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- might be allocating funding in return for smart growth provisions in General Plans and zoning; and
- Up-front purchase of conservation and agricultural easements to either side of the tracks and stations where located in undeveloped areas outside of cities.
- Urban growth boundaries;
- Limits on subdivisions outside of urban growth boundaries and the like.

Even with these measures identified in a revised DEIR/S, additional evidence must be provided that they would actually have the desired affect in rural areas. Revised analyses of these likely significant and adverse growth inducing impacts of HST must be completed.

g. The DEIR/S Fails to Analyze Adequately Hydrology and Water Resources Issues

The DEIR/S does not disclose the project’s (including all alternatives’) impact to the physical environment and in specific to hydrology and water resources as required under CEQA and NEPA for a number of reasons including 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 hydrology and water quality resources. Examples of omitted or inadequate project description elements that result in an underestimation of these impacts include, but are not limited to the total extent of grading and remedial grading, location and extent of staging areas, location and extent of borrow and spoils sites, extent of borings, location and extent of construction roads and traffic and the like. While the DEIR/S does describe tunneling, it fails to adequately analyze and characterize the potentially significant impacts of tunneling on hydrology and water quality.¹³ The DEIR/S assumes that tunnels will be lined and made waterproof and oil and gas proof. However, the disruption of tunnels to hydrologic features during and after construction could be significant and long-term.

Second, the description of the affected environment discussion has numerous omissions and inconsistencies that make the section inadequate for choosing a preferred modal alternative, let alone HST alignment and station alternatives. The affected environment discussion does not provide an adequate description of the hydrologic and water quality environments that may be affected by the project. A few examples are discussed below but should not be considered an exhaustive list of inadequacies.

be put in place in order to achieve these outcomes. The Metropolitan Transportation Commission has launched a study to better ascertain the relationship of stations, land use and ridership. See Attachment E. A revised DEIR/S should consider this and other studies when formulating effective mitigation measures to ensure a beneficial land use outcome of HST.

¹³ Please see our Attachment D for more on potential geological and hydrological effects of tunneling.

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The DEIR/S improperly compares the impacts to hydrology and water quality of the Modal Alternative and HST with the No Project, rather than existing conditions as required by CEQA and NEPA. The DEIR/S describes the existing condition as the transportation infrastructure that exists in 2003 and its associated levels of service. DEIR/S page 3.1-7. The No Project includes the existing infrastructure, plus the implementation of funded and programmed transportation improvements that will be operational by 2020 and the projected level of service of that infrastructure in 2020. DEIR/S page 3.1-7. The comparison of the Modal Alternative and HST with the No Project rather than with existing conditions results in an underestimation of the new impacts associated with these alternatives, because they assume a new baseline condition. See DEIR/S page 3.13-7. A revised analysis must compare the Modal Alternative and HST to both existing baseline conditions and to the “future” No Project conditions. Under the first analysis, those improvements that really are likely to be completed should be added to the Modal and HST Alternatives as part of these projects.¹⁴

The study area for assessing impacts to these resources is inadequate. Specifically, the study area for assessment impacts associated with hydrology and water quality is the area within 100 feet of the centerline for the HST project and within 100 feet of the direct footprint from proposed new stations; and the area within 100 feet of the Modal Alternative direct corridor footprint and direct footprint of facilities. This study area is insufficient to address the potentially permanent impacts to ground and surface waters that could be impeded or altered by the construction of the HST and other modal alternatives. Study areas which include the entirety of affected watersheds should be used in undeveloped and sensitive areas. A revised DEIR/S should propose and defend the adequacy of these expanded study areas based on sound science.

In addition, the DEIR/S uses limited information to formulate its affected environment section, which is not likely to be consistent across the project area. The DEIR/S states that more detailed analysis, including field studies and modeling, would be required at the project level. DEIR/S page 3.14-19-20. This information must be provided in a revised and recirculated DEIR/S prior to any decisions on HST alignments or station locations.

This and other incomplete and inconsistent setting information must be provided in a revised DEIR/S. In the absence of adequate, accurate and complete setting information, adequate analyses of project-related and cumulative impacts cannot be completed.

Third, the DEIR/S underestimates impacts to hydrology and water quality because the project description omits adequate and complete information about the true extent of project-related impacts and fails to adequately analyze impacts. Specifically, direct impacts are likely to be much greater than described because the project description fails to include the true extent of grading and disruption of hydrologic regimes associated with the project. In addition, the DEIR/S fails to provide adequate information concerning impacts. For example, the DEIR/S estimates runoff and sedimentation rates

¹⁴ The DEIR/S’s approach to analyzing impacts of traffic, noise and air quality all improperly compare the Modal and HST alternatives to the No Project instead of to existing conditions as required by law.

