

Comment Letter O049

O049

Audubon California
Bay Area Open Space Council
California Native Plant Society
Center for Law in the Public Interest
Defenders of Wildlife
Defense of Place
Greenbelt Alliance
Golden Gate Audubon Society
Mountain Lion Foundation
Natural Resources Defense Council
Planning and Conservation League

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: Comments on Draft Environmental Impact Report/Draft Environmental Impact
Statement (DEIR/S) for the Proposed California High Speed Rail Project

Dear Chairman Petrillo and Members of the Authority:

These comments are submitted on behalf of the following groups:

Bay Area Open Space Council
California Native Plant Society
Center for Law in the Public Interest
Defenders of Wildlife
Defense of Place
Greenbelt Alliance
Golden Gate Audubon Society
Mountain Lion Foundation
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The purpose of this letter is to provide comments on the Draft Environmental Impact
Report/Draft Environmental Impact Statement (DEIR/S) for the proposed California
High Speed Rail Project (hereinafter "project" or "HST") and to inform the Authority
that the document fails to comply with the requirements of the California Environmental
Quality Act ("CEQA"), Public Resources Code Section 21000 et seq. and the CEQA
Guidelines, California Code of Regulations, title 14, section 15000 et seq. ("CEQA
Guidelines") and the National Environmental Policy Act ("NEPA") 42 U.S.C 4321; 40
C.F.R. 1500.1.

The massive California High Speed Rail project has the potential either to significantly
improve the quality of transportation and life in California or to result in major negative
environmental impacts and significant economic and social displacement. Given the
unprecedented statewide scope of this project, CEQA and NEPA mandate that its DEIR/S
must be of the highest quality, including full disclosure of the many significant impacts
that would occur. The DEIR/S should give both the public and decisionmakers a full
opportunity to understand the environmental consequences of the project and propose and
feasible measures and alternatives to mitigate environmental damage. As explained in
detail below, the DEIR/S fails to comply with this mandate.

A summary of the major defects in the DEIR/S includes, but is not limited to, the
following:

- The DEIR/S fails to adequately and completely describe the project
alternatives.
• The DEIR/S lacks an adequate summary section.
• The DEIR/S fails to clearly characterize the significance of project-related
and cumulative impacts before and after mitigation. Conclusions that are
reached concerning the comparative significance of impacts are in many
cases based on inadequate and misleading information (e.g. growth
inducement, impacts to agricultural land, biological resources, etc.).
• The DEIR/S improperly defers analysis of impacts of the HST alternative
until the project-level review; after alignments and station locations are
selected.
• To determine level of impact, the Modal and HST Alternatives are
improperly compared with the No Project Alternative instead of baseline
conditions for most environmental topic areas.
• Mitigation "strategies" consist of vague and unenforceable suggestions and
for the most part are improperly deferred until the project-level review.
Some of the suggested strategies would actually result in additional
impacts that are not evaluated as indirect or secondary impacts of the
project (e.g. sound walls, additional tunneling, intersection and access
improvements, and the like).
• The DEIR/S fails to analyze all feasible alternatives, improperly rejects
feasible alternatives and fails to identify the environmentally superior HST
alignments and station locations. For example, as described in detail in
Attachment A, the DEIR/S fails to include an Altamont Alternative and



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rejected this option based on flawed, misleading and incomplete information.

Given the multiple inadequacies described in this letter, this DEIR/S cannot properly form the basis of a final EIR. CEQA and the CEQA Guidelines require recirculation of a draft EIR where, as here, the document is so fundamentally inadequate in nature that meaningful public review and comment are precluded. See CEQA Guidelines § 15088.5.

