

MOTSCHIEDLER, MICHAELIDES, WISHON,
BREWER & RYAN, LLP
ATTORNEYS AT LAW
1690 WEST SHAW AVENUE
SUITE 200
FRESNO, CALIFORNIA 93711

J. CARL MOTSCHIEDLER
PHILLIP G. MICHAELIDES
A. EMORY WISHON III
C. WILLIAM BREWER*
RUSSELL K. RYAN†
JUSTIN D. HARRIS

TELEPHONE (559) 439-4000
FACSIMILE (559) 439-5654

POST OFFICE BOX 9099
FRESNO, CALIFORNIA 93790-9099

*A PROFESSIONAL CORPORATION
†ALSO ADMITTED IN UTAH

May 20, 2013

VIA FEDEX

Mr. Dave Navecky
Office of Environmental Analysis
Surface Transportation Board
395 "E" Street, SW
Washington, D.C. 20423-0001

Re: Comments to April 2013 Supplemental Alternatives Analysis Report ("SAA") [Merced to Fresno Section: Central Valley Wye Alternatives]; Opposition to Road 18 Wye to SR 152 (North and South) Alternatives; and Support for Preferred Alternatives Road 13 Wye either to Avenue 21 or SR 152 and Suggestions

Dear Mr. Navecky,

Our firm represents Delta Valley Venture, LLC, ("**Client**"); owner of commercial properties within the State Route 99 corridor in Chowchilla, Madera County, which properties are severely and adversely damaged by the recently proposed SR 152 (North and South) to Road 18 Wye Alternatives for the High Speed Rail alignment(s). This letter constitutes our Client's formal written comments on the SAA in connection with the Project Subsequent Environmental Impact Report/ Subsequent Environmental Impact Statement ("**SEIR/SEIS**") for the California High Speed Rail Project ("**HSR**").

The subject commercial property is situated at the southwest corner of Highway 99 and Avenue 24 along the frontage of Avenue 24 and Chowchilla Boulevard in the City of Chowchilla, County of Madera ("**Chowchilla**"). Specifically included is the following assessor parcels: 027-053-008 ("**Property**"). Client owns Delta Valley Venture leases the Property to Valley Gateway, Inc. which is moving forward with commercial development.

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For ease of reference and overview of our general position, we have taken liberty to superimpose comments, markings or depictions on the map of the study area provided by CHSRA/FRA. Those overlaid comments are attached hereto as Exhibit A and by this reference incorporated herein. Also enclosed as Exhibit B, please find the detailed CHSRA's maps showing subject property and the footprint of the Wye Alternatives.

We previously submitted comments on October 11, 2011, and resubmitted them on January 19, 2012. Responses to our previous comments were provided at pages 15-5 through 15-15 of the Partially Revised Final Program SEIRs for the Merced-to-Fresno section and the Bay Area to Central Valley section. A copy of our previous comments is submitted herewith for information and reference inasmuch as, and to the extent that, they are relevant here. (See Exhibit C.) We do note for the record that in our previous comments we opposed the A2-UPRR/Avenue 24 (Henry Miller) alignments which have been withdrawn by the CHSRA and NRA. We further note that the Alternative¹ we deemed should be preferred [the A1-BMSF/Avenue 21 Alternative] has been withdrawn. However, the Avenue 21 and SR 152 to Road 13 Wye have been carried over for further detailed evaluation. Now we strongly support Road 13 Wye either to Avenue 21 or SR 152 and strongly oppose Road 18 Wye to SR 152 (North & South).

Position Summary.

Our Client strongly oppose the SR 152 (North and South) to Road 18 Wye Alternatives on the multitude of grounds set forth hereinbelow. Most of Client's opposition to the Road 18 Wye Alternatives concurs with, aligns with, is consistent with and is supported by the SAA, again as specified below.