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qualitatively. DEIR/S page 3.14-2. Additional analytical analysis would ultimately be needed. Moreover, the DEIR/S provides vague statements concerning water quality impacts, but fails to provide any analysis or quantification of those impacts. For example, the DEIR/S states: "Pollutant sources in urban areas include parking lots and streets, rooftops, exposed earth at construction sites, and landscaped areas. Pollutant sources in rural/agricultural areas primarily include agricultural fields and operations." DEIR/S page 3.14-5. Yet, there is no further analysis of these impacts.

With respect to hydrologic and water quality impacts to biological resources, the DEIR/S is particularly inadequate. The DEIR/S states:

"The impacts of nonpoint-source pollutants on aquatic systems are many and varied. Polluted runoff waters can result in impacts on aquatic ecosystems, public use, and human health from ground and surface water contamination, damage to and destruction of wildlife habitat, decline in fisheries, and loss of recreational opportunities. Small soil particles washed into streams can smother spawning grounds and marsh habitat. Suspended small soil particles can restrict light penetration into water and limit photosynthesis of aquatic biota. Metals and petroleum hydrocarbons washed off roadways and parking lots, and fertilizers, pesticides, and herbicides from landscaped areas, may cause toxic responses (acute or long-term) in aquatic life, or may harm supply sources such as reservoirs or aquifers."

No further information or analysis is provided in this or the biological section of the DEIR/S concerning these potentially significant and irreversible impacts to biological species and their habitats.

Fourth, the DEIR/S also does not address the feasibility of mitigating many of the potentially significant impacts identified. Specifically, the DEIR/S defers development of all recommended mitigation "strategies" until the project-level analysis is completed. See DEIR/S pages 4.14-18-19. This approach to mitigation is simply inadequate for either modal alternative selection or more detailed alignment and station location selection for HST. Feasible mitigation measures must be identified and in the case of more detailed decisions concerning HST alignments and stations, additional details concerning these project descriptions must be provided. It is not appropriate to make an alignment choice based on the possibility significant impacts to hydrology and water quality "might" be avoided by as yet undetermined mitigation.

Finally, the DEIR/S concludes that "some" potentially significant impacts related hydrology and water quality for the HST project would be potentially less than significant after mitigation. DEIR/S page 7-11. This conclusion is not supported by evidence in the record. As with other environmental impacts, the DEIR/S fails to disclose which potentially significant hydrologic and water quality impacts will be reduced with mitigation and fails to adequately characterize the disposition of water quality and hydrology impacts for the modal alternatives as well as the HST project.

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h. The DEIR/S Fails to Analyze Adequately Geology and Soils Issues

The DEIR/S does not disclose the project's (including all alternatives') impact to the physical environment in specific on geology and soils as required under CEQA and NEPA for a number of reasons including lack of adequate and complete setting information, lack of adequate project description, inadequate analysis of impacts and failure to identify feasible mitigation measures. Our attachment D explores these issues in more depth.

First, omitted and inadequate project description information makes it impossible to adequately evaluate project related impacts on geologic and soils resources. Examples of omitted or inadequate project description elements that result in an underestimation of these impacts include, but are not limited to the extent and type of fencing/noise walls, the total extent of grading and remedial grading, location and extent of staging areas, location and extent of borrow and spoils sites, extent of borings, location and extent of construction roads and traffic and the like. While the DEIR/S does describe tunneling, it fails to adequately identify the potentially irreversible and significant geologic, hydrologic and soils impacts of tunneling.

Second, the description of the affected environment discussion has numerous omissions and inconsistencies that make the section inadequate for choosing a preferred modal alternative, let alone HST alignment and station alternatives. The affected environment discussion does not provide an adequate description of the geologic and soils conditions that may be affected by the project. In addition, there are many errors that raise questions regarding the validity of the entire analysis. A few examples are discussed below but should not be considered an exhaustive list of inadequacies.

The study area for assessing impacts to geologic and soils resources is inadequate. Specifically, the study area for geology and soils is limited to the corridor extending 200 feet on each side of the alignment centerlines and a 200 foot radius around each station or airport site. According to the DEIR/S, this distance incorporates all cross-sections *with the exception of deep cuts and fills, and broadening the study area to include the entire width of deep cut-and-fill sections would not change the results of the comparison.* DEIR/S page 3.13-4. To the contrary, areas of deep cuts and fills could involve corridors extending well beyond the 200 foot radius where impacts could occur.

In addition, the DEIR/S uses limited information to formulate its affected environment section, which is not likely to be consistent across the project area.

"...this analysis was performed generally on the basis of existing data available in GIS format. The data provided in this section are intended for planning purposes, are not meant to be definitive for specific sites, and have not been independently confirmed. More detailed geologic studies would be required at the project level, and would likely include subsurface exploration, laboratory testing, and engineering analysis to support detailed alignment design and

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mitigation of potential impacts associated with geologic and soils conditions, including seismic hazards.” DEIR/S page 3.13-14.

