

22 Local Agency Comments

Part 3 of 4

Submission 266 (David Rodgers, Madera County Board of Supervisors, June 5, 2019)

Merced - Fresno 2014+; Central Valley Wye - RECORD #266 DETAIL

Status : Action Pending
Record Date : 6/26/2019
Submission Date : 6/5/2019
Interest As : Public Hearing Participant
First Name : David
Last Name : Rodgers
Submission Content :
Attachments : CVY_PublicHearing_Speaker_Rodgers_060519.pdf (40 kb)

266-384

DAVID RODGERS: Good afternoon, David Rodgers, Madera County supervisor. It's tough to speak with my back to people out here. I'm going to turn sideways, if that's okay. During the course of this project, over the last nine years, I have been a representative for District 2 in Madera County, and has evolved in a number of different ways. It has changed and continually changed, and we have come to another crossroads at this point, in which the governor has stated that the new plan will be to take a route from Bakersfield to Merced, and so I say in turn, I'm giving you this in terms of the change and in the spirit of change that has been brought forth from the governor's office.

Originally, we had two routes that were selected for possibilities, and that was alternative one and alternative two. Alternative two was the BNSF line, and then alternative one was the Amtrak line, which runs out through the country, down Santa Fe, and on over to Merced. At this juncture, the construction that has occurred in Madera County ends somewhere near Avenue 17 on Road 27 and a half. That's the extent of the construction, and it seems to follow that Amtrak line to that point. My suggestion is that it would be amiable and amicable to take that route out through the country on the Amtrak line, which would avoid the WYE all together, and you ask why would we do that? There's a very simple reason. I believe if you do a little analysis on that, on that particular section of the turning, the WYE, you'll find that going out the Amtrak route will save pretty close to a billion dollars in construction costs. When you talk about overpasses, going over the freeway, interchanges that are going to be interrupted, and I believe, also, the turn, there's two turns that will take place, and you avoid those two turns. You'll just have a straight -- basically a straight line. It will be a little crooked, but it's not that bad. Not like two turns and jumping overrule Highway 99 and 152.

So that's my thoughts. I believe as the representative of District 2, that construction in Madera County is all within my district. So I speak for the residents of Madera County when I say that is a good alternative. Not only this, but I would assure you the board would look favorably upon that kind of change, the Board of Supervisors would favor that kind of change, not only at cost savings to the taxpayers, but for the benefit of District 2 residents, which I represent.

We would do our job to help you get that through at Merced County as well. So thank you for your time, and I appreciate your -- the energy you're putting into making good things happen, hopefully, to come from this.

Response to Submission 266 (David Rodgers, Madera County Board of Supervisors, June 5, 2019)

266-384

The Authority appreciates the comments from Madera County supervisor Rodgers regarding considering an alternative that would continue along the BNSF/Amtrak rail line to the north from the currently underway HSR construction in Madera County, and not include a Central Valley Wye east-west connection. The Authority is continuing to plan for and environmentally evaluate the entire Phase 1 HSR system, from San Francisco to Los Angeles/Anaheim, through individual project section EIR/EISs. The Central Valley Wye and the east-west connection of the main stem of the HSR system in the Central Valley to the San Francisco Bay Area remains an integral component of the HSR Phase 1 system. An HSR system that is limited to a north-south track only, without a connection to the San Francisco Bay Area, would not address the purpose and need for the HSR system in California.

Submission 283 (Patrick Cavanah, Stanislaus County Environmental Review Committee, October 10, 2019)

Merced - Fresno 2014+; Central Valley Wye - RECORD #283 DETAIL

Status : Action Pending
 Record Date : 10/15/2019
 Submission Date : 10/10/2019
 Interest As : Local Agency
 First Name : Patrick
 Last Name : Cavanah
 Submission Content :

Please see attached letter that came into the Authority's headquarters today regarding the Wye. Please let me know if you need the original copy.

Thanks!

Annie Parker
 Information Officer II
 California High-Speed Rail Authority
 770 L Street, Suite 620
 Sacramento, CA 95814
 w: (916) 403-6931
 c: (916) 203-2960
 Annie.Parker@hsr.ca.gov<mailto:Annie.Parker@hsr.ca.gov>
 www.hsr.ca.gov<http://www.hsr.ca.gov/>
 Attachments : 2019-10-10_CVY_NEPACommltr_StanislausCtyEnvRev.pdf (357 kb)



CHIEF EXECUTIVE OFFICE

Jody L. Hayes
 Chief Executive Officer
 Patricia Hill Thomas
 Chief Operations Officer/
 Assistant Executive Officer
 Keith D. Roggs
 Assistant Executive Officer
 Patricia M. Dietrich
 Assistant Executive Officer

STANISLAUS COUNTY ENVIRONMENTAL REVIEW COMMITTEE

October 10, 2019

California High-Speed Rail Authority
 Merced to Fresno Section: Central Valley Wye Draft Supplemental EIR/EIS
 770 L Street, Suite 620, MS-1
 Sacramento, CA 95814

SUBJECT: ENVIRONMENTAL REFERRAL – CALIFORNIA HIGH-SPEED RAIL AUTHORITY – CALIFORNIA HIGH SPEED RAIL PROJECT – MERCED TO FRESNO SECTION: CENTRAL VALLEY WYE DRAFT SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL IMPACT STATEMENT EIR/EIS – NOTICE OF AVAILABILITY OF DRAFT SUPPLEMENTAL IMPACT STATEMENT – NEPA PUBLIC HEARING

283-405

Thank you for the opportunity to review the above-referenced project.

The Stanislaus County Environmental Review Committee (ERC) has reviewed the subject project and has no comments at this time.

The ERC appreciates the opportunity to comment on this project.

Sincerely,

Patrick Cavanah
 Sr. Management Consultant
 Environmental Review Committee

PC:ss

cc: ERC Members

STRIVING TOGETHER TO BE THE BEST!

California High-Speed Rail Authority | 615 Capitol Mall, Suite 3101
 Sacramento, CA 95833 | www.hsr.ca.gov | Tel: (916) 554-6000

Submission 283 (Patrick Cavanah, Stanislaus County Environmental Review Committee, October 10, 2019) - Continued

10/10/2019 10:15 AM
Stanislaus County
Chief Executive Officer
P.O. Box 2404
Merced, California 95362-0404



RETURN SERVICE REQUESTED

3688447888 00105 10/10/2019 10:15 AM

Response to Submission 283 (Patrick Cavanah, Stanislaus County Environmental Review Committee, October 10, 2019)

283-405

The comment indicating no further comments from Stanislaus County Environmental Review Committee is noted.

Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019)

Merced - Fresno 2014+; Central Valley Wye - RECORD #290 DETAIL

Status : Action Pending
 Record Date : 10/29/2019
 Submission Date : 10/28/2019
 Interest As : Local Agency
 First Name : Kristen
 Last Name : Kortick
 Submission Content :

Dear California High Speed Rail Authority,

Please see attached comment letter to the Central Valley Draft Supplemental Environmental Impact Report/Environmental Impact Statement on behalf of the Wye Madera Task Force. Should you have any issues reading or downloading the document please feel free to contact our office at your earliest convenience. Thank you.

Sincerely,

Kristen Kortick
 Law Clerk
 [cid:image001.png@01D58DD4.E3A0FF60]
 A Professional Corporation
 2100 21st Street | Sacramento, CA 95818
 tel: (916) 456-9595 | fax: (916) 456-9599

This electronic message transmission contains information from the law firm of Abbott & Kindermann, Inc. which may be confidential or privileged. Recipients should not file copies of this e-mail with publicly accessible records. The information is intended to be for the use of the individual(s) named above. If you are not the intended recipient, please be aware that any disclosure, copying, distribution or use of the contents of this message is prohibited.

Abbott & Kindermann, Inc. Circular 230 Notice: To ensure compliance with IRS requirements, we inform you that any U.S. federal tax advice contained in this communication is not intended or written to be used, and cannot be used by any taxpayer, for the purpose of avoiding any federal tax penalties. Any legal advice expressed in this message is being delivered to you solely for your use in connection with the matters addressed herein and may not be relied upon by any other person or entity or used for any other purpose without our prior written consent.

Attachments : 191028 FINAL Comment Letter to HSR .pdf.pdf (5 mb)



October 28, 2019

Via Email on October 28, 2019
Via Hand Delivery on October 29, 2019

California High Speed Rail Authority
 Merced to Fresno Section: Central Valley Wye Draft Supplemental EIR/EIS
 770 L Street, Suite 620 MS-1
 Sacramento, CA 95814
CentralValley.Wye@hsr.ca.gov

Re: Comments on Merced to Fresno Section: Central Valley Wye Draft Supplemental Environmental Impact Report/Environmental Impact Statement

Dear High-Speed Rail Authority:

The purpose of this correspondence is to comment on the Merced to Fresno Section: Central Valley Wye Draft Supplemental Environmental Impact Report/Environmental Impact Statement¹ (collectively "DSEIR/EIS") of the California High Speed Rail Project ("HSR"). These comments are submitted on behalf of Madera County in its capacity as representative of the Wye Madera Task Force ("Task Force"). The Task Force is a collaborative of agencies in Madera County with common interests pertaining to the HSR. The Task Force is comprised of the following legal entities:

- County of Madera;
- City of Chowchilla;
- City of Madera;
- Madera County Transportation Commission;
- Madera Unified School District;
- Workforce Development Board of Madera County; and
- Madera County Economic Development Commission.

The Task Force agencies have a constituency of over 150,000 people and over 8,000 businesses in Madera County and the cities of Chowchilla and Madera. The comments herein

¹ The DSEIR/EIS cover date is September 2018, but the document was not published for CEQA review until May 3, 2019, and was not issued for NEPA review until September 13, 2019.

Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

California High-Speed Rail Authority
October 28, 2019
Page 2 of 57

California High-Speed Rail Authority
October 28, 2019
Page 3 of 57

reflect the Task Force agencies' legitimate governmental and community environmental, social and economic concerns. Construction and operation of HSR in Madera County will have direct environmental, social, and economic effects on residents and businesses in the County. The development of HSR in Madera County will also increase the obligations and need for local land use planning agency actions while reducing the resources (e.g., tax revenue) available to provide such services. Thus, Task Force member agencies and their constituents will be directly affected by decisions of the California High-Speed Rail Authority ("CHSRA") and its Board of Directors ("Board"). The Task Force recognizes that individual Task Force members are also submitting comment letters on the DSEIR/EIS. The Task Force acknowledges and is supportive of the issues and concerns raised in the individual comment letters, including but not limited to the comment letter submitted by the City of Chowchilla on October 28, 2019.

290-660

Furthermore, Task Force land use planning agencies, including Madera County and the cities of Chowchilla and Madera, will have to make discretionary decisions associated with HSR for the execution of right-of-way and maintenance agreements, issuance of encroachment permits, and other approvals and actions associated with HSR development. Therefore, these agencies are "responsible agencies" under CEQA. Thus, comments herein must be considered and addressed by CHSRA in order to produce an adequate document that can be used by local agencies in complying with CEQA for their discretionary decisions associated with the HSR.

290-661

The comments herein address both National Environmental Policy Act ("NEPA")² and California Environmental Quality Act ("CEQA")³ issues, and this correspondence incorporates by this reference all comments raised in the Task Force's June 20, 2019 correspondence to the CHSRA. The Task Force objects to the HSR as described and evaluated in the DSEIR/EIS pursuant to CEQA and NEPA⁴

We recognize that CHSRA previously circulated the DSEIR/EIS as a CEQA document and that the same DSEIR/EIS is now being circulated as a NEPA document. Pursuant to Task Force discussions with CHSRA staff pertaining to the NEPA review process, it is our expectation that all comments provided during the two review periods will be treated equivalently and, in particular, that comments herein pertaining to CEQA issues will be fully addressed by CHSRA. We further note that CEQA requires a lead agency to consider all comments and public and agency input received during the CEQA review process until such time as the close of the public hearing and a final decision is made.

² 42 U.S.C. §§ 4321 et seq. (2010).

³ CAL. PUB. RES. CODE § 21000 et seq. (2018).

⁴ CAL. PUB. RES. CODE § 21177 (2019); 42 U.S.C. §§ 4342, 4344 (2005).

