

Comment Letter O035

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DESERT TORT PRES COM

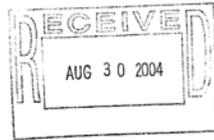
PAGE 02

O035

Desert Tortoise Preserve Committee, Inc.

August 27, 2004

Mr. Joe Petrillo
Chair
California High-Speed Rail Authority
Draft Program EIR/EIS Comments
925 L Street, Suite 1425
Sacramento, CA 95814



Re: California High Speed Rail Draft Program EIR/EIS.

Dear Mr. Petrillo:

The Desert Tortoise Preserve Committee and Desert Tortoise Council appreciate this opportunity to comment on the California High Speed Rail Draft Program EIR/EIS.

The Desert Tortoise Preserve Committee has worked since 1974 to promote the welfare of the desert tortoise and the species that share its habitat through preserve development and management, and through research and education. The Desert Tortoise Council was established in 1976 to promote the conservation of the desert tortoise in the southwestern United States and Mexico.

The desert tortoise (Gopherus agassizii) is a State and Federal-listed threatened species. The West Mojave population of the desert tortoise has suffered severe declines in recent years. Many biologists, including members of the Desert Tortoise Recovery Plan Assessment Team, recent convened by the USFWS to review the 1994 Desert Tortoise (Mojave Population) Recovery Plan, consider the West Mojave population to merit endangered status.

The Council On Environmental Quality - Regulations for Implementing the National Environmental Policy Act Section 1502.14 Alternatives including the proposed action states: This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (Sec. 1502.15) and the Environmental Consequences (Sec. 1502.16), it should present the environmental impacts of the proposals and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decision maker and the public.

- (a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.
(b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.

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O035-1

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- (e) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.
(f) Include appropriate mitigation measures not already included in the proposed action or alternatives.

The proposed project considers two alternative routes for the Bakersfield to Los Angeles portion of the High Speed Rail. One of these, the Palmdale alignment, cuts through the West Mojave Planning area between Tehachapi and Palmdale, and passes through desert tortoise habitat for about 20 miles. The EIR/EIS is deficient in failing to mention either the desert tortoise or the West Mojave Habitat Conservation Plan (WMP) in connection with this Palmdale alignment alternative. The EIR/EIS needs to review impacts to the proposed conservation strategies of all species to be covered under the West Mojave Plan. Consideration should be given for the need for take avoidance measures, compensation for lost habitat (under the WMP compensation ratios of 0.5:1 to 1:1 prevail in the impacted area) and the cumulative impact of increased development facilitated by the provision of a new commuter rail to Los Angeles.

Because the draft EIR/EIS fails to review and analyze impacts to the desert tortoise, and fails to review and analyze impacts to the WMHCP no basis for the project managers to make an informed decision on the choice of alternatives and the public has no basis for determining if the proposed mitigation measures are adequate to minimize and fully mitigate impacts to listed species as required under the California Endangered Species Act. The draft EIR/EIS needs to be revised to include an adequate review of impacts to California's State reptile.

We thank you for this opportunity to submit written comments on the California High Speed Rail Draft Program EIR/EIS. Please continue to keep us informed of any decisions related to this and similar projects. I can be reached by telephone at (951) 683-3872 or by e-mail at <dtpo@pacbell.net>.

Sincerely,

[Handwritten signature]

Michael J. Connor, Ph.D.
Executive Director

Desert Tortoise Preserve Committee, Inc.

O035-1
cont.

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08/27/2004 12:41



U.S. Department of Transportation
Federal Railroad Administration

Response to Comments of Michael J. Connor, PhD. , Executive Director, Desert Tortoise Preserve Committee, Inc., August 27, 2004 (Letter O035)

O035-1

The Co-lead Agencies have considered feasible and practicable alternatives in the Program EIR/EIS process in compliance with CEQA and NEPA requirements. The development of HST alignment and station options for the Draft Program EIR/EIS included an extensive screening analysis in which many alignment and station options were eliminated from further consideration according to several criteria including high potential for impact to biological resources. The remaining alignment and station options were analyzed in the Program EIR/EIS and potential impacts were identified and compared. This information was considered and influenced the identification of a preferred system of alignment and station options. In identifying a preferred HST system, additional alignment and station options were eliminated from further consideration according to several criteria including high potential for impacts on biological resources. The subsequent preliminary engineering and project level environmental review will provide further opportunities to avoid and minimize the potential effects to biological resources including the desert tortoise and its habitat.

Section 3.15.2.C of the Final Program EIR/EIS has been revised to identify the desert tortoise habitat and the West Mojave Habitat Conservation Plan. Sections 3.15.3.C and 3.15.4.C of the Final Program EIR/EIS have been revised to address potential impacts to the Desert Tortoise its habitat. Please also see response to Comment O034-18.