The DEIR/S states that “...slope instability can generally be addressed with planning and design.” Based on this, the DEIR/S concludes that HST impacts related to geology and soils can be mitigated to less than significant. See Table 7.3-1.

This and other incomplete and inconsistent setting information must be provided in a revised DEIR/S. In the absence of adequate, accurate and complete setting information, adequate analyses of project-related and cumulative impacts cannot be completed.

Third, the DEIR/S underestimates impacts to geology and soils because the project description omits adequate and complete information about the true extent of project-related impacts. Specifically, direct impacts are likely to be much greater than described because the project description fails to include the true extent of grading associated with the project and in particular grading needed to remediate landslides and poor soils, and grading associated with facilities related to HST (e.g. stations, parking lots, access roads etc.).

Fourth, the DEIR/S also does not address the feasibility of mitigating many of the potentially significant impacts identified. To the contrary, mitigation strategies consist of developing specific mitigation measures during project-level review:

“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.

This approach to mitigation is simply inadequate for either modal alternative selection or more detailed alignment and station location selection for HST. The DEIR/S must identify specific measures that could reduce project-related impacts. Such measures include recommending against certain alignments or station locations to reduce or eliminate significant or potentially significant impacts. This DEIR/S simply fails to provide such guidance.

Feasible mitigation measures must be identified and in the case of more detailed decisions concerning HST alignments and stations, additional details concerning these project descriptions must be provided. It is not appropriate to make alignment choice based on the possibility significant impacts to geology and soils resources “might” be avoided by as yet undetermined mitigation.

The DEIR/S contains a lengthy list of subsequent analyses that would be required to “obtain more reliable assessments of potential impacts on geology and soils in the study area.” DEIR/S page 3.15-31. The technology exists to complete these analyses before selection of HST and specific alignments and station locations. It is simply not appropriate to make choices concerning HST alignments and stations without this

information being developed and circulated for public review and comment in a revised DEIR/S.

Finally, the DEIR/S concludes that potentially significant impacts related to geology and soils for the HST project would be potentially less than significant after mitigation. DEIR/S page 7-13. This conclusion is not supported by evidence in the record.

i. The DEIR/S Fails to Analyze Adequately Public Services and Utilities

The DEIR/S’s approach to analysis of potential impacts related to public services and utilities is completely inadequate. Once a project is defined, a DEIR/S must then analyze how the direct and indirect impacts of the project and cumulative projects would affect both public services and utilities. As set forth in the CEQA Guidelines Appendix G, such impacts may include adverse physical impacts associated with:

- provision of new or physically altered government facilities for public services;
- construction of new water, wastewater, storm drainage or other utilities.

Here, the DEIR/S focuses only on potential conflicts between the project and *existing public utilities*. The DEIR/S is silent on any impacts associated with providing public services and utilities to HST. Moreover, the DEIR/S fails to address potential impacts as a result of damage to services that could occur for example by damage or disruption to services as a result of project construction, operations or accidents. The only utilities addressed are electricity, natural gas and wastewater. Other services and utilities are simply excluded from the discussion and analysis. Analysis of potential impacts to other services and utilities is deferred until project-level analysis. DEIR/S pages 3.10-11 and 12. Moreover, the DEIR/S concludes that all potentially significant impacts to these facilities will be reduced to less than significant with mitigation – a conclusion that is not supported by evidence or analysis in the DEIR/S.

The project description and setting fail to provide even the most basic information about project demand for services and utilities and existing service/utility capacity. In fact, the DEIR/S states: “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 omission of this information is simply not appropriate. This information exists since the providers of these services must have long-term plans. As such, it is essential that this information be provided in a revised and recirculated DEIR/S. This information will be an important indicator of where alignments and stations are planned that have inadequate services and utilities and where there are no plans to provide these facilities. This in turn will assist in determining where HST could be a growth inducer.

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A revised and recirculated DEIR/S must include information concerning all potential conflicts with all public services and utilities, as well as disclose potential impacts associated with new and expanded services for the HST stations and induced growth. Such information must include any areas where services and utilities are currently inadequate to serve the HST and/or induced development as a result of this alternative being selected. If provision of any services or utilities to HST will reduce these services to existing customers, that must also be disclosed.

J. The DEIR/S Fails to Analyze Adequately Section 4(f) and 6(f) Issues

The DEIR discussion of the issue of parks, open space, wildlife refuges and otherwise “protected” areas, is inadequate for numerous reasons including lack of adequate information about the proposed project alternatives, lack of setting information, inadequate impacts analysis and failure to identify feasible mitigation measures.