I. THE DEIR/S DOES NOT COMPLY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

A. Use of a Program DEIR/S Does Not Excuse Inadequate Analysis

As discussed more fully below, the DEIR/S repeatedly fails to adequately describe the project, analyze project impacts, and mitigate its host of associated impacts with specific, enforceable mitigation measures. As apparent justification for the DEIR/S's lack of detail and specificity concerning the project, impacts and mitigation measures, the document repeatedly defers critical analysis and project description on the grounds that the DEIR/S is a program EIR/S. The mere fact that the DEIR/S is a program EIR/S does not provide a carte blanche to omit a discussion of the project as is currently reasonably foreseeable. An agency "must use its best efforts to find out and disclose all that it reasonably can." CEQA Guidelines § 15144. Here, the DEIR/S's failure to describe and analyze the project extends well beyond the exact location alignments and stations. The DEIR/S's vague and noncommittal analysis with respect to numerous project elements precludes a full and proper analysis of project alternative impacts.

Equally flawed, the DEIR/S repeatedly determines that project impacts would not be significant based solely on uncommitted future assumptions. CEQA contemplates consideration of environmental consequences at the "earliest possible stage, even though more detailed environmental review may be necessary later." McQueen v. Board of Directors, 202 Cal.App.3d 1136, 1147 (1988). Similarly, NEPA requires agencies to integrate the NEPA process into their activities at the earliest possible time. 40 C.F.R. 1501.1; 1501.2. Regardless of an intention to undertake site-specific environmental review for future project phases, the use of "tiering" and a program EIR/S is not a device for deferring the identification of significant environmental impacts. Stanislaus Nat'l Heritage Project v. County of Stanislaus, 48 Cal.App.4th 182, 199 (1996).

While the DEIR/S attempts to present a choice between rail and other transportation modes, the proposed project is much more than a modal choice. Here, the project will likely result in the selection of preferred alignments and general station locations. As the DEIR/S mentions, "The Authority expects to identify a preferred system of alignment and station options in the Final Program EIR/EIS, after the public comment period for this Draft EIR/EIS has concluded" (DEIR page S-16). Accordingly, the DEIR/S must include a sufficient level of detail on each feasible alignment alternative and its related impacts and mitigation to support an alignment choice, and a worst-case scenario of the impacts of the related level of development and the specific areas can be forecast and

analyzed. Rather than do so, the DEIR/S provides insufficient details concerning many elements of the proposed project likely to result in significant impacts. The DEIR/S's deferral of project description elements, analysis of impacts and mitigation measures is particularly egregious here because project approvals may include alignment and station locations and commit the Authority to a course of action. See Rio Vista Farm Bureau v. County of Solano, 5 Cal.App.4th at 351, 371 (1992).

As part of its flawed approach, the DEIR/S impermissibly and repeatedly concludes that the majority of all of the HST project's environmental impacts are either less than significant or will be rendered less than significant by mitigation, while at the same time deferring necessary analysis of mitigation measures. Under CEQA, an EIR may conclude that impacts are insignificant only if it provides an adequate analysis of the magnitude of the impacts and the degree to which they will be mitigated. See Sundstrom, 202 Cal.App.3d at 306-07. Thus, if an agency fails to investigate a potential impact, its finding of insignificance simply will not stand. Id. Further, CEQA generally requires that all mitigation measures be adopted simultaneously with, or prior to, project approval. Here the proposed mitigation measures are not measures at all. Rather, they consist of vague strategy suggestions, the details of which are deferred until project-level review. An agency may defer preparation of a plan for mitigation only when the agency commits itself and/or the project proponent to satisfying specified performance standards that will ensure the avoidance of any significant effects. Id. In the present case, the DEIR/S violates CEQA by deferring critical analyses of project impacts and feasible mitigation. The following is a non-exhaustive list of examples of mitigation strategies that are vague, unenforceable and details of which are deferred to a later date:

Transportation: "Consultation and coordination with public transit services in order to encourage the provision of adequate bus feeder routes to serve proposed station areas could mitigate potential transit feeders." DEIR/S page 3.1-24.

Air Quality: "Potential localized impacts could be addressed at the project level by promoting the following measures. Increase use of public transit; increase use of alternative fuel vehicles; increase parking for carpools, bicycles, and other alternatives transportation modes." DEIR/S page 3.3-33.

