle. Several of the existing at-grade rail crossings on this corridor have sidewalks skewed as they travel over the tracks. This condition results in a longer distance for pedestrians to travel over the tracks and can lead to wheelchair wheels getting stuck in the tracks.

1160-2554

- Adjacent driveways and frontage roads to at-grade crossings can cause queues onto the tracks. RCEB recommends all nearby driveways and frontage roads be closed.

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- Existing railroad preemption should be reevaluated. RCEB recommends advance railroad preemption be installed with advance pedestrian clearance.
- Most of the at-grade crossings in San Francisco and San Mateo counties have automatic pedestrian gates which are non-compliant with current MUTCD requirements by being mounted on the same mast as the vehicular railroad gates. The automatic pedestrian gates are required to be brought into compliance with MUTCD standards by being relocated into their own masts.
- Several of the Caltrain stations contain at-grade pedestrian crossings with narrow center platforms and no warning devices. These stations should be redesigned to allow for either grade separated pedestrian crossings or at-grade pedestrian crossings with automatic warning devices.
- Several of the existing at-grade crossings have either mountable raised concrete medians or low and narrow raised concrete medians are easily mountable. RCEB recommends all mountable medians be replaced with 8 inch tall unmountable raised concrete medians.
- All medians should be squared off on the track side to discourage motorists from making U-Turns on the tracks.

- Comments at specific rail crossings:

- The 16th Street at 7th Street, San Francisco crossing is located beneath Highway 280. The direction of the sun rising and setting, in combination with a transition from sunlight to sudden shadows results in motorist and bicyclist complaints of not being able to see the railroad crossing before their eyes can adjust. The San Francisco Municipal Transportation Agency also plans to use electrified buses on 16th Street. The overhead electrified bus lines conflict with the proposed 25 kV railroad overhead electrified lines.
- The Broadway, Burlingame crossing has had eight incidents in the past five years. The crossing is complex as it is located between two signalized intersections and has a very high traffic volume due to the close proximity to Highway 101. The signalized intersections at Rollins Rd and the Highway 101 on/off-ramp also can lead to queuing back to the Broadway crossing. While the crossing has railroad preemption, the queues along Broadway from Highway 101 can prevent queues from clearing the tracks. RCEB recommends the crossing be grade separated.
- The Oak Grove, Burlingame and North Lane, Burlingame crossings provide access to Burlingame High School and experiences heavy vehicular and pedestrian traffic as a result. North Lane at California Drive is STOP controlled which can cause queuing back onto the tracks. RCEB recommends either the STOP control be moved to California Drive with North Lane having a through movement or the intersection be signalized with railroad preemption.

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1160-2564

- o The 1st Ave and 2nd Ave, San Mateo crossings have adjacent crosswalks and/or mid-block crosswalks. Adjacent crosswalks can cause queues onto the crossings as vehicles wait for pedestrians occupying the crosswalks. There is no railroad preemption to mitigate queues from the crosswalks at these two locations. RCEB recommends all adjacent crosswalks be removed.

1160-2565

- o The Ravenswood Ave, Menlo Park crossing regularly experiences queuing from the El Camino Real intersection. The large distance to the intersection is not conducive to installing railroad preemption. RCEB recommends CHSRA consider alternative queue mitigation measures including a queue cutter.

1160-2566

- o The Churchill Ave, Palo Alto crossing has very heavy bicycle use from the adjacent high school. The volume of bicyclists overwhelm the roadway during the times school begins and ends. The crossing has also had four incidents in the past five years, all of which were vehicles stopping and fouling the tracks. The project must include measures to mitigate these issues.

1160-2567

- o The West Meadow Dr, Palo Alto crossing has had four incidents in the past five years. All four incidents involved motorists who stopped on the tracks. Mitigation measures must be provided to reduce the number of motorists who stop on the tracks.

1160-2568

- o The West Charleston Rd, Palo Alto crossing has had six incidents in the past five years. Five of the incidents involved motorists who stopped on the tracks. Mitigation measures must be provided to reduce the number of motorists who stop on the tracks.

1160-2569

- o The Castro St, Mountain View crossing can experience multiple gate activations sequentially and within a short time period as Caltrain trains enter and exit the adjacent Mountain View Caltrain station. This condition can lead to the northbound Central Expressway phase being bypassed multiple times. This condition causes traffic to back up on Central Expressway, resulting in queues one mile south to the Central Expressway Santa Clara Valley Transportation Authority light rail crossing. An increased volume of trains will increase the number of occurrences of this condition. RCEB recommends the Castro Street crossing be converted to a pedestrian only crossing or grade separated.

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The comments above are a cursory review of the at-grade crossings and should not be construed as a complete review or with RCEB concurring with either alternative with at-grade high speed rail crossings. RCEB continues to recommend the entire high speed rail corridor be grade separated with no at-grade rail crossings as that configuration provides the largest safety considerations to the public.

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The Commission is the responsible agency under CEQA section 15381 with regard to this project. As such, we greatly appreciate and thank you for the opportunity to work with the

1160-2571

CHSRA to improve public safety as it relates to crossings in the San Francisco to San Jose segment of the HST system in California. We request that RCEB be kept informed of all developments associated with the HST project. Meetings should be arranged with the Commission's RCEB staff to discuss relevant safety issues and conduct diagnostic reviews of any proposed and impacted crossing locations along the proposed alignment in the San Francisco to San Jose HST project.

If you have any questions please contact Felix Ko via email at felix.ko@cpuc.ca.gov.

Sincerely,



Felix Ko
Senior Utilities Engineer
California Public Utilities Commission
Rail Safety Division
Rail Crossings and Engineering Branch

Response to Submission 1160 (Felix Ko, California Public Utilities Commission, September 9, 2020)

1160-2542

The Authority acknowledges CPUC's jurisdiction over the safety of highway-rail crossings in California and will comply with all federal and state laws guiding safety and security for passenger rail and safety, security, and emergency response planning. Specifically, Volume 3, Preliminary Engineering Plans, was developed in compliance with Commission GOs, as appropriate for preliminary design. Design criteria for the selected alternative will comply with all relevant engineering standards, including MUTCD and Commission GOs. The Authority will coordinate with CPUC during final design and submit the design as required by CPUC application procedures. The comment did not result in any revisions to the Draft EIR/EIS.

1160-2543

Refer to Standard Response FJ-Response-GS-1: Requests for Grade Separations.

The comment provides a recommendation that the entire corridor be grade separated with no at-grade crossings. The comment is noted, but did not result in any revisions to the Draft EIR/EIS.

1160-2544

The Authority will continue to coordinate closely with Caltrain as the project progresses. As stated in Section 2.1, Introduction, of the Draft EIR/EIS, the ultimate implementation of the project on Caltrain facilities "would be subject to further joint blended system planning and agreement with PCJPB as governed through existing and future interagency agreements." The comment did not result in any revisions to the Draft EIR/EIS.

1160-2545

The comment states that HSR platforms are required to conform to clearance requirements within California Public Utilities Commission General Order 26-D. The comment is noted. As described in the response to submission FJ-1160, comment 2542, the Volume 3, Preliminary Engineering Plans, were developed in compliance with CPUC GOs, as appropriate for preliminary design. The comment does not raise any specific concern regarding the conclusions or adequacy of the Draft EIR/EIS and did not result in any revisions to the Draft EIR/EIS.