First, the DEIR/S fails to adequately characterize the project setting with respect to 4(f) and 6(f) resources. In enacting 4(f) the Department of Transportation Act of 1996, Congress declared that “special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands.” 49 U.S.C. Section 303. As a means of implementing these goals, Congress specified two fundamental mandates: 1) prohibiting federal agencies from approving transportation projects that require use of a public park or recreation area unless there is no feasible and prudent alternative to using the parkland; and 2) requiring transportation projects which use a public park or recreation area to include all possible planning to minimize harm to the parkland. U.S.C. Section 303e. Authoritative interpretation of federal agencies’ duties under this provision was established and continues to be provided by the 1917 Supreme Court decision in Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402. In that case, the Supreme Court overturned the Secretary of Transportation’s approval of a six-lane highway through a park in Memphis. In reaching its decision, the court held that “only the most unusual situations are exempted” from the 4(f) mandate. The court further clarified that such situations would include only “unique problems” such as extreme financial costs or community disruption of “extraordinary magnitudes.” Id. at 411, 413.

Based on this and other cases, it is clear that choosing a siting alternative that requires use of a public park or recreation area simply because it is the least expensive or most efficient choice does not meet the mandate of the 4(f) rule. In the case of HST, there appear to be feasible alternatives to simply avoid impacting public parks, recreation areas nature preserves and refuges. Our summary of flaws in the DEIR/S analysis of these impacts is as follows¹⁵:

Section 3.16, specifically dealing with protected places, was titled “Section 4(f) and 6(f) Resources.” This title is unclear to the general public and only clear to those very familiar with Land Water Conservation Fund terminology; many park advocates entirely missed the section because of its title. Further, names of the specific parks that would be

¹⁵ See also letters submitted by the California State Parks Foundation, Defense of Place and the Natural Resources Defense Council.

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highly impacted by the high-speed rail, other than a small number of “signature” parks, were absent in the main body of the DEIR/S and could only be found buried in the technical reports of the regional studies. This does not comply with CEQA and NEPA requirements that all information needed to make an informed decision should be included in the EIR/S.

In fact, it appears that the HST alternative would impact over state 22 parks and recreation areas including, but not necessarily limited to:

- Cardiff State Beach
- Carlsbad State Beach
- Castaic State Recreation Area
- Colonel Allensworth State Historic Park
- Cornfields State Park
- Doheny State Beach
- Fort Tejon State Historical Park
- Henry W. Coe State Park
- Hungry Valley State Vehicular Recreation Area
- Leucada State Park
- McConnell State Recreation Area
- Moonlight State Beach
- Old Town San Diego State Recreation Area
- Pacheco State Park
- San Clemente State Beach
- San Eljio State Beach
- San Luis Reservoir State Recreation Area
- San Onofre State Beach
- South Carlsbad State Beach
- Torrey Pines State Beach
- Torrey Pines State Reserve
- Taylor Yards State Park

The DEIR/S fails to provide a comprehensive list of impacted parks and recreation areas and thus fails to inform the public of the impacts of HST as well as potentially other modal choices. Overall, HST would impact 55-89 parks, protected open space areas, nature preserves and wildlife refuges in California. The DEIR/S simply fails to identify all of these areas and assess the impacts of HST on them.

Second, the DEIR/S improperly defers analysis of impacts to these resources. The DEIR/S lists a number of issues for future analysis related to these impacts. Because protected areas are such a high priority for Californians, simply deferring discussion and analysis on the specific impacts to Section 4(f) and 6(f) resources to the project level EIR is insufficient. These resources provide amenities such as: important recreation opportunities, barriers and buffers from urban sprawl, an experience of areas with unique qualities, wildlife habitat and migration corridors, an escape from urban environments and many other important amenities to both humans and wildlife. These amenities are

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the reason why Section 4(f) and 6(f) resources are set aside for future generations. The negative impacts on both the Section 4(f) and 6(f) resources themselves and the amenities they provided should have been considered in the DEIR/S. Indeed, the DEIR/S approach to these resource impacts fails to reflect the “special effort” or assessment of “prudent and feasible alternatives” that Section 4(f) requires. Section 4(f) is clear that preservation of parkland is of paramount importance, more so than costs, directness of route, and community disruption. See *Citizens to Preserve Overton Park v. Volpe* (1971) 401 U.S. 402, 412-13. A revised and recirculated DEIR/S must include a thorough analysis of these impacts.

Section 3.16 of the DEIR compared the number of Section 4(f) and 6(f) resources that would be impacted by the HSR versus the modal and no action alternatives with brief mention of the impacts to the parks in the various regions of the HSR study. A simple tally of the impacts on Section 4(f) and 6(f) resources between the different transportation alternatives deprives the DEIR of any meaningful information about the nature of the extremely large number of impacts to these resources.

Parks, open space, wilderness, and wildlife refuges are clearly spending priorities for Californians based on the billions of dollars that have been allocated for acquisition of such places in voter approval of several recent ballot initiatives. Extensive discussion of the HSR impact on these protected areas should have been a higher priority in the DEIR/S. A revised DEIR/S must quantify the potential impacts to significant public investments made to both publicly owned and privately owned conservation areas¹⁶.

