

Formal Filing

Docket #:

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-35724

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Confidential Attachments:

Public Attachments:  - Public_Comments on Prop Adoption of EIS.pdf



FD 35724

Barbara Saddler to: David Navecky
Cc: zimmermans, Jessica Caine

05/20/2013 04:59 PM

----- Forwarded by Barbara Saddler/STB on 05/20/2013 04:59 PM -----

From: Severn Severn/STB
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Subject: Notification about new formal filing

An official filing has been submitted. Here is the doclink: 



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May 20, 2013

File No. 62043

BY E-FILING

Dave Navecky
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Surface Transportation Board
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Re: Environmental Comments on Proposed Adoption of Final EIS by the Board;
Docket No. FD 35724

Dear Mr. Navecky:

On behalf of Preserve Our Heritage ("POH"), we are providing comments regarding the Surface Transportation Board's ("Board") proposed adoption of the California High-Speed Train: Merced to Fresno Section, Final Project Environmental Impact Report/Environmental Impact Statement ("EIS") issued by the Federal Railroad Administration ("FRA") and the California High-Speed Rail Authority ("Authority"). The EIS purports to evaluate the potential environmental impacts of construction and operating a high-speed passenger train between Merced and Fresno in the San Joaquin Valley, California ("Project"). Because of the significant analytical and legal flaws in the EIS, we object to the Board's adoption of the EIS for purposes of any Board decision ruling on the Project.

POH is an organization comprised of farmers and other agricultural interests in the Madera and Merced area of California's Central Valley. POH's members have lived and farmed in this region for generations, and they pride themselves on being good stewards of the land. They are a key feature of the community, and their homes and farms are key components of this rural agricultural landscape.

Because of the Project's potential for significant regional and local agricultural impacts, POH has been monitoring and participating in the Authority's administrative procedures over the past several years, including its environmental analysis of rail line alternatives through the greater Madera and Merced region and elsewhere. POH provided comments on the Draft EIS and the Final EIS by letters dated October 13, 2011, and May 1, 2012, respectively. These comment letters are attached as Attachment A and Attachment B.

POH hereby incorporates by reference and submits the attached comment letters on the Draft EIS and the Final EIS as POH's comments on the Board's proposed adoption of the Final EIS. The EIS fails to give the environmental consequences of the Project the "hard look" that is

required under NEPA, and any decision by the Board predicated on the EIS would be arbitrary and capricious for that reason. *See, e.g., Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208 (9th Cir. 1998); *Kleppe v. Sierra Club*, 427 U.S. 390 (1976). POH's key concerns with the EIS include, but are not limited to, the following:

- NEPA requires that an EIS include an accurate and consistent description of the project. *See* 40 C.F.R. §§ 1502.13, 1502.14. The EIS fails to satisfy this fundamental principle, because each project alternative described in the EIS is either incomplete, misleading, or generally inadequate for environmental review or for review by the public.
- NEPA prohibits lead agencies from segmenting a project in order to avoid their environmental review obligations under NEPA. Actions and proposals that should be considered together should not be separated for consideration in separate impact statements. *See Thomas v. Peterson*, 753 F.2d 754 (9th Cir. 1985); 40 C.F.R. § 1508.25(a)(1). We understand that the wye connecting the north to south alignment to the San Francisco Bay Area will be evaluated in a separate environmental review document. This is classic piecemealing and a textbook violation of NEPA.
- NEPA requires an analysis of a reasonable range of alternatives. *See* 40 C.F.R. § 1502.14. Underpinning the high-speed rail project is California's Proposition 1A, which requires the Authority to take into primary consideration rail alignments that use existing transportation corridors. The Authority has rejected this directive because alignments and wye designs evaluated in the EIS largely depart from existing transportation corridors and needlessly realign or destroy vital irrigation infrastructure.
- NEPA requires a "hard look" at a project's environmental consequences. As discussed in more detail in POH's attached comment letters, the topical subject matters discussed in the EIS are based on incomplete and inadequate analyses.
 - The analyses of topical areas that are particularly defective include, but are not limited to, agricultural resources; noise and vibration; air quality and greenhouse gas emissions; electromagnetic fields and electromagnetic interference; biological resources and wetlands; cultural and paleontological resources; socioeconomics, communities, and environmental justice; and regional growth.
 - Notably, the EIS's analysis of transportation impacts fails to adequately evaluate the Project's resultant increase in traffic congestion where, for example, the alignment crosses existing roads and other rights-of-way. A further transportation study evaluating these impacts is needed to better understand how the Project will

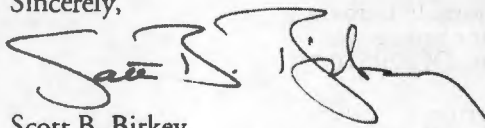
Dave Navecky
May 20, 2013
Page 3

affect transportation patterns, and to identify measures designed to minimize public safety concerns such as traffic-related injuries and casualties.

In summary, the EIS does not reflect a reasonable, good faith effort to disclose and evaluate the environmental effects of the Project. The EIS is fatally flawed and because of these significant deficiencies, the Board should not rely upon the EIS for any decision it may make related to the Project, including any decision on the Authority's request for construction authority.

Accordingly, POH **objects** to the Board's adoption of the California High-Speed Train: Merced to Fresno Section, Final Project Environmental Impact Report/Environmental Impact Statement issued by the Federal Railroad Administration and the California High Speed Rail Authority.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott B. Birkey", written over a horizontal line.

Scott B. Birkey

Attachments

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cc: See service list.

CERTIFICATE OF SERVICE

I hereby certify that on May 20, 2013, I served the foregoing Environmental Comments on Proposed Adoption of Final EIS by the Board; Docket No. FD 35724 upon the following parties of record in this proceeding:

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Attachment A



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October 13, 2011

File No. 62043

VIA E-MAIL AND OVERNIGHT DELIVERY

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Dan Leavitt
California High-Speed Rail Authority
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**Re: Comments on California High-Speed Train Project, Merced to Fresno Section,
Draft EIR/EIS**

Dear Messrs. Valenstein and Leavitt:

On behalf of Preserve Our Heritage ("POH"), we are providing comments on the California High-Speed Train Project, Merced to Fresno Section, Draft Environmental Impact Report/Environmental Impact Statement ("Draft EIR/EIS") prepared by the Federal Railroad Administration ("FRA") and the California High Speed Rail Authority ("Authority") for the high-speed rail section between Merced and Fresno ("Project").¹ These comments also reflect comments by POH's environmental consultants, Impact Sciences and Illingworth & Rodkin, regarding certain key sections in the Draft EIR/EIS. We are also providing for the administrative record a video of the October 6, 2011, Fresno City Council meeting.

In summary, based on our collective review we believe the Draft EIR/EIS is fundamentally flawed in several important respects. The Authority has failed under CEQA to produce a Draft EIR/EIS that reflects a reasonable, good faith effort to disclose and evaluate the environmental impacts of the Project, or to properly identify and describe mitigation measures and alternatives related to the Project. *See, e.g., Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.*, 47 Cal.3d 376 (1988). Further, the FRA has failed under NEPA to take a "hard look" at the environmental consequences of the Project, and any decision by the FRA predicated on this Draft EIR/EIS would be arbitrary and capricious. *See, e.g., Kleppe v. Sierra Club*, 427 U.S. 390 (1976);

¹ Unless otherwise specifically noted, references to the "Authority" include both the California High Speed Rail Authority and the Federal Railroad Administration.

Blue Mountains Biodiversity Project v. Blackwood, 161 F.3d 1208 (9th Cir. 1998). The Authority should, at the very least, address and remedy these significant flaws, and re-circulate a revised draft of the EIR/EIS for another round of public review and comment. See, e.g., 14 Cal. Code Regs. § 15088.5.

I. INTRODUCTION

POH is an organization comprised of farmers and other agricultural interests in the Madera and Merced area of the California Central Valley. POH's members have lived and farmed in this region for generations, and they pride themselves on being good stewards of the land. Because of the high-speed rail Project's potential for significant regional and local agricultural impacts, POH has been monitoring the Authority's environmental analysis of the high-speed rail line alternatives through the greater Madera and Merced region. As discussed in detail below, POH has significant concerns regarding that analysis, and is particularly alarmed by the fact that – in contravention of Proposition 1A – the Authority is considering rail alignments that would disrupt intact agricultural lands and locate rail corridors on pristine greenfields rather than use existing transportation corridors.

POH is no stranger to the Authority or its staff. For more than a year, POH has served on technical working groups, participated in public meetings and offered suggestions on how high-speed rail could work within our community. POH has presented rail alignment options to the Authority on several occasions that could serve as models for how existing corridors could be used to avoid destroying our communities, pristine wildlife, or the basis of our economy. We have developed maps that meet HSRA published planning criteria, taken HSRA staff and executives on tours of impacted lands and testified innumerable times at HSRA meetings, technical working groups, community outreach meetings and workshops. As early as September 2010, HSRA staff told POH they would accept no further changes or inputs to their planned routes; in their words, "pencils were down." When questioned regarding the lack of use of existing corridors, HSRA's contractor told POH that "from space" all the options looked like existing corridors.

HSRA's lack of consideration for the impacted communities is evidenced by the fact that the Authority gave the public only 60 days to review and comment on the thousands of pages comprising the Draft EIR/EIS and its technical reports. The Authority is pushing to start construction in order to cross a mythical "point of no return" and thus gave the public inadequate time to review and comment on more than 15,000 documents. This is a patent disregard of the public's right to expect an adequate opportunity to review and comment on a project of monumental importance to the State of California. The Authority's rush through this process is a violation of both the letter and the spirit of CEQA and NEPA. See, e.g., 14 Cal. Code Regs. § 15201 ("Public participation is an essential part of the CEQA process."); *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.*, 42 Cal.3d 929 (1986) (noting that the CEQA process "must be open to the public, premised upon a full and meaningful disclosure of the scope, purposes, and effect of a consistently described project . . ."); 40 C.F.R. § 1500.1(b) (noting that during the

NEPA procedures "public scrutiny [is] essential to implementing NEPA"). POH reserves its right to raise this argument at any point during the CEQA and NEPA process for the Project.

POH rejects the myth created by the Authority that high-speed rail will result in the creation of jobs. POH recognizes that there will be a temporary increase in construction employment when the section and stations are constructed. However, there is no mention in the Draft EIR/EIS that construction workers will be hired locally. Furthermore, there is no assurance of the Project creating a substantial number of permanent jobs. In fact, POH believes that the Project will result in substantial job losses in Madera and Merced Counties by taking thousands of acres of prime farmland out of agricultural use. POH has dedicated itself to the preservation of agricultural land and the agricultural industry. If our agricultural land is destroyed, we not only lose a finite resource and a way of life, we lose the jobs that accompany agriculture: the packing box manufacturer, the bottle maker, the seed company, the crop duster, the irrigation supplier, the equipment supplier, and the value-added manufacturing that still exists in this state.

As discussed in more detail below, the Draft EIR/EIS is critically deficient. Nonetheless, we note that the Draft EIR/EIS makes one thing abundantly clear: although all of the alternatives have substantial adverse environmental impacts, the BNSF and the Hybrid alternatives would result in substantially greater environmental impacts than the UPRR/SR 99 alternative. This only makes sense. Unlike the BNSF and the Hybrid alternatives, the UPRR/SR 99 alternative would primarily use *existing transportation corridors*. As such, it has fewer impacts to agricultural resources, biological and wetland resources, and other impacts. With respect to the wye options, POH reiterates that the Highway 152 wye option, which the Authority has deferred to the next EIR/EIS, is in fact the environmentally superior option in comparison to the other wye options, because it uses existing transportation corridors and has the fewest environmental impacts.

POH believes the West Chowchilla Design Option also results in significant environmental impacts. This option would result in particularly devastating agricultural impacts, as it would create an alignment that cuts through irrigation systems, drainage systems, power access, and roads. There would be no feasible mitigation to remedy such extensive impacts. This option would also cut through several environmentally sensitive areas. One of those areas is the 14-acre environmental retreat in which the San Joaquin Valley Raptor Center releases injured predators such as hawks. To our knowledge, no local agencies and almost no landowners in the area support this option. In any event, this option is clearly at odds with the Project objectives on page 1-4, one of which is to "maximize the use of existing transportation corridors and rights of way, to the extent feasible." Finally, we note that the Draft EIR/EIS includes certain mistakes suggesting that the analysis of this option is inaccurate. For example, the Draft EIR/EIS erroneously states on page 3.8-21 that "Dutchman Creek borders the north side of Harris-DeJager HMF site." Dutchman Creek is actually several miles to the north. In addition, there are sections of the Avenue 21 corridor where there is no existing corridor, only a series of water canals. We believe that as a community which lives and works directly in the route of HSR, that the only acceptable and least damaging route for HSR is along the Hwy 99/UPRR and Hwy 152 alignments.

Finally, we find it curious that the preface to the Draft EIR/EIS states "The Board will not make a final decision on the Project alternative to be implemented until after the Final Project EIR/EIS is issued," and yet under the Merced to Fresno HST Milestone Schedule, the Draft EIR/EIS states that property acquisition will begin in December 2012. This suggests the Authority's analysis is little more than a *post hoc* rationalization.

With this background, POH respectfully makes the following comments on the Draft EIR/EIS.

II. COMMENTS ON DRAFT EIR/EIS

A. The Project Alternative Descriptions Are Incomplete, Misleading, and Generally Inadequate for Environmental Review.

The National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, and the California Environmental Quality Act (CEQA), Cal. Pub. Res. Code § 21000 *et seq.*, generally require that a project description must be accurate and consistent throughout the environmental document. Under CEQA, for example, "[a]n accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR." *County of Inyo v. City of Los Angeles*, 71 Cal.App.3d 185, 193 (1977); *see also Kings County Farm Bureau v. City of Hanford*, 221 Cal.App.3d 692 (1990). This principle generally applies in the NEPA context, as well. *See, e.g.*, 40 C.F.R. §§ 1502.13, 1502.14.

The Draft EIR/EIS fails to satisfy these fundamental principles of NEPA and CEQA. The description of each project alternative in the Draft EIR/EIS is either incomplete, misleading, or generally inadequate for environmental review, and – by extension – for review by the public. For example:

- *Passim*. Throughout Chapter 2, the TPSS and the power source for the vicinity are not identified. Similarly, while the TPSS and proposed power line extensions and reconductoring are identified in the text of the chapter, there are no graphics depicting where these improvements will be made. This makes it nearly impossible to tell whether the environmental impacts associated with these project components were analyzed.
- Page 2-27. The Draft EIR/EIS fails to mention the large amount of vacant housing that exists in the Central Valley as result of the downturn in the economy. Given that vacant housing inventory, it is unlikely the projected levels of growth identified in the Draft EIR/EIS will be achieved by 2035. The employment and population numbers reported in the Draft EIR/EIS overstate by orders of magnitude the projected growth of the study area under the No Project Alternative.

- Page 2-54. The graphic shows a "Secondary Impact Area" adjacent to the Merced HST Station but there is no explanation of that in the Project description. Moreover, there is no analysis of any "secondary impacts" in this area in any of the topical areas in the Draft EIR/EIS. Notably, there is no "Secondary Impact Area" identified for the Fresno HST station. The Draft EIR/EIS fails to account for these "Secondary Impact Areas" in the Project alternative descriptions, and it fails to analyze any of the "secondary" impacts that may result in these two areas.
- Page 2-65. The Draft EIR/EIS states that the BNSF alignment will go through the communities of Sharon and Kismet. Those two communities are not mentioned again in any of the resource sections of the Draft EIR/EIS. Is the Project description in error or the analysis incomplete?
- Page 2-89. Numerous agencies, organizations and citizen groups have identified inaccuracies in the Authority's ridership numbers. (*See, e.g.*, Elizabeth Alexis, Memo to the Ridership Peer Review Panel, Sept. 2011.) The Authority continues to use these numbers to justify the need for the Project and to assert that the Project will provide environmental benefits such as reduced air pollution and greenhouse gas emissions. Because these ridership numbers are inaccurate, the resulting benefits are seriously overstated.
- Pages 2-91 and 2-02. The description of the HST Service for the full system does not provide any information on the number of daily trains that would operate on the Merced-Fresno section, both north and south of the wye. In fact the Draft EIR/EIS does not make clear the number of trains that would operate on this section and the frequency of those trains. Given that the number of daily trains is a key variable that determines several of the Project's impacts, the lack of this information in the Project description is a serious flaw of the Draft EIR/EIS and has a ripple effect throughout the entirety of the document.
- Page 2-91. The Draft EIR/EIS claims that the percentage of transit passengers arriving by automobile will decrease as land development around the station increases. This is unlikely to occur because there are no true incentives to get local governments to focus on infill. To make this a reality, the Authority would need to provide incentives for cities along the high-speed rail alignments to encourage infill development near the transit centers. The Draft EIR/EIS assertions regarding infill development around stations are not supported by the facts.
- Page 2-96. The Draft EIR/EIS describes the track and station construction taking 7 years to complete and the HMF being completed in 9 years. The economic analysis uses 5 years of construction, thereby distorting the economic impacts of the Project.