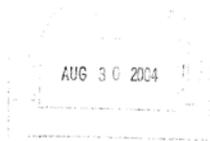
Comment Letter O036

O036

FRIENDS of the GREEN LINE
FRUSTRATED LA COMMUTERS... FIGHTING FOR BETTER MOBILITY

Saturday, August 28, 2004

Mehdi Morshed
Executive Director
California High-Speed Rail Authority
Attn: California High-Speed Train
Draft Program EIR/EIS Comments
925 L St. #1425
Sacramento, CA 95814-3704



Dear Mr. Morshed:

Re: Comments on the Draft Program Environmental Impact Report and Statement for the Proposed California High-Speed Train System

The Friends of the Green Line (FoGL) is pleased to be able to enter one concern and our comments on the draft EIR/EIS for the proposed California High-Speed Train system.

Our one concern addresses the segment of the MTA Harbor Subdivision Right-of-Way (HSD ROW) between Imperial / Aviation and Aviation / 98th Street. Our organization believes that this segment provides the needed path for any future northward extensions of the MTA Green Line. We seek to protect the possibility of such northward extensions from encroachment by the City of Los Angeles World Airports or any other group, such as the High-Speed Train System.

Our following comments and recommendations regarding the Harbor Subdivision Right-of-Way (HSD ROW) from Los Angeles International Airport (LAX) to Los Angeles Union Station are based upon the opinions of our members, as well as comments collected at numerous outreach events organized or attended by FoGL including presentations to the South Bay Cities Council of Governments, the City of Inglewood Traffic Committee, Los Angeles World Airports, various City of Los Angeles Neighborhood Councils, local elected officials and the LAX / Westchester / Marina del Rey Chamber of Commerce.

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FRIENDS of the GREEN LINE
FRUSTRATED LA COMMUTERS... FIGHTING FOR BETTER MOBILITY

1. FoGL strongly supports use of the HSD ROW for the High Speed Rail project, and has for some time advocated passenger rail service on this underutilized line.
2. FoGL recommends that the HSD also support local and regional train service, thus offering significant benefits to communities along the corridor, such as Inglewood and Downtown Los Angeles.
3. FoGL recommends that every effort be made to optimize connections between High-Speed Rail and existing transit services and bus/rail infrastructure.
4. FoGL recommends consideration of any Intermodal Transportation Center (ITC), such as that described in the current LAX Master Plan, be an alternative terminal point for this alignment. All LAX Master Plans to date have included an ITC connected to the LAX terminals by a People Mover. FoGL believes that the ITC is a much more accessible "gateway" to the High-Speed Rail for residents of the South Bay and other cities close to LAX.

Friends of the Green Line is a group of concerned citizens working to help develop the full potential of the Los Angeles County Metro Green Line. FoGL is a project of The Transit Coalition, a grass roots volunteer organization that advocates a balance of bus, commuter, heavy and light rail, bike, airport access, goods movement and automobile transportation in the Los Angeles region.

Should you have any questions or need additional information, please contact Bart Reed at (818) 367-1661.

Sincerely,

Kenneth J. Alpern
Kenneth Alpern, M.D.
Steering Committee Co-Chair
Friends of the Green Line

Daniel Walker
Daniel Walker
Steering Committee Co-Chair
Friends of the Green Line

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O036-1
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O036-1



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Administration**

Comment Letter 0036 Continued

LAX Express Proposal

Most world-class airports offer direct rail service to the heart of their cities. Friends of the Green Line (FoGL) advocates the LAX Express with rail service between Los Angeles International Airport (LAX) and downtown Los Angeles Union Station.

The Metropolitan Transportation Authority owns a lightly used existing Right-of-Way known as the MTA Harbor Subdivision.



This map shows the complete Right-of-Way, which runs northwest from San Pedro, past LAX, then continuing northeast on to Redondo Junction, a rail interchange with connections to Los Angeles Union Station (LAUS). At LAUS there are connections to existing rail lines and future proposals like the High Speed Rail to the Bay Area.

The LAX Express proposal could provide Local and Cross-town Express service for South Bay and West Los Angeles residents between transit hubs at LAX and LAUS.

Green Line Rail Access To Westchester Via LAX



Friends of the Green Line (FoGL) recommends that any plan for improvements in security, noise abatement and traffic include the FoGL LAX Express proposal and the FoGL Green Line extension proposal to Westchester via LAX as an integral part of the overall LAX Master Plan and not just a connection to the Green Line on the outskirts of LAX. By reducing the number of transfers, more passengers will utilize public transit and this will reduce traffic congestion, air pollution and noise around LAX.