1160-2546

The comment is noted and is consistent with the preliminary engineering plans. All proposed pedestrian undercrossings in Volume 3, Preliminary Engineering Plans, of the Draft EIR/EIS have a minimum vertical clearance of 10 feet. The comment did not result in any revisions to the Draft EIR/EIS.

1160-2547

Refer to Standard Response FJ-Response-SS-1: At-Grade Crossing Safety.

The comment notes at-grade crossing incidents along the corridor between 2014 and 2019 and makes assertions about the likely risk of increasing incidents with the addition of HSR operations in the Caltrain corridor. Please refer to Section 3.11.6.3, Community Safety and Security, of the Draft EIR/EIS, which includes information on safety risks. The comment does not raise any specific concerns regarding the conclusions or adequacy of the Draft EIR/EIS, and no revisions are required.

Response to Submission 1160 (Felix Ko, California Public Utilities Commission, September 9, 2020) - Continued

1160-2548

Refer to Standard Response FJ-Response-SS-1: At-Grade Crossing Safety, FJ-Response-TR-3: Gate-Down Time Calculation Details.

The comment asserts that Caltrain's proposed electrified train detection system may lead to longer gate down times at at-grade crossings, in turn leading to motorist frustration and potentially unsafe actions. Please refer to Standard Response FJ-Response-TR-3: Gate-Down Time Calculation Detail, for additional information about the assumptions surrounding gate-down times used for the purposes of the environmental impact analysis.

As stated under Impact S&S#14 in Section 3.11, Safety and Security, of the Draft EIR/EIS, at all at-grade crossings, the HSR project alternatives would install four-quadrant gates, barriers, and roadway channelization, all of which are intended to prohibit the driver behavior cited in the comment. Accordingly, the Draft EIR/EIS analysis found that installation of at-grade crossings, perimeter fencing, and four-quadrant gates would improve safety along the right-of-way, providing sufficient protections. Please also see Standard Response FJ-Response-SS-1: At-Grade Crossing Safety, for additional information regarding the effectiveness four-quadrant gate systems in reducing the potential for at-grade crossing accidents.

The comment did not result in any revisions to the Draft EIR/EIS.

1160-2549

The comment is noted and will be presented to Authority decision makers as part of the Final EIR/EIS when considering the project for approval. As described under NV-MM#4 in Section 3.4.7, Mitigation Measures, the establishment of quiet zones can only be undertaken by local jurisdictions; the Authority cannot legally establish or require a quiet zone. The comment did not result in any revisions to the Draft EIR/EIS.

1160-2550

The design of the selected alternative would comply with all relevant engineering standards, including the California Public Utilities Code and relevant GOs. The comment did not result in any revisions to the Draft EIR/EIS.

1160-2551

Refer to Standard Response FJ-Response-SS-1: At-Grade Crossing Safety.

The comment suggests that the project should include traffic signal preemption improvements at roadway intersections in proximity to at-grade crossings.

As explained in the standard response referenced above, there are 41 public at-grade rail-roadway crossings between 4th and King Street Station in San Francisco and West Alma Avenue in San Jose. The project includes installation of four-quadrant gate applications at each at-grade crossing. Vehicle detector loops and stop bars are included in each four-quadrant gate application to prevent queuing onto the tracks. The project also includes installation of median separators where not currently present. Existing at-grade crossings between San Francisco and San Jose vary as to whether the railroad preemption is or is not interconnected with adjacent traffic signals. At 22 at-grade crossings with adjacent traffic signals, there is existing signal preemption. Some of these crossings have advanced signal preemption which generally provides for 5 to 15 seconds of green time to allow queues between the grade crossing and traffic signal to dissipate, while at other crossings signal preemption is at the same time as safety gate activation. At the 19 at-grade crossings where there are no immediately adjacent traffic signals, there is no signal preemption.

Among other requirements, CPUC GO 75-D requires that at an at-grade crossing with automatic warning devices where a diagnostic team determines that preemption is necessary, for example where vehicular traffic queues from traffic signal-controlled intersections exceed the Clear Storage Distance (as defined in the CA MUTCD), the traffic signals shall be interconnected with the automatic warning devices.

The blended portions of the project alternatives would be within the Caltrain corridor and PCJPB would be the host railroad. As the host railroad, the PCJPB is responsible for operations within the Caltrain corridor and establishes the operational and safety requirements for all railroad operations using its tracks. The PCJPB is also responsible for compliance with FRA and CPUC requirements for crossing and signal system operations as the host railroad. Caltrain uses a hazard analysis tool that is updated periodically to determine whether a particular crossing will receive upgrades. Consequently, it is Caltrain's responsibility to determine whether additional (or different) signal preemption of traffic signals at adjacent intersections is or is not warranted per CPUC requirements.

Section 3.11, Safety and Security, has been updated in the Final EIR/EIS to include

Response to Submission 1160 (Felix Ko, California Public Utilities Commission, September 9, 2020) - Continued

1160-2551

additional information about the status of existing signal preemption, CPUC requirements regarding signal preemption and Caltrain's responsibilities as the host railroad.

In addition, as described in revisions to the Final EIR/EIS Section 3.11, Safety and Security, the Authority is considering certain site-specific traffic mitigation measures at certain intersections near at-grade crossings (but not all). Where those mitigation measures are adopted and implemented, and the subject intersections do not currently have signal preemption, and signal preemption would be warranted per CPUC requirements, then signal preemption would be provided as part of the mitigation measure.

1160-2552

Refer to Standard Response FJ-Response-SS-1: At-Grade Crossing Safety.

This comment provides a recommendation to improve at-grade crossing design by installing reflective delineators. The comment is noted and will be considered by the Authority during final design.

1160-2553

The level of engineering presented in Volume 3, Preliminary Engineering Plans, of the Draft EIR/EIS is at a preliminary level sufficient for the environmental analysis. The final level of engineering design will be considered in coordination with the CPUC.

1160-2554

Refer to Standard Response FJ-Response-SS-1: At-Grade Crossing Safety.

The comment is noted and will be considered by the Authority in coordination with CPUC as part of the final design. The comment did not result in any revisions to the Draft EIR/EIS.

1160-2555

Refer to Standard Response FJ-Response-SS-1: At-Grade Crossing Safety.

The comment recommends advance railroad preemption be installed with advance pedestrian clearance. As discussed in the standard response referenced above, the Authority will install four-quadrant gates, median channelization, and fencing that will improve at-grade crossing safety.

As explained in Impact S&S#14 in Draft EIR/EIS Section 3.11, Safety and Security, Caltrain (as the owner and operator of the railroad) is responsible for managing and controlling operations to meet safety requirements within the Caltrain corridor. The discussion within Impact S&S#14 of the Final EIR/EIS has been revised to provide further discussion of Caltrain's planned upgrades to its signal system, which will improve connections between onboard train systems and wayside signal operations. Caltrain also has a policy of advancing signal preemption when warranted and funding available. Caltrain conducts periodic hazard analysis to determine when crossings will be upgraded. Thus, preemption improvements would be something Caltrain would be responsible for in regards to blended service operations. The comment did not result in any changes to any of the conclusions of the Draft EIR/EIS.

1160-2556

The comment states that existing pedestrian gates at existing at-grade crossings are not compliant with requirements of the MUTCD.