Air Quality: "Potential construction impacts, which should be analyzed once more detailed project plans are available, can be mitigated by following local and state guidelines." DEIR/S page 3.3-33.

Noise and Vibration: "More detailed mitigation strategies for potential noise and vibration impacts would be developed in the next stage of environmental analysis." DEIR/S page 3.4-23. "This program level analysis has identified areas where future analysis should be given to potential HST-induced vibrations." DEIR/S page 3.4-24.

Energy: "The design particulars would be developed at the project-level of analysis..." DEIR/S page 3.5-22.

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Land Use: "Local land use plans and ordinances would be further considered in the selection of alignments and station locations..." DEIR/S page 3.7-26.

Agriculture: "Consideration of potential mitigation such as protection or preservation of off-site lands to mitigate conversion of farmlands or acquiring easements, or payment of an in-lieu fee as mitigation mechanisms, would depend on the potentially considerable environmental impacts identified at specific locations, as assessed in a project-level document. DEIR/S page 3.8-18.

Geology and Soils: "Mitigation for potential impacts related to geologic and soils conditions must be developed on a site-specific basis, based on the results of more detailed (design-level) engineering geologic and geotechnical studies." DEIR/S page 3.13-13.

Biological Resources: "Consultation with the appropriate resource agencies to develop site-specific avoidance and minimization strategies would be incorporated in the project-level environmental review." DEIR/S page 3.15-31.

4(f) and 6(f): Possible mitigation measures include sound walls, visual buffers/landscaping, modification of access to the resources. Strategies would be developed during the public input process. DEIR/S page 3.15-13.

Specific mitigation measures, including identified funding for them, must be developed at this time, well before project-level environmental review, and based on complete project information and impact analyses. Project-related and cumulative impacts determined to be significant and unavoidable must also be identified and listed as such. (See Table 7.3-1). These include, but are not limited to the following¹:

- Traffic and circulation
- Land use compatibility
- Hydrology
- Noise
- Biological impacts related to changes in hydrology and noise
- Biological impacts related to habitat fragmentation and wildlife corridors
- Growth inducement
- Among others

The DEIR/S's failure to adequately identify and analyze the potentially significant effects of the project, and to design proper mitigation measures prior to project approval, renders the document legally inadequate, particularly as it applies to choosing between potential

¹ The DEIR/S is so poorly drafted that it is difficult to determine what impacts are significant before and after mitigation. The individual topic chapters fail to clearly identify significant impacts and demonstrate how mitigation reduces significant impacts to less than significant. The closest the DEIR/S comes to identifying this *required information* is Table 7.3-1, which falls well short of CEQA/NEPA requirements for identification of significant impacts before and after mitigation.

high speed rail alignments. With the DEIR/S in its current form, decision-makers, the public and permitting agencies cannot evaluate the advisability of project approval even at the level of a modal choice. A revised DEIR/S must be completed and circulated which provides adequate information about project alternatives, project-related and cumulative impacts and mitigation measures before decisions are made concerning the HST project.

B. The DEIR/S Lacks an Adequate Summary Section

This project is the largest infrastructure project ever contemplated in California history and therefore one of the most complex projects ever considered. As such, it is critical that the document relied on to inform decision-making concerning the proposed project be well organized, clear and readable. Environmental documents are designed for many different readers and often different sections are targeted at different audiences. That makes it very important for the summary section to present information to readers interested in getting a quick understanding of the proposed action and its consequences. Typically, EIR and EIS summary sections include a matrix or table that allows comparison of all alternatives in terms of their respective environmental impacts and includes conclusions regarding the significance of impacts before and after mitigation. Great care should be taken to ensure that after reviewing the summary section, readers have a clear understanding of the proposed project, project alternatives and how they compare to one another. The instant DEIR/S fails to provide a clear, complete and therefore adequate summary section. To the contrary, the comparison table only includes general information concerning the three project "modal" alternatives, fails to characterize as significant or insignificant the impacts of each, and fails altogether to include a table describing the HST alignment and station choices. Moreover, the body of the DEIR/S does not include clear information about the level of significance of project-related impacts. Only Table 7.3-1 indicates the potential significance of HST-related impacts before and after mitigation. This is a major flaw in the DEIR/S, which must be corrected in a recirculated draft.