B. The Draft EIR/EIS Inappropriately Segments the Overall Project, Resulting in Piecemeal Environmental Analysis Masking the Project's True Environmental Impacts.

A project description should include "the whole of [the] action," and must include the entirety of the project. See *Santiago Water District v. County of Orange*, 118 Cal.App.3d 818, 829-30 (1981). A lead agency may not "piecemeal" or "segment" a project by splitting it into two or more segments for analysis in separate environmental documents. CEQA mandates that environmental considerations must not be "submerged by chopping a large project into many little ones – each with minimal potential impact on the environment – which cumulatively may have disastrous consequences." *Boxung v. Local Agency Formation Comm'n*, 13 Cal.3d 263, 283-84 (1975). NEPA also prohibits lead agencies from segmenting a project in order to avoid their NEPA obligations. See, e.g., *Thomas v. Peterson*, 753 F.2d 754 (9th Cir. 1985); see also *Save Yaak Comm. v. Block*, 840 F.2d 714 (9th Cir. 1988). Under NEPA, actions and proposals *that should be considered together* should not be separated for consideration in separate impact statements, and this principle applies in particular with respect to "connected actions" that are "closely related." 40 C.F.R. § 1508.25(a)(1). In several instances, the Draft EIR/EIS demonstrates that the Authority is piecemealing its environmental review of this Project.

- Page 2-22. The Draft EIR/EIS says that the Authority will pick a north-south alignment based on the analysis in this Draft EIR/EIS, but the wye will be picked based on the anticipated Merced to San Jose section EIR/EIS. This is classic piecemealing and a textbook violation of both NEPA and CEQA. Two elements of the same project must be evaluated together in one environmental document. See, e.g., *Laurel Heights Improvement Ass'n v. Regents of the University of California*, 47 Cal.3d 376, 396 (1988). Evaluating the wye in a separate environmental document violates this fundamental precept, and this is particularly egregious here where the wye is a significant portion (about one-third of the total 65-mile section) of the section that comprises the Merced to Fresno corridor. Indeed, the Authority itself admits on page 3.1-2 that the wye influences the impacts of the north-south section. The wye also decides travel time and is an important factor in the purpose and need and decision making.
- *Passim*. The Draft EIR/EIS reports the environmental impacts of the Ave 21 and Ave 24 wyes and north-south section combinations together. As a result, it is nearly impossible for the public – and the Authority Board – to tease out the environmental impacts related to the north-south sections. The Authority cannot select the north-south alignment for this section based on the incomplete information in this Draft EIR/EIS. The Authority cannot make a decision on the north-south alignment without fully analyzing and disclosing the impacts of all the wye options, including the SR-152 wye. The Authority must analyze the environmental impacts of the SR-152 wye, add that information to this Draft EIR/EIS, and recirculate this document so that all of the impacts of the Project

will be fully disclosed to the public and the decision makers will have all the necessary information needed to make an informed decision with respect to this section of the HSR system.

C. The Draft EIR/EIS Is Deficient Because It Defers the Environmental Analysis and Mitigation Related to Key Elements of the Project.

An analysis of environmental impacts that can be feasibly evaluated should not be deferred to later. *See, e.g., Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova*, 40 Cal.4th 412 (2007) (EIR for large community plan did not adequately investigate impacts of supplying water to future stages of development); *Stanislaus Natural Heritage Project v. County of Stanislaus*, 48 Cal.App.4th 1428 (EIR for proposed multistage development project that contained no analysis of water supply impacts of later phases, and deferred analysis to later EIRs, held to be inadequate).

Similarly, it is generally inappropriate for a lead agency to defer formulation of a mitigation measure to the future. 14 Cal. Code Regs. § 15126.4(a)(1)(B). For example, mitigation measures calling for a mitigation plan to be devised based on future studies are legally inadequate if they do not describe the nature of the actions expected to be incorporated in the plan. *See San Joaquin Raptor Rescue Ctr. v. County of Merced*, 149 Cal.App.4th 645 (2007) (rejected mitigation measure calling for future surveys for special status species and development of undefined habitat management plan in response to surveys); *Endangered Habitats League v. County of Orange*, 131 Cal.App.4th 777 (2005) (rejecting mitigation measure requiring submission of acoustical analysis and approval of mitigation measures recommended by analysis because no mitigation criteria or potential mitigation measures were identified).

The Draft EIR/EIS improperly defers the environmental analysis and mitigation related to key elements of the Project, and therefore violates the principles identified above. The Authority may not wait until after the Draft EIR/EIS to evaluate the Project's impact or to develop mitigation related to any already-identified impacts from the Project. Those efforts must be done now and included in the Draft EIR/EIS. Below are examples of where the Draft EIR/EIS falls far short of satisfying this requirement.

- Page 2-98. The Draft EIR/EIS describes future staging areas, the locations and sizes of which currently are not identified in the Draft EIR/EIS. Given that this is a project-level analysis, the Draft EIR/EIS should indicate clearly how many staging areas will be required for the total length of the Merced to Bakersfield section, the length of time the staging areas would be needed, and in what condition they would be returned to owners. The Draft EIR/EIS fails to provide any of that information. It also fails to describe from where the dirt to construct the berms would be obtained.

- Page 2-98. The Draft EIR/EIS states that preconstruction activities will require temporary batch plants to produce PCC or asphaltic concrete. According to the Draft EIR/EIS, the contractor will be responsible for reducing air emissions, mitigating noise impacts, and reducing the potential for discharge of pollutants into storm drains or watercourses from the use of equipment, materials, and waste products. The Draft EIR/EIS also indicates that the Authority will do further studies as necessary to develop traffic control plans and conduct cultural resource investigations and historic property surveys.² All of this is classic deferred analysis. These project components should be fully identified in the Draft EIR/EIS. If because of the preliminary nature of the Project design these details about the Project cannot be identified at this time, then the Draft EIR/EIS should have identified clear performance standards as to how these future activities will be completed and how environmental impacts will be avoided or minimized. No such performance standards have been provided. As written, the public has no assurance that these components of the Project will not result in substantial additional environmental impacts that are not disclosed nor mitigated by the measures included in the Draft EIS/EIR.
- Page 3.1-2 states that even though the Authority and FRA will not make a decision on the wye as part of this Draft EIR/EIS, it analyzes the impacts of the Ave 21 and Ave 24 wye to show how the wyes would influence impacts associated with the north-south alignment. If that is the case, as noted in our comments above, the Authority cannot approve a north-south alignment without fully evaluating the SR 152 wye because that wye will also influence the impacts of the north-south alignment and the Authority and FRA have committed to evaluating that wye. As such, in addition to the piecemealing issue identified above, waiting until later to evaluate the SR 152 wye is an improper deferral of environmental analysis.
- The Draft EIR/EIS is replete with numerous examples of deferred mitigation. For example, *Bio-MM#5* requires the preparation of a biological resources management plan as mitigation. However, there are no details as to what will be included in the management plan, which is completely inadequate as mitigation under CEQA and NEPA. The Draft EIR/EIS provides no information regarding the requirements of the plan. How would any of the biological resources be managed? This question cannot be answered from the information provided in the mitigation measure. This is textbook deferral of mitigation. Similarly, *Bio-MM#6* requires the preparation of a restoration and revegetation plan, presumably for upland vegetation impacts, but there is a complete lack of details

² The reference to future cultural resource investigations and historic property surveys is particularly disturbing because the Project must complete the Section 106 compliance process pursuant to the National Historic Preservation Act before the Project is approved. Section 106 does not allow such analysis to be deferred.

in this measure, and therefore this is a plan with no content and incapable of providing any real mitigation.

- Along these same lines, the last sentence on page 3.4-50 (Noise and Vibration) states "establish performance criteria to balance existing noise events and ambient roadway noise conditions as factors for determining mitigation measures." If performance criteria are to be established to mitigate impacts, those need to be presented in the Draft EIR/EIS and not deferred to a later point in time.

D. The Analysis of Alternatives Is Deficient, and the Alternatives Evaluated Do Not Reflect a Reasonable Range of Alternatives.

As a preliminary matter, POH was frustrated to learn that the Draft EIR/EIS evaluates the BNSF alternative. The Authority and FRA should not have wasted public resources evaluating that alternative in this Draft EIR/EIS. That alternative was evaluated previously in the HSR System Program EIR/EIS and that analysis clearly demonstrated that the BNSF alternative would have substantially greater environmental impacts than the UPRR/SR 99 alternative. As this project-level EIR/EIS tiers from the Program EIR/EIS that preceded it, there was absolutely no need to evaluate this alternative again. CEQA explicitly states that only those alternatives be considered that would meet the Project objectives and avoid or reduce (and not increase) the Project's environmental impacts. Cal. Pub. Res. Code § 21002; 14 Cal. Code Regs. § 15126.6. Similarly, the ultimate purpose of the alternatives analysis in a NEPA document is to identify ways in which a project's environmental impacts may be reduced or avoided. See 42 U.S.C. § 4332(2)(C)(iii); 40 C.F.R. § 1502.14. The expenditure of public funds on such spurious analysis is inappropriate, and the continued evaluation of these alternatives, which deviate from existing transportation corridors, is a misrepresentation of the intent of the voting public.

Both CEQA and NEPA require lead agencies to evaluate a reasonable range of project alternatives to the proposed Project. 14 Cal. Code Regs. § 15126.6; 40 C.F.R. § 1502.14. In general, for purposes of CEQA, project alternatives are chosen in light of the objectives of the project while avoiding or substantially lessening any of the project's significant effects. See 14 Cal. Code Regs. § 15126.6(a), (f). For purposes of NEPA, alternatives are chosen in light of the purpose and need for the project. See 40 C.F.R. § 1502.13. Underpinning the high-speed rail project is Proposition 1A, which requires the Authority to take into primary consideration rail alignments that use existing transportation corridors. The Draft EIR/EIS clearly demonstrates that the Authority has rejected this directive and otherwise evaluated a range of alternatives that does not satisfy CEQA or NEPA requirements.

- Page 2-20. The Draft EIR/EIS states that a UPRR/BNSF hybrid alternative (A4) was removed from consideration because it "departed from existing transportation corridors, thereby causing new transportation corridors among highly productive agricultural lands. Doing so would have the potential to reduce the viability of surrounding farmlands, giving way to other uses such as transportation and utility

infrastructure that could result in unwanted and unplanned growth patterns." Yet a new hybrid has been brought back into the Draft EIR/EIS which, contrary to the false statement on page 2-21, also departs from existing transportation corridors. The West Chowchilla Bypass Option, which is part of the new hybrid alternative, does not follow any transportation corridor, county easement, trail, or other such existing corridor. Instead, that option would be established through cultivated agricultural fields and would destroy water district and farmer water facilities essential to continued production of several thousand acres of productive agricultural lands.

- Page 2-20. The BNSF and Hybrid alternatives and wye designs, including the Avenue 21 alignment, that are proposed all depart from existing transportation corridors and also needlessly realign or destroy vital irrigation infrastructures. All of these proposals are completely in conflict with the objectives of *maximizing the use of existing transportation corridors* and rights-of-way and provide intercity travel in a manner *sensitive to and protective of the region's natural and agricultural resources* and reduce emissions and vehicle miles traveled for intercity trips, as set forth in Proposition 1A.
- Page 2-20. Because the Authority has decided to remove Alternative A4 from further consideration given that it departs from existing transportation corridors; impacts that would have resulted from implementation of Alternative A4 will be avoided. However, the BNSF and the new Hybrid Alternative that are effectively replacing Alternative A4 and are being carried forward for consideration will result in nearly the same level of impacts as Alternative A4. The Draft EIR/EIS inappropriately carries these alternatives forward, and then fails to evaluate their impacts on farmland, especially the additional losses of farmland that would result from unwanted and unplanned growth patterns triggered by these alignments. This sleight of hand by the Authority is nothing more than a bait and switch tactic.
- Page 2-21. The Draft EIR/EIS states that the BNSF Alternative³ has a lower level of impact on commercial centers. BNSF alternative goes through at least two unincorporated communities. Unincorporated areas depend on the surrounding agricultural economy which would be devastated and these unincorporated communities will fail. This effect is not addressed in the Draft EIS/EIR.
- Page 2-26. The No Project Alternative is described as the growth planned for the region as well as existing and planned transportation improvements. Since the

³ Page 2-61 of the Draft EIR/EIS states that the design option for the north-south alignment of the BNSF Alternative was created in "consultation with Merced County." Please provide documentation of that consultation.

Project is a transportation improvement, the No Project Alternative should have been defined as no HST and that only other planned transportation improvements would be implemented between now and 2035.

- Page 2-26. The several pages worth of material discussing growth is irrelevant and introduces an unnecessary bias in the Draft EIR/EIS. As a result of the manner in which the No Project Alternative is defined, the impacts of the No Project Alternative are overstated in this Draft EIR/EIS.
- Page 2-96. The Draft EIR/EIS refers to the "Rapid Fire" modeling tool, and provides a number of predictions based on the use of that model. Several specific predictions are listed in bullet-point, including the prediction that the "Growing Smarter" scenario would reduce greenhouse gas emissions equivalent to adding a forest a quarter the size of California. No support, however, is provided for the use of the "Rapid Fire" modeling, such as the assumed projections and numbers for these growth predictions.
- Page 2-101. The Draft EIR/EIS lists all major permits and approvals. As the Project is likely to modify a floodplain, some approval from FEMA is likely required for the Project. However, FEMA is not listed in Table 2-16. The Draft EIR/EIS also identifies that a Section 408 permit from the U.S. Army Corps of Engineers would be required, but that approval is also not listed in this table.
- *Passim*. The Draft EIR/EIS does not adequately address the alternative grade separation crossings. These very large overcrossing (approximately 2700' long by 30'+ tall) structures will have an additional visual, economic, and environmental impact on our rural lifestyle, as well as safety hazards, particularly during the fog season. They have the potential of taking up a significant amount of additional land.

E. The Topical Subject Areas Discussed in the Draft EIR/EIS Are Based on Incomplete and Inadequate Analyses.

The Draft EIR/EIS is fundamentally flawed because it does not include any supporting technical analysis in the Draft EIR/EIS itself, but instead requires the reader to dig through the mounds of technical reports attached to the Draft EIR/EIS in order to understand the analysis. Making matters worse, the Draft EIR/EIS does not point the reader to where that material might exist in the reports. A layperson with little to no expertise in the topical areas has almost no chance of actually locating the underlying analysis described in the Draft EIR/EIS. This is inconsistent with CEQA and NEPA principles of transparency. While data that is key to the analysis of an issue may be placed in a technical appendix, that data must be summarized in the body in the body of the EIR to ensure that the information is presented in a manner that will adequately inform the public and decisionmakers. Readers should not be forced to sift through appendixes to

uncover information that is fundamental to the EIR's environmental analysis. See *San Joaquin Raptor Rescue Ctr. v. County of Merced*, 149 Cal.App.4th 645, 659 (2007); see also *California Oak Found. v. City of Santa Clarita*, 133 Cal.App.4th 1219 (2005) (noting the fact that critical information regarding a project's water supply was presented only in an appendix added to the final EIR, rather than in the text of the EIR, and explaining that information buried in an appendix cannot substitute for a reasoned analysis).