This correspondence is organized as follows:

- I. **Introduction and Procedural Summary**
 - A. Introduction
 - B. Summary of HSR Procedural CEQA/NEPA History
- II. **Subsequent EIR/EISs Fully Updating the 2012 Merced to Fresno EIR/EIS and the 2015 Program EIR/EIS Addressing Changed Circumstances are Legally Required**
 - A. The DSEIR/EIS Analyses And Stated Benefits Must Reflect Current Uncertainties Regarding The Completion And Timing Of The HSR System
 - B. A Subsequent EIR/EIS Must Address The Merced To Fresno Section And Not Be Limited To The Central Valley Wye
 - C. The DSEIR/EIS Must Disclose And Evaluate Impacts In Light Of Modified Project Objectives
 - D. The DSEIR/EIS Must Acknowledge That Construction Of The HSR Merced To Fresno Section Has Resulted In A Substantial Increase In The Severity Of Impacts
 - E. A Subsequent EIR/EIS Is Required Because The Project Will Have One Or More Significant Effects Not Discussed In The Previous EIR/EIS
 - F. A Subsequent Program EIR/EIS For The Statewide California HSR System Must Be Prepared And Certified Prior To Further Preparation Of Section-Specific EIRs/EISs Given Changed Circumstances And Uncertainties Regarding Statewide HSR Development
 - G. Assuming *Arguendo* That The DSEIR/EIS Was The Correct Environmental Document, The Document Still Fails To Comply With CEQA And NEPA
 - H. CHSRA Failed To Issue A Notice Of Preparation For The "Proposed Project," Thereby Denying Local Agencies And Other Stakeholders The Ability To Provide Input On The Scope Of Issues To Be Considered In The Additional Environmental Documentation
 - I. The September 2019 DSEIR/EIS Fails To Comply With Procedural Requirements Of The July 2019 NEPA Assignment MOU
 - J. The DSEIR/EIS Fails To Meet CEQA And NEPA Requirements For Document Readability
- III. **The DSEIR/EIS Does Not Properly Tier Out or Incorporate By Reference the Prior Environmental Documents**
- IV. **The DSEIR/EIS Contains a Legally Inadequate Project Purpose, Need, and Description**

Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

California High-Speed Rail Authority
 October 28, 2019
 Page 4 of 57

- V. **The Focus of the DSEIR/EIS On The Central Valley Wye Results In Improper Piecemealing of Environmental Analyses**
- VI. **The DSEIR/EIS Fails to Adequately Disclose, Analyze and Mitigate Impacts**
 - A. Impact Avoidance And Minimization Features Are Improperly Assured In The Analysis
 - B. The DSEIR/EIS Fails To Provide Legally Adequate Mitigation Measures
 - C. The DSEIR/EIS Fails To Properly Analyze And Mitigate Traffic And Circulation Impacts
 - D. The DSEIR/EIS Fails To Properly Analyze And Mitigate Agricultural Resources Impacts
 - E. The DSEIR/EIS Fails To Properly Analyze And Mitigate Air Quality Impacts
 - F. The DSEIR/EIS Fails To Properly Analyze And Mitigate Greenhouse Gas (GHG) Emissions
 - G. The DSEIR/EIS Fails To Properly Analyze And Mitigate Noise And Vibration Impacts
 - H. The DSEIR/EIS Fails To Fully Address Land Use Conflicts And Land Use Plan Inconsistencies
 - 1) The DSEIR/EIS Fails To Fully Evaluate And Mitigate For Land Use Plan Inconsistencies
 - 2) The DSEIR/EIS Fails To Sufficiently Identify Land Use Incompatibilities Or Provide A Mechanism For Local Land Use Plan And Zoning Updates To Accommodate HSR
 - I. The DSEIR/EIS Fails To Fully Evaluate And Mitigate Aesthetic And Visual Resources
 - J. The Central Valley Wye Design Must Accommodate Utility Infrastructure
 - K. The DSEIR/EIS Fails To Disclose And Mitigate Significant Effects Associated With Emergency Response Services
 - L. The DSEIR/EIS Fails To Properly Address Long-Term Socioeconomic Impacts On Madera County
 - M. The DSEIR/EIS Socioeconomic Analysis Is Flawed In Its Assumptions Regarding The Benefits Given Uncertainties Associated With Development Of A Statewide HSR System
 - N. The DSEIR/EIS Fails To Fully Disclose Community Impacts And Relies On Insufficient Measures To Reduce Such Impacts
 - O. The DSEIR/EIS Relies On Insufficient Measures To Reduce Displacement And Relocation Impacts On Community Cohesion

California High-Speed Rail Authority
 October 28, 2019
 Page 5 of 57

- P. The DSEIR/EIS Fails To Fully Disclose And Address Environmental Justice Impacts
- Q. The DSEIR/EIS Improperly Concludes That HSR Will Result In Disproportionate Benefits To Disadvantaged Communities
- R. The DSEIR/EIS Environmental Justice Analysis Relies On Speculative Mitigation Measures In Its Conclusion That Environmental Justice Impacts Would Be Less Than Significant
- VII. **The DSEIR/EIS Fails To Provide A Legally Adequate Cumulative Impacts Analysis**
- VIII. **The DSEIR/EIS Fails To Consider And Evaluate Alternatives That Would Avoid Or Reduce Impacts Of The Proposed Project**
- IX. **Conclusion**
- Attachment A. Impact Avoidance and Minimization Feature Revisions**

I. INTRODUCTION AND PROCEDURAL SUMMARY

A. Introduction

California's HSR is an unprecedented undertaking for California with substantial economic, social, and environmental effects. The Task Force recognizes the magnitude of this undertaking and has been generally supportive of CHSRA's efforts to develop the system. However, the Task Force also has concerns regarding local impacts and benefits as well as concerns regarding uncertainties surrounding full development of the HSR statewide system. In May of this year, CHSRA acknowledged in its 2019 Project Update Report to the California State Legislature that "the project is at a crossroads" and that "initial cost projections and timelines were simply unrealistic."⁵ In fact, even as the DSEIR/EIS for the Central Valley Wye is circulating for public review, CHSRA is reconsidering the feasibility of developing only certain interim segments and components of HSR due to improbabilities of being able to finance the entire HSR.⁶ These current circumstances have substantial implications on the future of HSR and on the validity of environmental analyses and conclusions that are based on the assumption of a fully developed and operational statewide HSR system. Decision making and findings have relied on the optimistic assumption that the transportation, air quality, climate change, and other environmental and economic benefits anticipated from the statewide system will come to fruition. Yet, if the system is not fully developed or is not developed in the previously anticipated timeframes, the benefits will be substantially reduced or not realized at all.

⁵ Report from California High-Speed Rail Authority on Delivering High-Speed Rail to Californians, Project Update (May 20, 2019) (on file with California High-Speed Rail Authority).

⁶ Memorandum from Frank Vasco, Chief of Rail Operations & Early Train Operator on California High-Speed Rail Briefing (October 15, 2019) (on file with California High-Speed Rail Authority).

290-662

Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

California High-Speed Rail Authority
 October 28, 2019
 Page 6 of 57

California High-Speed Rail Authority
 October 28, 2019
 Page 7 of 57

290-662

Contrasting this HSR uncertainty is the continued construction of HSR facilities in the Central Valley, including Madera County, now underway. Madera County land use agencies, residents, and businesses are experiencing the effects of this construction, including air pollutant emissions, noise, permanent loss of agricultural land, construction traffic, and road closures.

The Central Valley Wye is a planned component of the HSR system intended to be the intersection of the San Jose to Merced and Merced to Bakersfield HSR sections. Each of the Central Valley Wye alternatives presented in the DSEIR/EIS will result in a substantial and permanently altering development footprint in Madera County. The Task Force member agencies, therefore, have the interest and obligation on behalf of their constituents to ensure that the effects of the Central Valley Wye are fully and properly evaluated in compliance with NEPA and CEQA, and that adverse environmental, economic, and social effects are minimized to the greatest extent feasible. In this capacity, the Task Force seeks to ensure that decisions are made based on the most current and relevant information and that decisions are not made based on previous data, assumptions and funding expectations that may no longer be relevant or accurate.

290-663

CHSRA chose to evaluate the Central Valley Wye through preparation of a “supplement” to the 2012 Merced to Fresno Section EIR/EIS. Both CEQA and NEPA require that when a subsequent or supplemental environmental document is prepared, the document must update the previous environmental document based, in part, on changed circumstances. The DSEIR/EIS does not meet this standard. Substantial changes have occurred to the circumstances under which HSR is now being pursued as compared to circumstances that existed in and prior to 2012 when the Merced to Fresno EIR/EIS was certified. Thus, the DSEIR/EIS must reflect these changed circumstances and must not rely on previously anticipated HSR system outcomes when those outcomes are not reasonably foreseeable. Furthermore, the DSEIR/EIS provides analyses only of the Central Valley Wye portion of the 2012 Merced to Fresno HSR/EIS and, by doing so, fails to update the 2012 EIR/EIS for other portions of the Merced to Fresno Section as required by CEQA and NEPA.

B. Summary Of HSR Procedural CEQA/NEPA History

The 2005 Program EIR/EIS was a first-tier analysis of the general effects of implementing the HSR system across two-thirds of the state (CTISRA 2005). The 2008 San Francisco Bay Area to Central Valley High-Speed Final Program EIR/EIS (CTISRA 2008) and the 2012 Bay Area to Central Valley High-Speed Train Partially Revised Final Program EIR (CTISRA 2012) were also first-tier, programmatic documents, focusing on the Bay Area to Central Valley region. These first-tier EIR/EIS documents were prepared with the intention of providing the Federal Railroad Administration (“FRA”) and CHSRA with the environmental analyses necessary to evaluate the overall HSR system and make broad decisions about general HSR alignments and station locations for further study in the second-tier EIR/EISs.

The 2012 Merced to Fresno Section EIR/EIS (CHSRA 2012) was a second tier EIR/EIS in that it provided project-level information for decision-making on the Merced to Fresno section

of the HSR system. The Merced to Fresno EIR/EIS identified alternatives and also examined design options for an east-west connection to the San Jose to Merced section. CTISRA certified the Merced to Fresno Final EIR/EIS under CEQA on May 3, 2012 and filed a Notice of Determination on May 4, 2012. The FRA issued a Record of Decision (“ROD”) on September 18, 2012, and the Surface Transportation Board (“STB”) issued a ROD on June 13, 2013. These second-tier approvals deferred a decision on the alignment and design of the connection CHSRA referred to as the “Central Valley Wye” that would provide the connection of the San Jose to Merced section and the Merced to Fresno section.

The 2019 DSEIR/EIS that is the subject of this comment letter is CHSRA’s next required step in the environmental review process to select a Central Valley Wye connection. The DSEIR/EIS states that it “evaluates the impacts and benefits of implementing the Central Valley Wye connection alternatives in the more geographically limited area of the Central Valley Wye connection between the cities of Merced and Madera, and is based on additional project planning and engineering that has occurred over the last several years.”

The DSEIR/EIS was originally published by CHSRA on May 3, 2019, with a requirement that comments on the document be submitted by June 20, 2019. The May 2019 publication was for CEQA review only, as the federal lead agency, FRA, had neither authorized the publication of the document nor assigned NEPA authority to the State of California (“State”). On June 14, 2019, the Task Force submitted a letter to CHSRA requesting extension of the comment period and requesting to meet with CHSRA to discuss the Task Force’s concerns. The Task Force was not formally notified of a decision on its request for additional time to comment. Therefore, the Task Force submitted its comment letter on June 20, 2019.

On July 1, 2019, and in response to a January 31, 2018, application by the State, FRA executed a memorandum of understanding (“MOU”) with the State assigning FRA’s responsibilities for compliance with NEPA with respect to certain projects necessary for the design, construction, and operation of the HSR system, and expressly including the “Merced to Fresno (including the Central Valley Wye Supplemental EIS).” (MOU, pg. 6) Subsequently, on September 13, 2019, CHSRA published a “Public Notice, Notice of Availability of Public Hearing, NEPA-Only Release and Notice” (“NEPA NOA”) advising that the DSEIR/EIS was available for review and comment for a 45-day period ending October 28, 2019.

290-664

This comment letter is submitted in response to the NEPA NOA. It is our intent that CHSRA consider these comments pursuant to both CEQA and NEPA. The Task Force was advised by CHSRA staff that the CEQA comment period would not be extended, but that additional opportunity to comment would be provided during the subsequent NEPA review circulation and that all comments submitted during the NEPA review period – whether addressing CEQA or NEPA issues – would be addressed by CHSRA.⁷ Where CEQA and NEPA are concurrently

⁷ Email from Madera Task Force to California High-Speed Rail Authority (August 15, 2019) (on file with Madera Task Force).

Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

California High-Speed Rail Authority
 October 28, 2019
 Page 8 of 57

California High-Speed Rail Authority
 October 28, 2019
 Page 9 of 57

290-664 applicable, CEQA provides built in provisions for joint cooperation. However, the state agency "must still ensure that CEQA is fully complied with, including those instances where the environmental documents are jointly produced."⁸

II. SUBSEQUENT EIR/EIS FULLY UPDATING THE 2012 EIR/EIS AND THE 2005 PROGRAM EIR/EIS ADDRESSING CHANGED CIRCUMSTANCES ARE LEGALLY REQUIRED

290-665 The DSEIR/EIS does not comply with CEQA or NEPA mandates for appropriate environmental documentation. As a *supplement* to the 2012 Merced to Fresno EIR/EIS the DSEIR/EIS improperly limits environmental evaluation to the Central Valley Wye component of the Merced to Fresno Section and does not sufficiently address the *multitude* of changes in circumstances that have occurred since 2012 or since the 2005 Program EIR/EIS was prepared. Instead, two *subsequent* EIR/EISs must be prepared that fully update the 2012 EIR/EIS for the entire Merced to Fresno Section and the 2005 Program EIR/EIS that reflect current circumstances, including circumstances associated with reasonably foreseeable outcomes based on current uncertainties associated with the statewide HSR system. As fully explained herein, the 2005 Program EIR/EIS should be first in time with subsequent environmental analysis, followed by subsequent analysis for the 2012 Merced to Fresno Section.

290-666 As to CEQA, the general circumstances requiring the preparation of subsequent EIRs or supplements to EIRs, set forth in Public Resources Code section 21166, essentially limits preparation of Subsequent EIRs to certain situations as identified in CEQA Guidelines sections 15162 and 15163.

In general, when an EIR has been certified, no subsequent EIR is required for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

- (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete, shows any of the following:

290-666

- (A) The project will have one or more significant effects not discussed in the previous EIR or;
- (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
- (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
- (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.⁹

Additionally, a subsequent EIR shall be given the same notice and public review as required under CEQA Guidelines, sections 15087 or 15072. A subsequent EIR shall state where the previous document is available and can be reviewed.¹⁰

Or the other hand, a *supplement* to an EIR, the document prepared by CHSRA, may only be prepared in lieu of a *subsequent* EIR when the following circumstances exist:

- (a) The Lead or Responsible Agency may choose to prepare a supplement to an EIR rather than a subsequent EIR if:
 - (1) Any of the conditions described in Section 15162 would require the preparation of a subsequent EIR, and
 - (2) Only minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation.¹¹

In sum, a *supplemental* EIR provides a short-form method where only minor additions or changes would be necessary in the previous EIR to make that EIR apply in the changed situation, as compared to a *subsequent* EIR that addresses significant changes in the project and changes in the circumstances under which the project would be undertaken. The Central Valley Wye environmental document clearly is not limited to "minor additions or changes" to the 2012 EIR/EIS and, therefore, must be noticed and circulated as a *subsequent* EIR.

290-667

Under NEPA, significant new circumstances or information relevant to environmental concerns or substantial changes in the proposed action that are relevant to environmental concerns may necessitate preparation of a supplemental EIS following either the draft or final

⁸ Nelson v. County of Kern, 118 Cal.App.4th 252, 280 (2010).

⁹ Cal. Code Regs. tit. 14, §§ 15162, 15163 (2018).