Once again, this DEIR/S is not only being relied upon for a choice of modes between No Project, Modal Alternative and HST, but, this document is also intended for use in selecting HST alignments and station locations. If the document is to be used for either "level" choice of alternatives, a revised summary table or matrix must be developed that clearly characterizes the significance of impacts before and after mitigation, and presents the information in a manner that allows meaningful comparison of both the modal alternatives and project components (alignments/station locations, etc.), if decisions will be made concerning these components based on the DEIR/S.

C. The DEIR/S Fails to Adequately Describe the Proposed Project

The DEIR/S incomplete project description 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's failure to discuss key project components,

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potentially significant environmental impacts are not adequately described, analyzed or addressed.

Under both CEQA and NEPA, the DEIR/S must contain a clear and comprehensive project description. The CEQA Guidelines define "project" as "the whole of an action, which has a potential for resulting in a physical change in the environment, directly or ultimately..." CEQA Guidelines Section 15378. Among other components, an EIR's project description must contain a "general description of the project's technical, economic, and environmental characteristics, considering the principal engineering proposals if any and supporting public service facilities." CEQA Guidelines Section 15124(c). Similarly NEPA provides that the lead agency must ensure that the description of the project action includes "connected actions" that are currently proposed or will be proposed in the foreseeable future. The lead agency must determine the proposed action's full extent, including all components, segments, and future phases. An agency may not divide a proposed action into smaller segments to avoid disclosure and analysis of the full environmental effects. If the EIS excludes arguably related actions, it must include the following:

- A description of the related actions and how they relate to the proposed action;
- A brief discussion of the impacts of the related actions to the extent they are known;
- An explanation of why it is not required or possible to evaluate the actions in detail at this time; and
- An explanation of when, and in what type of NEPA document, the related actions are being or will be evaluated (e.g. a second Tier EIS).

1. The DEIR/S's Description of the Project is Not Adequate

Under both CEQA and NEPA, the DEIR/S must contain a clear and comprehensive project description. Because this DEIR/S may be relied on for both a modal choice and general alignments and station locations for HST, the project description must accurately, completely and clearly describe all of the following:

- Each modal choice (No Project, Modal Alternative and HST);
- All features for each modal alternative (e.g. construction, operations, related facilities, etc.); and
- All features of each proposed alignment, station location and other features of HST.

Instead of providing a clear and comprehensive project description early in the DEIR/S, the reader must "assemble" the project descriptions for each alternative choice (modal as well as alignments/station locations) by sifting through not only the DEIR/S, but all of its appendices and in some cases, related studies. For example, the ridership studies, which provide underlying assumptions concerning both modal alternatives and key components of the HST alternative (alignment and station choices) are found in a separate document

not included in the DEIR/S. This approach contravenes both CEQA and NEPA. All information should be presented in the DEIR/S necessary to accurately and thoroughly describe the proposed project or action – and in this case, actions. A revised draft DEIR/S must be completed which includes all information about the proposed modal alternatives necessary to support informed decision-making.

2. The DEIR/S Fails to Adequately Describe Features of the Project Alternatives

According to the DEIR/S, the Authority and FRA may not only select a modal choice, but as well may select a preferred HST corridor/alignment, station locations, and recommended mitigation strategies based on the DEIR/S. DEIR/S page S-1. The lack of an adequate and complete project description does not support informed decision-making concerning modal choice let alone more detailed decisions such as corridor/alignment and station locations. Specifically, the DEIR/S provides only the most cursory information concerning the description of the modal alternatives and even less information concerning the specifics of the corridor/alignment and station locations. Information that is provided is difficult to verify because the assumptions underlying the information is not provided or is located in documents not readily available or properly summarized in the DEIR/S.