In contrast, Client submit substantial evidentiary support in favor of Road 13 Wye either to SR 152 or Avenue 21 Alternative(s). Most of Client's evidence strongly supporting Road 13 Wye either to SR 152 or Avenue 21 Alternative(s); concurs with, aligns with, is consistent with and is supported by the SAA, again as set forth hereinbelow.

Although out of four CHSR Central Valley Wye Alternatives: Road 13 Wye to Avenue 21 or SR 152 to Road 13 Wye would certainly be preferred over the Road 18 Wye Alternatives: Client deem that Road 13 Wye either to Avenue 21 or SR 152 Alternative(s) are the most preferred Alternatives.

¹ Use of the term "Alternatives" shall mean the four (4) Wye Alternatives that have been carried over for further detailed evaluation in the SAA.

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Summary of Additional Comments.

In addition to the detailed, substantial evidence addressing the support vs. opposition to the Wye Alternatives, we submit further comments with respect to what we perceive are inconsistencies within the SAA that comply neither with CEQA/NEPA or common law. These comments call for certain statements in the SAA to either be corrected or stricken.

We also briefly express concerns regarding consistency of the Project's respective Wye Alternatives with the applicable Land Use Plans and Policies.

Definitions.

These Alternatives are the specific focus of the SAA.

Road 13 Wye either to Ave 21 or SR 152: Least Impactive and Most Favored

A. Least Adverse Impacts and Most Favored on Grounds for Which HSRA'S and FRA'S SAA Concurs.

- (1) Least impact of all Alternatives to aquatic resources (SAA Section ES.4, page ES-3 and Appendix B, page B-2).
- (2) Least impact of all Alternatives to agriculture resources (SAA Section ES.4, page ES-3 and Appendix B, page B-2).
- (3) Least impact of all Alternatives to Agriculture Lands (SAA Table ES-1, page ES-4).
- (4) Second lowest impact with respect to Grade Separations (SAA Table ES-1, page ES-4).
- (5) Shares lowest impact to Schools within 1,500 feet (SAA Table ES-1, page ES-4).
- (6) Lower number of forced Business Relocations than both Road 18 Wye Alternatives (SAA Table ES-1, page ES-4).

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- (7) Meets Design Objectives: Lowest Capital Cost M-F Wye Leg – Ranch Road to Avenue 17 (SAA Table ES-1, page ES-4 and Appendix B, page B-2).
- (8) Meets Design Objectives: Lower Capital Costs than both Road 18 Wye Alternatives (SAA Table ES-1, page ES-4 and Appendix B, page B-2).
- (9) Meets Design Objectives: Lower cumulative travel time [to Fresno, to Merced and Merced to Fresno] (SAA Appendix B, page B-2).
- (10) Meets Design Objectives: Lowest Operation and Maintenance Costs per year of all Alternatives (SAA Appendix B, page B-2).
- (11) Lower impact to Wetlands than either Road 18 Wye Alternatives (SAA Appendix B, page B-2).
- (12) Lowest impact of all Alternatives on Vernal Pools (SAA Appendix B, page B-2).
- (13) Lowest impact of all Alternatives on Streams, Creeks or Canals (SAA Appendix B, page B-2).
- (14) Lower impact than SR 152 (North) to Road 18 Wye on Lakes/Ponds/Rivers [and equal to this impact from SR 152 (South) to Avenue 18 Wye] (SAA Appendix B, page B-2).

B. Additional Ground Supporting SR 152 (North) to Road 13 Wye.

- (1) Avoids devastating, if not total, damaging adverse impacts to our Client's commercial development and business at Avenue 24 and Chowchilla Boulevard. (Specifically, Madera County APN 027-053-008.)
- (2) Avoids devastating, if not total damaging, adverse impacts to our Client's other commercial properties and developing businesses at Avenue 24 and Chowchilla Boulevard. (Specifically, Madera County APNs 027-053-009, 027-053-010 and 027-053-011.)
- (3) Avoids severe, significant damages dividing, disrupting and destroying some or all of the gated community of Green Hill Homes.