¹⁰ Cal. Code Regs. tit. 14, § 15162(d); Cal. Pub. Res. Code §§ 21083, 21166; *Bowman v. City of Petaluma*, 185 Cal.App.3d 1065 (1986); *Benion v. Board of Supervisors*, 226 Cal.App.3d 1467 (1991); and *Fort Mojave Indian Tribe v. California Department of Health Services*, et al., 38 Cal.App.4th 1574 (1995).

¹¹ Cal. Pub. Res. Code §§ 21083, 21166; Cal. Code Regs. tit. 14, § 15163.

Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

California High-Speed Rail Authority
October 28, 2019
Page 10 of 57

California High-Speed Rail Authority
October 28, 2019
Page 11 of 57

290-667

EIS or the Record of Decision.¹² Pursuant to NEPA, a supplemental EIS is essentially the equivalent of a *subsequent* EIR. The Council on Environmental Quality ("CEQ") NEPA Regulations specifically provide as follows:

Agencies shall prepare supplements to either draft or final environmental impact statements if:

- (i) The agency makes **substantial changes in the proposed action** that are relevant to environmental concerns; or
- (ii) there are significant **new circumstances or information** relevant to environmental concerns and bearing on the proposed action or its impacts.

An agency may also prepare a supplement to either a draft or final environmental impact statement if the purposes of the Act will be furthered by doing so.¹³

Although the term "supplement" is used in the NEPA context of this DSEIR/EIS, the actual text of the DSEIR/EIS does not meet the legal requirements of a supplement as it does not fully identify and address "new circumstances or information relevant to environmental concerns bearing on the proposed action or its impacts."

Specific examples of deficiencies of the DSEIR/EIS in meeting basic CEQA and NEPA legal requirements as a subsequent or supplemental EIR/EIS are set forth below and include but are not limited to the following:

A. The DSEIR/EIS Analyses And Stated Benefits Must Reflect Current Uncertainties Regarding The Completion And Timing Of The HSR System.

290-668

Ample evidence has emerged to demonstrate that the statewide HSR as envisioned and evaluated in the 2005 Program EIR/EIS is incapable of being completed. This results in changes in circumstances that not only must be reflected in the environmental analysis of the Central Valley Wye, but must also be reflected in the base document from which the 2012 Merced to Fresno EIR/EIS and the 2019 DSEIR/EIS tier – in other words, a subsequent Program EIR/EIS must first be prepared to update the 2005 Program EIR/EIS before any section-specific documents can tier from the Program EIR/EIS. Uncertainties in the statewide HSR system have been known and acknowledged by CHSRA in its biannual business plans and in CHSRA's May 29, 2019, "Delivering High-Speed Rail To Californians Project Update Report To The California State Legislature" ("2019 Project Update Report"). Therefore, the 2005 Program EIR/EIS must be the subject of a subsequent EIR/EIS analysis before any other HSR segments can be legally analyzed and certified under CEQA or NEPA.

¹² 40 C.F.R. § 1502.9(c) (1978)
¹³ 40 C.F.R. § 1502.9(c)(2).

290-669

The same is true of the 2012 Merced to Fresno EIR/EIS in terms of requiring review as a subsequent EIR and supplemental EIS. The 2019 DSEIR/EIS does not disclose and account for the current status of the future sections of HSR. The DSEIR/EIS analysis appears to be premised on current completed final approval of the other sections of the HSR system. This presumption is inaccurate. For the DSEIR/EIS analysis to be accurate and meaningful, the DSEIR/EIS should discuss the timing and phasing for interconnection of the San Jose-Merced Section to the proposed Central Valley Wye and the DSEIR/EIS should disclose the implications of selecting/evaluating a configuration for the Central Valley Wye prior to completion of environmental review of the San Jose-Merced Section.

Other legal deficiencies in the DSEIR/EIS include, but are not limited to, the following:

290-670

(1) The DSEIR/EIS does not incorporate information from the 2018 HSR Business Plan adopted nearly one year prior to circulation of the DSEIR/EIS, nor does the DSEIR/EIS address current circumstances of HSR uncertainties in funding and full system development as outlined in the 2019 Project Update Report;

290-672

(2) The DSEIR/EIS references and relies on information in the 2016 California High-Speed Rail Business Plan. However, a revised Business Plan was published in June of 2018, nearly one year prior to circulation of the DSEIR/EIS on May 3, 2019. The 2018 Business Plan contains updated projections (e.g., ridership, phasing, and timing) that directly pertain to impact analyses and other conclusions in the DSEIR/EIS. The 2018 Business Plan was completed nearly a year prior to publication of the DSEIR/EIS and information from the 2018 Business Plan should be used in the DSEIR/EIS; and

290-673

(3) In the 2019 Project Update Report, which was published prior to circulation of the DSEIR/EIS, CHSRA acknowledges palpable uncertainties regarding the implementation of HSR. The 2019 Project Update Report notes that "the project is at a crossroads" and that "initial cost projections and timelines were simply unrealistic";¹⁴

290-674

At the October 15, 2019, CHSRA Board meeting, Agenda Item Number 2 discusses a "Early Train Operator Side-by-Side Interim Analysis." The staff report background summary indicates that in May 2019, CHSRA requested a side-by-side study to investigate and compare options for potential early service investments in the Central Valley, San Francisco Bay Area and Los Angeles/Anaheim high-speed rail corridors¹⁵ ("2019 Project Memo"). The focus of the work was to assess comparable investments within each corridor that could provide early interim high-speed rail service. It was intended to provide information to the Board to support upcoming future investment decisions. The side-by-side analysis "focused on identifying the set of investments that provided demonstrable high-speed rail investment in a regional context and provide improved regional operations (emphasis added)."¹⁶ "Further, the Authority is committed

¹⁴ Report from California High-Speed Rail Authority, *supra* note 5, p.1.
¹⁵ Memo from Frank Vacca, *supra* note 6.
¹⁶ *Id.*

Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

California High-Speed Rail Authority
 October 28, 2019
 Page 12 of 57

California High-Speed Rail Authority
 October 28, 2019
 Page 13 of 57

290-674 to bookend investments in both Northern and Southern California and completion of environmental work for the length of the San Francisco to Los Angeles/Anaheim corridor. All of this is done with the goal of delivering a working section demonstrating the project's feasibility and attracting other funding to complete the line north to south."¹⁷

It appears that CHSRA may be seeking to justify completion of disparate regional segments with speculation that at some future time, funding sources might materialize to complete the entire project from Northern to Southern California. The environmental documentation, and its impact identification, analyses and mitigation, on HSR to date at both Tier 1 and Tier 2 environmental documentation levels have been based on the completion of the entire statewide HSR system, and not only regional segments. This 2019 Project Memo illustrates that HSR will: (a) have significant effects not discussed in the previous eight-year-old Merced to Fresno EIR/EIS; that (b) significant effects previously examined will be substantially more severe than shown in the previous Merced to Fresno EIR/EIS and first-tier programmatic CEQA documents; and (c) Mitigation Measures previously found feasible may not in fact be feasible, due to project changes and lack of funding.

The 2019 Project Memo recognizes the lack of funding with the following comment: "The fact is that we do not have all the funding in hand to construct the full 520-mile system from San Francisco to Los Angeles/Anaheim or even the Silicon Valley to Central Valley segment. Because of this, the authority is recommending a building block approach to delivering the system that delivers the most with our available funds."¹⁸

With regard to regulatory compliance, the 2019 Project Memo notes that as the permits have been acquired for construction, additional mitigation requirements have been identified. Moreover, these mitigation measures and implementation for construction have resulted in delays and, in some cases, costs have increased beyond what had been originally anticipated.¹⁹ However, there is no clear recognition of the need to budget and pay for implementation of substantial mitigation measures adopted with certification and approval of previous environmental documents beyond obtaining individual resource permits.

Therefore, a subsequent EIR/EIS for the Central Valley Wye is requested to address substantial changes in the project, with respect to circumstances under which the project is undertaken at both the full system HSR level and as to the 2012 Merced to Fresno Section as originally analyzed. CHSRA's substantial changes to HSR are relevant to environmental concerns and the 2019 Project Memo confirms that there are significant new circumstances relevant to environmental concerns, such as inability to fund mitigation obligations causing potential new or increased impacts.

¹⁷ *Id.*
¹⁸ *Id.*
¹⁹ *Id.*

290-675 This comment letter need not provide an exhaustive summary of uncertainties, but the 2018 Business Plan, 2019 Project Update Report, and 2019 Project Memo are incorporated herein by reference, and clearly demonstrate that the future of HSR is not as originally conceived and approved in the 2005 Program EIR/EIS, nor as described and anticipated in the 2012 Merced to Fresno Section DEIR/EIS. Consequently, the 2005 Program EIR/EIS must be updated with subsequent CEQA and supplemental NEPA analyses before analysis of any future segments. Thereafter, and for the reasons articulated herein, the DSEIR/EIS for the Merced to Fresno section, including the Central Valley Wye, must be the subject of subsequent CEQA and supplemental NEPA review and approval.

290-676 As discussed above, an essential component of a supplemental EIR/EIS is to provide updated evaluations in consideration of factors including changes in circumstances under which a project would be implemented. By not incorporating the information regarding the currently reasonably foreseeable future of HSR, the DSEIR/EIS fails to properly characterize and evaluate changed circumstances associated with ridership, construction phasing, construction timing, and the currently predicted factors of HSR development and operation. Without such an update, the DSEIR evaluation does not properly disclose the impacts of the modified project and relies on unrealistic and overly optimistic projections of future HSR benefits. Such benefits directly contribute to impact significance determinations in the DSEIR/EIS and those conclusions should, therefore, be updated.

290-677 **B. A Subsequent EIR/EIS Must Address The Merced To Fresno Section And Not Be Limited To The Central Valley Wye**

The DSEIR/EIS defines the "project" as the Central Valley Wye instead of describing and evaluating the Central Valley Wye as a change to the project evaluated in the 2012 Merced-Fresno EIR/EIS. While the DSEIR/EIS is described as a supplement to the 2012 Merced-Fresno EIR/EIS, the DSEIR/EIS treats the Central Valley Wye as a stand-alone "project" component of HSR, evaluating the impacts of the Central Valley Wye in isolation, in lieu of updating the analysis of the 2012 Merced-Fresno EIR/EIS. This approach does not provide a full and meaningful understanding of the impacts of the Merced-Fresno Section of HSR with incorporation of the proposed Central Valley Wye portion. Since the analysis is limited to the Central Valley Wye as a stand-alone project, the impact analysis and identification of mitigation is thus improperly limited.

290-678 **C. The DSEIR/EIS Must Disclose And Evaluate Impacts In Light Of Modified Project Objectives**

An objective in the 2012 Merced-Fresno EIR/EIS states, "Develop a practical and economically viable transportation system that can be implemented in phases by 2020 and generate revenues in excess of operations and maintenance (O&M) costs." (Emphasis added.)

Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

California High-Speed Rail Authority
 October 28, 2019
 Page 14 of 57

California High-Speed Rail Authority
 October 28, 2019
 Page 15 of 57

290-678

The 2019 DSEIR/EIS eliminates the 2020 implementation date from the project objectives²⁰ (DSEIR/EIS, pgs. S-8, 1-6) without an explanation of the effects of this change on the impact analyses and conclusions. The DSEIR/EIS must explain the reasons and/or purpose of this change and must describe the ramifications of this change on the entire Merced to Fresno Section, and the statewide HSR system. A change in the completion date will significantly affect the adverse impacts and benefits of the HSR system. These changes must be evaluated and disclosed for the reasons set forth herein.

D. The DSEIR/EIS Must Acknowledge That Construction Of The HSR Merced To Fresno Section Has Resulted In A Substantial Increase In The Severity Of Impacts.

290-679

Construction of HSR components in Madera County began in 2015. Since that time, Madera County residents, businesses, and local agencies have experienced and observed the direct negative effects and challenges of implementation of this substantial public infrastructure construction project.

The Task Force has identified issues of concern pertaining to the proposed project presented in the DSEIR/EIS. These relate to temporary effects during construction of HSR facilities and permanent effects resulting from the changes to its communities and public infrastructure resulting from the permanent presence and operation of HSR facilities in the County. New construction-related impacts could largely be addressed through more mitigation requiring clearly defined local agency involvement and approval processes, greater attention to impacts on existing transportation infrastructure, and improved construction planning and phasing. Nonetheless, the DSEIR/EIS fails to consider existing conditions in its environmental analysis. This clearly is new information relevant to environmental concerns and bearing on the impacts of the project that must be considered in a subsequent EIR/EIS.²¹

290-680

The current road closure situation at the Road 27 grade-separation project for HSR Construction Package 1 (CP-1) Extension north of Madera is illustrative of an increase in the severity of previously identified impacts that must be disclosed in a subsequent EIR/EIS for the Merced to Fresno Section. Road 27 is a north/south County road that serves as one of two primary access routes to the Madera Acres community, including Berenda Elementary School that serves approximately 850 students. Road 27 was permitted by the County to be closed for one year for HSR construction at the HSR crossing in September 2016 resulting in all traffic being detoured to the remaining primary access route (Road 26). The detour essentially doubled the traffic using Road 26 access to the area, which led to significant congestion at the single access point and doubled traffic loading on these roads, thereby accelerating the depletion of the service life of this transportation infrastructure. Furthermore, the extended route and duration of the detour is resulting in increased air pollutant and GHG emissions that have not been

²⁰ California High-Speed Rail Authority, Draft Supplemental Environmental Impact Report/Environmental Impact Statement, S-8, 1-6 (2018) (on file with California High-Speed Rail Authority).

²¹ 40 C.T.R. § 1.502.9(c)-(i) and (ii).