FoGL recommends a regional airport system, and the LAX Express can be modified for direct transit between most of the major Airports in the Los Angeles Region. The above map shows the Green Line as originally adopted by the MTA, and includes the Los Angeles World Airport (LAWA) proposed People Mover. FoGL remains neutral on any LAWA proposal and supports efforts to regulate passenger capacity at LAX.

Light Rail and Airports A Perfect Match

Construction of the Green Line past LAX was halted in the 1990's due to concerns about interference from the train's overhead power collectors interfering with airplane landing systems. An exhaustive study showed a shallow trench, which lowers the light rail trains below the line of sight of the radar beacons, solves the problem.

The Santa Clara Valley Transportation Authority (VTA) Light Rail system in San Jose California was extended past the end of the runways at NAS Moffett Field with its highly sensitive electronic equipment without any problems, using the same exact configuration recommended by the Green Line Interference study.



This photo shows the train's overhead wires—the source of the potential interference—just above the level of the fence and just feet from the end of the runway as a VTA Light Rail train passes under the flight path in a trench that helps shield any interference from the train.

FoGL advocates extending the Green Line in a trench, similar to the one shown in the above photo, past LAX's south runways and continuing on to Westchester.

Why The Green Gap?

Extending the Green Line 2.5 miles north to Westchester with stations at LAX would save 15-30 minutes per trip by eliminating the walking and shuttle transfer currently needed to get from the Green Line to LAX.

Extending the Green Line 2.5 miles east to the Norwalk Metrolink Station would save 15-45 minutes per commute by not having to use the current shuttle bus system.

Extending the Green Line 2.5 miles south to the South Bay Galleria would move the terminus to an existing transit hub, a busy shopping mall and provide a friendlier pedestrian environment.



Commuters on this Shuttle bus will miss the East Bound Green Line Train by seconds and have a 15-minute wait for the next mid-day train to arrive.

Save Our Health

Traffic noise at all I-105 freeway median Green Line stations frequently reaches the 85 to 90 db range.

This is not only uncomfortable but also unhealthy. Prolonged exposure to noise levels over 85 db may gradually lead to some hearing loss. Simple measures such as sound barriers can significantly reduce noise levels at the station platforms.

Protection from noise and weather is urged at all Green Line Stations.

Friends Of The Green Line Goals

- 1 Extend the Green Line thru LAX to Westchester to allow access from the North and the South
- 2 Provide Express Train Service between LAX and Union Station
- 3 Extend the Green Line South to the South Bay
- 4 Extend the Green Line East to the Norwalk Metrolink Station
- 5 Provide shelter from noise and weather at Green Line Stations

Conceptual Westside Rail



Who Are We?

Friends of the Green Line (FoGL) is an all-volunteer organization of frustrated commuters and transit users working for improved mobility and less pollution in the Greater Los Angeles Region. FoGL is not affiliated with the MTA or LAWA.

FoGL recognizes the Green Line as a form of mass transit that is positioned to improve ground and air transportation throughout Southern California, in particular because of its proximity to LAX, the Westside, the South Bay and the Norwalk Metrolink Transit Center which would link MetroRail to Orange, Riverside and San Diego Counties.

How Can You Help?

The Transit Coalition is a 501 (c) (3) non-profit organization. Please contact us if you would like to attend our meetings, make a tax-deductible contribution, volunteer your time or help in any other way.



www.transitcoalition.org
 www.friends4theline.com
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 www.railpac.org • www.metroilverline.com
 www.friends4gapo.org
 Please make your donation payable to:
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 12463 Telfair Avenue
 Sylmar, CA 91342-3736
 transitcoalition@earthlink.net
 Voice: 818-367-1661 • Fax: 818-362-7997



Green Line Extensions: The Ones That Got Away!



Friends of the Green Line

Response to Comments of Keneth Alpern, M.D., Daniel Walker, Steering Committee Co-Chair, Friends of the Greenline, August 28, 2004 (Letter O036)

O036-1

Acknowledged. The Authority has determined that a direct HST service to LAX would not be part of the initial statewide HST network. Connections to the HST system would be provided to LAX and Western Los Angeles County by local transportation (shuttle, regional transit, or the automobile). A direct HST link to LAX would require a costly spur line with very limited maximum speeds that would have lower ridership potential than HST links to the San Diego (via the Inland Empire) and to Orange County. See Standard Response 6.39.1.