In addition, POH and its environmental consultants have identified a number of deficiencies in the topical areas discussed in the Draft EIR/EIS. The specific topical areas discussed below include Air Quality and Global Climate; Noise and Vibration; Electromagnetic Fields and Electromagnetic Interference; Biological Resources and Wetlands; Agricultural Lands; Cultural and Paleontological Resources; Socioeconomics, Communities, and Environmental Justice; Aesthetic Resources; Regional Growth; Geological and Hydrological; and Cumulative Impacts. The remaining topical areas, however, are also deficient and inadequate under NEPA and CEQA, and these include Transportation; Public Utilities and Energy; Hydrology and Water Resources; Geology, Soils, and Seismicity; Hazardous Materials and Wastes; Safety and Security; Station Planning, Land Use, and Development; and Parks, Recreation, and Open Space.

Given the deficiencies in all of the topical areas discussed in the Draft EIR/EIS, the Authority has failed to produce a Draft EIR/EIS that reflects a reasonable, good faith effort to disclose and evaluate the environmental impacts of the Project, or to properly identify and describe mitigation measures and alternatives related to the Project. In addition, the Authority has failed to take the requisite "hard look" at the environmental consequences of the Project. See, e.g., *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.*, 47 Cal.3d 376 (1988); *Kleppe v. Sierra Club*, 427 U.S. 390 (1976); *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208 (9th Cir. 1998).

1. Air Quality and Global Climate Change

Subsection 3.3.3.1 indicates that the on-road vehicle emission analysis was conducted using average daily vehicle miles traveled (VMT) estimates and associated average daily speed estimates using the California Air Resources Board (CARB) emission factor program, EMFAC2007. The section states that the current version of EMFAC2007 does not consider recent regulatory actions for improvements in vehicle fuel economy. Furthermore, the section acknowledges that the estimated 2035 on-road emissions would be lower if the recent regulatory actions were incorporated into the emission factors; however, the overall conclusions of this report would not change. While it is true that the overall conclusions of the analysis would not change, the Draft EIR/EIS overestimates the 2035 on-road emissions of criteria pollutants and greenhouse gases by an estimated 20 to 30 percent and thereby overstates the reduction in greenhouse gas emissions that would result with the HST.

The Draft EIR/EIS should be revised to include additional information regarding the improvement in corporate average fuel economy (CAFE) standards from recent regulatory actions that are not considered in EMFAC2007. Subsection 3.3.2.2 includes a discussion of Assembly Bill

1493, which sets tailpipe emission standards for carbon dioxide (CO₂) from motor vehicles in California. After a series of litigation and initial denial of a Clean Air Act waiver by the United States Environmental Protection Agency (U.S. EPA), the State of California worked with the federal government to establish a single national CO₂ emissions standard for motor vehicles. In April 2010, the United States Environmental Protection Agency (USEPA) and the Department of Transportation (DOT) National Highway Traffic Safety Administration (NHTSA) issued a final regulation order establishing national standards for model year 2012 through 2016 passenger cars and light-duty truck. In 2012, passenger cars and light-duty trucks would have to meet an average emissions standard of 295 grams of CO₂ per mile and CAFE standards of 30.1 miles per gallon.⁴ By 2016, the vehicles would have to meet 250 grams of CO₂ per mile and 35.5 miles per gallon.⁵ This is compared to model year 2011 CAFE standards of 30.2 miles per gallon for passenger vehicles and 24.1 miles per gallon for light duty trucks (for a combined 27.3 miles per gallon).⁶ This information should be included in the discussion of Assembly Bill 1493 or in the discussion of federal greenhouse gas regulations, as it would be useful to the public and decision makers to understand that future condition emissions from on-road motor vehicles will decline on a per mile basis with or without the Project and that the EMFAC2007 generated emissions do not account for this decline.

The Draft EIR/EIS fails to disclose the severity of the Project's construction impacts. Construction-related air quality impacts are summarized in Table 3.3-7, Table 3.3-8, and Table 3.3-9. However, the tables only indicate whether the Project and alternatives would exceed the San Joaquin Valley Air Pollution Control District (SJVAPCD) annual California Environmental Quality Act (CEQA) significance thresholds and the annual General Conformity thresholds for the San Joaquin Valley Air Basin (SJVAB). The table does not provide the numerical emission estimates, forcing the reader to look for those numbers in the model printouts in the appendix. This is not appropriate as a layperson would not be able to find that information in the appendix. Secondly, without the numbers, it is impossible for the public and the decision makers to assess the severity of any potentially significant impacts. The Draft EIR/EIS should update Table 3.3-7, Table 3.3-8, and Table 3.3-9 with a summary of the numerical estimated emissions. For the same reasons, Table 3.3-29, Table 3.3-30, and Table 3.3-31 showing the mitigated construction impacts should be updated with numerical construction emission estimates. Without the numbers, the public has no way of determining what reductions would be achieved by the proposed mitigation measures.

Section 3.3.3.8 describes the methods for evaluating potential air quality impacts from material hauling. The discussion states that exhaust emissions from trucks used to haul material to the construction site were estimated using heavy-duty truck emission factors from EMFAC2007 and anticipated travel distances of these trucks within the SJVAB. However, it is not clear from the

⁴ U.S. Environmental Protection Agency, "Transportation and Climate, Regulations and Standards," <http://www.epa.gov/otaq/climate/regulations.htm#finalR>, 2011.

⁵ Ibid.

⁶ Federal Register, Vol. 74, No. 59, March 30, 2009.

discussion if the emissions from entrained road dust emissions were also included in the haul truck analysis. If entrained road dust emissions were not included in the analysis, the Draft EIR/EIS should be revised to include these emissions as impacts could be underreported for particulate matter.

Section 3.3.6 states that water demand is evaluated in Section 3.6 of the Draft EIR/EIS. However, it is not clear if the greenhouse gas emissions analysis in Section 3.3 account for indirect greenhouse gas emissions from this water demand. Section 3.3 should be revised to include a discussion of indirect greenhouse gas emissions from the Project's water demand and provide either a numerical estimate of the associated greenhouse gas emissions from water demand or demonstrate, based on substantial evidence, that such emissions would be minimal and would not substantially affect the conclusions in Section 3.3.

In addition, several of the mitigation measures identified in this section are inadequate or misleading. For example:

- *Mitigation measure AQ-MM#2* requires that the Project utilize low-VOC architectural coating achieving a 10 percent reduction in volatile organic compound (VOC) emissions. VOC emissions contribute to the formation of regional ozone, for which the SJVAB is nonattainment. Several architectural coating manufacturers have reformulated paints to levels that achieve even greater reduction in VOC emissions. These are known by the South Coast Air Quality Management District (SCAQMD) as Super-Compliant or Clean Air paints. Mitigation measure AQ-MM#2 should be revised to include the use of Super-Compliance or Clean Air paints if such paints are found to meet the needs of the Project.
- *Mitigation measure AQ-MM#4* requires the use of Tier 4 engines for off-road construction diesel equipment greater than 50 horsepower if such an engine is available for the particular piece of equipment. This measure should also specify that any emissions control device used by the contractor shall achieve emissions reductions that are no less than what could be achieved by a Level 3 certified diesel emissions control strategy for a similarly sized engine as defined by CARB regulations. The measure should also require that a copy of each unit's certified tier specification, any best available (BACT) documentation, and any CARB or SJVAPCD operating permit be made available at the time of mobilization of each applicable unit of equipment.
- *Mitigation measure AQ-MM#7* requires that large stationary equipment (combustion equipment, paint booths, wastewater treatment, etc.) be implemented with best industry practices, or alternative equipment to the extent possible to reduce emissions of criteria pollutants. This measure should also require compliance with SJVAPCD BACT requirements.

2. Noise and Vibration

The Noise and Vibration analysis in the Draft EIR/EIS is seriously flawed in that (a) it overlooks certain impacts; (b) identifies certain impacts as significant but does not provide any mitigation measures for those impacts; (c) finds an impact to be less than significant but does not provide substantial evidence in support of that conclusion, and (d) presents mitigation measures that are vague and uncertain, the effectiveness of which cannot reasonably be evaluated.

HST is a new source of noise for the Project area, and in fact for all of California as there is nothing like it in the state. However, information critical to the understanding of this new noise source is absent from the Draft EIR/EIS. Nowhere in the noise and vibration section of the Draft EIR/EIS or in the Noise and Vibration Technical Report is it reported how loud it will be as a very high speed train passes by, nor are any comparisons made to other sources to assist the reader in these most fundamental questions: "How loud will it be when the train goes by? What will it sound like?" The analysis is incomplete without this basic information. The assessment of impacts is grossly incomplete without a discussion and assessment of the single event noise, characterized by either the SEL (probably the best technical descriptor) or Lmax (more easily understood).

In evaluating construction noise, the Draft EIR/EIS uses FTA construction noise criteria. The federal lead agency is obliged under NEPA to respect local laws and ordinances. For example, Merced County has a noise ordinance that imposes restrictions on construction noise levels that are different from those provided by FTA. The Merced County noise ordinance also identifies an impact if construction activities increase noise levels substantially over ambient conditions (the same as the substantial increase test under CEQA). The noise analysis does not mention the County's ordinance and does not apply it for portions of the Project that would be constructed within unincorporated Merced County.

Page 3.4-10 describes the vibration criteria for HST operations. The criteria listed in Table 3.4-6 all relate to interference with interior operations and annoyance of building occupants. The Draft EIR/EIS does not report the criteria for property damage from vibrations generated by HST operations.

Page 3.4-13 lists the methodology and assumptions used in the analysis for train operations. The fourth bullet says that the track was assumed to be ballast and tie which is 2 to 4 decibels quieter than slab track. However, the Project Description says that it is possible that a slab track would be used in some sections (such as the aerial structures and creek crossings). Because of the ballast track assumptions, the noise impacts in the Draft EIR/EIS are underestimated by 2 to 4 decibels, which is a serious flaw. The Draft EIR/EIS should be revised to clarify where slab track might be used, and the noise levels for those portions of the alignment should be recalculated and reported. This analysis could potentially reveal that there are additional locations along the alignment where the impacts would be severe or significant.

The fifth bullet on page 3.4-13 states that the modeling used the full system schedule of conceptual train operations as outlined in Chapter 2. Chapter 2 does not provide any information

on the number of daily trains that would operate on the Merced-Fresno section. That information is possibly buried in some appendix (which the Draft EIR/EIS fails to point to) making it very difficult for the EIR/EIS reviewer to determine what basic information was used in the impact analysis. This is a serious flaw of the Project Description section as key information that forms the basis of environmental impact analysis is not disclosed, making it impossible to determine whether the impacts are accurately analyzed in this Draft EIR/EIS.

Page 3.4-15: The first full paragraph describes a Type 1 project but the Draft EIR/EIS fails to provide a list of such projects so a reviewer can determine whether all Type 1 projects were duly evaluated for their noise impacts. A table identifying all Type 1 projects should be added to the Draft EIR/EIS and the noise analysis should demonstrate clearly that all Type 1 projects have been evaluated for their noise impacts.

Page 3.4-15: The noise and vibration technical report and the noise and vibration chapter of the Draft EIR/EIS fail to properly address the CEQA Appendix G standards of significance checklist questions related to the assessment of noise impacts. The first question in the CEQA checklist asks, "Would the Project result in exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?" In an attempt to justify the narrow approach used in the analyses, relying solely on thresholds established in the FRA and FTA guidance documents, the Draft EIR/EIS states the following regarding CEQA significance criteria in Section 3.4.3.5 on page 3.4-15:

The FRA noise and vibration criteria for evaluating effects under NEPA may be used as the CEQA significance criteria. In addition to these criteria, CEQA guidelines also define an impact pertaining to noise and vibration as considered significant if it would result in any of the following environmental effects:

Exposure of persons to or generation of noise levels in excess of standards for a severe impact established by the FRA for high-speed ground transportation and by the FTA for transit projects. These standards cover both permanent and temporary periodic increases in ambient noise levels in the project vicinity above levels existing without the project.

Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels."

These statements make no sense and misrepresent CEQA. The Draft EIR/EIS has simply restated the use of the FRA and FTA criteria, ignoring the essence of the CEQA checklist, where the primary thresholds to assess the significance of environmental impacts under CEQA are clearly those established in the local general plan or noise ordinance. Other thresholds such as those contained in the FTA and FRA guidance documents, may be used in addition to, but not as an

alternative to, evaluation with respect to local standards unless a clear and compelling argument is presented explaining that the proposed thresholds are stricter than the local standards.

Page 3.4-2 of the Draft EIR/EIS purports to address regional and local general plans and noise ordinances. However, none of the standards set forth in the local general plans and ordinances are included. The reader is rather referred to the Noise and Vibration Technical Report. This report summarizes some of the noise-related policies and ordinances in an appendix, but only references this appendix in relation to construction noise and vibration, and does not apply the standards or explain why they were not used.

Local jurisdictions typically adopt absolute noise level thresholds for new transportation and stationary noise sources. For example, the City of Fresno's Noise Element of the General Plan, in Objective H-1, states the following: "Protect the citizens of the city from the harmful and annoying effects of exposure to excessive noise. Policy H-1-a-j states: "Noise created by new transportation noise sources, including roadway improvement projects, shall be mitigated so that resulting noise levels do not exceed the adopted standards at noise sensitive land uses." The City also adopts its own relative thresholds in Policy H-1-b where it states,

For purposes of city analyses of noise impacts and for determining appropriate noise mitigation, a significant increase in ambient noise levels is assumed if the project causes ambient noise levels to exceed the following:

- The ambient noise level is less than 60 dB Ldn and the project increases noise levels by 5 dB or more;
- The ambient noise level is 60-65 dB Ldn and the project increases noise levels by 3 dB or more;
- The ambient noise level is greater than 65 dB Ldn and the project increases noise levels by 5 dB or more."

Local jurisdictions in the State of California adopt standards that are used to establish thresholds of significance. Local jurisdictions, in their noise element, or noise ordinance, also typically establish quantitative noise level limits for noises generated on one piece of property that may affect another property. In Fresno, for example, these standards are set forth in Table 9 of the City of Fresno's Noise Element of the General Plan and would be applicable to the assessment of noise impacts from the train station. The assessment in the Draft EIR/EIS is incomplete because local standards have not been considered. The Draft EIR/EIS fails to disclose whether the Project would result in exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance.

On page 3.4-16, the last sentence in the paragraph, states that the Screening Distances for operational noise were adjusted to match Project conditions, such as speeds of up to 220 mph, but the distances reported in the table were not adjusted for these speeds. They are the distances derived from 180 mph as given by the FRA. Based on the data contained in Table 4-3 of the FRA Guidance Manual, the difference in the Project speed of 220 mph and the reference screening speed of 180 mph would cause an expected increase in the SEL of 4 dB. According to Appendix G in the FRA Manual, an attenuation rate of 4.5 dBA per doubling of distance was assumed in calculating the screening distances. If this is the case, then the screening distances should have been increased by a factor of 1.85 to account for the increased noise expected as a result of the increased speed. The study area, or region of influence, developed based on the screening distances in the Draft EIR/EIS is, therefore, substantially smaller than it should be based on the Project operating conditions. This is a serious flaw in the analysis. The Draft EIR/EIS should be revised to reflect the correct study area and once the study area is corrected, it is possible that the analysis will show significant impacts at additional receptors along the alignments.

On page 3.4-16, the discussion regarding the Vibration Study Area, second bullet, uses a distance of 275 feet from the edge of ROW. The Draft EIR/EIS does not explain what the basis of this distance is. On page 3.4-17, all screening distances for vibration are focused on annoyance. There are no screening distance criteria or analysis provided for property damage.

On page 3.4-1 to 3.4-59, the Noise and Vibration section of the Draft EIR/EIS does not provide a cohesive discussion containing the information necessary to support the conclusions reached. For example, beginning at page 3.4-22, Table 3.4-10 presents several pages of summary tables of existing ambient noise levels data. But then in Section 3.4.5 Environmental Consequences beginning on page 3.4-28, no information is presented as to how those noise levels will change with the Project. The document simply jumps to the summary tables that summarize the total numbers of "impacts." There is no way for the public to understand the magnitude of the noise increases, particularly where severe impacts would occur. Are noise levels going to increase 5 dB, 10 dB, or 20-30 dB? The Noise and Vibration Technical Report, in some instances, reports noise level increases up to 32 dB in Tables 7-3 to 7-13, and this tremendous increase in noise is not mentioned in the Draft EIR/EIS noise section. This is a serious omission depriving the decision makers of critical information necessary to judge the significance of the effects and the likelihood that mitigation measures could reduce the impacts to a less than significant level.