The comment is noted. The final design for at-grade crossing gates installed as part of the HSR project will comply with MUTCD standards. The comment did not result in any revisions to the Draft EIR/EIS.

Response to Submission 1160 (Felix Ko, California Public Utilities Commission, September 9, 2020) - Continued

1160-2557

The comment asserts that several Caltrain stations feature narrow center boarding platforms which are accessed via at-grade pedestrian crossings of the railroad tracks that do not include any warning devices. The comment further asserts that such stations should be redesigned to enhance pedestrian safety.

Please refer to Final EIR/EIS Chapter 2, Alternatives, and refer to Section 2.4.5.2, Caltrain Station Safety Improvements. This section describes that major safety improvements would be required at the Broadway Caltrain Station (Alternatives A and B), Atherton Caltrain Station (Alternatives A and B), and College Park Caltrain Station (Alternative A only). At these stations, new northbound outboard platforms would be built to eliminate the need for passengers to board and alight from the train between the active tracks and thus eliminate the “hold-out” rule requiring oncoming trains to stop outside the station zone until the passengers are safely clear. Since publication of the Draft EIR/EIS, Caltrain has permanently closed the Atherton Caltrain Station.

Accordingly, the Final EIR/EIS has been updated to clarify that if Caltrain removes the station’s platforms prior to construction of the HSR project, modifications to the Atherton Caltrain Station would no longer occur as part of the HSR project.

Section 2.4.5.2 also notes that to improve the safety of passengers waiting on Caltrain platforms when HSR and Caltrain trains pass through existing station, additional safety improvements (e.g., modifying tactile platform strips, visual or audible warnings) would be implemented to warn passengers to move away from the edge of the platforms prior to the approach of HSR and Caltrain trains.

1160-2558

The comment states that several existing at-grade crossings have low or otherwise mountable medians and recommends replacement of such with 8 inch tall unmountable concrete medians.

As explained in Draft EIR/EIS Section 2.4.5.1, At-Grade Crossing Improvements, the project includes installation of channelization on the approach to at-grade crossings. Refer to Figures 2-12 through 2-14, which depict six typical four-quadrant gate applications with channelization that would be applied at at-grade crossings. The specific channelization design was not determined as part of the preliminary engineering. However, the suggested specifications are noted and will be considered by the Authority during final design.

1160-2559

The comment recommends a specific median configuration to enhance safety at at-grade crossings. Draft EIR/EIS Section 2.4.5.1, At-Grade Crossing Improvements, describes that the project includes four-quadrant gates extending across all lanes of travel and median separators to channelize and regulate paths of travel. These features are designed to prevent drivers from traveling in opposing lanes or making U-turns to avoid the lowered gate arms. As explained in the response to submission FJ-1160, comment 2558, the specific channelization design was not determined as part of the preliminary engineering. However, the suggested specifications are noted and will be considered by the Authority during final design.

1160-2560

The comment states that because the existing at-grade crossing at the intersection of 16th Street and 7th Street in San Francisco is beneath a freeway (I-280), the railroad crossing can be obscured by various factors.

While the existing conditions related to the limited visibility of the 16th street at-grade crossing of the Caltrain corridor under specific conditions is noted, the HSR project would not exacerbate any of the visibility issues raised by the comment. The HSR project would include installation of a four-quadrant gate system at this intersection, discussed in greater detail in Section 2.6.2.2, Common Design Features, of the Draft EIR/EIS. The four-quadrant gate would itself improve visibility and enhance safety relative to existing conditions. The comment did not result in any revisions to the Draft EIR/EIS.

1160-2561

As noted in the comment, Caltrain is installing electrical infrastructure across 16th Street as part of the PCEP. The Authority has coordinated with Caltrain and understands the agency has coordinated with SFMTA and SFMTA and no longer proposes to install the overhead electric lines across the rail crossing at 16h Street. As such, this issue is no longer a conflict. The comment did not result in any revisions to the Draft EIR/EIS.

Response to Submission 1160 (Felix Ko, California Public Utilities Commission, September 9, 2020) - Continued

1160-2562

Refer to Standard Response FJ-Response-GS-1: Requests for Grade Separations.

The comment did not result in any revisions to the Draft EIR/EIS.

1160-2563

Refer to Standard Response FJ-Response-TR-1: Site-Specific Mitigation for Traffic Impacts.

The comment recommends that the stop-controlled intersection of California Drive/North Lane in Burlingame be modified from a stop-controlled intersection to a signalized intersection with railroad preemption. Impact TR#5 in Section 3.2, Transportation, of the Draft EIR/EIS identifies an adverse NEPA effect of traffic congestion/delay at the intersection of California Drive/North Lane. Please refer to Standard Response FJ-Response-TR-1: Site-Specific Mitigation for Traffic Impacts, regarding mitigation for LOS impacts. TR-MM#1 in Section 3.2 of the Final EIR/EIS addresses these NEPA effects and identifies a series of potential mitigations including the installation of a traffic signal at the intersection of California Drive/North Lane (TR-MM#1a.2).

1160-2564

Engineering refinements to improve intersection functionality, such as removal of adjacent crosswalks, will be considered in coordination with the CPUC as part of final design. The comment did not result in any revisions to the Draft EIR/EIS.

1160-2565

The comment recommends that the Authority consider queue mitigation measures including a queue cutter at the Ravenswood Avenue at-grade crossing in Menlo Park. In Section 3.11, Safety and Security, of the Draft EIR/EIS, the Ravenswood Avenue at-grade crossing is one of eight locations identified in SS-MM#4 for travel time monitoring and subsequent implementation of emergency vehicle priority treatment strategies as needed to address delays that exceed the designated travel time threshold increment. The planning and design of these treatments would be coordinated with the City of Menlo Park, and could include a queue cutter. Alternative engineering measures to improve intersection functionality will be considered in coordination with CPUC as part of the final design. The comment did not result in any revisions to the Draft EIR/EIS.

1160-2566

Refer to Standard Response FJ-Response-SS-1: At-Grade Crossing Safety.

The comment notes that there is very heavy bicycle traffic at the Churchill Avenue crossing in Palo Alto as well as several recent incidents of vehicles fouling the tracks. As part of the HSR project, installation of a four-quadrant gate system is planned at the Churchill Avenue crossing (Section 2.6.2.2, Common Design Features). As discussed under Impact S&S#14, the Draft EIR/EIS analysis found that installation of at-grade crossings, perimeter fencing, and four-quadrant gates would improve safety along the right-of-way, providing sufficient protections. No additional mitigation measures beyond those disclosed in the Draft EIR/EIS are warranted to address project impacts. The comment did not result in any revisions to the Draft EIR/EIS.

Response to Submission 1160 (Felix Ko, California Public Utilities Commission, September 9, 2020) - Continued

1160-2567

Refer to Standard Response FJ-Response-SS-1: At-Grade Crossing Safety.

The comment states that the existing Caltrain at-grade crossing at West Meadow Drive in Palo Alto has seen several recent instances of motorists stopped on the railroad tracks and recommends mitigation to reduce these occurrences.

As part of the HSR project, installation of a four-quadrant gate system is planned at the Meadow Drive crossing (see Section 2.6.2.2, Common Design Features). Refer to the standard response referenced above for additional information regarding the effectiveness four-quadrant gate systems in reducing the potential for at-grade crossing accidents.