The DEIR/S does provide information about the modal choices, but this information is incomplete. For example, the following information is provided concerning the No Project: proposed interchange improvements, construction related energy consumption (DEIR/S page 3.5-5) for the highway element and square feet of passenger terminals (DEIR/S Table 2.4-2 and Table 2.4-3), new gates (DEIR/S Table 2.4-2 and Table 2.4-3), access lanes (DEIR/S Table 2.4-2 and Table 2.4-3), parking spaces (DEIR/S Table 2.4-2 and Table 2.4-3) and construction-related energy consumption (DEIR/S page 3.5-5) for the aviation element of the no-project alternative. A similar level of detail of the project description is provided concerning the modal and HST alternatives. However, much of the critical information concerning the features of these alternatives is in the appendices to the DEIR/S or in other documents. In addition to the project features that are not described, the lack of transparency about how this information was developed renders it inadequate for meaningful impact analysis. Again, the reader must "assemble" the project description by reviewing hundreds of pages of the DEIR/S and its appendices, but also documents that are not included in the DEIR/S. A complete project description section is not included in the DEIR/S as it must be.

Specific examples of the types of information missing from the project description of the HST option include, but are not limited to the following:

a. The DEIR/S Description of Construction Activities is Incomplete

Construction activities related to the HST (as well as the other modal alternatives) could impose greater impacts on certain resources than the actual operations of the HST.

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Impacts related to construction activities are not necessarily short-term in nature. For example, many of the changes to hydrology and topography necessary to construct the project will be permanent. Also, construction impacts associated with HST construction will differ in nature and magnitude along different alignments due to varying topography, geological and environmental challenges, ease of access, distance from materials and utilities, construction staging areas, required equipment, and other factors. Because the Authority and FRA may select a preferred HST corridor/alignment, station locations, and recommended mitigation strategies based on the DEIR/S, it is not appropriate to defer details concerning construction activities until later.

Construction activities that are not disclosed include, but are not limited to the following: locations of spoils and borrow sites for soils related to grading and tunneling; other construction activities and schedule; extent of cuts and fills and total amount of grading for each alternative alignment and station; water use and dewatering related to tunnels; chemicals or other hazardous agents used for clearing or in construction; the number and type of construction employees; types of equipment and their characteristics; total construction related trips including truck haul routes; and the like. Also, where the alignments are located in remote areas, the DEIR/S should address construction worker housing or temporary housing and the potential impacts associated with actually building the tracks in these areas. Finally, it is clear that construction of HST in remote areas with steep terrain may involve extensive and long-term destruction of the natural landscape, including greater areas of grading, boring and vegetation removal than described in the DEIR/S. In addition, the duration of noisy and invasive construction activities in these areas may severely disrupt species. Without a complete and clear description of what it will actually take to construct HST in these areas, impacts to the landscape (including topography and hydrology) and biological species cannot be meaningfully analyzed.

Individually and collectively, this information about the project alternatives could result in a tipping the selection to a more developed route where fewer collateral impacts will be imposed to build the HST. If this information is not provided early in the decision-making process, a fully informed decision cannot be made. A revised DEIR/S must include this level of detail not only for the HST alignment and station options, but also for each of the three modal alternatives (No Project, Modal Alternative and HST).

b. The DEIR/S Fails to Describe the Potential Operations on HST

The DEIR/S fails to accurately and completely describe all likely operational aspects of the HST. Omissions include, but are not limited to number of and type of HST employees, the typical distance riders will travel to reach HST stations, use of trains for freight service, among other operational aspects of HST. For example, according to the DEIR/S: "While the Authority recognizes the potential for overnight medium-weight freight service on the proposed high-speed rail tracks, it has not been included in this analysis. Discussions with potential high speed freight operators could be initiated as part of subsequent project development with appropriate analysis." DEIR/S at 2-25. This is an example of another type of omission in the project description – a likely use of

