

**Comment Letter AL072**

AL072

**Comments of  
Grassland Water District  
And  
Grassland Resource Conservation District  
on the  
Draft  
Program Environmental Impact Report /  
Environmental Impact Statement  
For  
The California High Speed Train Project**

**Volume 1 of 2**

**August 31, 2004**

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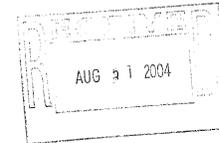
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August 31, 2004



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

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

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

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

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

<sup>1</sup> Pub. Res. Code §§ 21000 *et seq.*

<sup>2</sup> 42 U.S.C. § 4321 *et seq.*

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

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

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

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

<sup>3</sup> Exhibit 8, Grasslands Water District, Land Use and Economics Study: Grasslands Ecological Area (July 2001), p. 2 (hereafter "Grassland Water District").

<sup>4</sup> *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391.

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

**I. IMPORTANCE OF GRASSLAND ECOLOGICAL AREA**

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

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

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

<sup>5</sup> *Grassland Water District at 2.*

<sup>6</sup> *Id.* at pp. 11-12.

<sup>7</sup> U.S. Bureau of Reclamation, *Final NEPA EA, Refuge Water Supply Long-Term Water Supply Agreements* (January 2002).

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

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

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

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

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

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

<sup>9</sup> Exhibit 8, *Grasslands Water District*, supra, at p. 2.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at p. 14

<sup>12</sup> *Id.* at p. 21.

<sup>13</sup> See, e.g., Pub. Res. Code § 21100, 1124-339d

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

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

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

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

<sup>14</sup> *Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652.

<sup>15</sup> *Communities for a Better Environment v. Calif. Resources Agency* (2002) 103 Cal.App.4th 98, 109.

<sup>16</sup> 14 Cal. Code Regs. ("CEQA Guidelines") § 15002(a)(1).

<sup>17</sup> *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.

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

<sup>19</sup> CEQA Guidelines § 15002(a)(2).

<sup>20</sup> CEQA Guidelines § 15092(b)(2)(A)-(B).

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

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

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

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

<sup>21</sup> CEQA Guidelines § 15125(a).

<sup>22</sup> *Id.*; 40 C.F.R. § 1502.15.

<sup>23</sup> *Save Our Peninsula Committee v. Monterey Board of Supervisors* (2001) 87 Cal.App.4th 99, 121.

<sup>24</sup> *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1124-339d

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

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

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

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

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

1344, 1355.

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

<sup>26</sup> *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192.

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

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

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

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

<sup>27</sup> CEQA Guidelines § 15124(c).

<sup>28</sup> *Cry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20.

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

<sup>30</sup> See DEIR/S, High Speed Train Operations Report, Appendix E (online at [http://www.cahighspeedrail.ca.gov/eir/pdf/rpn\\_studies/state/Operations/Op\\_App\\_E.pdf](http://www.cahighspeedrail.ca.gov/eir/pdf/rpn_studies/state/Operations/Op_App_E.pdf)).

<sup>31</sup> Exhibit 9, Thomas Reid Associates, *Grassland Water District Land Planning Guidance Study* (1995), Appendix A (Noss, R.F., *Translating Conservation Principles to Landscape Design for the* 1124-339d

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

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

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

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

*Grassland Water District* (1994), p. 44-47.  
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**V. THE DEIR/S FAILS TO ADEQUATELY ANALYZE POTENTIALLY SIGNIFICANT IMPACTS, FAILS TO INCORPORATE ADEQUATE MEASURES TO MITIGATE IMPACTS TO LESS THAN SIGNIFICANCE AND IMPROPERLY DEFERS MITIGATION MEASURES**

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

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

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

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

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

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

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

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

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

<sup>33</sup> CEQA Guidelines § 15168(a).

<sup>34</sup> CEQA Guidelines § 15168(b)(4).

<sup>35</sup> CEQA Guidelines § 15168(c).

<sup>36</sup> CEQA Guidelines § 15168(c)(1).

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

<sup>38</sup> DEIR/S at 1-12.

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

<sup>40</sup> *Stanislaus Nat'l Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 199.

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

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

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

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

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

<sup>41</sup> CEQA Guidelines § 15161.

<sup>42</sup> *Id.*

<sup>43</sup> *Stanislaus Nat'l Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 199.

<sup>44</sup> *Id.* at 202.

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

<sup>46</sup> *Id.* at 197.

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

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

#### B. Analyzing Significant Environmental Impacts

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

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

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

<sup>47</sup> Pub. Res. Code § 21100(b)(1); CEQA Guidelines § 15126.2(a); 40 C.F.R. 1508.8, 1502.16.)

<sup>48</sup> CEQA Guidelines § 15382.

<sup>49</sup> *Id.* at § 15126.2(a).

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