Comment Letter O037

O037



KAWEAH RIVER ROCK CO., INC.
P.O. Box 515 • Woodlake, California 93286-0515
Telephone (559) 564-3302
Fax (559) 564-8389

August 26, 2004

Mehdi Morshed
Executive Director
California High Speed Rail Authority
925 L Street, Suite 1425
Sacramento, CA 95814

Re: Support for High Speed Rail Project – City of Visalia Site

Dear Mr. Morshed:

On behalf of Kaweah River Rock Co., Inc. and the Tulare/Kings Chapter of the Construction Materials Association of California I would like to thank you for the opportunity to respond to the Draft EIR/EIS on the High Speed Rail project proposed for the State of California. We endorse the project and support the alignment along the Union Pacific corridor with a station site in Visalia, California. It is our belief a station site in Visalia will best maximize rider-ship opportunities throughout Tulare, and Kings Counties. At the time estimated for the completion of the High Speed Rail project, the regional population for this area is projected to reach 750,000 persons. In addition, the Union Pacific alignment would be located in existing transportation corridors so there would be less potential for significant environmental impacts (e.g. reduced auto emissions, etc. due to shorter driving distances to access trains).

We understand there is some expressed concern regarding the Union Pacific alignment and, if chosen as the preferred route, it would travel directly through the downtown areas of some of the smaller cities located in southern Fresno County and southern Tulare County. We would like to express our support for the evaluation and the possibility of a by-pass route around these smaller rural communities as a resolution to concerns expressed by these communities.

Finally, we believe the proposed Union Pacific alignment would optimize operational and capital costs, while minimizing natural resource disruption. The Union Pacific alignment would provide numerous employment opportunities to the many agricultural communities along the route. High-Speed Rail related growth in service industries would diversify local job markets and provide jobs for low-skilled workers, thus contributing to a reduction of the area's historically high unemployment rate of 17%. The UP alignment would provide the highest potential benefit to helping to reduce unemployment.

Thank you again for the opportunity to comment on the Draft EIR/EIS and the proposed High Speed Rail Project. Please feel free to contact me if you have any questions or clarification of any of the comments stated herein.

Sincerely,

David F. Harrald
General Manager, Kaweah River Rock Co., Inc.
Chairman, Tulare/Kings Chapter, CMAC

O037-1



CALIFORNIA HIGH SPEED RAIL AUTHORITY



U.S. Department
of Transportation
**Federal Railroad
Administration**

**Response to Comments of David F. Harrald, General Manager, Kaweah River Rock Co. Inc., August 26, 2004
(Letter O037)**

O037-1

Please see standard response 6.15.4 and standard response 6.21.1.

Comment Letter O038

O038



Dan Leavitt, Deputy Director
California High-Speed Rail Authority
State of California
925 L Street, Suite 1425
Sacramento, Ca. 95814

August 27, 2004

Re: Menlo Park Chamber of Commerce Comments on High-Speed Train EIR/EIS

The Menlo Park Chamber has reviewed both the EIR and EIS for the proposed California High-Speed Train System. We support the establishment of a High-Speed Train System to serve our California transportation needs. We would expect that future documents as the proposed project moves forward would provide more detail on the specific impacts of High-Speed Train operations on residential/commercial land uses and mitigation measures that would be provided as part of any future project. We are particularly interested in the Caltrain corridor on the San Francisco Peninsula. It is not clear for example the requirements for a station which could be located in Redwood City or Palo Alto.

O038-1

In order for the High-Speed Train to be successful considering that a major part of the travel demand will be between the San Francisco Bay Area to the Los Angeles Area, we would encourage the routing that provides the shortest travel times between these two areas. In the reports the Henry Coe State Park and Pacheco route alignments are discussed between the Bay Area and the Central Valley. We do not support the Henry Coe State Park alignment but do support the Pacheco Pass alignment.

After our support for the Pacheco Pass alignment the Bay Rail Alliance requested a meeting with us to discuss our position and they further discussed the Altamont Pass alignment which has been eliminated by the California High-Speed Rail Authority after much study. We also understand TRACK and the Sierra Club are also still interested in this option and may challenge the EIR/EIS process to further evaluate this option. Our concern is the High-Speed Train will probably appear on the statewide ballot in 2006 for approval by the voters and we would hope this issue with them will be resolved prior to that vote and current process underway.

O038-2

Our concerns with the Altamont Pass alignment are the same as those in the EIR/EIS. The environmental challenges in the area of the Don Edwards Wildlife Area and requirements to get a new Bay crossing through BCDC would not be easy. Pacheco Pass provides more service through Santa Clara County and up the Peninsula. There are also benefits for Caltrain mainline improvements with Caltrain and High-Speed Rail working together. The higher ridership with the Pacheco Pass alignment is also important for the economics of paying the operating costs of the new system. We very much support this project look forward to working with you as the High-Speed Train moves forward.