290-680

evaluated, disclosed, or properly mitigated. Additionally, a significant portion of the traffic that would otherwise take access from Road 27 was rerouted through local neighborhood streets to access Road 26. This has increased the volume of traffic in neighborhoods and has negatively impacted the safety of children and pedestrians in these neighborhoods. After three years, construction at this location has not been completed and Road 27 remains closed, and these negative impacts remain. Compounding this situation, Burlington Northern Santa Fe (BNSF) initiated work on its existing rail line south of the Road 27 location, resulting in a closure that forced even more traffic onto the already heavily impacted Road 26. This traffic would have been detoured onto Road 27 were it not for the ongoing closure due to HSR construction. These overlapping closures have resulted in extending the travel distance between Madera Acres and the City of Madera by an additional two to four miles for each trip. Such construction-related impacts were not anticipated in the 2012 EIR/EIS, yet they have occurred. A subsequent EIR/EIS must acknowledge the increase in the severity of impacts associated with construction-related air pollutant and GHG emissions (due to extended construction activities and extended distances and durations of local traffic detours), additional VMT and traffic delays, and community effects caused by extended construction periods that have required significantly longer periods of time to complete than anticipated in the 2012 EIR/EIS, and a subsequent EIR/EIS must be prepared that reflects new information and changed circumstances and incorporated information now known as a result of ongoing construction work.

290-681

E. A Subsequent EIR/EIS Is Required Because The Project Will Have One Or More Significant Effects Not Discussed In The Previous EIR/EIS.

As noted, the DSEIR/EIS defines the “project” as the Central Valley Wye instead of describing and evaluating the Central Valley Wye as a change to the project evaluated in the 2012 Merced-Fresno EIR/EIS. Because the DSEIR/EIS treats the Central Valley Wye as a stand-alone “project,” the DSEIR/EIS fails to evaluate the impacts of the Central Valley Wye as a component of updating the analysis of the 2012 Merced-Fresno EIR/EIS. This approach does not provide a full and meaningful understanding of the potential impacts of the Merced-Fresno Section of HSR with incorporation of the proposed Central Valley Wye portion of the Merced-Fresno Section. Instead, the analysis is limited to the Central Valley Wye and the impact analysis is therefore similarly deficient.

Significant effects that have not been sufficiently evaluated and disclosed in the DSEIR/EIS include, but are not limited to, the following issues:

- Disproportionate adverse effects on disadvantaged communities (analysis concludes disproportionate benefit).
- Increased demand for emergency services and potential need for new emergency services facilities.
- Local Land Use Plan inconsistencies and failure to address same.
- Potential effects on the beneficial use of surface and groundwater rights and supplies and potential changes in groundwater recharge.

Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

California High-Speed Rail Authority
 October 28, 2019
 Page 16 of 57

California High-Speed Rail Authority
 October 28, 2019
 Page 17 of 57

290-682

F. A Subsequent Program EIR/EIS For The Statewide California HSR System Must Be Prepared And Certified Prior To Further Preparation Of Section-Specific EIRs/EISs Given Changed Circumstances And Uncertainties Regarding Statewide HSR Development

The CHSRA and the FRA prepared the 2005 Final Program EIR/EIS for the Proposed California High-Speed Train System (2005 Statewide Program EIR/EIS) (CHSRA and FRA 2005), which provided a first-tier analysis of the general effects of implementing the HSR system across two-thirds of the state.

As stated in the 2005 Statewide Program EIR/EIS (Section S.3, page S-2),

The purpose of the proposed HSR system is to provide a reliable mode of travel, which links the major metropolitan areas of the state and delivers predictable and consistent travel times. Further objectives are to provide an interface with commercial airports, mass transit, and the highway network and to relieve capacity constraints of the existing transportation system as intercity travel demand in California increases, in a manner sensitive to and protective of California's unique natural resources. The system needs to be practicable and feasible as well as economically viable. The system should maximize the use of existing transportation corridors and rights-of-way, be implemented in phases, and be completed by 2020.²²

The 2019 Merced to Fresno DSEIR/EIS discusses several instances in which CHSRA asserts that adverse impacts of the Central Valley Wye would be avoided or mitigated as a result of the “benefits” of the statewide HSR system. For example, the 2019 DSEIR/EIS states,

The Central Valley Wye alternatives, as part of the HSR system, would decrease greenhouse gas (GHG) emissions, improve regional access, and result in a net savings in energy.²³

As discussed previously, in its 2019 Project Memo, which was published prior to circulation of the DSEIR/EIS, CHSRA acknowledges significant uncertainties regarding the implementation of HSR. The entire foundation of environmental review under both CEQA and NEPA is no longer a valid basis on which section-specific environmental documents can rely. There is clearly a need at this juncture for CHSRA to postpone decisions on individual HSR segments and re-evaluate the HSR statewide system, identify an updated and realistic statewide system based on current circumstances, and prepare and issue for public review a Subsequent

²² California High-Speed Rail Authority, Statewide Program Environmental Impact Report/Environmental Impact Statement, S.3, S-2 (2005) (on file with California High-Speed Rail Authority).

²³ California High-Speed Rail Authority, *supra* note 18, pp. S.8.1, S-19.

290-682

Program EIR/EIS for the statewide HSR system. Only with such a subsequent EIR/EIS for the entire system can CHSRA, responsible agency decision makers and the public have the information needed to truly consider the environmental effects and benefits of a reasonably foreseeable outcome of HSR development based on current circumstances which have changed substantially since the 2005 Program EIR/EIS was certified and which, according to the October 15 CHSRA staff report, is now to provide (“...high-speed rail investment in a regional context [and] provide improved regional operations.”)²⁴

290-683

Not only does the 2019 DSEIR/EIS rely on conclusions of an outdated, irrelevant 2005 base environmental document, but the 2019 DSEIR/EIS appears to intentionally omit information to avoid disclosing these facts to the public. The 2019 DSEIR/EIS purports to quote the 2005 Program EIR/EIS’s statement of objectives, and yet modifies the statement to eliminate reference to elements of the 2005 objectives. As presented in the 2019 DSEIR/EIS:

The purpose of the HSR system is stated as follows:

The purpose of the statewide HSR system is to provide a reliable high-speed electric-powered train system that links the major metropolitan areas of the state, and that delivers predictable and consistent travel times. A further objective is to provide an interface with commercial airports, mass transit, and the highway network and to relieve capacity constraints of the existing transportation system as intercity travel demand in California occur, in a manner sensitive to and protective of California's unique natural resources. (Authority and FRA 2005) (2019 DSEIR/EIS, pg. S-7)

Although cited as a direct quotation from the 2005 Program EIR/EIS, the quotation instead revises the actual 2005 statement, “Further objectives are” to instead state “A further objective is” and then omits the remainder of the actual 2005 Program EIR/EIS objective statement which in the 2005 Program EIR/EIS includes, “The system needs to be practicable and feasible as well as economically viable. The system should maximize the use of existing transportation corridors and rights-of-way, be implemented in phases, and be completed by 2020.”

This failure of the 2019 DSEIR/EIS to accurately represent the objectives of the statewide HSR system as evaluated in the 2005 Program EIR/EIS is not merely a simple omission of words. Completion of the statewide HSR system is essential to the statewide benefits on which the 2019 DSEIR/EIS analysis and conclusions rely. CHSRA must fully evaluate and disclose the environmental effects of not only the Central Valley Wye, but the statewide HSR system in its entirety before making any further decisions regarding implementation of additional HSR sections or components. As the objectives of the statewide

²⁴ Memo from Frank Vasca, *supra* note 6.

Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

California High-Speed Rail Authority
October 28, 2019
Page 18 of 57

California High-Speed Rail Authority
October 28, 2019
Page 19 of 57

290-683

system appear to have changed, the new objectives must be identified, and a project or statewide program must be proposed that achieves the objectives. An EIR/EIS evaluating a project or program that does not achieve the basic objectives of the project or program serves no purpose and is legally deficient. As one of the key objectives of the 2005 Program EIR/EIS was to complete the statewide system "by 2020," the objectives clearly cannot be met based on current circumstances and the objectives and/or the statewide program must be modified to correlate.

G. Assuming Arguendo That The DSEIR/EIS Was The Correct Environmental Document, The Document Still Fails To Comply With CEQA And NEPA.

290-684

Assuming, *arguendo*, that the DSEIR/EIS was the appropriate environmental document for the Central Valley Wye, the DSEIR/EIS remains legally deficient for reasons that include, but are not limited to the following:

(i) CEQA Guidelines, § 15163(e) provides: "When the agency decides whether to approve the project, the decision-making body shall consider the previous EIR as revised by the supplemental EIR. A finding under Section 15091 shall be made for each significant effect shown in the previous EIR as revised." Because the DSEIR/EIS does not identify the changes to impacts identified in the Merced-Fresno EIR/EIS that would result from the proposed Central Valley Wye component, the DSEIR/EIS does not provide the evidence that will be necessary for a finding "for each significant effect...as revised," as required by CEQA and does not provide an opportunity for agencies and other stakeholders or the public to comment on such analysis.

290-685

(ii) NEPA's CEQ regulations require that supplements to the EISs shall be prepared when there are "significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts."²⁵ Thus to meet NEPA's obligations, an agency generally cannot rely on an outdated analysis to support its actions.²⁶

290-686

(iii) As this letter explains in depth, the conditions upon which the agency evaluated impacts for the Central Valley Wye and HSR have changed significantly warranting further review for both the HSR system and the 2012 Merced to Fresno Section in order to have legally defensible documents under both CEQA and NEPA.

290-687

H. CHSRA Failed To Issue A Notice Of Preparation For The "Proposed Project," Thereby Denying Local Agencies And Other Stakeholders The Ability To Provide Input On The Scope Of Issues To Be Considered In The Additional Environmental Documentation.

CEQA requires that either a subsequent EIR or a supplemental EIR shall be given the same notice and public review as required for an EIR under CEQA Guidelines Section 15087 or

290-687

Section 15072.²⁷ A subsequent EIR shall also state where the previous document is available and can be reviewed.

In tandem with CEQA requirements and as noted above, NEPA mandates that a supplemental EIS should have been prepared. The supplemental EIS process should have commenced with publication of a notice of intent stating the agency's intent to prepare a supplemental EIS and then publishing the notice of intent in the Federal Register. The notice of intent would provide a brief description of the proposed action and possible alternatives. It would also describe the proposed scoping process, including any meetings and how the public could become involved. The Task Force understands that the CEQ NEPA Guidelines excludes the scoping process for a supplemental impact statement.²⁸ Nonetheless, the CEQ NEPA Regulations also recognize that an agency may prepare EIS supplements when the agency determines that the purposes of NEPA will be furthered by doing so even if for no other reason.²⁹ In light of the statewide and regional import of HSR, adherence to a scoping process for a supplemental EIS would be appropriate and consistent with NEPA's goals for public notice.

Therefore, CHSRA must under CEQA, and should under NEPA have issued a Notice of Preparation on the DSEIR/EIS and any subsequent EIR/EIS that should be prepared. Both CEQA and NEPA require citizen involvement as key to implementing the policies and mandates of each statute. When faced with a statewide transportation project of this magnitude in geographic, technical, social and economic import, NEPA would dictate as does CEQA, that the public, responsible agencies, and trustee agencies should have received a notice of preparation of this subsequent environmental review. In fact, had proper noticing of the intent to prepare an environmental document for the Central Valley Wye been provided, we are confident that many of the Task Force concerns expressed in this letter would have been identified at that time and more readily addressed by CHSRA in the environmental document. For a defensible CEQA/NEPA process, CHSRA must step back and issue a notice of preparation then proceed with preparing a subsequent Programmatic EIR/EIS for the HSR project, and subsequent EIR/EIS on the 2012 Merced to Fresno section for the Central Valley Wye.

Because the DSEIR/EIS evaluates the Central Valley Wye Alternatives, as a stand-alone "proposed project" and "preferred alternative" and not as a modification to the Merced-Fresno Section "project" evaluated in the 2012 EIR/EIS, a NOP should have been prepared for a subsequent EIR/EIS.

290-688

Although the document is described as a supplement to the 2012 EIR/EIS, the DSEIR/EIS as written does not supplement the 2012 EIR in conformance with NEPA regulations and, instead, evaluates the Central Valley Wye as a stand-alone project component of the HSR. To evaluate the Central Valley Wye as a stand-alone project component of the HSR consistent with CHSRA's approach to other HSR components, the HSR Central Valley Wye EIR/EIS

²⁵ 40 C.F.R. §1502.9(c)(1)(ii).

²⁶ *Id.*

²⁷ See CAL. CODE REGS. tit. 14, § 15162, 15163.

²⁸ 40 C.F.R. § 1502.9(c)(4)

²⁹ 40 C.F.R. § 1502.9(c)(2)

Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

California High-Speed Rail Authority
 October 28, 2019
 Page 20 of 57

California High-Speed Rail Authority
 October 28, 2019
 Page 21 of 57

290-688

would need to be treated as a second tier EIR/EIS. As a second tier EIR/EIS, the CEQA and NEPA-required public noticing and an opportunity for input on the scope of issues to address in the environmental analysis scoping process would have been provided. CHSRA's decision to not issue a NOP and to not conduct EIR scoping for the Central Valley Wye denied local agencies, other stakeholders, and the public the ability to consider the proposed project and provide comments on the scope of issues to address in the EIR/EIS.

As a result, the DSEIR/EIS is legally deficient and does not fully consider environmental and other issues important to the Task Force and relevant for consideration in preparing the draft environmental document. Both subsequent EIR/EISs and supplements to EIR/EISs must receive the same kind of circulation for public review required for other kinds of draft EIRs/EISs.³¹

I. The September 2019 DSEIR/EIS Fails To Comply With Procedural Requirements Of The July 2019 NEPA Assignment MOU

290-689

The July 2019 NEPA assignment MOU requires the State to comply with certain provisions. Among these include providing disclosure statements on the cover of documents circulated for public review. Section 3.1.2 of the MOU requires that "[o]n the cover page of each ... environmental impact statement (EIS)... prepared for a railroad project assigned under this MOU, the State will insert the following language:"

The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being or have been carried out by the State of California pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated July 31, 2019, and executed by the Federal Railroad Administration and the State of California.

Section 3.1.2 of the MOU also states that the "[t]he State will provide the same or substantially similar disclosure to the public and agencies as part of initial agency outreach and public involvement, including in any notice of intent or scoping meeting notice and as otherwise appropriate."