Third, as in other environmental impact sections of the DEIR/S, the mitigation strategies for 4(f) and 6(f) issues are vague and improperly deferred. Yet, based on these strategies, a number of potentially significant impacts to these resources are concluded to be potentially less than significant after mitigation. See Table 7.3-1. A revised DEIR/S must not only include the required analysis of these issues, but identify feasible mitigation measures including annual operation and maintenance costs that are automatically incurred with a project of this scope. A revised DEIR/S must document how each measure actually reduces potentially significant impact to less than significant.

Section 4(f) requires analysis of alternatives be conducted and specific mitigation measures identified before an alignment choice is made. A revised and recirculated DEIR/S must include this information. Avoiding the impacts on Section 4(f) and 6(f) resources should be a major priority for evaluating all possible routes of the California High Speed Rail in the revised environmental document. If these areas are ultimately to be impacted, a revised evaluation must demonstrate that there was no other option and meet the high bar set by the courts for impacting these precious resources.

D. The DEIR/S Fails to Adequately Analyze Cumulative Analyses

¹⁶ See, for instance, the comment letter submitted by the The Nature Conservancy concerning significant properties that were purchased with public funding and whose biodiversity will be impacted by HST.

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CEQA and NEPA require that cumulative impacts be analyzed. The CEQA Guidelines define cumulative impacts as “two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.” CEQA Guidelines Section 15355(a). “[I]ndividual effects may be changes resulting from a single project or a number of separate projects.” *Id.* Federal Regulations implementing the National Environmental Policy Act (NEPA) also require that the cumulative impacts of the proposed action be assessed. Cumulative impact is defined by the Council on Environmental Quality as an “impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions.” 40 CFR 1508.7.

A legally adequate cumulative impacts analysis views a particular project over time and must consider the impacts of the project combined with other projects causing related impacts, including past, present, and probable future projects. CEQA Guidelines 15130(b)(1). Projects currently under environmental review unequivocally qualify as reasonably probable future projects to be considered in a cumulative impacts analysis. See *San Franciscans’ for Reasonable Growth v. City and County of San Francisco*, 151 Cal.App.3d 61, 74 & n. 13 (1984). In addition, projects anticipated beyond the near future should be analyzed for their cumulative effect if they are reasonably foreseeable. See *Bozong v. Local Agency Formation Comm’n*, 13 Cal3d 263, 284 (1975). Alternatively, an EIR may utilize:

A summary of projections contained in an adopted general plan or related planning document, or in a prior environmental document which has been adopted or certified, which described or evaluated regional or areawide conditions contributing to the cumulative impact.

CEQA Guidelines Section 15130(b)(1)(B). Any such planning document shall be referenced and made available to the public at a location specified by the lead agency. *Id.*

The discussion of cumulative impacts must include a summary of the expected environmental effects to be produced by those projects, a reasonable analysis of the cumulative impacts, and full consideration of all feasible mitigation measures that could reduce or avoid any significant cumulative effects of a proposed project. See CEQA Guidelines Sections 15126.4(a)(1) and 15130(b)(3).

This DEIS/R fails altogether to meet these requirements and instead only discusses present and future projects within the area that the HST would traverse. DEIR/S Appendix 3.17-A. Key transportation and other projects are omitted from the discussion and analysis (e.g. Expansion of LAX). As a result of this approach, the cumulative analysis is improperly narrow in scope and therefore underestimates and omits cumulative impacts.

The cumulative analysis also fails to specify mitigation measures for cumulative impacts, as required under CEQA and NEPA.

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E. The DEIR/S Fails to Identify Feasible Mitigation Measures

Both CEQA and NEPA require that mitigation measures be identified and analyzed. The Supreme Court has described the mitigation and alternatives sections of the EIR as the “core” of the document. *Citizens of Goleta Valley v. Board of Supervisors*, 52 CAL.3d 553 (1990). As explained below, the DEIR/S identification and analysis of mitigation measures, like its analysis throughout, is thoroughly inadequate.

An EIR is inadequate if it fails to suggest mitigation measures, or if its suggested mitigation measures are so undefined that it is impossible to evaluate their effectiveness. In the instant case, the DEIR/S defers the description of all meaningful mitigation and relies on vague and “future” mitigation to suggest that potentially significant impacts will be reduced to less than significant. Improperly deferred details of mitigation measures include, but are not limited to the following (see DEIR/S text and Table 7.3-1):

- **Traffic and Circulation:** Encourage use of transit to stations. Work with transit providers to improve station connections. Note that the feasibility of this mitigation is dramatically affected by alignment choice, yet the DEIR/S does not take this into account.
- **Energy Use:** “Develop and implement energy conservation plan for construction.” Note that the amount of energy consumed for construction (and operation) varies dramatically. Alternative: The tunneling report suggests that energy use can vary significantly based on the gradient and overall altitude gain involved in a particular alignment.] by alignment choice (due to substantially different topography), meaning the feasibility of this mitigation is highly dependent on alignment choice. The DEIR/S does not take this into account.
- **Land Use:** “Continued coordination with local agencies. Explore opportunities for joint and mixed-use development at stations. Relocation assistance during future project-level review.” Note that alignment choice and station locations would have a large impact on the feasibility of this proposed mitigation.
- **Geology:** “Use of ground motion data and instruments; routine maintenance of tracks; slope reinforcement.”
- **Growth Potential:** “Work with local communities to encourage higher density development around stations.” Note that the potential for higher density development around stations is quite different depending on alignment and station location.