The Draft EIR/EIS analysis found under Impact S&S#14 that installation of at-grade crossings, perimeter fencing, and four-quadrant gates would improve safety along the right-of-way, providing sufficient protections; no additional mitigation measures beyond those disclosed in the Draft EIR/EIS are warranted as a result of project impacts. The comment did not result in any revisions to the Draft EIR/EIS.

1160-2568

Refer to Standard Response FJ-Response-SS-1: At-Grade Crossing Safety.

The comment states that the existing Caltrain at-grade crossing at West Charleston Road in Palo Alto has seen several recent instances of motorists stopped on the railroad tracks and recommends mitigation to reduce these occurrences.

As part of the HSR project, installation of a four-quadrant gate system and median barriers are planned at the West Charleston Road crossing (see Section 2.6.2.2, Common Design Features). Refer to the standard response referenced above for additional information regarding the effectiveness four-quadrant gate systems in reducing the potential for at-grade crossing accidents.

The Draft EIR/EIS analysis found that installation of at-grade crossings, perimeter fencing, and four-quadrant gates would improve safety along the right-of-way, providing sufficient protections; no additional mitigation measures beyond those disclosed in the Draft EIR/EIS are warranted as a result of project impacts. The comment did not result in any revisions to the Draft EIR/EIS.

1160-2569

The comment recommends that the Castro Street at-grade crossing in Mountain View be grade separated or converted to a pedestrian only crossing. Please refer to Standard Response FJ-Response-GS-1: Requests for Grade Separations. The Authority is not proposing to grade separate or convert the Castro Street at-grade crossing in Mountain View to a pedestrian only crossing. The comment did not result in any revisions to the Draft EIR/EIS.

1160-2570

Refer to Standard Response FJ-Response-GS-1: Requests for Grade Separations.

The comment did not result in any revisions to the Draft EIR/EIS.

1160-2571

The Authority appreciates the CPUC's comments on the Draft EIR/EIS. The Authority is committed to ongoing coordination with the CPUC during final design and will submit design information as required by CPUC application(s) for approval. The Authority appreciates RCEB staff time on August 24, 2020 to discuss HSR ATC, grade crossing modernization, and intrusion detection and deterrence features. The comment did not result in any revisions to the Draft EIR/EIS.

Submission 1085 (Rebecca Coates-Maldoon, San Francisco Bay Conservation and Development Commission, September 4, 2020)

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San Francisco - San Jose - RECORD #1085 DETAIL

Status : Unread
Record Date : 9/4/2020
Interest As : Local Agency
First Name : Reyna
Last Name : Amezcua
Attachments : HighSpeedRail_DEIR_CommentLetter.pdf (776 kb)

Stakeholder Comments/Issues :

Dear High-Speed Rail Project Team,

On behalf of Rebecca Coates-Maldoon, BCDC Acting Chief of Permits, please find the enclosed comment letter for the above-referenced project.

Should you have any questions please contact Ms. Coates-Maldoon at 415/352-3634 or rebecca.coates-maldoon@bcdc.ca.gov.

Thank you.

Reyna Amezcua
Regulatory Division
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___ ONLY BY ELECTRONIC TRANSMISSION. During the Coronavirus (COVID-19) pandemic, this office will be working remotely, not able to send physical mail as usual, and is therefore using only electronic mail.

San Francisco Bay Conservation and Development Commission

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State of California | Gavin Newsom – Governor | info@bcdc.ca.gov | www.bcdc.ca.gov

September 3, 2020

California High-Speed Rail Authority
100 Paseo de San Antonio, Suite 300
San Jose, California 94113
Via Email: <san.francisco_san.jose@hsr.ca.gov>

ATTN: San Francisco to San Jose Project Section: Draft EIR/EIS

SUBJECT: High-Speed Rail San Francisco to San Jose Project Section Draft EIR/EIS Comments

Dear High-Speed Rail Project Team:

Thank you for the opportunity to comment on the California High-Speed Rail San Francisco to San Jose Project Section Draft Environmental Impact Report/Environmental Impact Statement (Draft EIR/EIS). The Notice of Availability of the Draft EIR/EIS was received in BCDC's office on July 9, 2020.

Although the Commission has not reviewed the Draft EIR/EIS, the following staff comments are based on the Commission's law and policies, including the McAteer-Petris Act, the *San Francisco Bay Plan*, and the federal Coastal Zone Management Act (CZMA).

Staff appreciates the in-depth discussions we have had with you to date regarding this project. Thank you for your consideration of the comments BCDC staff previously submitted on the Administrative Draft EIR/EIS on January 22, 2020, including through the creation of a new section (Appendix 3.1-B) analyzing the Bay Plan policies identified in our comments.

Please note that these staff comments do not represent a comprehensive evaluation, analysis, or approval of the proposed project under the Commission's law and policies. As you are aware, the portions of the project within the Commission's jurisdiction would require a permit from the Commission, anticipated to be a major permit requiring a public hearing and vote. The Commission will determine whether the project is consistent with its laws and policies as part of the permitting process, and staff look forward to continuing discussions with you about the project and related components (e.g., public access proposal) as the project moves forward.

SUMMARY

The Draft EIR/EIS Summary (including Summary of Biological and Aquatic Resources, e.g. S-31 through S-36) should reflect Bay fill and impacts to Bay resources (i.e., within BCDC's jurisdiction), in addition to impacts under other State and Federal laws. Our understanding is that Alternative A would have more fill and impacts to Bay resources than Alternative B.

1085-282



Submission 1085 (Rebecca Coates-Maloon, San Francisco Bay Conservation and Development Commission, September 4, 2020) - Continued

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1085-283

ALTERNATIVES, SECTION 2.9.3

The first paragraph of this section describes the five areas of BCDC’s jurisdiction as established by Section 66610(a) of the McAteer-Petris Act. The text incorrectly states that BCDC’s shoreline band jurisdiction applies not only to its Bay jurisdiction but also to its salt ponds, managed wetlands, and its certain waterways jurisdiction. BCDC’s shoreline band jurisdiction applies only to its Bay jurisdiction under Section 66610(a).

1085-284

MULTIPLE SECTIONS – DISCUSSION OF MCATEER-PETRIS ACT AND BAY PLAN

Several of our comments apply to the discussion of the McAteer-Petris Act that is reiterated in multiple sections of the Draft EIR/EIS, including Biological and Aquatic Resources (3.7.2.2), Hydrology and Water Resources (3.8.2.2), Station Planning, Land Use, and Development (3.13.2.2), as well as the expanded discussion on the McAteer-Petris Act and Bay Plan in Station Planning, Land Use, and Development (3.13.3.2):

1. The discussion of the fill policies of McAteer-Petris Act Section 66605 gives the erroneous impression that the potential public benefits of a project are a distinct consideration from whether the proposed fill is for a water-oriented purpose. The Section 66605 summary paragraphs in all noted sections list these as separate considerations.