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HST – which has the potential for increased impacts related to the development of freight carriers (likely trucks) to and from stations to off-haul freight (obviously, the project also could result in overall positive traffic congestion, revenue and air quality benefits depending on the details of the freight service). If the project description omits major features of HST or other modal alternatives, impacts will be underestimated. A revised project description must include all anticipated operational elements and analyze the impacts of these elements.

c. The DEIR/S Fails to Provide Information About All Related Projects and Project Features to HST

The DEIR/S fails in numerous respects to fully disclose and describe related projects and features of HST. For example, among other aspects of the project, CEQA requires the DEIR/S to describe all supporting public service facilities. The DEIR/S is silent on the types and locations of needed public service facilities and instead assumes these will be available: "It was not possible as part of this study to identify or quantify the utility improvements expected to occur by 2020. Rather, it is assumed that utility development will occur to meet projected demand and growth characteristics near the alignments of the proposed alternatives." DEIR/S page 3.10-5. The entire section on public utilities is focused on conflicts between HST and these facilities, rather than on project-related public service facilities. The need for new or expanded public services and utilities to serve station locations in remote areas is also excluded from the DEIR/S. All public services and facilities needed for the HST must be included in a revised DEIR/S, including, but not limited to: access roads, water and sewer services, emergency services, and the like. Services and infrastructure needed to serve the stations as well as the trains must be included.

In some cases the DEIR/S refers to related projects to HST, such as connecting transit. However, the DEIR/S is inconsistent in identifying these related projects, including, but not limited to co-use of tracks, future routes and connecting transit. Similarly, the DEIR/S fails to adequately 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 by further fragmenting habitat areas. Another example is the HST stations. The DEIR/S includes only general information about the total area of stations and their parking facilities. The information that is provided appears to underestimate total area for these key project features. The description fails to include the scale of these stations, their parking facilities and access for each proposed station location. Moreover, the DEIR/S fails to describe the likely related land uses would occur should these stations be built.² A revised DEIR/S must

² The DEIR establishes several standardized "types" of stations that could be tailored to each station location once stations are chosen. However, the actual suite of stations chosen for a particular alignment and the design of each station will affect the alignments cost, footprint, performance, and environmental impacts. Thus the choice of alignment must depend on an understanding of which stations will be chosen, how they will be designed and integrated into surrounding communities, and specific mitigation measures to mitigate impacts.

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include much more detailed descriptions of these and other project features, including likely diagrams and renderings of stations, parking facilities, access roads and transit oriented development around stations.

Finally, the DEIR/S fails to consistently describe related transit services, such as the Baby Bullet trains which just premiered in the Bay Area³, planned commuter rail service over the Dumbarton bridge, and planned Sacramento light rail service to the Sacramento Airport. This and other related transit services, segments, phases and other related facilities must be included in a revised project description in a revised and recirculated DEIR/S.

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

d. The DEIR/S Fails to Disclose all Fundamental Engineering Aspects of the HST Alternative

All engineering aspects of HST and the other alternatives must be disclosed and described. For example, while there is some information about the extent of tunneling, boring, grading, bridges and overpasses provided for the HST alternatives, the information is neither complete nor consistent. The DEIR/S also alludes to aspects of HST that give this option an advantage over other modal choices, but fails to provide sufficient information about the feature to substantiate claims of superiority. An example of this is that HST would consist of permeable track fill, rather than pavement expansion. DEIR/S page 3.14-11. According to the DEIR/S this results in HST generating less runoff and more infiltration than the modal alternative. Insufficient information is provided to document this conclusion. This is one more example of the type of information that should be fully disclosed in the project description and highlighted as a difference in the project alternatives.

e. The DEIR/S Fails to Fairly and Completely Disclose the Economic Aspects of the Modal and HST Alignment and Station Choices

³ While Baby Bullet service opened to the public during the comment period for this EIR, advent of the service has been well publicized for several years. See, for instance, "Baby Bullet" trains will speed service between S.F., San Jose," November 29, 2000, in the Menlo Almanac or the KCBS Radio stories "Caltrain "Baby Bullet" to make World Series run," October 27, 2002 or "Baby Bullet Train Planned for SF/San Jose Route" June 28, 2002, at <http://groups.yahoo.com/group/BATN/message/8906>.