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- **Hydrology and Water Resources:** “Avoid or minimize footprint in floodplains; conduct project-level analysis of surface hydrology and coastal lagoons; Best Management Practices...”
- **Section 4(f) and 6(f):** “Consider design options to avoid parkland and wildlife refuges; identify site specific mitigation measures.” Note that once an alignment through a park or refuge has been chosen, the ability of alternative designs to mitigate impacts is vastly reduced.

All of these recommended mitigation “strategies” adhere to a backward standard that equates to closing the barn door after the cows have escaped. By deferring the need for mitigation until project-level environmental review, the DEIR/S ignores critical mitigation issues that must be addressed before alignment decisions are made and before growth-induced ongoing impacts occur.

Moreover, as described in detail above, the DEIR/S includes inappropriate assumptions concerning the cost of mitigation measures for the alternatives. In fact, it appears that the DEIR/S improperly applied a standard 3% mitigation cost of all segments (except Dumbarton) rather than using detailed mitigation figures developed in background reports. For example, the 1995 Corridor Evaluation and Environmental Constraints Analysis suggested that mitigation costs vary significantly by project alignment segments. The analysis states that mitigation costs are higher in urbanized areas and where high value habitats would require mitigation. The use of a standard mitigation cost obscures and misrepresents key advantages of many of the alternatives and implies that some of the most environmentally sound routes are infeasible due to their mitigation costs.

Again, a revised DEIR/S must include adequate and feasible mitigation measures to address both project-related and cumulative impacts based on the “whole” project and a complete list of cumulative projects. Mitigation measures must be accurately presented in terms of their feasibility, including costs.

Funding solutions for mitigation costs should include a single fee-based environmental bank for projects to offset HST impacts that result in degradation of air and water quality, and agricultural, biological and recreational resources. Projects to be funded would include, but not be limited to, acquisition, easement or enhancement of resource lands, urban forestry, acquisition and maintenance for the State’s protected recreational resources, and related conservation projects that mitigate the loss of, or detriment to, impacted natural areas. A revised DEIR/S must include such feasible measures and funding solutions.

F. The DEIR/S Fails to Analyze Alternatives Adequately

The DEIR/S fails to adequately analyze alternatives that have been included and fails to analyze a reasonable range of alternatives to the project. Although the DEIR/S analyzes a number of alternatives at an “equal” level of detail, the respective alternatives analyses

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fall short of the standards set by CEQA and NEPA. Under CEQA, an EIR must analyze a reasonable range of alternatives to the project, or to the location of the project, that would feasibly attain most of the basic objectives while avoiding or substantially lessening the project’s significant impacts. See Pub. Res. Code Section 21100(b)(4); CEQA Guidelines Section 15126.6(a); Citizens for Quality Growth v. City of Mount Shasta, 198 Cal.App.3d 433, 443-45 (1988). Similarly, under NEPA a reasonable range of alternatives that satisfy the statement of purpose and need must be analyzed. See above argument that the statement of purpose and need is improperly constrained, and therefore, the range of alternatives is also improperly constrained.

The DEIR/S fails to include an adequate analysis of alternatives for a number of reasons:

- The DEIR/S fails to include a reasonable range of feasible alternatives.
- Feasible alternatives are rejected without evidence.

In addition to its failure to adequately identify and analyze alternatives to the HST alignments and stations, the DEIR/S fails to identify the environmentally superior HST alignments and station location alternatives. The document does identify the HST alternatives the environmentally superior alternative:

“Based on the evaluations documented in Chapter 3 of this Program EIR/EIS, the HST Alternative has been identified as the environmentally superior alternative.” DEIR/S page 7-5; See also DEIR/S S-8 – HST is the preferred system .

However, when it comes to alignments and station locations choices – choices which may be made relying on this DEIR/S, the document states:

“The Authority and the FRA continue to consider HST alignment and station options and have not identified a preference among those presented in the Draft Program EIR/EIS.” DEIR/S page S-8.

A revised and recirculated DEIR/S must identify the environmentally superior alignments and station locations as required by law.

Our specific comments on the defects with the alternatives analyses follow.