1085-285

In addition, Section 3.13.3.2 further includes an entire subsection entitled “Public Benefits of the High-Speed Rail System to the Bay Area,” but identifies whether a project is water-oriented as a consideration in a later subsection entitled “Other Requirements.” However, under the McAteer-Petris Act the two factors are linked. Specifically, Section 66605(a) provides that further filling of the Bay should be authorized “only when the public benefits from fill clearly exceed the public detriment from the loss of water areas *and* should be limited to water-oriented uses...” (emphasis added). This section correctly notes that BCDC will make a determination (in the permitting process) regarding the consistency of the proposed project with Section 66605 of the McAteer-Petris Act that proposed Bay fill should be limited to water-oriented uses.

1085-286

2. The summary of McAteer-Petris Act Section 66605 in Section 3.13.3.2 is an abbreviated discussion that is incomplete. Expand to include the additional provisions of Section 66605 referenced in other sections of document (e.g., minimize harmful effects to the Bay).

1085-287

3. Please clarify that Section 66605 as discussed applies to fill in the Commission’s Bay jurisdiction (e.g., “Pursuant to Section 66605 of the McAteer-Petris Act, BCDC is authorized to issue a permit for fill in the Bay if the proposed fill...”).

1085-288

4. The Commission issues permits when the Commission finds and declares that the project is consistent with the McAteer-Petris Act and Bay Plan (rather than if the applicant demonstrates consistency, as noted in the Draft EIR/EIS), or that the project is necessary to the health, safety, or welfare of the public in the entire bay area.

1085-289

5. The Draft EIR/EIS states that: “In addition, for permitting purposes, the Act allows for areas within the shoreline band to be designated by BCDC for priority uses. Within such areas, the proposed use must be consistent with the uses specified for the designated area.” Priority use areas are designated along the Bay shoreline both within and outside the shoreline



1085-289

band. BCDC would make findings regarding the consistency of the project, including project components within the priority use area but outside the shoreline band, with the Bay Plan policies applicable to the priority use area (i.e., recreation policies applicable to a waterfront park, beach priority use area), in addition to evaluating impacts to the coastal zone under the CZMA.

1085-290

6. The Draft EIR/EIS states (in both subsection 3.13.2.2, corresponding subsections in other chapters, and subsection 3.13.3.2) that the project would be consistent with Section 66605 of the McAteer-Petris Act and the policies of the San Francisco Bay Plan. Section 66632(f) of the McAteer-Petris Act provides that the Commission shall issue a permit if it determines that a project will be consistent “with the provisions of this title [i.e., the McAteer-Petris Act] and with the provisions of the San Francisco Bay Plan then in effect.” There are sections of the McAteer-Petris Act in addition to 66605 that are relevant to the project and will be considered in the BCDC permitting process. The other provisions of the McAteer-Petris Act that Commission would consider include, but may not be limited to, Sections 66602 and 66632.4 regarding maximum feasible public access.

1085-291

STATION PLANNING, LAND USE, AND DEVELOPMENT, SECTION 3.13

Additional comments on Section 3.13, beyond the comments on Subsections 3.13.2.2 and 3.13.3.2, are discussed below:

Figures 3.13-2, 3.13-6, 3.13-7, 3.13-8

The “public facilities” graphic designation is a similar blue color to the waters of the Bay (at first glance implying water inland or public facilities as the Bay), and Brisbane Lagoon is shown within the green “parks/open space” designation and appears to consist of multiple parcels (at first glance appearing to be land rather than water). For clarification, we suggest modifying the color scheme for these graphics and/or labeling Brisbane Lagoon. Guadalupe Valley Creek should also be shown and labeled relative to the project footprint in Figures 3.13-7 and 3.13-8.

1085-292

Section 3.13.5.3

This section states that under Alternative A, portions of the maintenance yard and the Tunnel Avenue realignment for the East Brisbane LMF would include fill and other project improvements within a portion of the Bay/tidal waterway of Visitacion Creek, and that Alternative B would not require filling of the Bay/tidal waterway of Visitacion Creek. This section also states that the widening of the Guadalupe Valley Creek bridge under both project alternatives would require fill of a portion of the Bay/tidal waterway of Guadalupe Valley Creek. BCDC will determine in the permitting process whether Bay fill for these project components, or for the overall project, would be for a water-oriented purpose. A rail maintenance facility typically would not be considered a water-oriented use. In contrast, under Section 66605(a) of the McAteer-Petris Act, bridges are identified as an example of a water-oriented use.

1085-293

Section 3.13.6.3

This section is entitled “Conflict with BCDC SF Bay Plan Policies.” This section does not address potential conflicts with the provisions of the McAteer-Petris Act regarding Bay fill (Section 66605) or maximum feasible public access (Sections 66602 and 66632.4). The Commission will consider the project’s consistency with the McAteer-Petris Act in addition to the policies of the Bay Plan.



Submission 1085 (Rebecca Coates-Maloon, San Francisco Bay Conservation and Development Commission, September 4, 2020) - Continued

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1085-294 | The Draft EIR/EIS states that “The East Brisbane LMF (Alternative A) would place project features within the shoreline band of Visitacion Creek,” but should further clarify that work in and over Visitacion Creek, including placing the creek into a culvert and the development above the culverted creek, would be within BCDC’s Bay jurisdiction, not the shoreline band.

1085-295 | In reference to the project involving filling of a portion of Visitacion Creek and a portion of Guadalupe Valley Creek, this section notes that BCDC will determine whether the proposed project is consistent with the Bay Plan policies concerning fill of the Bay and tidally influenced waterways. That is correct. In addition, BCDC will determine whether these project components, or the overall project, is consistent with the Bay fill policies established by Section 66605 of the McAteer-Petris Act.

1085-296 | **Section 3.13.9, Impact LU#7**
See comments on Section 3.13.6.3, above, regarding the need to address potential conflicts with the McAteer-Petris Act provisions on Bay fill and maximum feasible public access in addition to the Bay Plan. Please also avoid statements that declare that the proposed mitigation would achieve the Commission’s policies regarding maximum feasible public access and project consistency with the Bay Plan, as the Commission would make the determination on that issue.

The Draft EIR/EIS states that “The impact under CEQA also would be significant for Alternatives A and B because project components do not include measures to maximize public access to the Bay or shoreline, which would be inconsistent with the Bay Plan’s policy.” The Bay Plan has policies (plural) related to public access and other applicable policies, in addition to the maximum feasible public access requirement of McAteer-Petris Act Section 66632.4.

1085-297 | **ENVIRONMENTAL JUSTICE, SECTION 5.2.2**
BCDC’s Bay Plan Environmental Justice policies are relevant to this section but are not included. Please discuss these policies here or add a note under the discussion of State laws about BCDC’s Bay Plan Environmental Justice policies, and reference the additional discussion of these policies in Appendix 3.1-B, similar to the discussion on city and county general plan policies applicable to the analysis on environmental justice.

1085-298 | **BAY PLAN CONSISTENCY ANALYSIS, APPENDIX 3.1-B**
Appendix 3.B consists of a lengthy table that analyzes the consistency of project with San Francisco Bay Plan policies. As noted above, Section 66632(f) of the McAteer-Petris Act provides that the Commission will issue a permit if it determines that a project will be consistent “with the provisions of this title and with the provisions of the San Francisco Bay Plan then in effect.” This appendix, which consists primarily of Table 1, analyzes the consistency of the project with various Bay Plan policies, but not with the provisions of the McAteer-Petris Act. Relevant provisions of McAteer-Petris Act include but may not be limited to Section 66605 regarding Bay fill and Sections 66602 and 66632.4 regarding maximum feasible public access.