Sincerely,

Rick Ciardella, Chairman of the Board

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E-mail: info@menloparkchamber.com • www.menloparkchamber.com



CALIFORNIA HIGH-SPEED RAIL AUTHORITY



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Response to Comments of Rick Ciardella, Chairman of the Board, Menlo Park Chamber of Commerce, August 27, 2004 (Letter O038)

O038-1

Acknowledged. Should the HST proposal move forward, future project specific studies would provide more detail on the site-specific impacts of HST operations on residential/commercial land uses and mitigation measures as well as station requirements.

O038-2

Please see standard response 6.3.1.

Comment Letter O039

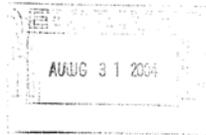


MIRANDA, TOMARAS & OGAS, LLP

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O039

August 30, 2004



Submitted via Facsimile

California High-Speed Train
Draft Program EIR/EIS Comments
Attn: Dan Leavitt
925 L. Street, Suite 1425
Sacramento, CA 95914

RE: Comments on behalf of the Pechanga Band of Luiseño Indians on the Draft Program EIR/EIS for the California High-Speed Train

Dear Mr. Leavitt:

The Pechanga Band of Luiseño Indians, a federally recognized Indian Tribe (hereinafter the "Pechanga Tribe") submits the following comments through its attorneys regarding the above-referenced Project. The Pechanga Band has previously commented on this Project at the Public Hearing on June 23, 2004 in Los Angeles, and requests that these written comments and the Public Hearing verbal comments be incorporated and considered in the record of approval for this Project.

The Pechanga Tribe's primary concern regarding this Project is the impact it will have on significant cultural resources, Luiseño sacred sites, and Native American human remains. The Pechanga Tribe has a long history of involvement with development Projects, local, State and Federal, that impact cultural resources affiliated with the Pechanga Tribe. The Pechanga Tribe is not opposed to this Project at this time. The Pechanga Tribe is concerned, however, about both the protection of unique and irreplaceable cultural resources, such as Luiseño village sites and archaeological items which would be displaced by ground-disturbing work on the project, and on the proper and lawful treatment of ceremonial and sacred items, including Native American human remains and likely to be discovered in the course of the work.

The Tribe is particularly concerned about one segment of the proposed route that passes through the City of Temecula, as it appears to impact one of the Tribe's sacred sites, known as "Temeku". Consequently, it follows that, because this project area is rich with cultural items, sacred sites, and Native American remains, development of this project area will have a direct and significant impact on known archeological areas. Thus, the Tribe requests that the California High-Speed Rail Authority ("Authority"), the Federal Railroad Administration ("FRA"), the Department of Transportation ("DOT"), and all other cooperating agencies on this Project pay careful attention to identify and evaluate Project impacts to cultural resources, including completing mandatory consultations with the Pechanga Tribe.

O039-1

August 30, 2004

RE: Comments on behalf of the Pechanga Band of Luiseño Indians on the Draft Program EIR/EIS for the California High-Speed Train

Page 2

Project Impacts to Luiseño Sacred Site, Cultural Traditional Properties and Archeological Sites

Of particular concern are any of the routes that pass through the Pechanga Tribe's traditional territories, including the "Los Angeles to San Diego via the Inland Empire Route" which address the "Ontario to March AFB" segment and the "March AFB to Mira Mesa" segment; and the "Los Angeles to San Diego via Orange County Route" which addresses the "Irvine to Oceanside" segment and the northern part of the "Oceanside to San Diego" segment. A copy of Luiseño traditional territory map is enclosed for your convenience. The Tribe has an interest in any portion of the Project within those territory boundaries.

The "Inland Empire Route" from March AFB to Mira Mesa segment alone contains approximately 62 recorded archeological/cultural resources. That number is likely higher as required archeological surveys have not yet been completed for this Project. In addition, the Tribe may know about additional sites that are not yet recorded, as well as having additional information about the sites that is not reflected in the site records. Such resources include village sites, ceremonial sites, and extremely unique and irreplaceable cultural resources, and sites which explain the migratory and habitation practices of the Luiseño people.

Within this route is also a site which is sacred to the Pechanga people. This site known as "Temeku" was recorded with the County Archeological Resources Unit in 1973 and was also added to the National Historic Register. This site meets and exceeds the CEQA eligibility requirements for a unique historic/archeological resource (Cal. Pub. Res. C § 21083.2(g)). This site is of great importance as it is a chronicled Luiseño village and plays a central role in Luiseño creation stories. A loss of this site, which actually consists of at least four recorded tri-nomial sites, would encroach upon the Tribe's sovereign rights to its culture, religion, and self-governance. The Tribe requests that this Project be designed so that the "Temeku" site will not be impacted by this Project, but preserved and left in its natural state.