I. The DEIR/S fails to include a reasonable range of feasible alternatives

The DEIR/S fails to include reasonable range of alternative alignments. For example, in the Bay Area, the DEIR/S fails to include the Altamont alternative.¹⁷ Elsewhere, the

¹⁷ Our detailed comments concerning the improper omission of an Altamont Alternative in the DEIR/S’s analysis of alternatives can be found in Attachment A. For other information relevant to the impermissible elimination of the Altamont Pass alignment alternative, please also see Attachment B on ridership and Attachment C on biology.

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DEIR/S fails to include alignments and station locations that would avoid 4(f) and 6(f) resources.

Under CEQA, an EIR must analyze a reasonable range of alternatives to the project, or to the location of the project, that would feasibly attain most of the basic objectives while avoiding or substantially lessening the project’s significant impacts. See Pub. Res. Code Section 21100(b)(4); CEQA Guidelines Section 15126.6(a); Citizens for Quality Growth v. City of Mount Shasta, 198 Cal.App.3d 433, 443-45 (1988). Similarly, under NEPA a reasonable range of alternatives that satisfy the statement of purpose and need must be analyzed. A revised DEIR/S must include a reasonable range of alternatives that would feasibly attain project objectives with fewer impacts.

Among the most glaring omissions is the omission of an Altamont alternative in the Bay Area.¹⁸ There is significant evidence that an Altamont Alternative will actually result in the fewest environmental impacts and superior ridership and costs.¹⁹ Based on the 10 criteria used for screening alternatives (DEIR/S at S-2), an Altamont alternative, there is evidence in the record that Altamont is the superior Bay Area option with respect to at least the following:

- maximizing ridership and revenue potential;
- minimizing travel time to be competitive with other modes of travel;
- minimizing impacts on natural resources;
- minimizing adverse social and economic impacts (e.g. growth inducement);
- minimizing impacts on parks and cultural resources.

For example, with respect to ridership, revenue, and environmental impacts, numerous documents in the record “find” or suggest that Altamont superior to other alternatives.²⁰ It is worth noting that the DEIR/S’s basic summary of background studies is misleading

¹⁸ See Attachment A.

¹⁹ Evidence of this includes, but is not limited to the following examples from the DEIR: DEIR Appendix 2-H-4e compares Bay Area-to-Merced alignments. It shows a Pacheco alignment requiring either 10 or 12 miles of tunneling (see also DEIR page 6-10, with Diablo alignment tunneling lengths ranging from 16-20 miles). Under this scenario, Altamont is the alignment with the least amount of tunneling (8.9 miles). Also according to Appendix 2-H, page 2-H-3 under wetlands, Altamont impacts approximately 27 acres of wetlands as compared with Pacheco which impacts approximately 290 acres of wetlands. Moreover, a new bay crossing appears to impact only 6.7 acres of wetlands (are we sure of this number?) as compared with Mulford Line between San Jose and Oakland which would impacts nearly 50 acres in the National Wildlife Refuge or 8Xs the impact of the project. In summary, a route along the existing Altamont pass commuter corridor would appear to serve more people, cost less to operate, and avoid massive construction and development in rural and wilderness areas than either the Pacheco or Mt. Hamilton alternatives. Yet, the DEIR/S fails to provide this information about comparative impacts.

²⁰ Among these: 1996 summary ridership study, 1996 Summary Report and Action Plan, a 1998 briefings to the HSRRA board, portions of the 1999 Corridor Evaluation and the 2000 Environmental Summary Report.

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in its treatment of northern mountain crossings. Chapter 2 of the DEIR/S begins with a “background” summary of three major sets of studies justifying its decisions: a 1994 LA-Bakersfield study, a 1996 Corridor Evaluation, and the 1999 Corridor Evaluation. The DEIR/S then directs the reader to Figure 2.3-1, summarizing the recommendation of the 1996 corridor evaluation as “recommended network of corridor alternatives.” The corridor alternatives shown on Figure 2.3-1 include Panoche, Pacheco, and Altamont northern mountain crossings, giving the impression that the Commission suggested all three for continued evaluation. Actually, the Commission issued a 1996 “Summary Report and Action Plan, summarizing its environmental, ridership, and other analyses. This summary report specifically recommended the Altamont alignment in the following language:

“Of the three northern mountain pass options (from south to north: the Panoche, the Pacheco and the Altamont), the Commission recommends the Altamont for linking the Central Valley to the greater San Francisco Bay Area. This option generates higher ridership and revenue for the system, and is less costly to construct than the two other mountain passes considered.” (Summary Report and Action Plan, 1996 page ES-7).

A revised DEIR/S should clearly acknowledge that a major body of taxpayer-funded study culminated in an Altamont recommendation, which the Authority discarded soon after it began to meet and chose to exclude from the DEIR/S.