On page 3.4-31, the discussion regarding the Common Construction Vibration Impacts contains an analysis of construction vibration impacts that is seriously flawed. Table 3.4-14 footnote states that the three categories are defined in Table 3.4-4. However, no categories 1, 2 and 3 are defined in that table. Assuming the categories that are being referenced are the same as the categories in Table 3.4-6, the numbers in Table 3.4-14 are referring to annoyance-related vibration impacts whereas the discussion above the table is about construction generated vibration effects on sensitive equipment for which no vibration level or vibration contour distances are provided. Based on this flawed analysis, the Draft EIR/EIS concludes that the construction vibration impact would be substantial under NEPA and significant under CEQA. Then the Draft EIR/EIS fails to identify a

mitigation measure for this significant impact. No mitigation measures are identified for the significant impact to sensitive equipment or the annoyance impacts to sensitive populations near the construction sites. The Draft EIR/EIS lists a mitigation measure (N&V MM#2) for construction vibration impacts. However, that measure is focused on minimizing property damage, an impact that is not even analyzed or identified as a construction period vibration impact. The Draft EIR/EIS needs to be revised to analyze and report all types of construction vibration impacts (annoyance, property damage, and the effect on sensitive equipment) and it should provide mitigation measures for each impact that is found to be significant.

Page 3.4-32 includes three paragraphs that describe noise impacts with the East of Chowchilla design option. Each paragraph reports a different and conflicting set of numbers. Which numbers are correct?

Page 3.4-42 states that there would be two significant operational vibration effects of the BNSF alignment but that there would be no property damage. The Draft EIR/EIS does not identify any criteria for property damage from HST operational vibrations so how is this impact evaluated and this conclusion drawn? Note that Table 3.4-7 provides vibration criteria only for special buildings such as theaters and studios, and not for fragile historic structures (building damage).

On page 3.4-42, in the discussion regarding traffic noise, the Draft EIR/EIS states that the Project would require a relocation of SR 99 between Ashlan Avenue and Clinton Avenue in Fresno to accommodate the HST tracks. The document then acknowledges that because this shift in SR 99 is related to the Project, the potential impacts associated with this shift have been evaluated as a part of the HST Project. In the next paragraph, the document contradicts this statement by saying that there is not sufficient information available to conduct a "detailed" noise assessment for traffic impacts and then concludes that the impacts would be significant without stating how this conclusion was reached. If there is quantitative data available to support the presumption that projected noise levels would approach or exceed the noise abatement criteria, then these data should be stated clearly in the impact assessment. The two paragraphs addressing a major roadway realignment are insufficient for CEQA clearance of this element of the proposed Project.

The document makes the finding that the impact from the relocation of SR 99 would be substantial under NEPA and significant under CEQA, and yet no mitigation measures are recommended. The document, therefore, fails to identify mitigation measures as required by CEQA and NEPA, and reach a conclusion as to whether or not the impact could be mitigated to a less-than-significant level as required by CEQA. The failure to properly analyze the traffic noise impacts and the mitigation measures associated with the relocation of a segment of SR 99 is an omission in the noise analysis for the Project.

On page 3.4-44, the mitigation measure N&V MM#1 includes several bullets referencing nighttime hours but the Draft EIR/EIS does not define what hours would be considered nighttime hours.

N&V MM#2 states that once a construction schedule is established, preconstruction surveys would be conducted at locations within 50 feet of pile driving to document the existing conditions of the buildings in case damage is reported during or after construction. Damaged buildings would be repaired or compensation paid. This mitigation measure does not adequately address buildings that are historic structures or potential historic structures; these structures due to their age, are typically the most susceptible to vibration damage. If a historic structure is damaged by construction vibration, repair and/or compensation will not mitigate the impact. The impact would be significant and unavoidable. The Draft EIR/EIS erroneously concludes a less than significant construction vibration impact after application of this faulty mitigation measure.

The last sentence on page 3.4-50 states "establish performance criteria to balance existing noise events and ambient roadway noise conditions as factors for determining mitigation measures." If performance criteria are to be established to mitigate impacts, those need to be presented in this Draft EIR/EIS and not deferred to another point in time.

On page 3.4-52, Table 3.4-25 demonstrates that after installation of sound barriers, UPRR/SR 99 alternative is the best alternative as it has the least remaining noise exceedances.

On page 3.4-52, N&V MM#4 needs to specify that the Authority *will* procure HST vehicles that minimize noise impacts. As stated, the mitigation measure is too vague and uncertain, and its effectiveness cannot be evaluated.

On page 3.4-58, Table 3.4-27 notes that Impact N&V#1 construction noise would be less than significant after mitigation. The Draft EIR/EIS does not provide substantial evidence showing how the proposed mitigation measures will be effective at all locations along the Project alignment in reducing the construction noise levels to be below the significance criteria indicated in Table 3.4-1. We believe that with the proposed rail construction, especially pile driving, daytime construction noise will exceed the levels noted in Table 3.4-1 and that the available mitigation measures will not be feasible in some locations and/or will not be capable of reducing noise levels to levels below the thresholds presented in the Draft EIR/EIS. The Draft EIR/EIS erroneously finds the impact to be less than significant.

The Noise and Vibration Technical Report and the noise and vibration section of the Draft EIR/EIS both indicate that an assessment of ground-borne noise is included in the documents, as required by the FRA and CEQA. Criteria are established for assessing the degree of ground-borne noise impacts. In fact, expected ground-borne noise levels and the impact of ground-borne noise are not discussed in either document. Page 3.4-11 states the following screening assumption: "Because airborne noise often masks ground-borne noise for above-ground (i.e., at-grade or elevated HSTs), ground-borne noise criteria apply primarily to operations in a tunnel, where airborne noise is not a factor. The Merced-to-Fresno alignment is planned to be aboveground. As a result for the Merced-to-Fresno corridor, ground-borne noise criteria only apply to buildings with sensitive interior spaces that are well insulated from exterior noise." There is no further mention of ground-borne noise in the noise section and no quantitative assessment of it in the Noise and Vibration Technical Report. The documents are therefore inadequate.

Following on this same theme, the Noise and Vibration Technical Report also fails to provide the information that is necessary for a lay or technical person to logically follow through the analysis and judge its adequacy. It continuously falls back on the statement that the analysis was done in a manner consistent with the FRA High-Speed Ground Transportation Noise and Vibration Impact Assessment document. Failure to address ground-borne noise impacts makes one wonder in what other areas the FRA Guidance Manual were either misinterpreted or misused.

For example, the assessment of ground-borne vibration impacts is set forth in Chapter 7 of the Noise and Vibration Technical report. Charts showing projected maximum ground vibration levels as a function of distance from the future tracks are shown in Figures 7-6 and 7-7 on page 7-25. Impacts are then summarized in Tables 7-22 through 7-28, wherein vibration levels are projected at the various representative sensitive receptor locations to the near track. One should be able to back check these values against the data shown in Figures 7-6 and 7-7; but this is not possible because a very important step in the analysis was not explained or included in a way that the reader could understand. In fact, the numbers in the tables are for the maximum vibration velocity level in any one-third octave band. Unfortunately, these data were not included in the Noise and Vibration Technical Report, making it impossible to follow from the data that is included to the conclusions reached in the impact tables. This is a complicated analysis, but it can be simply explained with a few additional charts and tables. Otherwise, it requires a leap of faith to believe the results shown in the summary tables.

As another example of this issue, in Table 7-18 in the Noise and Vibration Technical report (page 7-28), in the Central Section at closest receptor distance of 64 feet resulted in a ground vibration level of 59 VdB at Deadman Creek to Dry Creek (north of Madera Acres, east Chowchilla design option with Avenue 24Y); whereas two rows below with the West Chowchilla design option, at a similar distance of 61 feet, the resultant ground vibration level was 70 VdB. This is a very large difference in ground vibration levels at comparable distances and deserves an explanation. What caused this difference? But there is virtually no discussion of any of the results to aid the reader in understanding this technical analysis.

The operational noise analysis similarly fails to include the necessary information for the public to understand or independently evaluate the analysis. In particular, general assumptions regarding train operations were presented on pages 6-1 and 6-2 of the Noise and Vibration Technical Report. The train schedules are included, but the resultant number of trains that were included in the modeling for each section of track during the daytime and the nighttime, which is one of the critical variables in determining the hourly average (L_{eq}) and 24-hour day/night average noise level (L_{dn}), the basis for the impact assessment, were not included in the documents. Similarly, the sound exposure level (SEL), the fundamental building block of the calculation of hourly L_{eq} and L_{dn} that would result from the train passbys was not included in the document for either the at-grade or elevated track sections.

In Section 6.1.1, third bullet, modeling assumptions are set forth that are not supported by information in the FRA Guidance Manual. Specifically, the propulsion source height is set at 2 feet above the rails. In referenced Table 5-2 of the FRA Guidance Manual, the two closest

propulsion types are HS EMU with a propulsion source height of 10 feet and VHS Electric with a propulsion source height of 12 feet. If the propulsion source height has been underestimated, it would result in underestimating noise levels from the elevated track sections and in overestimating the effectiveness of noise barriers.

Figure 7-1 in the Noise and Vibration Technical Report (page 7-2) shows projected high-speed train 24-hour noise levels versus distance. The calculation of 24-hour noise levels is based on the number of trains that are assumed to pass by during the daytime, and the sound level generated by each passing train. This chart is for the at-grade section. It, however, does not specify whether it is for the section north or south of the proposed wye. Although insufficient information is included in the documents to determine the number of trains that would pass by in the various segments of the Project, it does appear that there would be a substantial difference in the number of trains north and south of the wye. This figure should, therefore, specify where it is applicable, and if it is only applicable to a specific segment of the Project, then additional chart or charts should be included for the other segments. Of particular interest would be another chart for the elevated track sections.

Other important information that is missing from the document, that should have been included in the tables of projected noise levels, are which of these figures would be applicable for each of those identified sensitive receptor locations and the SEL's at each location (modeling result Tables 7-3 through 7-13).

Information such as modeling inputs/outputs, necessary for any meaningful review of the technical work, was not included in the Noise and Vibration Technical Report. After reading both the EIR/EIS Noise and Vibration Section and 157-page Noise and Vibration Technical Report, the public still would not be able to determine how loud a passing train is expected to be and what it might sound like, how many trains are projected to go by during the daytime and the nighttime, whether or not the trains would be expected to awaken anyone or otherwise interfere with the use of property, the basis for important assumptions that affect the modeling results, if ground-borne noise is going to be a problem, anything meaningful about the noise impacts resulting from the relocation of a section of SR 99 in Fresno, and anything about how the Project-generated increase in ambient noise levels would compare to local standards established by the local jurisdictions in their General Plans and noise ordinances.

3. Electromagnetic Fields and Electromagnetic Interference.

On page 3.5-5, The Study Area for Analysis identifies 200 feet on both sides of the centerline for EMF and 500 feet on both sides of the centerline for RFI as the study area but fails to explain what these distances are based on. This basic information should have been included in the Draft EIR/EIS. By limiting the study area to these distances, the analysis artificially limits the likely impacts of the Project.

The Draft EIR/EIS states that 9.04G (9,040 mG) is the EMF level above which instantaneous exposure would be harmful to humans but on page 3.5-5, the Draft EIR/EIS states

that 2 mG is a typical EMF level from early epidemiological studies which showed that it is the lowest level of chronic long-term magnetic field exposure with no statistical association with a disease outcome. How do these two numbers compare?

Based on the instantaneous exposure criteria, the Draft EIR/EIS find the EMF health risk to be less than significant. But if 2 mG is the screening significance criteria for chronic health effects, then based on the numbers reported in Table 3.5-1 there are numerous locations along the alignment where that number would be exceeded, not just at the three health care facilities. Why would a resident living at 150 feet from the alignment not be at risk? The Draft EIR/EIS fails to adequately explain the likely EMF effects of the proposed Project.

Pages 3.5-14 and -15 discuss the effect of EMF on sensitive equipment and states that no businesses that could contain sensitive equipment are within the study areas. It is unclear whether the Draft EIR/EIS preparers checked with Mercy Hospital, Madera Community Hospital or the assisted care facility whether they contain any MRI equipment.

The analysis of corrosion impacts is non-specific and lacking in detail. It does not tell the reader how far out from the tracks this impact could occur. Also the discussion of this impact states that the Project would ground pipelines and other linear metallic objects in coordination with the owner or utility, and with the grounding, the impact would be less than significant. Chapter 2, which describes the Project, does not mention grounding as a component of the proposed Project (in fact it fails to mention even the grounding of the HST fences). Because grounding (especially of fences and pipelines belonging to other entities) is not and cannot be a part of the proposed Project, the Draft EIR/EIS should be revised to find this impact significant before mitigation and grounding of fences and pipelines belonging to other entities should be identified as a mitigation measure.

There are a number of dairies and poultry farms along the alignment. The EMF analysis fails to address the effects of EMF on livestock and poultry.

Page 2-13 describes the power grid and how it is expected to use very little power. The power is to be tapped every 30 miles, but the Draft EIR/EIS does not show where the facilities would be constructed. Absent the location, it is not clear whether the Draft EIS/EIR appropriately evaluated the EMF effects of the power facilities.

The Safety section reveals that there are between 11 and 15 schools less than 0.25 mile of the alignment with some within the ROW and others within 0.02 and 0.03 mile of the alignment, a fact that is glossed over in the EMF section of the Draft EIR/EIS. Based on their proximity, there potentially could be EMF issues at two or three schools. The Draft EIR/EIS does not analyze and report the effect on these schools which is a serious shortcoming of the EMF section. The State of California has a program to protect school children from EMF as a precautionary measure. The Draft EIR/EIS does not mention the program.

4. Biological Resources and Wetlands

Overall, Section 3.7, Biological Resources and Wetlands, provides insufficient information for any decision maker to make an informed decision as the section lacks sufficient details for project-level analysis. Some of the details that are missing in the Draft EIR/EIS are found only in the Merced to Fresno Section, Biological Resources and Wetlands, Draft Technical Report prepared by AECOM and CH2M Hill (August 2011), which is not included as a technical appendix but is merely included as a reference.

This deficiency is exacerbated by the fact that this section is so poorly organized. The organization of the entire Section 3.7 Biological Resources is very confusing. For example under the heading 3.7.4.3 Native Fauna Assemblages, impacts to wildlife are discussed in general which is unnecessary here because this is the discussion of the Affected Environment. Secondly, even though the subsection is titled Native Fauna Assemblages, there are no "native fauna assemblages" described in the subsection. Because of the poor organization of the section, impacts are generally described without detail within the "Affected Environment" topic with sentences like "Construction of an alternative would impact reptiles and amphibians by removing breeding sites ...;" for which Alternative would this apply, any or all?

On page 3.7-9 (Heading 3.7.4.2 Plant Communities) it is not clear why the section uses three different references to describe plant communities, yet only one of these references is typically used to describe plant associations included in current CEQA documents. A more common reference is List of California Terrestrial Natural Communities Recognized by the California Natural Diversity Database, September 2003, California Department of Fish and Game.

Page 3.7-10 to 3.7-11 do not clarify why the section uses the category of "Other Riparian" under which several plant communities are listed but none of which are described.

The information contained in Table 3.7-3 for special-status plant species cannot be verified because the Draft EIR/EIS does not include descriptions of suitable habitat for any special-status species. This is a serious flaw of Section 3.7 Biological Resources and Wetlands, as this information is available only in the separate Biological Resources and Wetlands, Draft Technical Report. The same criticism applies to Table 3.7-4 for special-status wildlife species; there is no description of habitat preferences included in the Draft EIR/EIS.

Starting on page 3.7-27, the discussion of wildlife movement corridors (Heading 3.7.4.6) is cursory and confusing. It is not clear whether all, a portion or a little of the discussion is based on the Spencer et al. 2010 reference and the discussion provides no clarification of whether Figure 3.7-6 Wildlife Corridors includes only the information from Spencer et al. 2010 (and Huber 2007) or also incorporates other references like Penrod et al. 2001.

Beginning on page 3.7-30, the discussion of Plant Communities (Heading 3.7.4.7) for each of the alternatives is very brief and cursory, providing almost no details on what plant communities are present or how many acres of each community is represented in the study areas.

This is partially remedied starting with Table 3.7-5 (on page 3.7-47) but there is no cross reference to direct the reader. The opening discussion of the BNSF Alternative inaccurately dismisses the presence of vernal pools within the study area.