As this Draft Program EIR/EIS does not engage in focused review of the Project's proposed alignments, the Tribe is unable to submit detailed comments at this time, but will submit further detailed comments on the specific impacts to cultural resources as soon as it is provided with specific information on route locations, grading plans, engineering plans, etc. In addition, as the information concerning cultural resources is sensitive and subject to confidentiality requirements under State law, the Tribe requests that the Authority consult with the Tribe in-person regarding the specific locations and details of the Project impacts to cultural resources, as the Tribe is unable to disclose specific details in this letter.

Applicable Federal Law Section 106 Review Required

The National Historic Preservation Act (16 U.S.C. §§ 470 et. seq) requires that a Section 106 review be performed for all Federal undertakings (16 U.S.C. 470w(7); 36 CFR §800.16(y)).

O039-1
cont



U.S. Department of Transportation
Federal Railroad Administration

Comment Letter 0039 Continued

August 30, 2004
 RE: Comments on behalf of the Pechanga Band of Luiseño Indians on the Draft Program EIR/EIS for the California High-Speed Train
 Page 3

As such, the Authority must initiate the Section 106 review process which includes consultation with, among others, federally-recognized Indian tribes. (*Id.* at §800.16(f) and (m)). Consultation is required whether the property in question is on or off tribal lands (*Id.* at §800.2(c)(2)(ii)).

As part of the Section 106 review process, agencies must make a “reasonable and good faith effort” at identification of historic properties within the area affected by the undertaking. (*Id.* at 800.4(b)(1)). The ACHIP and Federal Courts have determined that the process must be completed for not just the “permit area,” but for the entire project area. Colorado River Indian Tribes v. Marsh (1985) 605 F. Supp. 1425.

Historic properties are defined to include archaeological sites and areas which have religious or cultural significance to Tribes. *Id.* Further, such identification efforts should include consultation with Tribes. *Id.* As discussed below, the Pechanga Band therefore requests that appropriate assessments be made according to the Section 106 review process, and that the Pechanga Band be a consulting party on a government-to-government basis. (Executive Order 13175).

Applicable State law

The Tribe requests, pursuant to Cal. Pub. Res. C. § 21092.2, to be notified and involved in the CEQA environmental review process for the duration of the Project. The California Environmental Quality Act (CEQA) requires the Authority to identify cultural resources that will be impacted by this Project, and then assess Project impacts to historic, archeological and cultural resources (Cal. Pub. Res. C. § 21082.2). The CEQA suggests mitigation for historic and archeological sites, which includes avoidance when feasible. Such potential mitigation also includes placing sites in conservation easements and open space areas. Salvage excavations are only limited to situations where the Lead Agency determines that a site will be destroyed or damaged by the Project. The Tribe’s position is that salvage procedures should be the last option on a list of preferred mitigation for cultural resources, with avoidance being the preferred method of mitigation, as Cal. Pub. Res. C. § 21083.2 states, “...the lead agency may require reasonable efforts to be made to permit any or all of these resources to be preserved in place or left in an undisturbed state.” Such a mitigation plan can be employed with early planning and identification of cultural resources (Cal. Pub. Res. C. § 21003.1). A key element in this process is to include the Tribe in the identification of such resources. Since Luiseño cultural resources will be impacted by this Project, the Pechanga Tribe, as an expert in Luiseño cultural resources, requests to work with the Authority and other interested agencies on a government-to-government basis in developing all monitoring and mitigation plans concerning cultural resources for the duration of the Project pursuant to the CEQA (Cal. Pub. Res. C. § 21104).

Based on the history of known cultural resources in the area, the Pechanga Tribe contends that a thorough cultural resources assessment should be required as part of this Project, and that further focused EIRs should be prepared in conjunction with each of the potential alignments and route segments. The Tribe asserts, pursuant to State law, the Authority is required to engage in further environmental assessments for this Project which would consist

August 30, 2004
 RE: Comments on behalf of the Pechanga Band of Luiseño Indians on the Draft Program EIR/EIS for the California High-Speed Train
 Page 4

of focused EIR/EIS documents concerning the specific segments and proposed alignments of this Project (Cal. Pub. Res. C. § 21068.5; CEQA Guidelines § 15385). The Tribe further asserts that a focused EIR be prepared in conjunction with the Inland Empire route between March ARF and Mira Mesa which will address cultural resources impacts. Pursuant to CEQA and Federal law, such assessments should concern the specific identification and analysis of historic, archeological and cultural resources that will be impacted by the Project, along with proposed mitigation measures to address such impacts, as these requirements do not appear to have been completed through this Draft Program EIR/EIS process. Such assessments should be based on further archeological testing, including Phase I and pertinent Phase II testing, a site records search, and consultation with the Tribe, most of which have not been completed as of the publication of this EIR/EIS.