Further, Section 3.2.6 of the MOU requires that, "[o]n the cover page of each biological evaluation or assessment, historic properties or cultural resources report, Section 4(f) evaluation, or other such reports prepared under the authority granted by this MOU and distributed to other agencies or the public, the State will insert the following language:"

The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by the State of California

³¹ CAL. CODE REGS tit. 14, § 15162(d), 15163(e).
³² 40 C.F.R. §§ 1502.9(c)(2), 1502.9(c)(4).

290-689

pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated July 31, 2019, and executed by the Federal Railroad Administration and the State of California.

Section 3.2.6 also states that "[t]he State will provide the same or substantially similar disclosure to the public and agencies as part of agency outreach and public involvement procedures."

The DSEIR/EIS circulated on September 13, 2019, fails to provide the required language on the cover page of the DSEIR/EIS, and fails to provide the required language on any of the biological evaluations, historic properties and cultural resources reports, Section 4(f) evaluations, or any other documents. Furthermore, the required language was not provided in any of the public notice materials, including the September 13, 2019 NOA. CHSRA's failure to provide the legally required notification to the public and reviewing agencies in violation of the terms of the MOU could undermine the State's authority to serve as the NEPA lead agency. Given the tenuous relationship between the State and the federal government with regard to California High-Speed Rail, CHSRA should anticipate that any failure to comply with the MOU could result in FRA's retraction of the NEPA assignment. Related, throughout the DSEIR/EIS and supporting technical studies are statements that discuss the FRA's responsibilities associated with environmental review, approvals, and mitigation. While the Task Force does not disagree with the assignment of NEPA authority to the State, it is imperative that the NEPA document accurately reflect the roles and responsibilities of various State and federal agencies. As presented in the DSEIR/EIS circulated on September 13, 2019, after execution of the MOU and after the State's acceptance of NEPA assignment, the DSEIR/EIS fails to accurately describe agency roles, thereby rendering the document legally deficient.

290-691

J. The DSEIR/EIS Fails To Meet CEQA And NEPA Requirements For Document Readability

Both CEQA and NEPA require that environmental documents be understandable and readable "so that decision-makers and the public can rapidly understand the documents."³² NEPA regulations require that "environmental impact statements shall be written in plain language and may use appropriate graphics so that decision-makers and the public can readily understand them. Agencies should employ writers of clear prose or editors to write, review, or edit statements, which will be based upon the analysis and supporting data from the natural and social sciences and the environmental design arts."³³

Moreover, an EIS is required to be in a clear format, a clear presentation and written "in clear concise, easily readable form so as to provide a reasonably intelligent nonprofessional an understanding of the environmental impact."³⁴

³² CAL. CODE REGS tit. 14, § 15140.

³³ 40 C.F.R. § 1502.8.

³⁴ Oregon Environmental Council v. Knutson, 817 F.2d 484 (9th Cir. 1987), quoting Warm Springs Dam Task

Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

California High-Speed Rail Authority
October 28, 2019
Page 22 of 57

California High-Speed Rail Authority
October 28, 2019
Page 23 of 57

290-691

Under both CEQA and NEPA, the agency has a duty to provide the public with comprehensive information regarding environmental consequences of the proposed action and to do so in a readily understandable manner.

The DSEIR/EIS is legally deficient in its readability. The DSEIR/EIS does not provide a comprehensive summary of analysis methods and conclusions and does not provide a listing of specific mitigation requirements. The 2019 DSEIR/EIS is composed of a myriad of nearly 150 separate sections/documents to the 2012 Merced to Fresno EIS/EIR which also must be simultaneously consulted since the 2019 DSEIR/EIS is not a subsequent document and therefore does not fully update the 2012 EIR/EIS.

290-692

III. THE DSEIR/EIS DOES NOT PROPERLY TIER OFF OF OR INCORPORATE BY REFERENCE THE PRIOR ENVIRONMENTAL DOCUMENTS

The DSEIR/EIS references previous documents from which it is intended to “tier,” but fails to provide the CEQA and NEPA required roadmap for how the evaluation of the currently proposed project tiers from and relates to analyses conducted and presented in the documents from which it is tiered.

The analytical process known as “tiering” under CEQA allows a lead agency to prepare a series of EIRs, moving from general, regional concerns to more site-specific considerations with the preparation of each new document.³⁵ “Tiering” refers to “the coverage of general matters in broader EIRs (such as on general plans or policy statements) with subsequent narrower EIRs or ultimately site-specific EIRs incorporating by reference the general discussions and concentrated solely on the issues specific to the EIR subsequently prepared.”³⁶ “When an EIR incorporates an earlier environmental document by reference, ‘the incorporated part of the referenced document shall be briefly summarized where possible’ and ‘[t]he relationship between the incorporated part of the reference document and the EIR shall be described.’”³⁷

NEPA similarly allows tiering of environmental impact statements and notes that wherever a broad environmental impact statement has been prepared such as a program or policy statement and a subsequent statement or environmental assessment is then prepared for site-specific action, the subsequent statement or environmental assessment should summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference.³⁸

³⁵ *Force v. Gribble*, 373 F.Supp. 240, 252 (N.D. Cal. 1974).

³⁶ CAL. PUB. RES. CODE §§ 21068.5, 21093, 21094; CAL. CODE REGS. tit. 14, §§ 15152, 15385.

³⁷ *Endangered Habitats League, Inc. v. State Water Resources Control Board*, 63 Cal.App.4th 227, 236 (1997).

³⁸ *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, 40 Cal.4th 412, 443 (2007), quoting CAL. CODE REGS. tit. 14, § 15150(c).

³⁹ 49 C.F.R. §§ 1502.20, 1502.21.

290-692

The DSEIR/EIS supposedly relies on the analysis of prior first tier program documents including the Merced to Fresno Section Final EIR/EIS (2012) second-tier project document.³⁹

The DSEIR/EIS however, does not clearly explain how the sequence of environmental documents certified after the 2005 programmatic EIR/EIS for the entire HSR system has updated and refined the 2005 programmatic EIR/EIS, nor how they are all linked. As noted herein, the DSEIR/EIS itself treats the Central Valley Wye as a stand-alone project and not as a “supplement” to the Merced to Fresno Section Final EIR/EIS (2012). Moreover, the DSEIR/EIS fails to clearly explain how its analysis relies upon any of the previously prepared and certified documents.

CEQA statutory and case law are clear that when an EIR uses tiering or incorporation by reference “it must give the reader a better road map to the information it intends to convey.”⁴⁰

The data in an EIR must not only be sufficient in quantity, it must be presented in a manner calculated to adequately inform the public and decision-makers, who may not be previously familiar with the details of the project. “[I]nformation ‘scattered here and there in EIR appendices’ or a report ‘buried in an appendix’ is not a substitute for a good-faith reasoned analysis.”⁴¹

Since 2005, thousands of pages of CEQA analyses, and technical reports have been compiled on HSR and its segments. Now, 14 years later, the DSEIR/EIS considering the Central Valley Wye, the only axis for the entire HSR system intended to connect east/west segments with north/south segments of the system, fails to provide the general public with a better road map to the information it intends to convey. The DSEIR/EIS fails to cohesively walk the general public through the history of the project, the relationship between each CEQA/NEPA document, and how each document reflects HSR’s evolution. Also missing, is a required summary of issues discussed in the prior first tier and second-tier EIR/EISs and the DSEIR/EIS does not adequately incorporate by reference discussions from these prior environmental documents.

Therefore, the DSEIR/EIS does not adhere to tiering obligations under CEQA and NEPA.

290-693

IV. THE DSEIR/EIS CONTAINS A LEGALLY INADEQUATE PROJECT PURPOSE, NEED, AND DESCRIPTION

CEQA requires an EIR to have an accurate, stable, project description.⁴² [“An accurate,

³⁵ See, California High-Speed Rail Authority, *supra* note 18, pp. S-4, S-5.

³⁶ *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, 40 Cal.4th 412, 443 (2007) citing CAL. CODE REGS. tit. 14, §§ 15150, 15153.

⁴¹ *Vineyard Area Citizens, supra*, 40 Cal.4th, at p. 442, quoting *California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1239.

⁴² *County of Inyo v. City of Los Angeles*, 71 Cal.App.3d 185, 189 (1977).

Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

California High-Speed Rail Authority
 October 28, 2019
 Page 24 of 57

California High-Speed Rail Authority
 October 28, 2019
 Page 25 of 57

290-693

stable and finite project description is the sine qua non of an informative and legally sufficient EIR.”⁴³ Among other things, a project description must include a clear statement of the objectives sought by the proposed project, which will help the lead agency “develop a reasonable range of alternatives to evaluate in the EIR and will aid the decision-makers in preparing findings or a statement of overriding considerations, if necessary.”⁴³ The description must also include “[a] general description of the project’s technical, economic and environmental characteristics, considering the principal engineering proposals if any and supporting public service facilities.”⁴⁴ As part of the project description, an EIR also must contain:

A statement of objectives sought by the proposed project. A clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the decision-makers in preparing findings or a statement of overriding considerations if necessary. The statement of objectives should include the underlying purpose of the project.⁴⁵

The identification of the proposed objectives is crucial to the proper consideration and analysis of the project, especially development of a reasonable range of alternatives to be evaluated in the EIR. As stated in the seminal “project description” interpretation of *County of Inyo v. City of Los Angeles*, supra, 71 Cal. App. Third at PP. 192 – 193:

A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal’s benefit against its environmental cost, consider mitigation measures, assess the advantages of terminating the proposal (i.e. The “no project” alternative) and weigh other alternatives in the balance.

The adequacy of an EIR’s project description is closely linked to the adequacy of the impact analyses.⁴⁶ More specifically, the project description provides the analytical foundation for the entire EIR. It is therefore essential that the EIR has an accurate, well-conceived, stable, and finite project description. Thus, if the description is inadequate because it fails to discuss an aspect of the project, the environmental analysis will most likely reflect the same mistake.⁴⁷ As demonstrated below, a distorted project description truncates both the assessment of impacts and consideration of meaningful alternatives.

⁴³ San Joaquin Raptor Rescue Center v. County of Merced, 149 Cal.App.4th 645, 654-665 (2007), quoting CAL. CODE REGS. tit. 14, § 15124(b).

⁴⁴ CAL. CODE REGS. tit. 14, § 15124(c).

⁴⁵ CAL. CODE REGS. tit. 14, § 15124(b); In Re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings, 843 Cal.4th 1143, 1163 (2000), overruled on other grounds.

⁴⁶ San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus, 27 Cal.App.3d 713, 723-723 (1994).

⁴⁷ *Id.*

290-693

Under NEPA, similar to CEQA requirements, the EIS must include a discussion specifying the underlying purpose and need of the project.⁴⁸ The purpose and need delineate the range of alternatives to be discussed and evaluated in order to allow for the proper review of an appropriate range of alternatives.⁴⁹ The purpose and need must be properly defined; “if the agency constrains the definition of the project’s purpose and thereby excludes what truly are reasonable alternatives, the EIS cannot fulfill its role. Nor can the agency satisfy the Act.”⁵⁰

Finally, every EIR/EIS must contain a project description of a “project’s technical, economic, and environmental characteristics.”⁵¹ An EIR “is an informational document” that must be “prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences.”⁵² CEQA requires the analysis of potential impacts to be “reasonably thorough” and specific at the project level. CEQA Guidelines, section 15146 states “[t]he degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in an EIR.” Like CEQA, under NEPA, the information must be of high quality. Accurate scientific analysis, expert agency comments and public scrutiny are essential to implementing NEPA. The EIS must concentrate on the issues that are truly significant to the action in question.⁵³

Finally, the EIR/EIS project description must also be stable and finite.

As evidenced in both CEQA and NEPA, the foundation of the proper EIR/EIS rests in the definition of the project’s purpose, need and objectives. As explained herein, the Central Valley Wye and its DSEIR/EIS, CHSRA has failed to satisfy these basic tenets by failing to clearly identify its purpose and need as described herein.

As noted, the Central Valley Wye has been improperly characterized and described as “the project” in the DSEIR/EIS. Instead, it should have been characterized and evaluated as a change to a component of the Merced-Fresno project. Alternatively, the Central Valley Wye could have been treated as a second tier EIR/EIS, evaluating the Central Valley Wye as a component of the overall HSR.

The DSEIR/EIS does not address “changed circumstances” as required by CEQA and is speculative with regard to implementation of other components of the HSR and completion of

290-694

⁴⁸ 40 C.F.R. § 1502.13.

⁴⁹ 42 U.S.C. § 4321 et seq.; 40 C.F.R. § 1502.13; *Stop The Pipeline v. White*, F.Supp2d 957, 970-71 (2002); *Simmons v. U. S. Army Corp of Engineers*, 126 F.3d 664, 666 (7th Cir. 1997) (“in preparing an environmental impact statement under NEPA, a federal agency must first define the project’s purpose before it can delimit what “reasonable alternatives” are.”)

⁵⁰ *Simmons*, supra, 126 F.3d at p. 666.

⁵¹ CAL. CODE REGS. tit. 14, § 15124(c).

⁵² CAL. CODE REGS. tit. 14, § 15151.

⁵³ 40 C.F.R. § 1500.1(b).

Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

California High-Speed Rail Authority
October 28, 2019
Page 26 of 57

California High-Speed Rail Authority
October 28, 2019
Page 27 of 57

290-694 the IHSR system. Many of the conclusions in the DSEIR/EIS assume that the IHSR system will be fully developed, which may no longer be accurate.

The 2019 Project Update Report discusses feasibility analyses conducted by the Early Train Operator (“ETO”) assessing “the feasibility of two separate high-speed rail lines – one in the Central Valley and another from San Francisco to Gilroy – as candidates for early, interim service.” Studies by the ETO are ongoing and, as recently as an update presentation to the CHSRA Board on October 16, 2019, it is clear that substantial delays to completion of the state-side HSR system are occurring and there is, in fact, significant uncertainty with regard to whether the system will ever be completed. In consideration of these factors, the ETO and CHSRA have recently discussed that the Central Valley Wye may initially be developed only in part – north-south connections for the Merced to Fresno section, but without the currently proposed western segment for connection to the Bay Area. Such a change would substantially change the analysis and conclusions of any environmental review in terms of the overall environmental effects and the environmental and other benefits of the IHSR system. By not updating the Merced to Fresno Section EIR/EIS to account for current circumstances, CHSRA is not adequately disclosing the environmental consequences of its actions. It may, in fact, be necessary for CHSRA to prepare a subsequent Program EIR/EIS for the entire IHSR system in order to adequately evaluate and disclose environmental effects.