The discussion of Wildlife Movement Corridors (under Heading 3.7.4.10) on page 3.7-42 for the BNSF Alternative downplays the importance of the wildlife movement corridors with a matter-of-fact statement that the alignment crosses the Eastman Lake-Bear Creek ECA.

Starting on page 3.7-45, the discussion of agricultural lands as a land cover under construction period impacts is biased in the statement that these and developed lands are generally not productive habitat but this negates the importance of this habitat for special-status species such as San Joaquin kit fox, burrowing owl, Swainson's hawk and other raptors. For example, the discussion of Direct Impacts during Construction does not even list that agricultural lands will be impacted. The discussion of direct impacts has no quantification of impacts, which is only partially remedied starting with Table 3.7-5 (on page 3.7-47). As an example, the discussion of impacts to vernal pools in no way provides how many pools could be impacted or how many acres would be lost. Similarly, the impacts to Great Valley Mixed Riparian Forest would clearly result but there is no quantification of where those impacts would take place or how many acres are expected to be impacted.

Similar to the comments above regarding construction impacts to plant communities, the construction impacts discussion for special-status plant species, beginning on page 3.7-54, lacks detail regarding species that may be impacted, where those species may occur and how much of their population may be impacted. This is partially a result of the programmatic approach to this Project EIR/EIS with the assumption that all suitable habitat is occupied by the potential special-status species (see page 3.7-55), which completely lacks any project specificity for impacts. The statement "Appendix 3.7-A, Attachments 1 and 2, lists these species and discusses their potential for occurrence within each HST alternative" is completely misleading because there is no discussion in that appendix on habitat suitability for any of the special-status species. The Draft EIR/EIS is devoid of a discussion on habitat suitability for any special-status species, found only in the Biological Resources and Wetlands, Draft Technical Report.

Although it may be correct, we find it difficult to believe that the three project alternatives each have identical impacts to special status plant species. However, this is precisely what is written on page 3.7-55 as the discussion is word for word the same for each of the alternatives. This is not informative to the decision maker unless all alternatives are equivalent, which these are not.

Page 3.7-57 states that "No focus surveys were conducted for special-status wildlife species," which is unacceptable for a project level analysis. Assuming presence in all suitable habitats is unrealistic, as this does not allow a reader or decisionmaker to distinguish between the alternatives in regard to significant impacts.

The statement that "Sensitive biological resources occurring adjacent to and within the construction footprint are expected to incur direct and indirect impacts from Project operation" on page 3.7-72 makes little sense. It is not clear why sensitive biological resources would be present within the construction footprint; as most would be dead or have left the area. It would seem that most operational impacts would be indirect through noise, vibration, light, and the presence of additional people at the train stations.

On page 3.7-82, under Direct Impacts, the text states special-status plants would be affected (trampled/crushed) by increased pedestrian activity. The increased pedestrian activity would be only at the two stations and at the HMF. The rest of the tracks would not be accessible by foot; they would be fenced, something that the Draft EIR/EIS section does not mention. Similarly, it is not clear how or why there would be these indirect impacts, such as erosion or introduction of noxious plants from increased human activity, during the project period. If this is referring to indirect biological impacts from population growth induced by the Project, that is not stated anywhere in the Draft EIR/EIS section.

The Draft EIR/EIS does a very poor job analyzing the effects of the Project on wildlife movement. It does not make it clear why the at-grade sections of the tracks pose a barrier to wildlife movement because it fails to mention the safety fencing that would go on both sides of the tracks where they are at grade. If safety fencing is not proposed, train and animal collisions need to be addressed in the Biological Resources section of the Draft EIR/EIS, which they are not.

Page 3.7-98 states that the HST project may result in a substantial impact to movement of resident wildlife, even with the design components in place. Yet the NEPA conclusion is a moderate impact. How does a substantial impact translate into a moderate impact? The two statements are inconsistent.

On page 3.7-99, the fourth full paragraph states that the West Chowchilla design option with Ave 24 wye includes only at grade crossings but the next sentence says it includes two multi-span bridges. Which one is correct?

Table 3.7-28 uses the terms high, moderate, and low to describe the ECA and wildlife corridor crossings but does not explain anywhere what those terms refer to. The text refers only to "high-valued crossings" but does not explain what that means, or how value was assigned to the crossings. The technical report also does not provide any more information on this item, making it impossible to assess the accuracy of the analysis.

The discussion of mitigation measures (Heading 3.7.6 beginning on page 3.7-105) is like many other aspects of the biological section in being brief, cursory or misleading. On page 3.7-106, the text under Heading 3.7.6.1 says that the following common mitigation measures *could* be implemented as applicable, and the text further reads that resource-specific mitigation measures *could* be implemented. Mitigation measures are not optional. The flexibility provided in the Draft EIR/EIS by the use of "could" is inconsistent with NEPA and CEQA which require that mitigation

measures be binding on the Project. Other mitigation measures identified in the Draft EIR/EIS are similarly deficient:

- *Bio-MM#1* implies that by designating a project biologist to oversee the project implementation impacts to biological resources would be mitigated. This use of a monitoring biologist is a project design feature that does not provide for mitigation.
- *Bio-MM#2* provides access to the project site to regulatory agencies, which is not mitigation as the mere presence of a California Department of Fish and Game or a U.S. Army Corps of Engineers representative will not alone mitigate biological impacts.
- *Bio-MM#5* requires the preparation of a biological resources management plan as mitigation. However, there are no details as to what will be included in the management plan, which is completely inadequate as mitigation and is in fact a deferral of mitigation as no one can contemplate what the management plan will require from the lack of information in the Draft EIR/EIS. How would any of the biological resources be managed? This question cannot be answered from the content of the mitigation measure.
- *Bio-MM#6* requires the preparation of a restoration and revegetation plan, presumably for upland vegetation impacts, but there is a complete lack of details so this is a plan with no content and therefore incapable of mitigation.
- *Bio-MM#14* requires the completion of post-construction compliance reports which is not mitigation; a compiled report will not protect a kit fox from the impacts of a bulldozer.
- *Bio-MM#15* would require restoration of temporary riparian impacts but there is no timing requirement of when the restoration would take place, there is no list of appropriate species to be used for the restoration and there is no identification of where these temporary impacts would occur.
- *Bio-MM#16* is supposed to mitigate for impacts to protected trees, a term which is not defined in the document and for which a discussion of impacts is nowhere to be found in the Draft EIR/EIS. Plus the mitigation is to transplant trees that are in "good condition" (again undefined) but there is then no mitigation for a tree not in good condition. Also transplanting of trees requires a season or timing consideration, which is lacking in this measure.
- *Bio-MM#17* requires the conducting of pre-construction surveys for special-status plants species but this is again deferral of mitigation. There is mention for which

special-status species in which suitable habitat these surveys should take place, but the discussion of suitable habitat is not included in the Draft EIR/EIS. Lastly, this measure states that avoidance of special-status species observed where feasible but no one could judge what is or is not feasible based on the lack of information in the document.

- *Bio-MM#18* requires the preparation of a salvage, relocation and propagation plan for impacts to special-status plant species. Again, this measure is general and provides no specificity as to what species would be covered and there is no criteria for when propagation would be appropriate or what kind propagation technique should be used.
- *Bio-MM#23* requires the translocation of California tiger salamanders and although reference to the US Fish and Wildlife Service field survey methodology, but there is no mention of the timing of surveys and translocation, which is critical because the species aestivates during summer and typically are only active during the brief breeding season after good rains. This measure will need to consistent with the requirements of the US Fish and Wildlife Service.
- *Bio-MM#25* requires surveys to be conducted for western pond turtle and possible relocation. Suitable habitat for this species is not common and it would have been very simple for focused surveys to have been conducted prior to the preparation of the Draft EIR/EIS. Because the suitable habitat is not common, there is no certainty that this mitigation is feasible because there is no assurance that suitable habitat might be available outside of the construction areas. Also, there appears to be no difference between Bio-MM#25, Bio-MM#26 and Bio-MM#27; but why is there duplication of potentially infeasible mitigation measures?
- *Bio-MM#30* provides for the protection of raptors from project-related power lines. However, this impact is not discussed in the consequences section at all.
- *Bio-MM#43* requires the restoration of temporary impacts to jurisdictional areas through the use of stockpiled soil and appropriate plants and seed mixes. There are no further details in this measure and no way of knowing what "appropriate plants" would be as there is no list of species found within the study area in this Draft EIR/EIS.
- *Bio-MM#45* requires the installation of wildlife corridor undercrossings at designated locations shown on the construction drawings. There is no way of knowing where these undercrossings might be placed as there are no "construction drawings" found anywhere within the Draft EIR/EIS. This so-

called mitigation has the potential of causing impacts that have not been analyzed since it cannot be known what the resources are at the location of the installation.

- *Bio-MM#46* requires the installation of "free-ranging mammal proof fencing along portions of the proposed project ... consistent with final design." The placing of safety fencing is likely to have a significant impact on wildlife movement. This impact is not analyzed in the Draft EIR/EIS.
- *Bio-MM#48* requires compensation for permanent riparian impacts, which will be determined in the future with the appropriate agencies. It is not possible to know how much compensation will be provided nor is it possible to know if 2:1 ratio is sufficient because the details of the impacts are not specified.
- *Bio-MM#49* requires unspecified compensation for impacts to special-status plant species, which are not known. This is not mitigation because the compensation is either to purchase habitat in a mitigation bank, for which it is not known that any exist for each species, or comply with unknown requirements to be included in a yet-to-be developed biological opinion. This is deferral of mitigation.
- *Bio-MM#50* (valley elderberry longhorn beetle), *Bio-MM#51* (California tiger salamander), *Bio-MM#52* (Swainson's hawk), and *Bio-MM#53* (burrowing owl) all require compensation for the loss of habitat of these species and all are deferral of mitigation since it cannot be known from the information in this document if any of the compensation is feasible.
- *Bio-MM#55* requires the delineation of jurisdictional resources but the preparation of a delineation report is not mitigation.
- *Bio-MM#58* requires the installation of artificial dens for large, non-predatory mammals; there are no design parameters, it is not possible know whether these dens would indeed provide protection against predation, and it cannot be known where these dens, or how many, will be placed because this is tied to Bio MM#45, which is non-specific at this time.
- *Bio-MM#60* requires compensation for impacts to protected trees, which is an undefined entity and which has no quantification of what these impacts might be.

The analysis in Section 3.7 Biological Resources and Wetlands relies on information contained in Appendices 3.7-A and 3.7-B. Appendix 3.7-A contains lists of special-status species and the potential for occurrence. However, there is no information on habitat suitability or habitat preference for any of the plant or wildlife species included in the matrices. Therefore, it is impossible to verify accuracy of any of the determinations in this Appendix. Similarly, the information contained in Appendix 3.7-B, which contains acres of habitat impacted for special-

status species, cannot be verified since nowhere in the Draft EIR/EIS is there a description of in what habitat a special-status species may occur. For example, Appendix 3.7-B identifies 7 to 9 acres of habitat impact for western pond turtle. This species requires permanent pools of water but there is no mention of pools or ponds anywhere in the Draft EIR/EIS. So would the 7 to 9 acres of potential impact be the loss of that acreage in water pools or surrounding upland habitat where the species nests?

The Safety section of the EIR/EIS mentions collisions and derailments but there is no specific mention of collisions with wildlife. It is unclear how the Authority will ensure that animal-rail collisions will not result in serious rail accidents along the route.

In conclusion, the Biological Resources and Wetlands chapter in the Draft EIR/EIS does not meet the requirements of CEQA or NEPA in providing sufficient project-level details in order to make any meaningful decision.

5. Agricultural Lands

On page 3.14-6, section 3.14.3 states that Form NRSC-CPA-106 was completed in accordance with FPPA criteria to arrive at a total score for each HST alternative. The forms that were completed are not provided in any technical report or appendix to the Draft EIR/EIS making it impossible for a reader to logically follow through the analysis and judge its adequacy.

On page 3.14-7, in addition to the Important Farmland acreage converted, the Draft EIR/EIS does not list the NRCS farmland conversion score as a criterion to use in evaluating impacts under NEPA. This is insufficient for the NEPA analysis of the Project impacts to agricultural lands.

NRCS soil classification alone cannot determine the value of agricultural lands. The soil classification does not take into account major capital improvements made by landowners.

On page 3.14-8, section 3.14.4 describes dairies in the context of the regional agriculture, but there are also poultry houses in the area of the BNSF alternative that are not discussed in the Draft EIR/EIS. In addition, this section reports the agricultural production numbers for 2007. However, more recent numbers from 2009 are available that more accurately reflect current conditions. The Draft EIR/EIS should use these more recent numbers.

The farming community has repeatedly informed the Authority of its concern that the Project would interfere with existing aerial spraying practices and also affect pollination by bees. Nonetheless, impacts related to pesticide spraying and pollination are barely addressed on page 3.14-19 and only briefly addressed on page 3-14-23. No technical backup is provided to support these conclusions. Impacts to bee pollination due to vortexes caused by passing train could have significant economic loss to permanent croplands. The Draft EIR/EIS is silent on these impacts.

On page 3.14-25 and 26, the EIR/EIS erroneously concludes that impact related to temporary utility disruption would be compensated through the right-of-way process, and that such disruption would not result in conversion of farmland. Even short-term disruption of irrigation systems can result in losses that may render the operation infeasible.

Pages 3.14-28 and 29 indicate that the UPRR Alternative has a FPPA score in excess of 160 in Madera County and the BNSF and the Hybrid Alternatives have scores in excess of 160 in Madera and Merced Counties, without reporting how much the number is exceeded or whether they are close to the maximum score of 260 points. The decision makers and the public need this information to get a sense of the severity of the Project's impacts and to understand the differences among the alternatives. The Draft EIR/EIS is simply devoid of this important information. We note that there is no technical report that addresses the agricultural resources impacts and there is no way a reader can verify the accuracy of the farmland conversion scores or the analysis summarized in the Draft EIR/EIS. Note that in the event that the score is greater than 160, the FPPA requires consideration of alternatives that avoid or minimize farmland impacts. The Draft EIR/EIS does not describe how the Authority will respond to or address the FPPA requirements.

In the Overview discussion in Section 3.14.5.1 of page 3.14-22, the Draft EIR/EIS provides no support that the Project will provide any substantial opportunities for focusing development on land that is already urbanized. For example, based on Merced County history and the General Plan Update that is currently being prepared by the County, it is unlikely that as a result of the HST growth will be focused in developed areas. Furthermore, the Draft EIR/EIS merely speculates that the No Project Alternative will result in farmland conversion.

Page 3.14-25 indicates that leasing land under permanent crops (as opposed to grazing lands and annual crops) will impact the landowner longer than the 1 to 3 year construction period lease mentioned in the Draft EIR/EIS. Furthermore, the BNSF Alternative is worse than the UPRR Alternative in this regard because more of the lands along that alignment are under permanent crops and therefore this so-called temporary impact would be worse along that alignment. The Draft EIR/EIS does not acknowledge this difference in impacts among the alternatives.

Page 3.14.27 discusses the permanent conversion and severing of parcels, and states that the neighboring landowner may want to buy up the land. This is highly speculative. The Draft EIR/EIS provides no support for the assumption that the parcel will be economical for acquisition.

Page 3.14.27 fails to present the total acreage of grazing lands affected by each alternative. This analysis would help the public better understand the Project's impacts on cattle farming and the dairy industry in the affected counties. NEPA requires an evaluation of a project's impact on the human environment – agricultural operations including orchards, row and field crops, cattle grazing, dairy farming, poultry farming, are all critical elements of the human environment particularly in the project area, where the existence of thousands of people depends on the continued success of these operations. The Draft EIR/EIS fails to cover all of these likely effects of the Project on agriculture.

On page 3.14-31, the discussion of Parcel Severance states that it is assumed that "other remainder parcels are of sufficient size to maintain economic activity and are not at risk of conversion." The Draft EIR/EIS does not provide any information on these other remainder parcels (how many, of what minimum size, etc.) that would assure the reader that it is okay to assume that they would not be at a risk of conversion. There is no technical report prepared for agricultural lands impacts and there is no way to verify the accuracy of this assumption made by the Draft EIR/EIS preparers. We believe that the Draft EIR/EIS seriously understates the Important Farmland impacts of the alternatives by excluding these other remainder parcels.