1085-299 | Table 1 generally presents a thorough and detailed analysis of numerous applicable or potentially applicable Bay Plan policies. Table 1 notes that BCDC will determine consistency with several of the identifies policies, but indicates that the project would be “consistent” with the other policies listed. In fact, BCDC will conduct a thorough analysis of all applicable Bay Plan policies, and ultimately

1085-299 | determine whether the project is consistent with its laws and policies, as part of the permitting process. For that reason, BCDC staff will not provide specific comments on the Table 1 Bay Plan policy consistency analysis at this time. However, the Table 1 analysis is helpful and provides useful information to the public and other interested parties for purposes of CEQA review of the proposed project.

1085-300 | As discussed for other sections of the Draft EIR/EIS, please avoid statements that declare that mitigation would achieve the Commission’s policies (e.g., Public Access Policy 1 discussion), as the Commission would make the determination on that issue.

OTHER (NOT COVERED)

In our earlier discussions about the project, the project team indicated that options were initially under consideration with regard to potentially rerouting or otherwise leaving Visitacion Creek uncovered above ground (i.e., not placed within a culvert, or minimizing the length of creek within a culvert), as part of Alternative A for the LMF. If any of these options are still under consideration by the project team, they should be addressed within the EIR/EIS (e.g., in Station Planning, Biological Resources, and Hydrology sections).

Thank you for your consideration of our comments. If you have any questions regarding this letter, please don’t hesitate to contact me at 415/352-3634 or rebecca.coates-maloon@bcdc.ca.gov.

Sincerely,

DocuSigned by:
Rebecca Coates-Maloon

A6398E29E-A1C46D

REBECCA COATES-MALDOON
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Response to Submission 1085 (Rebecca Coates-Maloon, San Francisco Bay Conservation and Development Commission, September 4, 2020)

1085-282

Please refer to Section 3.7.8.10, BCDC Jurisdictional Areas, of the Final EIR/EIS for detailed discussion of project construction and operations impacts on biological and aquatic resources within BCDC jurisdictional areas. The commenter correctly states that Alternative A would have greater impacts on aquatic resources within BCDC jurisdictional areas than Alternative B (see Table 3.7-18 in Section 3.7, Biological and Aquatic Resources).

Impacts within BCDC jurisdictional areas are included in the summary of impacts on biological and aquatic resources in Tables S-4 and S-5 in the Draft EIR/EIS Summary. The impacts in BCDC's jurisdiction are not specifically identified in these tables because these tables summarize overall impacts on biological and aquatic resources for each alternative for the entire Project Section, and there were no specific or unique impacts in the BCDC jurisdictional areas to identify that were not included in the summarized impacts. However, to address this request, a qualitative statement has been added to Section S.8.3.1, Alternative A, of the Final EIR/EIS to clarify that Alternative A would result in greater impacts on aquatic resources in BCDC's jurisdiction (including the placement of fill) than would occur under Alternative B.

1085-283

The Authority appreciates the clarifications and has incorporated these into the first paragraph of Section 2.9.3, High-Speed Rail Development within the San Francisco Bay Conservation and Development Commission Jurisdictional Areas, of the Final EIR/EIS.

1085-284

The comment indicates that the Draft EIR/EIS incorrectly summarizes Section 66605 of the McAteer-Petris Act. The comment indicates that under Section 66605 of the McAteer-Petris Act, the potential public benefits of a project are not a distinct consideration from whether the proposed fill is for a water-oriented purpose. To address this comment, the text related to Section 66605 of the McAteer-Petris Act has been revised accordingly, throughout the Final EIR/EIS.

1085-285

The comment indicates that Section 3.13.3.2, McAteer-Petris Act, of the Draft EIR/EIS includes two headings titled "Public Benefits of the High-Speed Rail System to the Bay Area" and "Other Requirements" and also notes that under the McAteer-Petris Act the two factors (public benefits and water-oriented use) are linked. To address this comment, the Authority revised the text in Section 3.13.3.2 of the Final EIR/EIS so that the discussion of public benefits and water-oriented use are discussed in one location.

1085-286

The comment requests that the discussion in Section 3.13.3.2, McAteer-Petris Act, of the Draft EIR/EIS be expanded to include additional provisions of Section 66605 of the McAteer-Petris Act. To address this comment, the Authority revised the Final EIR/EIS Section 3.13.3.2 and Appendix 3.1-B, Analysis of Consistency with McAteer-Petris Act and San Francisco Bay Plan, to include a discussion of other pertinent policies from the McAteer-Petris Act, including other provisions of Section 66605.

1085-287

The comment requests that the Authority clarify that Section 66605 of the McAteer-Petris Act applies to fill in BCDC's Bay jurisdiction. To address this comment, the Authority revised Section 3.13.3.2, McAteer-Petris Act, of the Final EIR/EIS accordingly.

1085-288

The comment identifies the circumstances under which BCDC would issue a permit. To address this comment, the Authority revised the discussion of the McAteer-Petris Act in Section 3.7, Biological and Aquatic Resources; Section 3.8, Hydrology and Water Resources; and Section 3.13, Station Planning, Land Use, and Development, of the Final EIR/EIS accordingly.

Response to Submission 1085 (Rebecca Coates-Maloon, San Francisco Bay Conservation and Development Commission, September 4, 2020) - Continued

1085-289

The comment states that the BCDC would make findings regarding project components within a priority use area but outside of a shoreline band; consistency with Bay Plan policies; and impacts on the coastal zone. The comment is noted.

Appendix 3.1-B, Analysis of Consistency with McAteer-Petris Act and San Francisco Bay Plan, of the Final EIR/EIS includes a list of pertinent policies from the Bay Plan and the McAteer-Petris Act, and the Authority's evaluation of the project's consistency with these policies. The Authority acknowledges that BCDC will ultimately determine whether the project is consistent with the Bay Plan and the McAteer-Petris Act, including policies pertaining to priority use areas. The Authority looks forward to continued coordination with BCDC regarding the permitting process.

1085-290

The comment identifies that in addition to Sections 66605 and 66632(f) of the McAteer-Petris Act, the BCDC would consider other provisions of the McAteer-Petris Act, including Sections 66602 and 66632.4. To address this comment, the Authority revised the Final EIR/EIS Section 3.13.3.2, McAteer-Petris Act, and Appendix 3.1-B, Analysis of Consistency with McAteer-Petris Act and San Francisco Bay Plan, to include a discussion of pertinent policies from the McAteer-Petris Act, including Sections 66602 and 66632.4.

1085-291

The comment requests that the color schemes in the Draft EIR/EIS Figures 3.13-2, 3.13-6, 3.13-7, and 3.13-8 be modified, that Brisbane Lagoon be labeled, and that Guadalupe Valley Creek be shown and labeled.

While the request to revise the color used for the "public facilities" land use category is noted, revisions to the color scheme have not been implemented because these colors are used consistently throughout 15 figures in Draft EIR/EIS Section 3.13, Station Planning, Land Use, and Development, and Volume 2, Appendix 3.13-A, General Plan Land Use and Maps, and revisions would not substantially enhance the value of the document as an informational tool. However, in response to this comment, the Authority has revised Figures 3.13-2, 3.13-6, 3.13-7, and 3.13-8 to add labels for Brisbane Lagoon and Guadalupe Valley Creek.