290-695 Given uncertainties with regard to funding, final design, phasing, timing, and other factors, the DSEIR/EIS does not sufficiently disclose impacts of the Central Valley Wye, or the full Merced-Fresno Section in consideration of these uncertainties. The DSEIR/EIS should have provided updated information regarding assumptions pertaining to HSR system and should evaluate and disclose impacts based on reasonably foreseeable outcomes for HSR. Impact analyses and conclusions in the DSEIR/EIS that presuppose development of subsequent phases of HSR and future benefits (e.g., improved statewide mobility, reduced vehicle miles traveled [VMT], reduced traffic, reduced air pollutant and greenhouse gas [GHG] emissions) are speculative, overly optimistic, or worse yet, completely contradictory to conclusions in the 2019 Project Update Report and the 2019 Project Memo,⁵⁴ based on current circumstances and available information. Therefore, without a sufficient project description, the DSEIR/EIS cannot provide impact evaluations and conclusions that reflect only those components of HSR that are reasonably foreseeable given the current status of federal participation, funding, and other circumstances.

290-696 The Central Valley Wye should not be characterized as “the project” in the DSEIR/EIS and instead should be characterized and evaluated as a change to a component of the Merced-Fresno project or a second tier EIR should be prepared evaluating the Central Valley Wye as a component of the overall HSR. Consequently, the DSEIR/EIS contains a legally deficient project description under both CEQA and NEPA.

⁵⁴ Memo from Frank Vacca, *supra* note 6.

290-697

V. THE FOCUS OF THE DSEIR/EIS ON THE CENTRAL VALLEY WYE RESULTS IN IMPROPER PIECEMEALING OF ENVIRONMENTAL ANALYSES

CEQA requires that environmental review documents analyze “the whole of an action.”⁵⁵ California courts have strictly enforced CEQA’s prohibition on “piecemealing,” to ensure that an EIR passes muster as a document that provides “adequacy, completeness, and a good faith effort at full disclosure.”⁵⁶ Courts have mandated such an approach to ensure that environmental considerations not become submerged by chopping a large project into many little ones, each with a potential impact on the environment, which cumulatively may have disastrous consequences.

The Authority prejudicially abused its discretion, in violation of CEQA, by failing to consider and link impacts associated with the Central Valley Wye to either the rest of the Merced to Fresno Section and the HSR system as a whole. By analyzing the impacts limited to the Central Valley Wye portion of the Merced to Fresno Section in isolation from the contributing impacts of the entire Merced-to-Fresno Section, CHSRA denied the public and decisionmakers the information concerning the impacts of the Merced to Fresno Section when disclosure of such effects should, in fact, be the primary focus of the DSEIR/EIS.

VI. THE DSEIR/EIS FAILS TO ADEQUATELY DISCLOSE, ANALYZE AND MITIGATE IMPACTS

An EIR must provide adequate, complete, and full disclosure of the environmental impacts of a proposed project.⁵⁷

Similarly, NEPA requires agencies to prepare an EIS for any agency action that significantly affects the quality of the human environment. This includes providing a detailed statement on the environmental impact of the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, alternatives to the proposed action, among other obligations.⁵⁸ An EIS complies with NEPA if it shows that the agency took a “hard look” at the environmental consequences of its proposed action.⁵⁹

An agency fails to meet its “hard look” obligation when it relies on incorrect assumptions or data in drafting an EIS or presents information that is incomplete or misleading such that the decision-maker and the public cannot make an informed comparison of alternatives.⁶⁰

⁵⁵ CAL. CODE REGS. tit. 14, § 15378.

⁵⁶ CAL. CODE REGS. tit. 14, §§ 15378, 15151.

⁵⁷ CAL. CODE REGS. tit. 14, § 15151.

⁵⁸ 42 U.S.C. § 4332(c).

⁵⁹ *Klanarath Siskiyou Wildlands Center v. Bureau of Land Management*, 387 F.3d 989, 993 (9th Cir. 2004).

⁶⁰ *Native Ecosystems Council v. Mactar*, 883 F.3d 783, 795 (2018).

Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

California High-Speed Rail Authority
 October 28, 2019
 Page 28 of 57

California High-Speed Rail Authority
 October 28, 2019
 Page 29 of 57

290-698

A. Impact Avoidance And Minimization Features Are Improperly Assumed In The Analysis

The DSEIR/EIS describes Impact Avoidance and Minimization Features (IAMFs) that have been incorporated into the HSR project to avoid and minimize impacts as well as to mitigate expected impacts. Courts have concluded that an EIR can violate CEQA when it incorporates proposed mitigation measures, such as the IAMFs, into the description of the project, and then bases its conclusion of less-than-significant impacts in part on those mitigation measures. The court found that this improperly compresses the analysis of impacts and mitigation measures into a single issue.⁶¹

Although the distinction between elements of a project and measures designed to mitigate impacts of a project may not always be clear, nonetheless, CEQA requires the proper identification of significant impacts and separately, the related mitigation measures. An EIR must include, among other things, a detailed statement setting forth “[a]ll significant effects on the environment of the proposed project” and “[m]itigation measures proposed to minimize significant effects on the environment.”⁶² “Significant Environmental Effects of the Proposed Project” and “The Mitigation Measures Proposed to Minimize the Significant Effects” shall be discussed “preferably in separate sections or paragraphs of the EIR.” “For each significant effect, the EIR must identify specific mitigation measures; where several potential mitigation measures are available, each should be discussed separately, and the reasons for choosing one over the others should be stated.”⁶³ If the EIR identifies significant environmental effects, the public agency may approve the project only if it makes one or more of the following findings: “[*] (1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment; ... [¶] (3) Specific economic, legal, social, technological or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.”⁶⁴ These findings must be made for each identified significant effect: “accompanied by a brief explanation of the rationale for each finding.”⁶⁵

The importance of these procedural steps and findings can be explained as follows: “[t]he purposes of section 21081 are that there be some evidence that the alternatives or mitigation measures in the EIR actually were considered by the decision making agency and, as the Supreme Court stated in a similar situation, that there be a disclosure of ‘the analytic route the agency traveled from evidence to action.’ Thus, when a project is approved that will significantly affect the environment, CEQA places the burden on the approving agency to affirmatively show that it has considered the identified means of lessening or avoiding the

⁶¹ *Trisha Lee Louis et al., Plaintiffs and Appellants, v. Department of Transportation et al.*, 223 Cal. App. 4th 614 (2014).
⁶² CAL. PUB. RES. CODE, § 21100, subd. (b); see CAL. CODE REGS. tit. 14, § 15126.
⁶³ *Sacramento Old City Assn. v. City Council*, 229 Cal.App.3d 1011, 1027 (1991).
⁶⁴ CAL. PUB. RES. CODE, § 21081; *Sacramento Old City Assn. v. City Council*, *supra*, 229 Cal.App.3d at p. 1034.
⁶⁵ CAL. CODE REGS. tit. 14, § 15091.

290-698

project’s significant effects and to explain its decision allowing those adverse changes to occur.”⁶⁶

The DSEIR/EIS fails to separately identify and analyze the significance of impacts before proposing mitigation measures. In this instance, what the DSEIR/EIS does in assuming implementation and efficacy of IAMFs as part of the project is not merely a harmless procedural failing. This short-cutting of CEQA requirements subverts the purposes of CEQA by omitting information necessary for informed decision-making and informed public participation. It precludes both identification of potential environmental consequences arising from the project and also precludes thoughtful analysis of the sufficiency of measures to mitigate those consequences. The DSEIR/EIS is deficient for assuming implementation and efficacy of IAMFs as components of the project without first evaluating impacts that would occur in the absence of these IAMFs, and this deficiency cannot be considered harmless.⁶⁷ As a result, the DSEIR/EIS fails to fully evaluate and disclose impacts associated with those resource subjects for which IAMFs are identified, including aesthetics and visual quality, agriculture and farmland, air quality, biological resources, cultural resources, electromagnetic fields and electromagnetic interference, geologic resources, hazardous materials and waste, hydrology and water resources, land use and development, noise and vibration, parks and open space, public utilities and energy, safety and security, and transportation in compliance with CEQA and must be revised to fully evaluate and disclose impacts that would occur prior to implementation of mitigation measures, including IAMFs. Consequently, the DSEIR/EIS is legally deficient for failing to separately identify and analyze the significance of impacts before proposing mitigation measures.

290-699

Additionally, **Attachment A** of this comment letter provides specific revisions requested by the Task Force (in underline/strike-through text) to certain IAMFs pertaining to Aesthetics, Agriculture, and Transportation that must be incorporated to ensure the IAMFs sufficiently define implementation responsibilities, provide opportunities for local agency input and approval, and establish clear requirements and performance standards. Without such additional specificity, the efficacy of the IAMFs assumed in the DSEIR/EIS analysis is insufficient and must be revised to provide analysis of impacts without the unreasonable assumption that the IAMFs would serve as effective mitigation. Although our specific suggestions in **Attachment A** are limited to IAMFs associated with Aesthetics, Agricultural and Farmland, and Transportation, similar detail is necessary for all IAMFs in order for the IAMFs to actually reduce impacts as intended and assumed in the DSEIR/EIS.

290-700

B. The DSEIR/EIS Fails To Provide Legally Adequate Mitigation Measures

Concrete, enforceable mitigation measures must be “required in, or incorporated into” a project.⁶⁸ An EIR must evaluate the efficacy of mitigation measures in order to properly disclose

⁶⁶ *Village Laguna of Laguna Beach, Inc. v. Board of Supervisors*, 134 Cal.App.3d 1022 (1982).
⁶⁷ CAL. PUB. RES. CODE, § 21168.9.
⁶⁸ CAL. PUB. RES. CODE, § 21081(a)(1).

Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

California High-Speed Rail Authority
 October 28, 2019
 Page 30 of 57

California High-Speed Rail Authority
 October 28, 2019
 Page 31 of 57

290-700

a project's environmental costs to decisionmakers and the public. For this reason, the adoption of deferred, vague, or inadequate mitigation measures violates CEQA. Deferral of the analysis of the feasibility and adoption of mitigation measures also violates CEQA.

Mitigation Measures in the DSEIR/EIS do not provide sufficient detail regarding implementation requirements or performance standards. Furthermore, the DSEIR/EIS is unclear with regard to how the mitigation measures adopted for the 2012 Merced-Fresno Section relate to the mitigation measures identified in the Central Valley Wye DSEIR/EIS. Mitigation measures must: 1) be specific to the proposed project; 2) clearly state the performance standards they will achieve; 3) identify the party(ies) responsible for their implementation and funding; 4) identify the timing of implementation; and 5) commit CHSRA to oversight and verification that measures are fully implemented. In the absence of specific commitments and performance standards, the conclusions in the DSEIR/EIS regarding the efficacy of mitigation measures at avoiding or reducing impacts are unsupported.

The DSEIR/EIS includes numerous impact areas in which the necessary impact disclosure was omitted and the adoption of concrete, enforceable mitigation measures was improperly deferred in violation of CEQA, including, but not limited to, those discussed in the subsections below.

Mitigation is an important NEPA mechanism that federal agencies can use to minimize potential adverse impacts associated with their actions. Agencies can use mitigation to reduce environmental impacts in several ways. These include: avoiding an impact by not taking a certain action or parts of an action; minimizing the impact by limiting the degree or magnitude of the action and its implementation; rectifying an impact by repairing, rehabilitating or restoring the affected environment; reducing or eliminating an impact over time through preservation and maintenance operations during the life of an action; and compensating for an impact.⁶⁹

290-701

C. The DSEIR/EIS Fails To Properly Analyze And Mitigate Traffic And Circulation Impacts

The DSEIR/EIS fails to update and disclose impacts associated with other portions of the Merced to Fresno section based on changed circumstances and new information which is required of a subsequent/supplemental EIR/EIS. The current road closure situation at the Road 27 grade-separation project for HSR Construction Package 1 (CP-1) Extension north of Madera is illustrative of this deficiency. Road 27 is a north/south County road that serves as one of two primary access routes to the Madera Acres community, including Berenda Elementary School that serves approximately 850 students. Road 27 was permitted by the County to be closed for one year for HSR construction at the HSR crossing in September 2016 resulting in all traffic being detoured to the remaining primary access route (Road 26). The detour essentially doubled the traffic using Road 26 access to the area, which led to significant congestion at the

⁶⁹ 40 C.F.R. § 15.08.20.

290-701

single access point and doubled traffic loading on these roads, thereby accelerating the depletion of the service life of this roadway and caused increased air quality and greenhouse gas emissions impacts. Additionally, a significant portion of the traffic that would otherwise take access from Road 27 was rerouted through local neighborhood streets to access Road 26. This has increased the volume of traffic in neighborhoods and the concern for the safety of children and pedestrians in these neighborhoods. After three years, construction at this location has not been completed and Road 27 remains closed. Compounding this situation, Burlington Northern Santa Fe ("BNSF") initiated work on its existing rail line south of the Road 27 location, resulting in a closure that forced even more traffic onto the already heavily impacted Road 26. This traffic would have been detoured onto Road 27 were it not for the ongoing closure due to HSR construction. These overlapping closures have resulted in extending the travel distance between Madera Acres and the City of Madera by an additional two to four miles for each trip.

Such construction-related impacts were not anticipated in the 2012 EIR/EIS, yet they have occurred. The DSEIR/EIS must reflect new information and changed circumstances and incorporate information now known as a result of ongoing construction work as part of CHSRA's obligation to identify, analyze, and mitigate impacts.

290-702

The DSEIR/EIS identifies IAMFs intended to avoid or reduce project impacts on traffic and circulation; however, the IAMFs as presented in the DSEIR/EIS fail to fully define the requirements, timing, and performance standards that must be achieved in order to reduce impacts as assumed in the analysis, including those associated with construction effects on traffic and circulation, including those associated with construction effects on traffic and circulation. Attachment A of this letter provides specific suggested revisions to IAMFs that are needed to ensure their efficacy in addressing impacts on traffic and circulation.