On page 3.14-32, under the discussion of each alternative, the Draft EIR/EIS states that the alternative would close between 20 and 42 roads and farm equipment would not be able to use the detours, overpasses or underpasses. Yet the Draft EIR/EIS states that the impact would be negligible or less than significant. There is no basis provided for this conclusion. Instead of jumping to this conclusion which is not substantiated by any evidence, the Draft EIR/EIS should have listed all the farm properties that would be affected by these road closures so that the scale/magnitude of the impact could be ascertained. The Draft EIR/EIS should also have examined the economic effect of severing farm operations by closing roadways in this manner. The Draft EIR/EIS's analysis of road closure effects is completely inadequate.

The tables on pages 3.14-33 and 34 show hundreds of acres of protected farmland that would be converted as a result of the Project, yet the Draft EIR/EIS comes to the incredible conclusion that there would be no impact. According to the Draft EIR/EIS, conversion of more than 50 acres of farmland is a substantial depletion. How is the loss of hundreds of protected farmland "no impact?" This impact conclusion should be changed to substantial and significant.

The impacts discussed on page 3.14-35 to local dairies when lands are severed by rail alignments will be devastating. But the impacts on dairies are addressed in a very cavalier manner. The document states that dairies are not important farmland and therefore the impact on dairies would be negligible or less than significant. The text refers the reader to the discussion of economic impacts in Section 3.12 Socioeconomics. However, that section also provides a qualitative discussion of impacts on dairies with no attempt at quantifying the economic impacts of reduced operations or closure of some of the dairies due to the Project. For the dairy facilities that would be displaced by the Project, the Draft EIR/EIS fails to describe the cost and time that will be needed to locate them at a new location and possible additional problems with the re-permitting of mandatory waste water discharge permits. The permitting process could take years at the state level. The Draft EIR/EIS Agricultural Lands and the Socioeconomics sections do not even report how many dairies would be affected directly or indirectly. Page 3.14-35 describes noise impacts on dairy cattle but fails to mention any vibration effects which can affect milk production and detrimental EMF effects of the Project on dairy cattle.

The Draft EIR/EIS fails to discuss the effect of the HST embankments on drainage and the potential for ponding to increase and result in loss of crops and orchards that are not tolerant of ponding.

The Project would convert between 1,000 to 1,500 acres of important farmland (depending on alternative) but the Draft EIR/EIS fails to reveal the number of agricultural jobs and the income that would be lost as a result of that conversion. The Draft EIR/EIS's evaluation of economic impacts or the extent to which those economic impacts would have environmental impacts is plainly deficient and inadequate.

Page 3.14.37 mentions wind induced effects and concludes no impact by emphasizing how short the duration would be (1 second) of the airflow. Because the Draft EIR/EIS does not report the number of trains that would operate on this section, the Draft EIR/EIS fails to report how frequently this event would happen along the alignment. This wind effect of the passing train will ultimately affect aerial and land spraying operations along the alignment because the regulatory agencies may not permit sprayed pesticides to drift off the property. The eventual elimination of farmable lands adjacent to rail alignments will result from the inability of the farmers to use proper agricultural practices.

The Project will result in a number of other economic and infrastructure impacts that are dismissed or not evaluated in the Draft EIR/EIS. For example, the proposed Project conflicts with existing Madera County General Plan and the Right to Farm Act adopted by Madera County. It will result in a substantial reduction in the agricultural tax base in that county. In addition, the proposed re-alignment of surface water delivery systems will seriously affect the operation of local irrigation districts. Access for daily maintenance would be problematic. Additional mileage due to grade separation and road closures will drive water cost up. These realignments will take up more agricultural lands, a loss that the Draft EIR/EIS fails to take into account. Moreover, road closures and grade-separated tracks will force farmers to drive one to two miles in order to reach other parcels of their farms. Currently parcels are accessible at ¼ mile section breaks. This will be an enormous additional cost to farmers. Finally, the HST will result in vibration and electrolysis effects on pipelines and agricultural irrigation wells, and those effects are not considered in the Draft EIR/EIS.

The mitigation measures in the Agricultural Resources chapter of the Draft EIR/EIS are inadequate. Notably, agricultural mitigation measures should be coordinated with the local landowner being affected with assistance from area farm organizations and agencies. Additionally, local affected landowners should have the option to have the Authority pay for development rights on the rest of their property ensuring that no additional lands will be taken for future non-agricultural development. In addition, the Authority should clarify that it will restore farmlands used for construction staging areas. Replacement and compensation for the loss of permanent crops should be documented.

6. Cultural and Paleontological Resources

The Draft EIR/EIS fails to evaluate the Project's impacts on cultural landscapes, including rural industrial landscapes that may be present along the alignments and could be affected by the Project. (See, for example, the impacts discussion on page 3.17-59.) The Draft EIR/EIS also does not mention any effects of the Project on traditional cultural activities.

Page 3.17-61 discusses the potential for construction vibration to affect historic properties/resources, and argues that the impact would be less than significant because the Project will develop avoidance measures to ensure no adverse direct or indirect effects. However, the Draft EIR/EIS fails to list the types of construction measures that could be used to ensure vibration levels are less than 0.12 ppv in/second at the exposed structure. The Draft EIR/EIS also does not provide details of potential historic buildings and their distance from the construction sites. Therefore, the reader cannot determine whether all impacts will be avoided or fully reduced. The Draft EIR/EIS does not provide substantial evidence that the impact will indeed be reduced to a less than significant level.

On page 3.17-62, the Draft EIR/EIS states that by constructing the Tulare Street overcrossing, the rail alignment would have an indirect adverse effect on the Southern Pacific Railroad Station (SPRR) in Fresno, and calls it a moderate effect under NEPA and a less than significant impact under CEQA. However the HST Fresno Station would be adjacent to the SPRR Station. The Draft EIR/EIS fails to provide an explanation as to why the construction of the new station will not adversely affect the historic significance of the NRHP-listed SPRR Station.

On page 3.17-71, in the first paragraph under Historic Architectural resources, the text states that because of the low vibration HST technologies, vibration impacts would be limited to within 45 to 50 feet of the HST corridor in urban areas. Analysis in support of this statement is not provided in this section or the Noise and Vibration section of the Draft EIR/EIS.

7. Socioeconomics, Communities and Environmental Justice

On page 3.12-3, under the heading Economic Effects on Agriculture, the analysis does not focus on the reductions in agricultural incomes of the affected farmers but on the reduction in property tax revenues to the three counties. The title of the section is completely misleading.

Page 3.12-5 lists other sections of the Draft EIR/EIS that were considered in evaluating the Project's impacts on Environmental Justice communities. This list does not include EMF. As discussed above, the Draft EIR/EIS has failed to demonstrate that the Project will not result in significant EMF impacts on residential areas and schools. The Environmental Justice impact evaluation should also consider the EMF impacts of the proposed Project on communities of concern.

Page 3.12-5 notes that effects would be considered substantial if an alternative results in negative economic effects due to a reduction in tax revenue or employment in the cities and counties. However, the Draft EIR/EIS does not consider the loss of agricultural jobs in its analysis of economic impacts. This is a significant gap in the analysis. The Project may result in the substantial conversion of agricultural lands, which would put out of business innumerable farmers and others with agriculture interests.

On page 3.12-6, the study area for community resources is defined to be 0.25 mile of the centerline and 0.5 mile from the station but no explanation is provided as to why the Authority

expects that there would be no impacts beyond these distances. That information needs to be added to the Draft EIR/EIS.

On page 3.12-36, Construction related tax revenues, the analysis states essentially that because the decrease in property values cannot be quantified, the impact is considered moderate under NEPA. The Draft EIR/EIS provides no support for identifying this impact as "moderate."

Table 3.12-11 on page 3.12-40 is misleading. The Draft EIR/EIS continues to understate the noise impacts of the proposed Project and incorrectly states that nearly all the severe impacts could be effectively mitigated under all alternatives. The analysis in the noise section shows that barriers would be able to reduce noise impacts at some locations where severe impacts would occur but there would still be 200 to 400 locations that would experience severe noise impacts as mitigation would not be feasible. Similarly, the Draft EIR/EIS focuses on visual change associated with aerial structures. However, the Draft EIR/EIS fails to mention blight, an undesirable visual change that typically characterizes urban development adjacent to railroad corridors. Blight can often result from the disinterest of property owners in maintaining their properties that flank the tracks. The Project will increase the potential for blight in the Project study area.

On page 3.12-43, the Draft EIR/EIS states that the elevated guideway would negatively affect property values in Le Grand and would have the potential for physical deterioration (the source of this impact is not explained in the document), but then argues that the impact under CEQA would be less than significant because the Project's social effects are not treated as significant impacts on the physical environment under CEQA. That is inaccurate. Physical deterioration of buildings is a physical impact and not a social impact. The CEQA conclusion should be potentially significant and mitigation should be provided for this impact.

Page 3.12-45 discusses residential displacement impacts and notes that mobile home parks would be affected. Mobile home parks are very specific land uses that cannot be easily relocated. This housing is also often low income housing. The Draft EIR/EIS generally states that there are sufficient residential properties and construction of new housing would not be required. The Draft EIR/EIS does not provide substantial evidence that displaced mobile homes would be able to find home sites in other mobile home parks.

The Draft EIR/EIS is inadequate as a project level document in the amount of information it provides the reader. For example, Table 3.12-13 presents the residential displacement impacts by lumping all types of residential units together. To be meaningful to the public and the decision makers, the Draft EIR/EIS must report the details of types of housing affected (single family, multi-family, mobile home, senior housing, etc.) and the number of units of each type of housing affected. This information would help the public and decisionmakers understand the relative ease/difficulty there would be in finding replacement housing for the displaced population. The broad-brush analysis in this Draft EIR/EIS does not reveal the severity of the impacts, nor does it provide the reader enough information that he/she can use to evaluate the effectiveness of the proposed mitigation measures. Put simply, the Draft EIR/EIS is inadequate as a full disclosure document.

Pages 3.12-51 and 52 admit that the studies focused on property value impacts of transit projects did not focus on property values impacts in the areas between the stations. Absent any meaningful studies, the Draft EIR/EIS should include an independent analysis of the property value impacts outside of the station areas by consulting with realtors and other knowledgeable persons. Railroad noise is known to depress property values and blighted areas always have property values that are lower than other areas in the same community. Instead the EIR/EIS argues that the areas along the alignment are already impacted and therefore "the potential for lower property values is low" and the impact is negligible. The Draft EIR/EIS improperly downplays this impact.

Page 3.12-53 suggests that businesses that are displaced by the elevated guideway could relocate under the guideway once the construction is complete. This is incorrect. Parking and some recreational uses are perhaps the only land uses that could be relocated under the guideway due to EMF and other concerns.

The discussion on pages 3.12-53 and 54 regarding the Project's impacts on the agricultural industry is completely inadequate as it does not present the full extent of the economic impacts of the proposed Project. The only numbers that are reported are the acreages of Important Farmland that would be converted. While that is a major component of the Project's impact on agriculture, that is not the full story. The Draft EIR/EIS does not estimate and report the loss of direct and indirect agriculture-related jobs and income, and thereby provides no sense of the severity of the impact. The loss of income from impacts to the dairies and poultry facilities, an economic impact, is not reported. The Draft EIR/EIS states that related economic sectors would experience short-term multiplier effects but does not explain why the impacts would be short term. If 1,500 acres of Important Farmland and hundreds of acres of grazing land are converted, agricultural operations are disrupted, orchards are flooded, and numerous dairy and poultry operations are displaced or interrupted, how can the multiplier effects be short term? The Draft EIR/EIS's conclusion is without any basis or support.

On page 3.12-55, Table 3.12-17 indicates that even though property acquisition impacts would be predominantly borne by environmental justice communities, with mitigation the impacts would not be more severe for these communities than the effects on non-environmental justice communities. The fact of the matter is that if a project with numerous adverse effects is proposed in an area that contains high concentrations of environmental justice communities, as does the Project area, then that project has a significant environmental justice effect. The Draft EIR/EIS should admit to such an impact, rather than argue that the impact would not be more severe than the impact on non-environmental justice communities. Of the 38 census blocks along the alternative alignments, only 5 include no environmental justice populations in high concentrations.

The table on page 3.12-56 notes that impacts of employment losses would be negligible. As the Draft EIR/EIS fails to quantify what those losses will be, it does not provide any evidence as to why the losses will be negligible. In addition, since the Project is affecting predominantly minority and low income areas, the brunt of the employment impact will be on environmental justice populations.

On page 3.12-57, the Draft EIR/EIS continues to understate the residual noise impacts of the Project. Depending on alternative, between 200 and 400 severe noise impacts are expected to remain unmitigated and environmental justice communities would be significantly adversely affected by the train noise.

On page 3.12-59, under the heading Environmental Justice Conclusion, the Draft EIR/EIS states that the primary impacts on environmental justice communities would relate to property acquisition impacts and visual impacts. That is not true as the Project will result in numerous other adverse impacts such as job losses, blight, and severe noise levels and all of these impacts will be borne mainly by environmental justice populations because all alternatives travel through environmental justice areas. The Draft EIR/EIS states that the offsetting benefits of the Project should be considered. We believe that the offsetting benefits of the Project will not accrue to the Project's environmental justice communities. The HST will largely serve metropolitan areas and usage by local population is expected to be minimal. To the extent, the Project results in new jobs, there is no assurance that those jobs will go to locals, especially the local environmental justice populations. Indeed, the Draft EIR/EIS admits that these jobs would not go to local environmental justice populations as they may not have the skills, but does not offer any mitigation such as a "hire locally" program for Project construction and operations to address this issue.

Several mitigation measures in this section are deficient:

- *SO-MM#5* is deferred mitigation. Public outreach to obtain feedback on impacts and mitigation measures should have been done as part of the EIR/EIS preparation process. In addition, if mitigation measures are still to be developed based on public input, then there is no way of determining whether the Project's impacts will be fully addressed by the limited number of mitigation measures listed in the Draft EIR/EIS.
- *SO-MM#6* presents mitigation for displacement impacts in the Environmental Justice communities of Franklin-Beech, Le Grand, and Fairmead, including "consideration" of replacement housing to keep the residents in their communities. This mitigation measure is vague in that it requires the Authority to "consider" and not actually construct replacement housing. Secondly, the Draft EIR/EIS does not report the number of residences displaced in these Environmental Justice communities which makes it impossible for a reader to understand the severity of the impact and the feasibility of constructing replacement housing within these communities. The Draft EIR/EIS further states that there would be no secondary effects of these mitigation measures. However, there could be secondary effects if a large number of replacement homes are constructed. Because of the lack of any data, the veracity of the statements in the Draft EIR/EIS cannot be confirmed.

8. Aesthetic Resources

On Page 3-16.27, the Traction Power Distribution Stations column suggests the Authority does not know the sizes and spacing of these stations. They expect "landscaping" and or fences to "screen" these. In the Aesthetic section page 3-16-62, the Draft EIR/EIS concludes that these "screens" would make the impact less significant. If the sizes of the features are not known, how will landscaping or fencing be adequate to screen them? (Page 2-13 also talks about the "mast poles" that will be 23.5 feet above the rail, but these are not mentioned in the Aesthetic section.)

9. Regional Growth

As an initial matter, the analysis in this section of the Draft EIR/EIS estimates Project-related construction employment and income assuming 5 years of construction. This is inconsistent with the Project Description in Chapter 2, which states that the Project will be constructed over 7 to 12 years.

The discussion in the Project Impacts section, subheading Induced Population Growth, is too vague and generalized for analysis. Moreover, this discussion is irrelevant to the population growth that the Project would induce. If the position taken by the Authority in this discussion is that the direct and indirect jobs created/supported by the Project would be filled by persons already in the area, and hence there would be no induced population growth, then it is not clear why the next section (Land Use Consumption) states that the induced population growth associated with the HST would require an additional 7,845 acres of land beyond what is needed to accommodate the forecast population under the No Project Alternative. The entire analysis of the Project's growth impacts is convoluted and unclear.

The Regional Growth section does not address the impact of the Project-induced population growth of 78,500 additional residents in the three-county area on water consumption. The issue is not even mentioned. The Utilities section does not mention water consumption by these 78,500 persons. The EIR/EIS analysis is inadequate as it does not assess or disclose this impact which is a critical issue in the Central Valley.

It also does not appear that the Authority has prepared a water supply assessment pursuant to Cal. Water Code § 10910. The Project qualifies as a "project" for purposes of this section and therefore, the Authority was required to prepare a water supply assessment for the Project. Because it has not done so, the Authority has failed to comply with the Water Code.