Since an Altamont Alternative is feasible and likely superior with respect to environmental impacts, costs and ridership than other Bay Area routes, a revised DEIR/S must include analysis of an Altamont Alternative or Alternatives at an equal level of detail of the other alternatives studied.

2. Feasible alternatives are rejected without Evidence

Finally, the Authority rejected further consideration of the Altamont Alternative based on incomplete and faulty reasoning. Specific reasons for rejecting this alternative included:

- First, the Authority concluded it would be impractical from an operational perspective to serve San Francisco, Oakland and San Jose utilizing the Altamont Pass, because the HSR system would need to split in three different directions at Newark/Fremont to serve San Jose, San Francisco, and Oakland. In the Authority’s view, this would greatly reduce frequency of service to each of these locations.
- Second, the Altamont pass option includes a new Bay crossing to access San Francisco, which the Authority asserted would have more significant impacts on sensitive wetlands, salt water marshes, aquatic habitat, and sensitive species within an surrounding the Don Edwards San Francisco Bay National Wildlife Refuge than the other alternatives. DEIR/S page S-5. Also, see Screening Report Appendix A, page 2 “Confirmation of

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Previous Decisions.” Oddly, while the concern about the need to avoid running the train through the Refuge was used to justify deleting the Altamont alternative, this concern was not applied to the proposed service between San Jose and Oakland; the DEIR/S recommends carrying forward for further consideration rebuilding the Mulford Line, which also runs through the Refuge.

Neither basis for rejecting the Altamont Pass alternative was adequately researched or documented. To the contrary, as described in detail in Attachment A hereto, evidence concerning comparative impacts, ridership and project costs suggest that a full analysis of Altamont is warranted.

II. THE DEIR/S SHOULD BE REDRAFTED AND RECIRCULATED

The serious inadequacies of the DEIR are symptomatic of fundamental deficiencies in the conception of the project itself. The Authority may not approve the project unless the DEIR is again revised and recirculated to fully disclose and analyze the project’s impacts and a proper range of alternatives. Given the multiple inadequacies discussed above, 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.

CONCLUDING COMMENTS

Again, all of the groups listed below appreciate the opportunity to comment on the DEIR/S. Please keep the individuals listed below informed of any and all upcoming matters related to the HSR project.

Sincerely,

Fred Keeley
Executive Director
Planning and Conservation League
Planning and Conservation League Foundation

(on behalf of 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, and Planning and Conservation League Foundation)

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ATTACHMENTS:

- A: Supplementary Altamont Specific Comments
- B: Supplementary Ridership Comments
- C: Supplementary Biology Comments
- D: Supplementary Geology Comments
- E: MTC Study Materials
- F: Newspaper Articles

ATTACHMENT A:

ALTAMONT PASS ALIGNMENT ISSUES

Possibly the most glaring omission in the DEIR is its failure to include an Altamont Pass alignment alternative to link the Central Valley and the Bay Area. The Altamont Pass was identified by the High Speed Rail Commission in 1996 as the preferred option for connecting the Bay Area to the Central Valley. As the Commission wrote:

“Of the three northern mountain pass options (from south to north: the Panache, the Pacheco, and the Altamont) the Commission recommends the Altamont Pass for linking the Central Valley to the San Francisco Bay Area. This option generates higher ridership and revenue for the system, and is less costly to construct than the other mountain passes considered.” (Summary Report and Action Plan, page ES-7, December 1996).

Nevertheless, HSRA dropped the Altamont Pass alternative from further consideration in 1999 in favor of the Pacheco Pass alternative *before* the environmental review process was initiated.¹ Specifically, Altamont Pass effectively was eliminated in 1999 during development of the business plan and then officially “screened” out during a 2001 screening process (the late 1998 design of alignment studies that emerged in 1999 probably effectively determined this outcome even earlier). Yet, numerous documents in the record suggest that it is superior to the other Bay Area alternatives in terms of environmental impacts, transportation service (including ridership), cost and other key decisionmaking factors.

Federal agencies with jurisdiction over particular HSR environmental impacts have echoed our observation that this elimination of Altamont was premature. The U.S. Army Corps of Engineers writes in its letter of January 21, 2004 on the Alternatives Report, Chapter 2:

“What remains of concern to the Corps are the elimination of three regional segments, or portions thereof, from further analysis. The first area of concern is the Altamont Pass option in the Bay Area to Merced segment... The elimination of these corridor alignment options from the Program DEIR/Tier 1 DEIS brings into question the Project’s compliance with the Guidelines as promulgated until 40 CFR 230, in part because sufficient documentation has not yet been provided to justify their elimination based on practicability constraints and/or unacceptable environmental impacts. Attachment X, page 2.

¹ Further, DEIR page 2-2 says that three major previous alignment studies “culminated” in the 2000 business plan. Actually, the majority of northern mountain crossing routes were added after the business plan without benefit of these alignment studies. The three Diablo route alternatives were not considered before the 2000 business plan.