290-703

Furthermore, the DSEIR/EIS does not fully evaluate the temporary and permanent effects of the Central Valley Wye on transportation and circulation. The DSEIR/EIS identifies that the proposed project would result in 57 road crossings and 33 permanent public road closures. Additional temporary road closures will be necessary during construction. The DSEIR/EIS does not provide the level of detailed evaluation on traffic operations and vehicle miles traveled (VMT) associated with the road closures to enable DSEIR/EIS reviewers or decision makers to fully understand the impacts on traffic operations levels of service or VMT that will occur as a result of the proposed Central Valley Wye. Furthermore, the DSEIR/EIS does not adequately consider CEQA alternatives that would avoid or lessen the significant environmental effects (see Section VIII of this letter), and in this case, transportation impacts, of the proposed project. Without detailed analyses of specific locations, the DSEIR/EIS does not properly evaluate and disclose the potential need for additional design measures, mitigation, and/or investigation of alternatives to reduce significant transportation impacts. It can be reasonably anticipated that the substantial number of road/crossings closures and detour routes could result in significant traffic operations impacts and increased VMT on a local level. Additional analysis of traffic impacts associated with the temporary and permanent road closures must be conducted by CHSRA.

Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

California High-Speed Rail Authority
 October 28, 2019
 Page 32 of 57

California High-Speed Rail Authority
 October 28, 2019
 Page 33 of 57

- 290-704 The substantial amount of permanent road closures (over 50 percent of the roads crossed by the Central Valley Wye) will result in significant modifications to the existing and planned future road network in Madera County, and will create the need for local land use planning agencies and the Madera County Transportation Commission to update their transportation plans to account for these significant changes in future road volumes and travel patterns. Thus, the Task Force is requesting that CHSRA provide funding to support the updates required due to HSR.
- 290-705 To address these inadequacies in the traffic and transportation analyses, the DSEIR/EIS must:
1. Clearly define, through project impact avoidance and minimization features ("IAMPs") or mitigation measures, a mechanism for HSR construction practices that will minimize construction-related traffic effects (e.g., detours, closures, increased VMT with specific requirements for construction scheduling and phasing, and include defined processes for review and approval of construction traffic management plans by affected local agencies in Madera County;
 2. Provide a mechanism to establish specific mitigation for impacts to local transportation infrastructure due to construction activities (i.e. detour and haul routes);
 3. Provide a mechanism to aid in funding the extension and connection of Avenue 17 westward to SR 145 to compensate for east/west road closures and the loss of connectivity resulting from HSR and to ensure emergency access and acceptable response times between areas east and west of HSR facilities;
 4. Provide for the design, permitting, and reconstruction of the State Route (SR) 99/SR 152 interchange with a design that includes on- and off-ramps to both northbound and southbound SR 99.
 5. Analyze proposed SR 152 at-grade crossings and closures for County roads with respect to the County General Plan Circulation Element and SR 152 agreement between County and Caltrans and provide mitigation to address impacts associated with the closures, including increased VMT resulting from elimination of existing route options; and
 6. Provide specific measures to reconstruct and improve existing local roads and intersections sufficient to mitigate construction impacts and to accommodate increased use due to closure of other roads and future traffic.

290-711

D. The DSEIR/EIS Fails To Properly Analyze And Mitigate Agricultural Resources Impacts

The DSEIR/EIS analysis of the impacts to agricultural resources is incomplete and fails to provide information necessary for a supplemental/subsequent EIR/EIS for the Merced to Fresno Section. The DSEIR/EIS reports that the Central Valley Wye will result in the permanent loss of over 2,000 acres of important farmland (ranging from 2,144 acres to 2,305 acres depending on the alternative).

State statutes expressly protect agricultural lands. (See Pub. Resources Code, §21095; see also CEQA Guidelines, Appendix G(1); Cal. Land Conservation Act of 1965 (Williamson Act), Gov. Code, § 51200 et seq.; Cal. Farmland Conservancy Program Act of 1995, Pub. Resources Code, § 10200 et seq.) Recognizing the importance of agriculture to the economy of the State of California, the Williamson Act was enacted to maintain agricultural uses on the state's agricultural land. CEQA requires careful impact analysis concerning agricultural resources.⁷⁰

NEPA does not dictate specific mitigation measures for agricultural resource impacts but does require consideration and analysis where there is a significant impact based on setting and surrounding circumstances. NEPA requires examination of the action's effects in the immediate locale, rather than in the broader ecosystem or world as a whole.⁷¹ Where CEQA may require specific analysis for the agency to consider, NEPA holds the agency responsible for taking into consideration the immediate locale and impacts the project may have either directly or indirectly. As agriculture is a central industry in the Central Valley Wye, NEPA requires the DSEIR/EIS to carefully scrutinize the impacts the project may have on agriculture uses prior to finalization of the DSEIR/EIS.

The DSEIR/EIS identifies that each of the Central Valley Wye alternatives, including the proposed project/preferred alternative, would be inconsistent with agricultural policies of the Madera County General Plan, 2014 Regional Transportation Plan and Sustainable Communities Strategy, City of Chowchilla 2040 General Plan, and Title 18 of the Madera County Code. The DSEIR/EIS concludes that, "[a]s a state agency, the Authority is not required to adhere to local and regional policies that protect agricultural land from conversion to agricultural uses, and the Central Valley Wye alternatives would involve conversion of agricultural land to nonagricultural use. Therefore, the inconsistency would not be reconciled." Nonetheless, the DSEIR/EIS must discuss any inconsistencies between the proposed project and applicable general plans and regional plans.⁷² The DSEIR/EIS fails to do so here. Additionally, the DSEIR/EIS fails to acknowledge that, regardless of CHSRA's obligation to adhere to these policies, the inconsistencies result in significant land use inconsistencies under both CEQA and NEPA and

⁷⁰ Cherry Valley Pass Acres & Neighbors v. City of Beaumont, 190 Cal.App.4th 316 (2019); Citizens for Open Government v. City of Lodi, 205 Cal.App.4th 296 (2012); Masonite Corporation v. County of Mendocino, 218 Cal.App.4th 230 (2013).

⁷¹ American Rivers and Alabama Rivers Alliance v. FERC, 895 F.3d 52, 36-37 (2018); 40 C.F.R. § 1508.27(a).

⁷² Cal. Code Regs. tit. 14, § 15125(d).

Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

California High-Speed Rail Authority
 October 28, 2019
 Page 34 of 57

California High-Speed Rail Authority
 October 28, 2019
 Page 35 of 57

290-711 must be identified as such. Madera County land use planning agencies will need to update their General Plans, including the preparation of detailed and costly studies addressing issues that would otherwise not be necessary, and zoning to reflect the changes in land use and public facilities and finance plans to account for the impacts associated with HSR facilities and operations.

290-712 The DSEIR/EIS presents a Land Evaluation and Site Assessment (“LESA”) that provides a relative point scoring for the evaluation of impacts associated with the loss of agricultural land associated with the Central Valley Wye alternatives. The LESA evaluations are limited solely to areas that would be affected by the portions of Central Valley Wye and do not provide a comprehensive LESA evaluation for Madera County as a whole in consideration of the remainder of the Merced to Fresno section areas that are outside of the Central Valley Wye footprint. To fully account for agricultural impacts through a LESA evaluation, the evaluation must be updated to account for the entirety of HSR facilities in Madera County – including areas previously evaluated in the 2012 EIR/EIS and the additional areas now under consideration for the Central Valley Wye. Importantly, the LESA evaluation of the proposed Central Valley Wye configuration (Alternative 4) concludes with an impact rating score of 159 points. As discussed in the DSEIR/EIS, an impact rating score of 160 points are given increasingly higher levels of protection. In the absence of a County-wide LESA evaluation, CHSRA has not properly evaluated the impact to determine whether the County-wide LESA impact rating score would exceed 160 points and the potential need for additional mitigation and higher levels of protection.

290-713 The loss of agricultural land associated with the Central Valley Wye and the rest of the Merced to Fresno Section within Madera County represents a significant impact associated with the reduction in agricultural land, agricultural commodity production, agricultural-related jobs, income, and tax revenues. CHSRA must accurately identify and quantify these impacts and provide compensation to local agencies and to communities for reduced jobs and income associated with permanent loss of agricultural land and productivity as a result of the HSR.

290-714 The DSEIR/EIS identifies seven IAMFs intended to avoid or reduce project impacts on agricultural resources; however, the IAMFs as presented in the DSEIR/EIS fail to fully define the impacts or the requirements, timing, and performance standards that must be achieved in order to reduce impacts as assumed in the analysis. Attachment A of this letter provides specific revisions to IAMFs that will ensure their efficacy in addressing identified agricultural impacts.

290-715 **F. The DSEIR/EIS Fails To Properly Analyze And Mitigate Air Quality Impacts**

CEQA and NEPA both require an agency to consider the cumulative impacts of a project’s impact on air quality. Under NEPA, a cumulative impact is “the 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... undertakes such

290-715 other actions.”⁷³ Where air quality impacts are analyzed in an EIR/EIS, the Clean Air Act and not NEPA is the primary force guiding agencies into air quality compliance. ⁷⁴ Where an agency must comply with NEPA and the CAA in an EIR/EIS, the agency is required to look to the provisions outlined in the Clean Air Act, Title 1, to ensure full compliance prior to its adoption.

CEQA Guidelines § 15126.2(a) mandates an EIR/EIS “identify and focus on the significant environmental effects of the proposed project...examin[ing]...changes in the existing physical conditions in the affected area,” and that discussions should include, “relevant specifics of... health and safety problems caused by the physical changes.” As part of the Health Risk Assessment in an EIR/EIS, and an agency must present “a detailed comprehensive analysis... to evaluate and predict the dispersion of hazardous substances in the environment and the potential for exposure of human populations and to assess and quantify both the individual and populationwide health risks associated with those levels of exposure.”⁷⁵ EIR/EIS’s are deemed deficient by courts where the agency “failed to explain why it was not feasible to provide an analysis that connected the air quality effects to human health consequences.”⁷⁶ Further, CEQA stresses the need for a comprehensive cumulative impacts analysis. The cumulative impact analysis is vital when considering air quality impacts in particular:

“because the full environmental impact of a proposed project cannot be gauged in a vacuum. One of the most important environmental lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant when considered individually but assume threatening dimensions when considered collectively with other sources with which they interact.”⁷⁷

The DSEIR/EIS’s analysis of air quality impacts is deficient for reasons which include those discussed below.

The DSEIR/EIS fails to sufficiently analyze the combined air quality impacts of the Merced to Fresno Section with the additional construction of the Central Valley Wye and makes unsupported assumptions that concurrent construction of HSR and adjacent projects would not occur. The DSEIR/EIS’s focus solely on the Central Valley Wye excludes evaluation of air quality impacts of the Merced to Fresno Section as a whole. As discussed in this letter, a subsequent/supplemental environmental document must provide updated analysis of the entire project and this is not accomplished in the DSEIR/EIS.

⁷³ 40 C.F.R. §1506.7.

⁷⁴ *Tomac v. Norton*, 433 F.3d 852, 863 (2005).

⁷⁵ CAL. HEALTH & SAFETY CODE §44306 (1988).

⁷⁶ *Sierra Club v. County of Fresno*, 6 Cal.5th 502, 522 (2018).

⁷⁷ *Bakersfield Citizens for Local Control v. City of Bakersfield*, 124 Cal.App.4th 1184, 1214 (2004), citing *Communities for a Better Environment v. California Resources Agency*, 103 Cal.App.4th 98, 114 (2002); see *Los Angeles Unified School District v. City of Los Angeles*, 58 Cal.App.4th 1019, 1025 (1997).

Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

California High-Speed Rail Authority
 October 28, 2019
 Page 36 of 57

California High-Speed Rail Authority
 October 28, 2019
 Page 37 of 57

290-716

The DSEIR/EIS presents predicted reductions in air criteria pollutant emissions based on assumed statewide buildout of HSR. Table 3.3-24 of the DSEIR/EIS presents predicted reductions for all criteria pollutants within the San Joaquin Valley and statewide, showing substantial reductions as a result of HSR. Footnote 1 of the table states “[b]ecause the Central Valley Wye alternatives would not exist in isolation without the rest of the HSR system, this table also applies to the larger HSR system.” (Emphasis added.) This statement is incorrect and misleading. As discussed in the DSEIR/EIS, CHSRA proposes to construct the Central Valley Wye in advance of full development of the HSR statewide system. Furthermore, as discussed previously in this comment letter, CHSRA has acknowledged substantial uncertainties with regard to the future full development of a statewide HSR system. Thus, for the reasonably foreseeable future, the Central Valley Wye and other sections of HSR within the Central Valley will likely exist in isolation. Since air pollutant emission reductions associated with HSR have been an important factor in decisions to approve HSR components (expressly stated in the 2012 Statement of Overriding Considerations for the Merced to Fresno Section, “the HST system as a whole will provide substantial improvement in air quality”), the DSEIR/EIS must provide analysis and conclusions based on accurate and current information to facilitate fact-based decision making.

290-717

The DSEIR/EIS analysis concludes that construction of the Central Valley Wye could result in exceedance of the NOx significance threshold and identifies mitigation requiring the CHSRA to enter into a Voluntary Emissions Reduction Agreement (VERA) with the San Joaquin Valley Air Pollution Control District to offset NOx emissions to below the significance threshold. However, the DSEIR/EIS fails to evaluate and disclose the following pertaining to NOx emissions:

1. The health effects of NOx (and other criteria pollutants) emissions are not sufficiently disclosed. Although the mitigation measure anticipates offsetting NOx emissions to below the significance threshold, the DSEIR/EIS must discuss the pre-mitigation impacts associated with criteria pollutant emissions. Quantifying the emissions and comparison to thresholds is not sufficient. In addition, the evaluation must identify the health risk associated with the criteria pollutant emission or provide a discussion of why such health risk cannot be determined.²⁸
2. The DSEIR/EIS does not establish that the SJVAPCD has the ability to provide the required offsets in the timeframe and location sufficient to mitigate the project impact.
3. Construction-related NOx emissions will occur at construction sites. However, the location of NOx emission offsets that may be obtained through the VERA mitigation measure is unknown. The contribution of NOx

²⁸ Sierra Club v. County of Fresno, 6 Cal.5th 592 (2018).