10. Geological and Hydrological

The Draft EIR/EIS's Geology Section dismisses the potential for subsidence to affect the HST by simply stating that in the Project area subsidence has been on the order of 1 foot and that in the future subsidence will not be an issue as groundwater withdrawals are controlled to minimize subsidence. The Draft EIR/EIS is inadequate because it provides no data showing that the subsidence in the area is 1 feet. Notably, the Draft EIR/EIS does not indicate what data was used

for this analysis. Furthermore, the Draft EIR/EIS does not take into account what is being done to control groundwater withdrawals in the area.

The Hydrology section of the Draft EIR/EIS mentions the Central Valley Flood Protection Act of 2008 which requires protection against a 200-year flood. While that act is not in full effect at this time, HSR should plan for that higher level of protection. According to the EIR/EIS, the HST has been planned only for a 100-year flood.

11. Cumulative Impacts

Page 3.19-4 lists cumulative foreseeable projects. This list is incomplete. For example, the tables do not list the Merced County General Plan or the City of Merced's recently updated General Plan. The growth reflected in these documents should have been used in the analysis of cumulative impacts.

On page 3.19-12, the second full paragraph discusses HAPs associated with the HMF at Castle. The analysis presented in this paragraph is not a cumulative impact analysis; it is simply a restatement of the Project's impact. A true cumulative impact analysis would include the combined effect of all existing, proposed, and reasonably foreseeable future sources of HAPs.

III. CONCLUSION

POH is deeply committed to the good stewardship of our state's agricultural lands and natural resources. The analysis in the Draft EIR/EIS is disappointing, as it fails to adequately and accurately define the Project and evaluate all of the environmental impacts related to the Project. The Draft EIR/EIS is inadequate under NEPA and CEQA because it fails to consider the context in which the Project impacts would occur, and in numerous cases fails to report the intensity of the impact. It also fails to bring out the differences in environmental impacts among the alternatives, which is information that is critical for the decisionmakers. Finally, it defers the analysis of Highway 152 to a later and separate EIR/EIS, and otherwise improperly segments the Project.

The Authority and the FRA have failed to properly discharge their duty under CEQA and NEPA, respectively, to produce a Draft EIR/EIS that reflects a reasonable, good faith effort to disclose and evaluate the environmental impacts of the Project, to properly identify and describe mitigation measures and alternatives related to the Project, or to take a "hard look" at the environmental consequences of the Project. See, e.g., *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.*, 47 Cal.3d 376 (1988); *Kleppe v. Sierra Club*, 427 U.S. 390 (1976); *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208 (9th Cir. 1998). At the very least, the deficiencies identified by POH should be remedied, and the Draft EIR/EIS recirculated for an additional round of public review and comment.

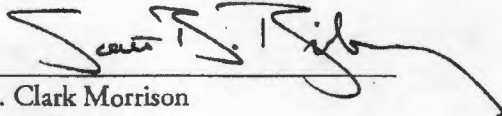
Furthermore, it is clear that all of the alternatives will have substantial adverse environmental impacts, especially on agricultural resources, the ambient noise environments,

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environmental justice communities, biological resources, schools, and transportation. Our region will suffer the adverse effects of this Project without receiving any of its supposed benefits. We therefore urge the Authority to reconsider the I-5 corridor for the HST project. It is in the interest of the State of California to do this project right rather than push forward with a project that will waste valuable public funds and benefit no one.

Sincerely,

COX, CASTLE, & NICHOLSON LLP

By: 

R. Clark Morrison
Scott B. Birkey

cc: Governor Jerry Brown
Senator Darrell Steinberg
Senator Mark DeSaulnier
Senator Alan Lowenthal
Senator Joe Simitian
Senator Anthony Cannella
Senator Doug LaMalfa
Assemblymember John Perez
Assemblymember Cathleen Galgiani
Assemblymember Bonnie Lowenthal
Assemblymember Diane Harkey
Congressman Dennis Cardoza
Congressman Jim Costa
Congressman Jeff Denham
Congressman Devin Nunes
Merced County Board of Supervisors
Madera County Board of Supervisors

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**[ATTACHED TO THE LETTER SENT VIA OVERNIGHT DELIVERY IS A DISC COPY OF
THE OCTOBER 6, 2011 FRESNO CITY COUNCIL MEETING]**

Attachment B



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May 1, 2012

File No. 62043

VIA E-MAIL AND OVERNIGHT DELIVERY

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Mark McLoughlin
California High-Speed Rail Authority
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**Re: California High-Speed Train: Merced to Fresno Section; Comments on
Final Project Environmental Impact Report/Environmental Impact Statement**

Dear Messrs. Valenstein and McLoughlin:

On behalf of Preserve Our Heritage ("POH"), we are providing comments on the California High-Speed Train Project, Merced to Fresno Section, Final Environmental Impact Report/Environmental Impact Statement ("Final EIR/EIS") prepared by the Federal Railroad Administration ("FRA") and the California High Speed Rail Authority ("Authority") for the high-speed rail section between Merced and Fresno ("Project").¹

In summary, based on our review we believe the Final EIR/EIS fails to respond adequately to POH's comments on the Draft EIR/EIS, and thus, the environmental analysis of the Project pursuant to the California Environmental Quality Act ("CEQA") and the National Environmental Policy Act ("NEPA") remains fundamentally flawed. *See* 14 Cal. Code Regs. § 15088(c) (responses to comments must be detailed and contain "good faith, reasoned analysis"); 40 C.F.R. § 1503.4 (requiring NEPA lead agencies to assess and consider "all substantive comments" received on a draft EIS); *see also Rural Land Owners Ass'n v. City Council* (1983) 143 Cal.App.3d 1013, 1020 (failure to respond to comments raising substantial environmental issues may render EIR legally inadequate). This failure to adequately respond to comments on the Draft EIR/EIS further highlights the document's legal inadequacies. We urge the Authority not to certify the Final

¹ Unless otherwise specifically noted, references to the "Authority" include both the California High Speed Rail Authority and the Federal Railroad Administration.

May 1, 2012

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EIR/EIS in its current state and to recirculate a new Final EIR/EIS that responds to the significant environmental issues we identified in our October 13, 2011 letter.

I.

INTRODUCTION

As described in more detail in our October 13, 2011 letter commenting on the Draft EIR/EIS, POH is an organization comprised of farmers and other agricultural interests in the Madera and Merced area of the California Central Valley. POH's members have lived and farmed in this region for generations, and they pride themselves on being good stewards of the land. Because of the high-speed rail Project's potential for significant regional and local agricultural impacts, POH has been engaged in the public review process related to the Authority's environmental analysis of high-speed rail line alternatives.

POH continues to have significant concerns regarding that analysis, and remains particularly alarmed by the fact that – in contravention of Proposition 1A – the Authority is considering rail alignments that would disrupt intact agricultural lands and locate rail corridors on pristine greenfields rather than use existing transportation corridors. POH is also alarmed by the Authority's decision to evaluate and determine a wye option connecting the east/west San Jose to Merced section with the north/south Merced to Fresno section. All of the wye options that are currently foreseeable should be evaluated in the Merced to Fresno EIR/EIS. POH reiterates that the Highway 152 wye option, which the Authority has deferred to the next EIR/EIS, is in fact the environmentally superior option in comparison to the other wye options, because it uses existing transportation corridors and has the fewest environmental impacts.

For good reason, the NEPA purpose and CEQA objectives for the HST system also call for protection of California's unique natural resources, including its agricultural lands, and use of existing transportation corridors. See Final EIR/EIS at p. 1-4. Identifying alternatives consistent with those objectives and purpose would not only ensure the EIR/EIS's legal adequacy, it would protect a way of life at the very core of California's history and development. As such, the EIR/EIS's failure to evaluate alternatives that are consistent with the project's CEQA objectives poses an imminent threat to our livelihood and way of life.

POH continues to believe the Avenue 21, Avenue 24, and the West Chowchilla Design Option have significantly greater environmental impacts as compared to the SR152 alternative. As noted in our comments on the Draft EIR/EIS, these options would result in particularly devastating agricultural impacts, as they would create an alignment that cuts through irrigation systems, drainage systems, power access, and roads. There would be no feasible mitigation to remedy such extensive impacts. The West Chowchilla Design Option would also cut through several environmentally sensitive areas.

As discussed in more detail below, due to its failure to adequately respond to POH's comments on the Draft EIR/EIS and remedy the significant flaws underlying those comments, the Final EIR/EIS is critically deficient. With this background, POH respectfully makes the following comments on the Final EIR/EIS.

II. COMMENTS ON FINAL EIR/EIS

A. The EIR/EIS Still Inappropriately Segments the Overall Project, Resulting in Piecemeal Environmental Analysis Masking the Project's True Environmental Impacts.

We remain significantly concerned about the Authority's intent to carve out from this EIR/EIS any real analysis of the wye options. The wye option is an important element of the north/south alignment that cannot be examined in isolation. By carving out this key element of the overall project from the analysis in the EIR/EIS, the "project" analyzed in this document is incomplete. Deferring the wye analysis for another day and another document patently disregards the mandate that a project description must include the entirety of the action, and disregards the prohibition that an agency may not piecemeal its environmental review of a project to mask the project's overall environmental impacts.

As we explained in our earlier letter, a project description should include "the whole of [the] action," and must include the entirety of the project. See *Santiago Water District v. County of Orange*, 118 Cal.App.3d 818, 829-30 (1981). A lead agency may not "piecemeal" or "segment" a project by splitting it into two or more segments for analysis in separate environmental documents. CEQA mandates that environmental considerations must not be "submerged by chopping a large project into many little ones – each with minimal potential impact on the environment – which cumulatively may have disastrous consequences." *Bozung v. Local Agency Formation Comm'n*, 13 Cal.3d 263, 283-84 (1975). NEPA also prohibits lead agencies from segmenting a project in order to avoid their NEPA obligations. See, e.g., *Thomas v. Peterson*, 753 F.2d 754 (9th Cir. 1985); see also *Save Yaak Comm. v. Block*, 840 F.2d 714 (9th Cir. 1988). Under NEPA, actions and proposals *that should be considered together* should not be separated for consideration in separate impact statements, and this principle applies in particular with respect to "connected actions" that are "closely related." 40 C.F.R. § 1508.25(a)(1).

In our comments on the Draft EIR/EIS, we questioned the propriety of the Authority's decision to pick a north-south alignment based on this EIR/EIS, while picking the wye based on the yet-to-be-published Merced to San Jose project EIR/EIS. Representing approximately one-third of the length of the Merced to Fresno section, the wye connecting the San Jose to Merced section with the Merced to Fresno section will undoubtedly influence the environmental impacts of the Merced to Fresno section. While the Draft EIR/EIS recognized this at p. 3.1-2, without explanation, the Authority removed from the Final EIR/EIS this reference to the critical interplay between wye choice and the impacts of the various north-south alignments. See Final EIR/EIS at pp. 3.1-1 through -2. Removing this text does not solve the problem created by the Authority's approach to environmental analysis of the Merced to Fresno section. Because of the inextricable interplay between the wye design and the environmental impacts of the north-south alignment, the decision to fully analyze wye impacts at a later time amounts to improper segmentation. See *Bozung*, 13 Cal.3d at 283-84; *Thomas*, 753 F.2d 754. These wye designs are clearly reasonably foreseeable

and therefore must be included in the EIR/EIS. See *Laurel Heights Improvement Ass'n v. Regents of the Univ. of Cal.* (1988) 47 Cal.3d 376. This is a fatal flaw in the EIR/EIS.

The Authority's conflicting and facially inadequate responses to our comment on this issue amplify the impropriety of the approach. See 14 Cal. Code Regs § 15088(c) (requiring responses to comments to contain "good faith, reasoned analysis"); 40 C.F.R. § 1503.4. In the specific response to our comment, the Authority stated:

because the three north/south alignment alternatives are compatible with each of the three east/west connection and wyes (Avenue 21, Avenue 24, and SR 152), the decision on the north/south alignment does not improperly constrain or pre-determine the decision on the east/west connection and wye.

(Emphasis added.) Yet, in Standard Response MF-Response-GENERAL-16, to which the specific response to our comment referred, the Authority stated

The Merced to Fresno Section EIR/EIS process will result in selection of the north-south alignment, which would narrow the wyes to those connecting to the recommended alignment; however there are other factors west of the wye that may influence the final selection of the wye. The San Jose to Merced Section EIR/EIS will fully evaluate all three wye configurations currently under consideration, including the two wye configurations that would connect to the Hybrid Alternative identified in the Merced to Fresno Section EIR/EIS and the SR 152 wye. For purposes of the Merced to Fresno Section EIR/EIS, to avoid any predetermination of the east-west and wye connection between the San Jose to Merced and Merced to Fresno sections, and thus the alignment for the San Jose to Merced Section, the Authority and FRA will defer making a decision on both the east-west connection and the SR 152 wye until completion of the San Jose to Merced Section EIR/EIS process.

(Emphasis added.) Not only is the Authority's response internally inconsistent and confusing, it evidences a lack of understanding of the fundamental issue we raised. Pre-determination of subsequent decisions to be made, while violating CEQA and NEPA on its own, does not address the other primary concern we raised, which is that the Authority cannot make a decision on the north-south alignment of the Merced to Fresno section without fully understanding the potential impacts of *each and every one* of the wye options and their interplay with the various north-south alignment alternatives. Because the Authority has not fully analyzed the wye options – including the SR 152 wye option – in the Merced to Fresno EIR/EIS, the Authority cannot make a fully informed decision regarding north-south alignment. As a result, the Authority's approach to analyzing the environmental impacts of the different wyes is classic project chopping, in violation of both CEQA and NEPA.

The response to our comment regarding project chopping also completely fails to address our concern that the Draft EIR/EIS's method of reporting environmental impacts of the wyes and north-south alignments in combination makes it exceedingly difficult, if not impossible, to tease out the environmental impacts related to the north-south sections. *See* 14 Cal. Code Regs. § 15088(c); 40 C.F.R. § 1503.4. Due to the inadequacy of the Authority's response to our comment and the underlying segmentation issue it highlights, we urge the Authority to complete environmental impact analysis for the wye options and to include that analysis in a recirculated Merced to Fresno EIR/EIS.

B. Alternatives Evaluated Still Do Not Reflect a Reasonable Range of Alternatives, and Analysis of Impacts to Agricultural Land and Communities Remains Deficient.

We remain concerned that the Authority failed to identify and evaluate a reasonable range of alternatives that satisfy CEQA and NEPA. 14 Cal. Code Regs. § 15126.6; 40 C.F.R. § 1502.14. In general, for purposes of CEQA, project alternatives are chosen in light of the objectives of the project while avoiding or substantially lessening any of the project's significant effects. *See* 14 Cal. Code Regs. § 15126.6(a), (f). For purposes of NEPA, alternatives are chosen in light of the purpose and need for the project. *See* 40 C.F.R. § 1502.13. The Authority's decision to elevate all other project objectives and goals above that of the project objective to use existing transportation corridors, as required by Proposition 1A, demonstrates that this EIR/EIS evaluates a range of alternatives that fail to satisfy CEQA and NEPA requirements. The Authority's decision to ignore this mandate will have devastating impacts on the area's agricultural economy and way of life, and it shows utter disregard for the project's important CEQA objective of providing intercity travel in a way that is sensitive to and protective of the area's agricultural resources. *See* Final EIR/EIS at p. 1-4.

The Authority should develop alternatives consistent with the project's objectives that result in fewer impacts to the region's agricultural interests and culture. For those of us who reside in the project area, farming is more than a means to make a living and support our families; it is a way of life that we pass down from generation to generation. As such, complying with CEQA and NEPA's requirements to identify a reasonable range of alternatives will not only ensure the legal adequacy of the EIR/EIS, it will protect a way of life that has been, and continues to be, central to California's agricultural economy and heritage. Doing so will undoubtedly lead to the rejection of the BNSF and Hybrid alternatives, as well as the West Chowchilla design option, and the Avenue 21 and Avenue 24 wye options. These alternatives and design options depart from existing transportation corridors and either destroy or require realignment of vital irrigation infrastructure.

C. The Project Alternative Descriptions Remain Incomplete, Misleading, and Generally Inadequate for Environmental Review.