In addition, the Pechanga Tribe requests that the Authority take steps for the protection and culturally appropriate treatment of any uncovered resources in the process of any such further assessments. Archeological surveys may reveal significant archaeological and cultural resources and sites that may be eligible for inclusion in the historic site register, may contain human remains and/or may be sacred Luiseño sites.

The Tribe would like the Authority to take notice of a State law that protects Native American religion and aims to prevent damage to cemeteries or places of worship:

“No public agency.....under a public license, permit, grant lease, or contract.....shall in any manner whatsoever interfere with the free expression of exercise of Native American religions as provided in the United States Constitution and the California Constitution; nor shall any such agency or party cause server or irreparable damage to any Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property, except on a clear and convincing showing that the public interest and necessity so require.” (Cal. Pub. Res. C. § 5097.9).

The Tribe asserts that this law is applicable to the Authority and this Project, as the Authority is a Public Agency and the Project will be located on public property. The “Temeku” site is a religious site to the Pechanga people and, as such would be covered by this law. As such, the Tribe asserts that because this Project is early in the planning process, as the focused EIR/EIS has not yet been prepared and as the State required archeological/cultural resources assessments have yet to be completed, the Authority must engage every effort to ensure that the “Temeku” site, and other sacred sites, are preserved and not impacted or damaged in any manner by this Project, pursuant to State law.

Further, the Band believes that if human remains are discovered, State law would apply and the mitigation measures for the Project must account for this. According to the California Public Resources Code, § 5097.98, if Native American human remains are discovered, the Native American Heritage commission must name a “most likely descendant,” who shall be consulted as to the appropriate disposition of the remains. Given the project’s location in Pechanga territory, the Pechanga Tribe intends to assert its right pursuant to California law with

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regard to any remains or items discovered in the course of this project in the Tribe's traditional territory. And, accordingly, the Tribe further requests that all permitting agencies, including the Authority, the FRA, the DOT, and all other cooperating agencies, work with the Tribe to draft an Agreement which would address any inadvertent discoveries of cultural resources, including human remains.

Request Mitigation Measures and Authority Action

1. The Tribe requests that the Authority, the FRA, and the DOT consult with the Tribe regarding Project impacts. Given that Native American cultural resources and sacred sites will be affected by the Project, the Pechanga Tribe must be allowed to be involved and participate with the Authority and other cooperating agencies in identifying cultural resources impacts and developing all monitoring and mitigation plans for the duration of the Project under Federal and State law.
2. The Tribe requests further archeological surveys be completed to meet the legal requirements for this Project. The Tribe requests to participate in those surveys, and to be a partner in setting forth survey methods and procedures, especially in culturally sensitive areas. Based on the history of known cultural resources in the area, the Pechanga Tribe contends that a thorough cultural resources assessment is necessary as part of the Section 106 review process and the CEQA process. Further, the Pechanga Tribe requests that the Authority and other cooperating agencies take steps for the protection of any uncovered resources in the process of any such assessment. Surveys may reveal significant archaeological resources and sites which may be eligible for inclusion in the historic site register, may contain human remains and/or may be sacred Luiseño sites.
3. The Authority commit to avoidance and preservation of Native American sacred sites, including the Pechanga "Temeku" site.
4. The Authority and/or other pertinent agencies enter into an Agreement with the Tribe which would address inadvertent discoveries of cultural resources, Native American human remains and cultural sites.
5. The Pechanga Tribe requests that the Authority allow the Pechanga Tribe to monitor all grading and ground-disturbing activities in culturally sensitive areas within the Tribe's traditional territory. Further, since there is the potential for archaeological resources within the Project area, it is the position of the Tribe that Pechanga tribal monitors should be required to be present during all archeological testing performed within the Tribe's traditional territory.
6. All Luiseño cultural resources uncovered in the Tribe's traditional territory shall be relinquished to the Pechanga Tribe for proper treatment. Such treatment may include leaving resources in place, reburial of resources in an area not subject to further disturbance, or repatriation of the resources to the Tribe.