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- (4) Does not violate City of Chowchilla's strong stance to oppose any Wye area that would surround the City with HSR track or an alignment that would divide the City east-west or north-south.
- (5) Would not be inconsistent or pose significant conflicts with City/County adopted Land Use Plans and Policies. [See detailed discussion below.]
- (6) Would not be inconsistent with Chowchilla Airport or Madera Airport Land use Compatibility Plans, including, without limitation, Approach and Departure Zones. [See detailed discussion below.]

Road 18 Wye to SR 152 (North and South): Most Adverse Impacts, Least Favored and Strongly Opposed.

A. Most Adverse Impacts and Least Favored, on grounds for which HSRA's and FRA's SAA concurs.

- (1) Highest [average] Adverse Impacts of all Alternatives on Aquatic Resources (SAA Table ES-1, page ES-4 and Appendix B, page B-2).
- (2) Highest Adverse Impacts of all Alternatives on Streams, Creeks or Canals (SAA Table ES-1, page ES-4).
- (3) Highest Adverse Impacts of all Alternatives on Biological Resources (San Joaquin Kit Fox, California Red-legged Frog, etc.) (SAA Table ES-1, page ES-4).
- (4) Highest Adverse Impacts of all Alternatives on Agricultural Lands (Prime Farm Land, etc.) (SAA Table ES-1, page ES-4).
- (5) Highest [average] Adverse Impacts of all Alternatives on Williamson Act Farmland (SAA Table ES-1, page ES-4).
- (6) Forced Relocation of School [SR 152 (South) to Road 18 Wye]: the only Alternative to have this adverse impact (SAA Table ES-1, page ES-4).
- (7) Highest Adverse Impacts of all Alternatives on Forced Relocations of Businesses (SAA Table ES-1, page ES-4).

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- (8) Highest Capital Costs M-F Wye Led-Ranch Road to Avenue 17 of all Alternatives (SAA Table ES-1, page ES-4 and Appendix B, page B-2).
- (9) Highest Capital Costs of all Alternatives (SAA Table ES-1, page ES-4 and Appendix B, page B-2).
- (10) Highest [average] Travel Time of all Alternatives (SAA Appendix B, page B-2).
- (11) Highest Operational and Maintenance Costs of all other Alternatives (SAA Appendix B, page B-2).
- (12) Highest Adverse Impacts on Aquatic Resources than all other Alternatives (SAA Appendix B, page B-2).
- (13) Highest Adverse Impacts on Wetlands than all other Alternatives (SAA Appendix B, page B-2).
- (14) Highest [average] Adverse Impacts on Vernal Pools than all other Alternatives (SAA Appendix B, page B-2).
- (15) Highest [average] Adverse Impacts of all Alternatives on Lakes/Ponds/Rivers (SAA Appendix B, page B-2).

B. Additional Grounds for Findings of Significant Adverse Impacts and Disfavoring of SR 152 (North and South) to Road 18 Wye.

- (1) Directly causes devastating if not total damaging adverse impacts to our Client's commercial development and business at Avenue 24 and Chowchilla Boulevard. (Specifically, Madera County APN 027-053-008.)
- (2) Directly causes devastating if not total damaging adverse impacts to our Client's other commercial properties and developing businesses at Avenue 24 and Chowchilla Boulevard. (Specifically, Madera County APNs 027-053-009, 027-053-010 and 027-053-011.)
- (3) Directly causes severe significant damages dividing, disrupting and destroying some of all of the gated community of Green Hill Homes.

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- (4) Violates City of Chowchilla's strong stance to oppose only Wye area that would surround the city with HSR track or an alignment that would divide the city east-west or north-south.
- (5) Would be inconsistent or pose significant conflicts with the City/County adopted Land Use Plans and Policies.
- (6) Would be inconstant with Chowchilla Airport or Madera Airport Lane Use Compatibility Plans including, without limitation, Approach and Departure Zones.