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A description of the economic feasibility of the various alternatives, modal and HST related, is critical to informed decision-making. Moreover, CEQA requires that the project description must contain a "general description of the project's *technical, economic,* and environmental characteristics, considering the principal engineering proposals if any and supporting public service facilities." CEQA Guidelines Section 15124(c). Disclosure of the costs of the HSR alternatives and the feasibility of funding route acquisition and improvement must be disclosed. All costs and revenues in comparable form for each modal alternative must also be disclosed in a revised DEIR/S.

f. The DEIR/S Fails to Adequately Describe Project Phasing

The omission of adequate and accurate project phasing information presents several problems for the document. First, the omission means that the project description may not include the "whole of the project" as required by CEQA or all related project elements as required by both CEQA and NEPA. Second, it renders the document confusing to the public, decision-makers and permitting agencies concerning what the project action really is. Third, it frustrates alignment decisions, since the financial viability, ridership, and environmental impacts will vary among alignments for the initial phase of the project, as well as for the project overall.

Studies performed by the predecessor Intercity High Speed Rail Commission through 1996 separately explained two major phases of this project. The first phase of the project is the portion from LA to the Bay Area, which would be separately financed through an initial statewide bond measure. The second phase includes "extensions" to Sacramento, San Diego, and possibly Oakland. The existence of this two-phase strategy is reflected in the statewide legislative ballot measure passed this year and scheduled for 2006. The ballot measure would provide a portion of the funding for phase I of the project, but not for phase II. Realistically, it may be years or decades between the construction of phase I and phase II. Indeed, the independent financial viability of phase I will affect whether phase II is built. Yet the DEIR/S speaks almost uniformly of the fully-built project.

The incomplete, inaccurate and vague project description points to a fundamental difficulty in the Authority's DEIR/S strategy. The DEIR/S is presented as a "programmatic" study to determine whether to build high speed rail rather than expanding highways and airports. However, the computer modeling, cost analysis, and environmental impacts of the HSR alternative cannot be evaluated without choosing a project alignment. Thus, if this DEIR/S is the basis for decision-making, the Authority/FRA will be making key alignment decisions in advance of the careful analysis needed to support informed decision-making as required by law. Indeed, the first page of the DEIR notes that "In the Final Program EIR/S, which will be prepared after the close of the public comment period on the Draft Program EIR/S, the Authority and the FRA may select a preferred HSR corridor/alignment..."

By reserving the ability to make this choice based on this DEIR/S, the agencies go beyond a programmatic-level DEIR/S. To cure this flaw, the Authority should either

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evaluate each major alignment in this document (including Bay Area access over the Altamont Pass), or explicitly defer all alignment decisions to a future project EIR/S. It is not acceptable to select a preferred HST corridor/alignment in advance of a detailed project DEIR/S which fully discloses all future phases of the HST. It would be particularly objectionable to do so "after the close of the public comment period" (ibid.) which focuses the public on programmatic-level decisions rather than fully vetting project-level decisions about alignment. DEIR/S at S-1.

Without accurate, adequate and complete information about the "whole" project and its major phases, an adequate analysis of project impacts is not possible. A revised and recirculated DEIR/S must be prepared before any decisions are made concerning modal choice, let alone HST alignments and station locations.