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The Pechanga Tribe looks forward to working together with the Authority, the FRA, and the DOT, and other cooperating agencies on this Project to address impacts to sacred sites, historic properties and cultural resources.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

MIRANDA, TOMARAS & OGAS, LLP



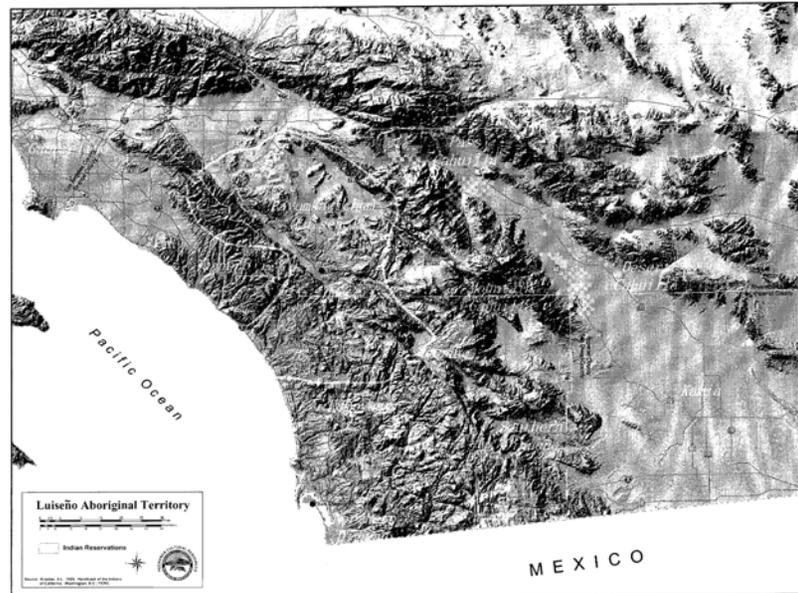
Laura Miranda
Attorneys for the Pechanga Band of Luiseño Indians

Enclosure: Map of Luiseño Territory

Cc: Mr. Bob Giroux, Authority Board Member
Riverside County Supervisor Venable
City of Temecula, City Manager, Shawn Nelson
Riverside County, Transportation Department, Edwin Studor
Riverside County Transportation Commission, Cathy Bechtel
Riverside County Tribal Task Force



Comment Letter O039 Continued



Response to Comments of Laura Miranda, Miranda, Tomaras & Ogas, LLP, August 30, 2004 (Letter O039)

O039-1

Please see standard response 10.1.14 and standard response 3.12.1.

The Authority is committed to avoiding impacts to Native American resources to the extent feasible and practical through careful alignment design and selection. As part of future project specific studies, the Authority will develop procedures for fieldwork, identification, evaluation, and determination of potential effects to cultural resources in consultation with SHPO and Native American tribes (see Section 3.12.5 of the Final Program EIR/EIS). More detailed evaluation and avoidance efforts will be included in project-level studies and appropriate monitoring procedures would be specified as part of project-level studies should the HST proposal move forward.

The archaeological reports and studies for this project, *Paleontological Resources Technical Evaluation* and *Cultural Resources Technical Evaluation* technical reports (January 2004) for the Los Angeles to San Diego via Inland Empire region are available on the Authority's website (www.cahighspeedrail.ca.gov) along with the other technical reports for the Los Angeles to San Diego via Inland Empire region and the other four regions investigated. These two technical reports were mailed to the Pechanga Indian Reservation care of John Macarro (July 23, 2004).

This program-level environmental process was done at a conceptual level of detail and relied upon existing available data for cultural resources. There was no field review or testing for cultural resources. Should the HST project move forward, field review and testing would be required as part of more detailed project-specific analysis. In particular, the Authority will coordinate with the Pechanga Tribe regarding avoidance of the Exeava'Temeku village (located just west of the I-15/I-79 interchange). As part of this program-level process, the co-lead agencies initiated consultation

with the Native American Heritage Commission for a search of their Sacred Lands file and lists of Native American contacts. The Native American contacts were sent letters providing information about the proposed project alternatives and requesting information about any traditional cultural properties that could be affected by the project. Authority staff also met with tribal representatives in a series of three Native American Outreach Workshops during the fall of 2003 (Frazier Park, San Luis Recreation Area, and Temecula Community Center). Following the release of the Draft Program EIR/EIS, two additional workshops were held (March 24, 2004, at the San Luis Recreation Area; and April 14, 2004, at UC-Riverside), led by the co-lead agencies' staff.

The co-lead agencies will continue to work with the Pechanga Tribe in all subsequent phases of planning and construction of the HST system should the HST project move forward. The co-lead agencies also will work with the Pechanga Tribe as well as other interested and/or potentially impacted tribes to develop appropriate mitigation measures.