As we discussed in our comment letter on the Draft EIR/EIS, NEPA and CEQA require that a project description must be accurate and consistent throughout the environmental document. Under CEQA, for example, "[a]n accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR." *County of Inyo v. City of Los Angeles*, 71

Cal.App.3d 185, 193 (1977); *see also Kings County Farm Bureau v. City of Hanford*, 221 Cal.App.3d 692 (1990). This principle applies in the NEPA context, as well. *See, e.g.*, 40 C.F.R. §§ 1502.13, 1502.14. As we noted in our comments on the Draft EIR/EIS, the document fails to meet these basic standards. A few examples of these deficiencies are identified below.

Insufficient Discussion of Impacts to Agriculture: In our comments on the Draft EIR/EIS, we noted the inadequacy of the document's analysis of impacts to farmland and farm communities. The Authority's response to our comments on these points are deficient because they fail to address specific issues we raised: for example, the failure to consider the impacts to farmland of unplanned and unwanted growth that would be triggered by the BNSF and hybrid alternative, the effects on unincorporated communities through which the BNSF alternative would pass, and the inappropriate growth and planning assumptions included in the no project alternative. *See* 14 Cal. Code Regs. § 15008(c); 40 C.F.R. § 1503.4.

It is troubling that the Authority chose to conclude that socioeconomic, community, and environmental justice impacts of moderate intensity for NEPA purposes are less than significant for CEQA purposes when, in other impact analyses in the EIR/EIS, NEPA impacts of moderate intensity were treated as significant CEQA impacts. *See, e.g.*, p. 3.12-35 through -36, 3.7-50. This treatment of impacts is arbitrary and appears to be an end-run around CEQA's recirculation requirements. *See* 14 Cal. Code Regs. § 15088.5(a). In sum, the Authority's failure to adequately consider these impacts to farmland and farm communities renders the EIR/EIS inadequate under CEQA and NEPA and exemplifies the Authority's lack of consideration of impacts to communities in the Central Valley.

Location of Key Infrastructure: We commented on the lack of information regarding the location of key project infrastructure such as traction power substations ("TPSS"), proposed power line extensions and reconductoring necessary to meet the project's electricity requirements. In response, the Authority stated that TPSS are not shown in chapter 2 due to the scale of the graphics in that chapter and generally referred POH to Appendix 2B as the supposed location of graphics showing the location of future TPSS's. The Authority also cursorily stated that TPSS locations "are reflected in the environmental impact analyses." This response is inadequate on several levels.

First, a vague reference to an appendix that is over two hundred pages in length does not satisfy the level of detail required of a response to comments on an EIR/EIS. *See* 14 Cal. Code Regs. § 15088(c) (responses to comments must be detailed and contain "good faith, reasoned analysis"); 40 C.F.R. § 1503.4. Further, in our review of Appendix 2B, we were unable to find any graphics depicting the location of future TPSS's. The Authority's response that TPSS's will be "bumps in the width of the right-of-way" underscores the inadequacy of the EIR's treatment of TPSS location. As electrical substations, TPSS impacts are not merely a function of the size of their footprint and may include localized electromagnetic field and hazardous materials impacts. *See City of Santee v. County of San Diego*, 14 Cal.App.3d 1438 (1989) (complete project description required so that all project's environmental impacts can be analyzed). The EIR/EIS's failure to indicate the location of TPSS's prevents adequate environmental analysis of the project and prevents public review of that analysis. The Authority's assurance that TPSS locations are reflected in environmental

analyses is unsupported in document and does not satisfy the NEPA and CEQA requirements that an EIR/EIS must be an informational document.

Second, the response wholly fails to address our concern that the location of proposed power line extensions and reconductoring is not described. Like the location of TPSS's, the location of reconductoring and power line extension work should have been disclosed so that the public could evaluate the potential impacts from that work. Failure to disclose the location of these project components substantially degraded the EIR/EIS's informative value and prevented the completion of adequate environmental review. *See County of Inyo* 71 Cal.App.3d at 193. As a project-level EIR, this degree of detail was required.

Shifting Project Description: In our comments on the Draft EIR/EIS, we noted that chapter 2 describes the BNSF alignment as going through the communities of Sharon and Kismet, but that those communities are not mentioned throughout chapter 3's various impact analysis sections. In response, the Authority stated that although these communities were not mentioned in the impact analysis, impacts to all small communities along the various alternative routes were analyzed. This cursory response does not meet the established standards for responses to comments on an EIR. *See* 14 Cal. Code Regs. § 15088(c) ("Conclusory statements unsupported by factual information will not suffice."); 40 C.F.R. § 1503.4.

Our review of the Final EIR/EIS also suggests that this statement may not be true. For example, maps depicting the location of noise and vibration monitoring sites along the various routes do not appear to depict monitoring sites in the vicinity Sharon and Kismet. For the reader, this suggests that noise- and vibration-related impacts to residents of Sharon and Kismet could not have been accurately analyzed due to lacking noise and vibration baseline information. While this may not be the case, inconsistencies in the project description for the BNSF alignment cause the type of confusion that a consistent and precise project description is designed to avoid. *See County of Inyo*, 71 Cal.App.3d at 197.

Inaccurate Ridership Estimates: Previously, we commented on the unusually high ridership estimates included in the Draft EIR/EIS. Ridership estimates included in the Draft and Revised 2012 Business Plan emphasize the questionable nature of the estimates used in the EIR/EIS. For example, the Revised 2012 Business Plan's medium ridership scenario estimates over 7 million fewer riders than the EIR/EIS's low forecast at the same ticket price. *See* Revised Business Plan at p. 5-20. Because the EIR/EIS relies on environmental benefits that would be created by the project to justify conclusions of no significant impact for subject areas like air quality and greenhouse gas emissions, use of these high ridership estimates inaccurately minimizes the project's environmental impacts. Use of different ridership estimates in different documents published by the Authority strongly suggests that the ridership estimates included in the project description were used to minimize the project's impacts. *See San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal.App.4th 645, 655 (project description should not be crafted to minimize reported environmental aspects by failing to consider reasonably foreseeable aspects of the project). Further, the response's failure to address this issue renders it inadequate. *See* 14 Cal. Code Regs. § 15088(c); 40 C.F.R. § 1503.4.

Assumptions Regarding Infill: Due to the lack of incentives encouraging infill development, we commented on the questionable nature of the Draft EIR/EIS's assumption that land development around stations would increase, thus reducing the use of automobiles by passengers attempting to arrive at a station. The Authority's response to our comment does not address our comment and instead assumes that infill development will occur. Not only does this response fail to meet CEQA and NEPA requirements, it reveals another deficiency in the project description. As with assumptions regarding ridership estimates, the EIR/EIS's use of unreasonable assumptions concerning infill development and its potential to reduce automobile use by HSR passengers render the project description fundamentally inadequate. *See San Joaquin Raptor Rescue Ctr.*, 149 Cal.App.4th at 655. A project description must set up accurate analysis of environmental impacts and cannot do so if it relies on unreasonable assumptions. *See id.*

D. The EIR/EIS Remains Deficient Because It Fails to Include Important Information, Defers the Environmental Analysis and Mitigation Related to Key Elements of the Project.

We pointed out in our comment letter that the Draft EIR/EIS improperly deferred environmental analysis and mitigation related to key elements of the project. The Final EIR/EIS does not remedy those deficiencies. An analysis of environmental impacts that can be feasibly evaluated should not be deferred to later. *See, e.g., Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova*, 40 Cal.4th 412 (2007) (EIR for large community plan did not adequately investigate impacts of supplying water to future stages of development); *Stanislaus Natural Heritage Project v. County of Stanislaus*, 48 Cal.App.4th 1428 (EIR for proposed multistage development project that contained no analysis of water supply impacts of later phases, and deferred analysis to later EIRs, held to be inadequate).

Similarly, it is generally inappropriate for a lead agency to defer formulation of a mitigation measure to the future. 14 Cal. Code Regs. § 15126.4(a)(1)(B). For example, mitigation measures calling for a mitigation plan to be devised based on future studies are legally inadequate if they do not describe the nature of the actions expected to be incorporated in the plan. *See San Joaquin Raptor Rescue Ctr. v. County of Merced*, 149 Cal.App.4th 645 (2007) (rejected mitigation measure calling for future surveys for special status species and development of undefined habitat management plan in response to surveys); *Endangered Habitats League v. County of Orange*, 131 Cal.App.4th 777 (2005) (rejecting mitigation measure requiring submission of acoustical analysis and approval of mitigation measures recommended by analysis because no mitigation criteria or potential mitigation measures were identified).

In our comments on the Draft EIR/EIS, we noted that the document failed to provide data in support of its conclusions and buried relevant data in technical appendices. The Final EIR/EIS fails to remedy this issue, and the Authority continues to assume that inclusion of information in appendices is sufficient for the purposes of NEPA and CEQA. That assumption is wrong. As stated in the CEQA guidelines, and EIR *shall* include summarized technical data and similar relevant information sufficient to allow full assessment of environmental impacts. *See* 14 Cal. Code Regs. § 15147. The EIR/EIS does not do this.

In our comments on the Draft EIR/EIS, we also noted a number of examples where the document improperly deferred the environmental analysis and mitigation related to key elements of the Project, in violation of the principles identified above. The Authority's responses to these examples are woefully inadequate.

Staging Areas and Batch Plants: We noted that the Draft EIR/EIS failed to indicate the size and location of construction staging areas and batch plants and that, as a project-level EIR/EIS, the document was required to include such detail in its analysis. In response, the Authority merely stated that location of staging areas and batch plants is not yet known but are expected to be located within the project area analyzed in the EIR/EIS. This response fails to comply with the requirement that responses to comments provide detailed, good-faith, reasoned analysis. See 14 Cal. Code Regs. § 15088(c); 40 C.F.R. § 1503.4. Not only is location an important factor in the magnitude of potential environmental impacts, but size of the staging areas is also key. The response's failure to address the issues we raised in our comment renders it inadequate. See 14 Cal. Code Regs. § 15088(c); 40 C.F.R. § 1503.4

Further Studies Called for by the Draft EIR/EIS: In response to our concern that the Draft EIR/EIS identified the need for further studies of traffic and cultural resource impacts, the Authority stated that construction of project elements outside of the project APE would require additional studies consistent with the requirements of the project's Section 106 MOA. This response emphasizes the EIR/EIS's inappropriate deferral of environmental analysis and showcases the potential harm caused by the failure to provide a consistent, sufficiently detailed project description. As with other lacking elements of the project description, the EIR/EIS's failure to identify the location of key project components prevents a full analysis of the project's environmental impacts, ensures underestimation of those impacts, and necessitates later environmental analysis, after the EIR/EIS certification and project approval. This violates CEQA and NEPA. See, e.g., *Vineyard Area Citizens for Responsible Growth*, 40 Cal.4th 412.

SR152 Wye Analysis: As we noted above, the failure to include analysis of SR152 wye environmental impacts cuts to the core of this document and leaves it critically flawed. Deferral of the analysis of this wye's potential impacts must be remedied before the Authority certifies the Final EIR/EIS. See *id.* Further, by referring to a non-existent response to a different comment, the Authority failed to meaningfully respond to our concerns regarding deferral of the SR 152 wye analysis. See 14 Cal. Code Regs. § 15088(c) (responses to comments must contain detailed, good-faith analysis); 40 C.F.R. § 1503.4.

Deferred Mitigation: In our comments on the Draft EIR/EIS, we noted that several mitigation measures failed to meet CEQA requirements and thus constituted improper deferral of mitigation formulation. The Authority's attempt to revise those mitigation measures still falls short. For example, mitigation measures N&V MM #3 still calls for the establishment of performance criteria for building sound insulation at some point in the future. CEQA requires performance standards to be established prior to EIR certification and project approval because, without performance standards, a lead agency cannot determine whether significant impacts will be mitigated to less than significant levels. See *San Joaquin Raptor Rescue Ctr.*, 149 Cal.App.4th 645. In other

instances, mitigation measures changed so substantially that they constitute significant new information, thus requiring recirculation prior to certification.

E. Analysis of Biological Impacts Remains Inadequate, and the EIR/EIS Cannot be Relied Upon by Agencies Issuing Permits and Approvals Necessary for the Project.

Due to the inadequacy of the EIR/EIS's analysis of impacts to biological resources and wetlands, the document is insufficient to support issuance of any of the permits and other agency approvals required for the project, including any Endangered Species Act, California Endangered Species Act, Clean Water Act Section 404, Clean Water Act Section 401, California Fish and Game Code requirements, and other permits and approvals that might be required for the project. Review of the Biological Resources and Wetlands section of the Final EIR/EIS shows that the Authority failed to adequately address the vast majority of comments we made on that section of the Draft EIR/EIS. For example, the Authority failed to address our concern that the value of agricultural lands to special status species such as San Joaquin kit fox, burrowing owl, Swainson's hawk and other raptors is inappropriately minimized in the EIR/EIS. The Authority's failure to appropriately value agricultural lands as habitat leaves its analysis of construction impacts materially flawed.

As described in the comments on the Draft EIR/EIS submitted by POH member Kole Upton (submission 750), the Hybrid Alternative will bisect and destroy a 14 acre parcel set aside 50 years ago that provides habitat for many species, including Swainson's hawks. In its cursory response to this comment, the Authority noted mitigation measures designed to minimize impacts to biological resources. This response misses the mark; impacts may only be mitigated if they are identified, and the EIR/EIS fails to identify impacts to this parcel, which was described by one biological consulting firm as an "island of refuge" for local wildlife in the area.

Given this and the other flaws we addressed in this letter, and in our letter commenting on the Draft EIR/EIS, agencies such as the U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, and the California Department of Fish and Game cannot rely on the EIR/EIS to issue permits necessary for the project.

F. Analysis of Transportation and Noise Impacts Fails to Comply with Established Procedures.

FRA procedures for consideration of environmental impacts require an EIS to "consider possible impacts all modes of transportation, including passenger and freight rail." Final EIR/EIS at p. 3.2-1. The Final EIR/EIS states that

with the introduction of HST service, the Amtrak San Joaquin rail service is likely to be adjusted to function as a feeder service to the HST System . . . While San Joaquin service adjustments are expected to occur, connecting or direct service to existing markets is expected to be provided and would likely improve as the HST System is implemented. This would be an impact with negligible

intensity under NEPA and it would be less than significant under CEQA.

Final EIR/EIS at p. 3.2-36. Contrary to these assertions, the Revised Business Plan states that Amtrak service would no longer be provided south of Merced. Authority Chair Dan Richard has confirmed this in testimony to the legislature and comments to the press. He has also stated that the plan contemplates an immediate switch of San Joaquin Amtrak service onto the HST tracks. Doing so would likely require station location changes in Merced and Fresno and might necessitate connector tracks north of Merced. In violation of CEQA, NEPA, and FRA procedures for consideration of environmental impacts, none of these potential impacts has been disclosed and analyzed in the EIR/EIS.

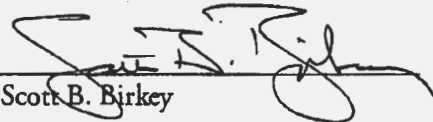
Additionally, NEPA requires federal agencies to consider local environmental protection laws, such as local noise ordinances. In this EIR/EIS, the Authority refused to apply local noise ordinances when analyzing the project's noise impacts. This constitutes a violation of NEPA.

III. CONCLUSION

POH is deeply committed to the good stewardship of our state's agricultural lands and natural resources, and we are disappointed in the Authority's failure to address the issues we raised in our comments on the Draft EIR/EIS. The Authority and the FRA have failed to properly discharge their duty under CEQA and NEPA, respectively, to produce an EIR/EIS that reflects a reasonable, good faith effort to disclose and evaluate the environmental impacts of the Project, to properly identify and describe mitigation measures and alternatives related to the Project, or to take a "hard look" at the environmental consequences of the Project. *See, e.g., Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.*, 47 Cal.3d 376 (1988); *Kleppe v. Sierra Club*, 427 U.S. 390 (1976); *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208 (9th Cir. 1998). The deficiencies identified by POH should be remedied, and the EIR/EIS recirculated for an additional round of public review and comment.

Sincerely,

COX, CASTLE, & NICHOLSON LLP

By: 
Scott B. Birkey

May 1, 2012

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Senator Alan Lowenthal
Senator Joe Simitian
Senator Anthony Cannella
Senator Doug LaMalfa
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