Failure of SAA to Meet CEQA/NEPA Requirement for Fact-Based Analysis

An SEIR must be prepared with a sufficient degree of analysis to provide decision-makers with the information needed to make an intelligent decision concerning a project's environmental consequences. 14 Cal Code Regs §15151. An SEIR must contain facts and analysis, not just an agency's bare conclusions or opinions. *Citizens of Goleta Valley v Board of Supervisors* (1990) 52 Cal 3d 553, 568, 276 Cal Rptr 410.

The SAA presents a non-sequitur conclusion or opinion in §3.2 Stakeholder Involvement and Public Feedback (SAA pp 19-20).

The SAA clearly states the primary and foundational basis for preparing the SAA were the participation, engagement, feedback, input and substantial evaluation of the stakeholders (See, e.g., SAA §1.1.4, p 3).

In §3.2 the SAA states the key themes specific to selection of Wye Alternatives, as expressed by the stakeholders. Set forth are appropriately ten (10) key themes that were heavily weighted in the findings of the SAA. These themes and the detailed analysis of facts relevant to them, which are set forth elsewhere in the SAA, provided the factual basis and analysis.

We note here that virtually all but one of the ten key themes were consistent with and supportive of our stated position of preferred Alternative.

Yet the drafters of the SAA concluded, "There appeared to be [stakeholders'] support for the SR 152 to Road 18 Wye Alternatives and opposition to the Avenue 21 to Road 13 alternative." (Emphasis added.) But we still have very strongly favored option of Road 13 Wye to SR 152 alignment.

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Although the “Key Themes” and related facts and analysis in the SAA clearly favors Client’s preferred Alternative [SR 152 (North) to Road 18 Wye] the “appearance” that forms an influential conclusion or opinion is a non sequitur is inconsistent, speculative conjuncture that is strategically placed and prejudicial.

In this respect, the SAA runs afoul of CEQA’s requirement for fact-based analysis.

The validity of an SEIR/SEIS is governed by the standard. See, e.g., *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal4th 412, 435.

Substantial evidence includes facts, reasonable assumptions predicated on facts, and expert opinion supported by facts, but does not include argument, speculation, or unsubstantiated opinion. Pub Res C §§21080(e), 21082(c).

Conclusion/Recommendation

Mitigation

The SAA contains no discussion or evaluation sufficient to determine whether the identified adverse impacts of the four (4) Wye Alternatives, respectively, can be adequately mitigated based on the results of further studies. See *Riverwatch v. County of San Diego* (1999) 76 Cal. App. 4th 1428, 1490, and *Laurel Heights Impr. Association v. Regents of University of California* (1988) 47 Cal. 3d 376.

Plan Consistencies/Inconsistencies

The SAA fails to address the consistencies and inconsistencies of the four (4) Wye Alternatives with the applicable General Plans and any other applicable land use plan. E.g., whether the carried-over Wye Alternatives would be consistent with the intent of local general plans to guide community growth. Under the CEQA Guidelines, an SEIR must discuss “any inconsistencies between the proposed project and applicable general plans, specific plans, and regional plans.” (14 Cal Code Regs §15125(d)).

It would appear no consideration whatsoever has been given to these issues, particularly with respect to our Client’s Highway Commercial Center and ongoing planned commercial development within the City of Chowchilla. See *Marin Mun. Water District v. KG Land Cal. Corp.* (1991) 235 Cal. App. 2d 1652, 1668; and *Greenbaum v. City of Los Angeles* (1984) 153 Cal. App. 3d 391.

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The Road 18 Wye Alternatives impose adverse impacts that are severe and unmitigatable. The current businesses and the ongoing planned commercial development would suffer devastating impacts such as loss of visibility from the highway—the lifeblood of Highway Commercial Developments—and lose substantial, critically essential frontage that would render the remainder parcels non-economic.