D. The DEIR/S Fails to Adequately Analyze and Mitigate the Project's Significant Impacts

The analysis of environmental impacts in the DEIR/S fails to provide the necessary facts and analysis to allow the Authority, the agencies and the public to make an informed decision concerning the project alternatives (modal and HST related) and mitigation measures. CEQA requires that an EIR be detailed, complete, and reflect a good faith effort at full disclosure. CEQA Guidelines section 15151. A fundamental purpose of an EIR is to "inform the public and responsible officials of the environmental consequences of their decisions before they are made." Laurel Heights Improvement Assn. V. Regents of the University of California, 6 Cal.4th 1112, 1123 (1988). To do so, an EIR must contain facts and analysis, not just an agency's conclusions. See Citizens of Goleta Valley v. Board of Supervisors, 52 Cal.3d 553, 568 (1990). Not only does the DEIR/S fail to provide supporting evidence for its conclusions concerning the significant of project-related and cumulative impacts, in most cases, it is not possible to tell from the DEIR/S whether an impact is considered significant, less than significant or reduced to less than significant after mitigation. The discussions simply omit this basic information.

The treatment of mitigation measures in the DEIR/S is similarly deficient. Mitigation measures must be identified and analyzed. This DEIR/S refers to the mitigation measures as mitigation "strategies." The term "mitigation strategy" is not recognized or defined by CEQA or NEPA. In most cases the suggested "strategies" are so vague that it is not possible to determine their efficacy in reducing significant impacts to less than significant. Many of these so called mitigation strategies consist of suggested actions the details of which are deferred until after project actions are taken that commit the Authority to a specific course (e.g. specific HST alignment and station locations). This approach makes it impossible to evaluate the effectiveness of strategies to reduce impacts. In addition, CEQA cautions that "public agencies should not approve projects as proposed if there are...feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects. ..." Pub. Res. Code section 21002. NEPA contains similar requirements. Here the DEIR/S simply fails to identify feasible mitigation measures capable of mitigating the significant environmental impacts of the project alternatives and cumulative impacts.

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This approach does not keep the DEIR/S from concluding that potentially significant impacts can be mitigated. See Table 7.3-1 where numerous significant impacts are rendered less than significant after vague and non-committal mitigation strategies are imposed. This approach violates CEQA and NEPA. A revised DEIR/S must include feasible mitigation measures to address significant project-related and cumulative impacts.

Finally, the DEIR/S improperly bases its analysis of the impacts associated with the Modal and HST Alternatives with the No Project Alternative, rather than with existing baseline conditions. This approach is improper under both CEQA and NEPA, which require the analysis of impacts to be based on existing physical environmental conditions in the affected area at the time the notice of preparation is published. CEQA Guidelines section 15126.2. A revised DEIR/S must include an analysis of the impacts of these alternatives with both the existing environmental conditions (at the time the NOP was issued) and with the No Project alternative.

Examples of inadequate impact analyses include, but are not limited to, the following:

a. The DEIR/S Fails to Analyze Adequately Traffic and Circulation Impacts

After identifying numerous significant impacts of HST on traffic and circulation, the DEIR/S concludes that all potentially significant traffic and circulation impacts of the HST alternative will be reduced to less than significant with mitigation. Mitigation consists of "encouraging" the use of transit and working with transit providers to improve station connections. This, along with other remarkable statements in this section of the DEIR/S underscore the reasons why this document is not adequate to support informed decision-making concerning the modal choices, let alone HST alignments and stations.

The DEIR/S fails to disclose the project's (including all alternatives') impact to the physical environment and in specific to traffic and circulation as required under CEQA and NEPA for a number of reasons including but not limited to the lack of adequate and complete setting information, inadequate analysis of impacts and failure to identify feasible mitigation measures.

First, omitted and inadequate project description information makes it impossible to adequately evaluate project related impacts on traffic and circulation. Examples of omitted or inadequate project description elements that result in an underestimation of traffic impacts include, but are not limited to: construction activities including construction haul routes, construction related trips, current and adequate information about ridership on the different modes, consistent assumptions concerning catchment areas (i.e. the distance people will travel to ride HST), information about all potential uses (e.g. freight) of HST as well as other information.

Second, the description of the affected environment discussion has numerous omissions and inconsistencies that make the section inadequate for choosing a preferred modal

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