1085-292

The comment does not raise any specific concern regarding the conclusions or adequacy of the Draft EIR/EIS. The comment is noted and will be presented to Authority decision makers as part of the Final EIR/EIS when they consider project approvals. The comment did not result in any revisions to the Draft EIR/EIS.

1085-293

The comment states that Section 3.13.6.3, Conflict with BCDC Bay Plan Policies, does not address the potential conflicts with Sections 66602, 66605, and 66632.4 of the McAteer-Petris Act. To address this comment, the Authority revised Appendix 3.1-B, Analysis of Consistency with McAteer-Petris Act and San Francisco Bay Plan, in the Final EIR/EIS to include a discussion of pertinent policies from the McAteer-Petris Act, including Sections 66602, 66605, and 66632.4.

Response to Submission 1085 (Rebecca Coates-Maloon, San Francisco Bay Conservation and Development Commission, September 4, 2020) - Continued

1085-294

The comment states that Section 3.13.6.3, Conflict with BCDC Bay Plan Policies, should clarify that work in and over Visitacion Creek would be within BCDC's Bay jurisdiction. To address this comment, the Authority has added a footnote in Impact LU#7 to clarify that in addition to Alternative A being located within the shoreline band jurisdiction of Visitacion Creek, Alternative A would also be located within BCDC's Bay jurisdiction.

1085-295

The Authority acknowledges BCDC's responsibility under Section 66605 of the McAteer-Petris Act. To address this comment, text has been added in Section 3.13.6.3, Conflict with BCDC Bay Plan Policies, of the Final EIR/EIS to clarify that BCDC will determine the project's consistency with Bay fill policies established by Section 66605 of the McAteer-Petris Act.

1085-296

The comment states the need for the Authority to address potential conflicts with provisions in the McAteer-Petris Act, in addition to the Bay Plan policies. To address this comment, the Authority revised Appendix 3.1-B, Analysis of Consistency with McAteer-Petris Act and San Francisco Bay Plan, in the Final EIR/EIS to include a discussion of additional pertinent policies from the McAteer-Petris Act.

The comment also states that the Draft EIR/EIS should have avoided statements that declare that mitigation would achieve BCDC's policies regarding maximum feasible public access, as this would be a determination made by BCDC. Although the Authority acknowledges that BCDC would make the final determination of maximum feasible public access, the Authority is required to make a conclusion of significance after the implementation of mitigation, for the purposes of CEQA. As such, the statement of the project's consistency with the Bay Plan after mitigation is needed to fulfill CEQA requirements. No revisions have been made to the Draft EIR/EIS pertaining to this topic.

The comment also identifies that the Bay Plan has policies related to public access, not just one policy. To address this comment, the Authority revised Section 3.13.9, CEQA Significance Conclusions, in the Final EIR/EIS to identify "policies" and not one "policy". Also, please refer to Appendix 3.1-B in the Final EIR/EIS, which includes a list of pertinent policies related to public access.

1085-297

In response to this comment, a summary of the McAteer-Petris Act and BCDC's Bay Plan Environmental Justice policies has been added to Section 5.2.2, State, of the Final EIR/EIS. A discussion of the project's consistency with these policies has been incorporated into Volume 2, Appendix 3.1-B, San Francisco Bay Conservation and Development Commission Bay Plan Consistency Analysis, of the Final EIR/EIS.

Response to Submission 1085 (Rebecca Coates-Maloon, San Francisco Bay Conservation and Development Commission, September 4, 2020) - Continued

1085-298

The comment identifies that Appendix 3.1-B, Analysis of Consistency with McAteer-Petris Act and San Francisco Bay Plan, in the Draft EIR/EIS analyzes the project's consistency with various Bay Plan policies but not with the provisions of the McAteer-Petris Act. To address this comment, the Authority revised Appendix 3.1-B in the Final EIR/EIS to include a discussion of pertinent provisions in the McAteer-Petris Act.

1085-299

The comment states that Appendix 3.1-B, Analysis of Consistency with McAteer-Petris Act and San Francisco Bay Plan, indicates the project's consistency with Bay Plan policies but that BCDC would ultimately determine whether the project is consistent with the laws and policies under its jurisdiction. The Authority acknowledges that BCDC would make the final determination. As described in Section 3.13.4.5, Method for Determining Significance under CEQA, the EIR/EIS is required under CEQA to consider whether the project would cause a significant environmental impact due to a conflict with any land use plan, policy, or regulations adopted for the purpose of avoiding or mitigating an environmental impact. In order to determine whether a significant environmental impact due to a conflict with a plan, policy, or regulation could occur, the Authority makes a determination of the project's consistency with plans, policies, and regulations. Although the Authority acknowledges that BCDC would make the final determination of the project's consistency with the BCDC's laws and policies, the Authority makes a consistency determination in the Draft EIR/EIS for the purposes of CEQA. The comment did not result in any revisions to the Draft EIR/EIS.

1085-300

As described in Table 2-21 in Section 2.9.3, High-Speed Rail Development within the San Francisco Bay Conservation and Development Commission Jurisdictional Areas, of the Draft EIR/EIS, construction of the East Brisbane LMF under Alternative A would require placing Visitacion Creek into an underground culvert. As part of the San Francisco to San Jose Project Section Checkpoint C Summary Report, the Authority assessed whether it would be feasible to leave Visitacion Creek uncovered, above-ground as part of a No-Fill Alternative and determined that it would be infeasible because it would require elevating the LMF by at least 12 feet, significantly increasing the construction cost and conflicting with proposed access roads that are included in the Brisbane Baylands General Plan.

While the San Francisco to San Jose Project Section Preliminary Conceptual Mitigation Plan (Authority 2020e) included a compensatory mitigation concept that involved rerouting Visitacion Creek to Brisbane Lagoon, this concept is one of a range of options presented in the Authority's Preliminary Compensatory Mitigation Plan and is not part of either project alternative evaluated in the Draft EIR/EIS. Consistent with BIO-MM#8, the Authority will develop a Compensatory Mitigation Plan that would identify the final mitigation approach options. The Compensatory Mitigation Plan would be developed in coordination with regulatory agencies after project approvals and completion of the final design.

19 STATE AGENCY COMMENTS (Part 2)

Submission 1229 (Stephanie Fong, California Department of Fish and Wildlife - Bay Delta Region, September 8, 2021)

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San Francisco - San Jose - RECORD #1229 DETAIL

Status : Unread
Record Date : 9/10/2021
Interest As : State Agency
First Name : Stephanie
Last Name : Fong
Attachments : CDFW- SCH2016052019-Stanich-KANZ090821.pdf (303 kb)

Stakeholder Comments/Issues :

See attached comment letter dated September 8, 2021.

State of California
Department of Fish and Wildlife

Memorandum

Date: September 8, 2021

To: Mr. Serge Stanich
California High-Speed Rail Authority
770 L Street, Suite 620, MS-1
Sacramento, CA 95814
Serge.Stanich@hsr.ca.gov

DocuSigned by

Stephanie Fong

From: Ms. Stephanie Fong, Acting Regional Manager
California Department of Fish and Wildlife-Bay Delta Region, 2825 Cordelia Road, Suite 100, Fairfield, CA 94534

Subject: San Francisco to San Jose Project Section: Revised Draft Environmental Impact Report/Supplement Draft Environmental Impact Statement, SCH No. 2016052019, San Francisco and San Mateo County

The California Department of Fish and Wildlife (CDFW) received a revised draft Environmental Impact Report (EIR) from the California High-Speed Rail Authority (Authority) for the San Francisco to San Jose Project Section: Revised Draft Environmental Impact Report/Supplement Draft Environmental Impact Statement (RDEIR/SDEIS or Project) pursuant to the California Environmental Quality Act (CEQA).