The SAA and SEIR/SEIS fail to address the revised Project's impacts on Airport Land Use Planning as required by CEQA.

The Road 18 Wye Alternatives appear to invade the boundaries of the Chowchilla Municipal Airport's Land Use Compatibility Plan. The Road 18 Wye Alternatives also appear to lie within two nautical miles of this public airport [applicable if a plan has not been adopted]. Any inconsistencies with the Airport Land Use Compatibility Plan must be discussed. Pub Res Code §21096(a); 14 Cal Code Regs §15154(a). The SAA fails to do so with respect to the four (4) Wye Alternatives under analysis; and particularly the Road 18 Wye Alternatives which clearly are the most proximate of all these Alternatives. For local agencies that have an airport, airport land use planning provisions of the State Aeronautics Act (Pub Util C §§21670-21679.5) require formation of an airport land use commission to develop an airport land use compatibility plan for the area surrounding the airport. The purpose of these provisions is to ensure orderly expansion of airports and adoption of land use policies that minimize the public's exposure to excessive noise and safety hazards in areas near airports that are not already devoted to incompatible uses. Pub Util C §21670(a)(2). Proposals to adopt or amend a general or specific plan, zoning ordinance, or building regulation that affects land uses within the planning area of an airport land use compatibility plan must be submitted to the commission for a consistency determination. Government Code §50485, which governs zoning within airport approach hazard areas, provides an additional source of authority for regulating the development of property surrounding airports.

If a project is located within the boundaries of an airport land use compatibility plan (or within two nautical miles of a public airport or public use airport if a plan has not been adopted), the lead agency may not adopt a negative declaration unless the lead agency considers whether the project will result in a safety hazard or noise problem for airport users or persons residing or working in the project area. Pub Res C §21096(b); 14 Cal Code Regs §15154(b).

If an SEIR is prepared, the lead agency must use the Airport Land Use Planning Handbook (Division of Aeronautics, California Department of Transportation, 2011) and

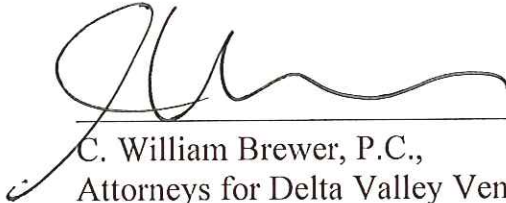
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other documents as technical resources to assist in the analysis of airport-related safety hazards and noise problems. Pub Res C §21096(a); 14 Cal Code Regs §15154(a). Under the provisions of 14 Cal Code Regs §15125(d), which requires that SEIRs discuss any inconsistencies with applicable general plans, specific plans, and regional plans, any inconsistencies with the airport land use compatibility plan should also be discussed. When an airport land use plan has not been adopted, the agency is required to use the Handbook standards in preparing the SEIR's assessment of airport-related safety hazards and noise problems. *Watsonville Pilots Ass'n v City of Watsonville* (2010) 183 CA4th 1059, 1085, 108 CR3d 577. It would appear the SAA and SEIR/SEIS have failed to address Airport Land Use Planning notwithstanding the CEQA requirements that it do so.

Very truly yours,

MOTSCHIEDLER, MICHAELIDES,
WISHON, BREWER & RYAN, LLP



C. William Brewer, P.C.,
Attorneys for Delta Valley Venture, LLC

CWB:hmr

cc: Jeff Morales, Chief Executive Officer
Diana Gomez, Central Regional Director
Lisa Marie Alley, Assistant Deputy Director of Communications
Karen Massie, Information Officer
Annie Parker, Information Officer

Enclosures:

Exhibit A – Comments on SAA Overview Map of Wye Alternatives
Exhibit B – Detailed maps showing Subject Property and Footprint of Wye Alternatives
Exhibit C – Previous Comments dated October 11, 2011, with attachments