CDFW is submitting comments on the RDEIR to inform the California High-Speed Rail Authority, as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project. CDFW is providing these comments and recommendations regarding those activities involved in the Project that are within CDFW's area of expertise and relevant to its statutory responsibilities (Fish and Game Code, § 1802), and/or which are required to be approved by CDFW (CEQA Guidelines, §§ 15086, 15096 and 15204).

CDFW ROLE

CDFW is a Trustee Agency with responsibility under CEQA (Pub. Resources Code, § 21000 et seq.) pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as a California Endangered Species Act (CESA) Permit, a Lake and Streambed Alteration (LSA) Agreement, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in "take" of plants or animals listed under CESA, either



Submission 1229 (Stephanie Fong, California Department of Fish and Wildlife - Bay Delta Region, September 8, 2021) - Continued

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during construction or over the life of the Project. Issuance of a CESA Permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA Permit.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c), 21083; CEQA Guidelines, §§ 15380, 15064, and 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with Fish and Game Code section 2080.

Lake and Streambed Alteration

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et. seq., for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. CDFW will consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement (or ITP) until it has complied with CEQA as a Responsible Agency.

PROJECT DESCRIPTION SUMMARY

Proponent: California High-Speed Rail Authority

Description and Location: The Authority plans to construct 800 miles of a high-speed rail system in California from Sacramento to San Diego, including the San Francisco Bay Area. The Project includes high-speed rail construction along 43 to 49 miles from the Salesforce Transit Center in San Francisco to the Diridon Station in San Jose. The Preferred Alternative includes high-speed rail in combination with the existing CalTrain rail system and CalTrain right-of-way. Alternative B would be similar to Alternative A, but would also include 6 miles of Authority passing track and a differing easterly alignment south of the Diridon Station. Both alternatives include track modifications to support higher speeds, station and platform modifications, communication radio towers, and safety and security improvements.

Location: Various locations in San Francisco County, San Mateo County, and Santa Clara County between San Francisco and San Jose.

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COMMENTS AND RECOMMENDATIONS

CDFW offers the below comments and recommendations to assist the Authority in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

Monarch Butterfly (*Danaus plexippus*)

Issue: The monarch butterfly is a federally listed species of concern. The RDEIR/SDEIS identifies suitable overwintering habitat for monarch butterflies within the Project area. Removal of suitable overwintering habitat would cause significant impacts to monarch butterflies. The proposed activities could directly injure, kill, or displace established monarch butterfly overwintering sites, resulting in direct take of monarch butterflies. To off-set potentially significant impacts to monarch overwintering sites, Section 3.7.9 Mitigation Measure Bio-MM#1 requires the Project to Prepare and Implement a Restoration and Revegetation Plan; however, it is currently unclear if development of this plan is sufficient to off-set project impacts to overwintering monarchs or result in complete take avoidance.

Evidence the impact would be significant: The data gathered from the Western Monarch Thanksgiving Count show that western overwintering monarchs are at an all-time critical low level and have significantly declined to approximately two percent of their numbers since 1997 (Xerces Society Western Monarch Thanksgiving Count, 2019). The decrease in monarch butterfly population may be due to the loss of overwintering habitat and loss of the monarch butterfly's host plant (milkweed) (Pelton et al. 2019). According to the Xerces Society, "Western monarchs use the same sites each year, even the same trees, and need intact overwintering habitat, which provides a very specific microclimate and protection from winter storms (Xerces Society website, 2020)".

Recommendations: CDFW recommends a monarch butterfly overwintering habitat avoidance, minimization and mitigation plan is developed and finalized, in consultation with a monarch butterfly expert and CDFW, prior to Project impacts to overwintering monarch butterflies or their habitat. Restoration and revegetation should be included as part of the plan and provided to CDFW for review at least 30 days prior to impacting monarch butterfly overwintering habitat. The plan should address revegetating all access routes, staging areas and areas of temporary impacts. The plan should include a planting palette, engineered design plans of planting palettes and irrigation systems, as well as a native seed mix list. Seed mixes should include native plant species for native pollinators such as milkweed for monarch butterflies. A 10-year-long monitoring plan should be included in this plan. If revegetation plantings fail, additional plantings should be required, and additional years of monitoring should be conducted in consultation with CDFW until a 80% success criterion is achieved.

All disturbed areas should be monitored and controlled for invasive species rated as "high" by the California Invasive Plant Council's database, which is accessible at: <https://www.cal-ipc.org/plants/inventory/>. All temporary irrigation systems should be

Submission 1229 (Stephanie Fong, California Department of Fish and Wildlife - Bay Delta Region, September 8, 2021) - Continued

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removed upon completion of site enhancements or at such a time when supplemental watering is no longer required.

1229-2787

CDFW recommends a 3:1 mitigation ratio to compensate for all permanent impacts to monarch butterfly suitable habitat, and revegetation of all temporarily-disturbed monarch butterfly suitable habitat.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs., tit. 14, § 753.5; Fish and G. Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

1229-2788

To ensure significant impacts are adequately mitigated to a level less-than-significant, the feasible mitigation measures described above should be incorporated as enforceable conditions into the final CEQA document for the Project. CDFW appreciates the opportunity to comment on the draft EIR to assist the California High-Speed Rail Authority in identifying and mitigating Project impacts on biological resources.

Questions regarding this memorandum or further coordination should be directed to Mr. Will Kanz, Environmental Scientist, at (707) 337-1187 or Will.Kanz@wildlife.ca.gov; or Mr. Wesley Stokes, Senior Environmental Scientist (Supervisory), at (707) 339-6066 or Wesley.Stokes@wildlife.ca.gov.

ec: California Department of Fish and Wildlife

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Response to Submission 1229 (Stephanie Fong, California Department of Fish and Wildlife - Bay Delta Region, September 8, 2021)

1229-2786

The comment asserts that the Revised/Supplemental Draft EIR/EIS identifies suitable overwintering habitat within the project area. The Authority respectfully disagrees with this assertion. Please refer to Revised/Supplemental Draft EIR/EIS Section 3.7.7.2, Biological Conditions, which states “monarch butterfly does not overwinter within the habitat study area.” Because the monarch butterfly does not overwinter within the habitat study area and the project would not remove suitable overwintering habitat, the additional mitigation suggested by CDFW (i.e., a monarch butterfly overwintering habitat avoidance, minimization, and mitigation plan to be developed in consultation with CDFW) is not warranted. However, monarch breeding and foraging habitat may occur in the study area and would be compensated at a 1:1 ratio as part of BIO-MM#41. The comment did not result in any revisions to the Draft EIR/EIS.

1229-2787

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. The comment did not result in any revisions to the Draft EIR/EIS.

1229-2788

The comment summarizes mitigation recommendations that the Authority has responded to separately. Please refer to the responses to submission FJ-1229, comments 2786 and 2787.