290-717

emissions associated with construction of the Central Valley Wye to local ozone formation must be evaluated and disclosed in the DSEIR/EIS.

4. The DSEIR/EIS states that all of the Central Valley Wye alternatives “would avoid localized health effects on low-income and minority populations.” (DSEIR/EIS page 5-38.) The analysis fails to recognize the predicted NOx exceedance of the threshold. Unless NOx emissions offsets provided through the VERA directly coincide in location and timing with Central Valley Wye construction, then construction-related NOx emissions could, and likely would, result in increased health risks to disadvantaged communities within proximity to the Central Valley Wye. The effects of NOx emissions and potential localized ozone formation and associated health risks must be evaluated, must consider the potential disproportionate effect on disadvantaged communities, and must consider the cumulative effect of other air pollutant emissions when combined with the potential increased health risk of NOx emissions.

290-718

The DSEIR/EIS identifies that AQ-IAMF#2 would contribute to reducing temporary direct impacts on implementation of an applicable air quality plan (Impact AQ#2). AQ-IAMF#2 requires the use of super-compliant or Clean Air paint with lower VOC content than required by South Coast and Central Valley AQMD rules, “when available.” The impact analysis and IAMF do not disclose the expected availability or lack thereof of such super-compliant or Clean Air paint, or the criteria to be used for a construction contractor to deem such paint as unavailable. The analysis does not provide sufficient detail to assess the extent to which the requisite paint type is assumed to be used and, thus, the DSEIR/EIS fails to disclose the potential impacts associated with the lack of availability of the otherwise required paint types.

290-719

DSEIR/EIS Air Quality and Global Climate Change section (at page 3.3-26) discusses that construction of the Central Valley Wye would not comply with Policy A1.1.4 and C1.1.1 of the Madera County General Plan Air Quality Element, that construction could result in exceedance of criteria pollutant thresholds. The discussion goes on to state that IAMFs and mitigation measures would “result in long-term benefits to air quality” which would reconcile inconsistencies and that no conflict with the policies would occur. No reference is provided to analysis or conclusions to support the assertion of long-term benefits. As discussed previously in this letter, CHSRA has not provided an updated analysis of the long-term reasonably foreseeable consequences of HSR. In the absence of supporting analysis, the DSEIR/EIS must conclude that construction of the Central Valley Wye would conflict with these policies. Furthermore, Policy A1.1.4 is one of four policies pertaining to AQ Objective B1.1 of the Madera County General Plan Air Quality Element which states the objective, “Integrate the County’s land use, transportation, and air quality planning efforts to make the most efficient and effective use of public resources and create a healthier and more livable environment.” Policy C1.1.1 is one of eight policies associated with AQ Objective C1.1 intended to further AQ Goal C1 of the Air Quality Element which is to “use air quality assessment and mitigation programs... to minimize air pollution, related public health effects, and potential climate change impacts within the

Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

California High-Speed Rail Authority
October 28, 2019
Page 38 of 57

California High-Speed Rail Authority
October 28, 2019
Page 39 of 57

290-719

County.” Thus, Policies A1.1.4 and C1.1.1 are directly related to public health and the project’s inconsistencies with these policies and the potential effects on public health must be disclosed in the DSEIR/EIS. The failure to do so renders the DSEIR/EIS legally inadequate.

290-721

assumptions regarding full implementation and timing of completion of the statewide HSR system, the DSEIR/EIS, and the documents from which it tiers, must be updated to reflect current circumstances.

290-720

F. The DSEIR/EIS Fails To Properly Analyze And Mitigate Greenhouse Gas (GHG) Emissions

Under the new CEQA guidelines, an agency must attempt to “describe, calculate, or estimate” GHG emissions from a project, but the agency has discretion as to how to execute said analysis.⁷⁹ The California Supreme Court further held when assessing the significance of greenhouse gas emissions, the agency should consider these factors among others:

- 1) the extent to which the project may increase or reduce greenhouse gas emissions as compared to the existing environmental setting; 2) Whether the project emissions exceed a threshold of significance that the lead agency determines applies to the project; 3) The extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions. Such requirements must be adopted by the relevant public agency through a public review process and must reduce or mitigate the project’s incremental contribution of greenhouse gas emissions. If there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding compliance with the adopted regulations or requirements, an EIR must be prepared for the project.⁸⁰

The DSEIR/EIS analysis of GHG emissions during construction and associated mitigation measures further fails to evaluate GHG emissions from the production of materials used in construction. For example, the production of cement (i.e., the binding agent mixed with water, sand, and gravel in the production of concrete) creates very high GHG emissions. Cement produced and used for concrete production for construction of the Central Valley Wye would be substantial and would reduce any overall HSR benefit of GHG reduction from transportation sources. The DSEIR/EIS must disclose estimated GHG emissions associated with the production of cement that would be consumed for construction of the Central Valley Wye and identify the significance of the GHG emissions and effect on global climate change.

290-721

Furthermore, the DSEIR/EIS must reflect changed circumstances and new information reflecting reasonably foreseeable outcomes of the statewide HSR system. To the extent that GHG emissions reductions of the statewide system are based on outdated information and

290-722

G. The DSEIR/EIS Fails To Properly Analyze And Mitigate Noise And Vibration Impacts

The CEQA Guidelines Checklist identifies three categories of noise impacts that may require further impact analysis. These categories include the following:

- 1) generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies; and
- 2) generation of excessive groundborne vibration or groundborne noise levels;⁸¹

CEQA provides deference to the lead agency’s thresholds of significance when evaluating and considering impacts. There are circumstances where an agency must clearly address persistent noise impacts like those in the Central Valley Wye.

A noise impact is considered significant if it were to “result in exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies; a substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project; and result in a substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project.” An EIR may use various thresholds of significance designed to identify perceptible increases in ambient noise levels; for example, persistent construction equipment noise may be considered significant.⁸²

The construction noise impact analysis in the DSEIR/EIS, however, is based on a flawed methodology that uses the “centerline” of construction areas as the noise and vibration source location. Construction activities and the noise and vibration they generate can occur anywhere within the construction area. Construction noise and vibration impacts must be evaluated based on the outer limits of construction areas, or the DSEIR/EIS must provide an explanation and commitment to limit construction noise and vibration sources to the centerline. In the absence of evaluating construction noise and vibration impacts from the outer limits of the construction area, the DSEIR/EIS fails to fully evaluate and disclose noise and vibration impacts associated with the project.

⁷⁹ CAL. CODE REGS. tit. 14, § 15064.4(a).

⁸⁰ Center for Biological Diversity v. Department of Fish & Wildlife, 62 Cal. 4th 204, 217 (2015); Association of Irrigated Residents v. Kern County Board of Supervisors, 17 Cal.App.3d 708 (2017); Rialto Citizens for Responsible Growth v. City of Rialto, 208 Cal.App.4th 899 (2012).

⁸¹ CAL. CODE REGS. tit. 14, § 15387, Appendix G (2018).

⁸² Mission Bay Alliance v. Office of Community Investment & Infrastructure, 6 Cal.App.5th 160, 160-162 (2016).

Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

California High-Speed Rail Authority
October 28, 2019
Page 40 of 57

290-723

Mitigation Measure NV-MM#2 improperly defers mitigation and its implementation could result in significant environmental impacts. NV-MM#2 anticipates that HSR operations could result in noise levels that exceed those presented in the evaluation and suggests that additional environmental analysis would be prepared at some future point in time based on final design and vehicle specifications. The mitigation measure states that it could lead to changes in final design and could lead to additional or modified mitigation measures, but then concludes that the measure would not trigger secondary environmental effects. However, in the event that noise levels associated with HSR operation are in fact higher than those anticipated in the DSEIR/EIS, such subsequent mitigation could very well result in environmental impacts that are not disclosed in the DSEIR/EIS. Such mitigation could include the need to construct noise barriers, to acquire and vacate additional residences or businesses, and other actions that would result in environmental effects. It is reasonably foreseeable that HSR vehicles could vary from the specifications anticipated in the DSEIR/EIS; in fact, it is reasonably foreseeable that HSR facilities may be used by diesel-powered locomotives for an undetermined interim period. Such future use and potential noise and vibration impacts must be evaluated and disclosed.

290-724

Furthermore, Mitigation Measure NV-MM#3 calls for implementation of “noise and vibration mitigation guidelines” and such guidelines appear to include physical actions that could result in environmental effects not disclosed in the DSEIR/EIS. The mitigation measure states that the guidelines include installation of sound barriers which could have significant visual/aesthetic effects. The potential for such barriers and an evaluation of their potential visual and other environmental effects, such as potential changes in stormwater runoff and surface drainage, must be provided. The mitigation measure also states that the guidelines also include CHSRA’s acquisition of noise easements whereby CHSRA would establish an agreement with a property owner who in turn would accept future noise conditions and release the right to petition CHSRA regarding future noise levels and disruptions. Such a measure is impermissible and would not mitigate the noise impact.

290-725

II. The DSEIR/EIS Fails To Fully Address Land Use Conflicts And Land Use Plan Inconsistencies

1) The DSEIR/EIS Fails To Fully Evaluate And Mitigate For Land Use Plan Inconsistencies

Section 15125 of the CEQA Guidelines obligates an EIR to discuss any inconsistencies between the proposed project and applicable general plans, specific plans, and regional plans.⁸³ Under section 15126.2(d) of the CEQA Guidelines, the EIR must discuss “the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment.”⁸⁴ It also must discuss the project’s potential to “encourage and facilitate other activities that could significantly affect the

⁸³ CAL. CODE REGS. tit. 14, § 15125.

⁸⁴ CAL. CODE REGS. tit. 14, § 15126.2(d).

California High-Speed Rail Authority
October 28, 2019
Page 41 of 57

290-725

environment, either individually or cumulatively.”⁸⁵ NEPA’s policy goals are intended to foster cooperation with local and state governments.⁸⁶ However, where federal agencies override local land use policies, federal agencies must apply NEPA with more careful scrutiny.⁸⁷

DSEIR/EIS Appendix 3.8-A provides CHSRA’s assessment of project consistency with goals and policies of various local general plans. Although the table lists “Consistent” for the majority of the identified goal and policies, no rationale is provided to explain the determination. Furthermore, the table’s listing of policies is substantially abbreviated and does not provide the full text of each policy and therefore fails to fully assess and explain the determinations.

For instance, the following is one example of 19 Madera County General Plan policies listed in the table. Under the heading “Applicable Local and Regional Plan/Law,” the table lists Madera County General Plan Policy 1.H.2 as, “New development will incorporate soil conservation practices.” The table finds that the project would be consistent with this policy but provides no rationale for this determination. Furthermore, Madera County General Plan Policy 1.H.2 reads as follows:

1.H.2. The County shall require that new development incorporates sound soil conservation practices and minimizes land alterations. Land alterations should comply with the following guidelines:

- a. Limit cuts and fills;*
- b. Limit grading to the smallest practical area of land;*
- c. Limit land exposure to the shortest practical amount of time;*
- d. Replant graded areas to ensure establishment of plant cover before the next rainy season;*
- e. Create grading contours that blend with the natural contours on site or look like contours that would naturally occur; and*
- f. Prohibit overgrazing.*

Another example involves the City of Chowchilla. In Chowchilla, the land use consistency analysis fails to consider the impacts on the City’s planned Industrial Park as a result of the Project. The result is not only the likely loss of fiscally important industrial-zoned land, but the impacts cascade into related planned land use policies for recreational trail corridors, such as a bike and pedestrian path, due to the project cutting off planned access to southern Madera County.

The failure of the DSEIR/EIS to present and consider the full text and context of each policy and to provide a rationale for the determinations makes the analysis meaningless. These deficiencies must be corrected for all goals and policies evaluated in the DSEIR/EIS.

⁸⁵ *Id.*

⁸⁶ See Section 101(a), 42 U.S.C. §4331(a).

⁸⁷ See, e.g., Maryland-National Capital Park & Planning Commission v. U.S. Postal Service, 487 F.2d 1029, 1035-1038 (1973).

Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

California High-Speed Rail Authority
 October 28, 2019
 Page 42 of 57

California High-Speed Rail Authority
 October 28, 2019
 Page 43 of 57

290-726

2) **The DSEIR/EIS Fails To Sufficiently Identify Land Use Incompatibilities Or Provide A Mechanism For Local Land Use Plan And Zoning Updates To Accommodate HSR**

As noted herein, the DSEIR/EIS must discuss inconsistencies with local land use plans.⁸⁸ DSEIR/EIS Impact LU#3 discusses that the Central Valley Wye alternatives would permanently convert existing land uses to transportation uses within the permanent rights-of-way. The impact acknowledges that numerous road closures would occur, reducing and restricting access between portions of communities. The impact discussion suggests that the impact would be less substantial, given that “permanently closed segments of road would typically be less than 1 mile and access to properties adjacent to these closed roads would be maintained” and because new grade-separated interchanges approximately every 2 miles...would maintain access throughout communities and avoid any changes to the current patterns of land use.” We reject the notion that a disruption of circulation requiring miles of additional travel provides for maintaining access, especially in consideration of bicycle and pedestrian travel. Such distances create a substantial barrier to movement and will, in fact, significantly alter land use patterns and should be identified as a significant and unavoidable land use conflict and significant impact. Although improperly finding the impact less than significant, the DSEIR/EIS does acknowledge that “this conversion of land and reductions and restrictions in access to city or community centers could result in direct impacts through altered land use patterns and corresponding changes in land use and zoning designations.” (Emphasis added.)

290-727

Although it acknowledges changes to land use patterns and identifies several inconsistencies between the project and local land use plans, the DSEIR/EIS still fails to address the ramifications of these inconsistencies on local land use planning. As noted above, the DSEIR/EIS references “corresponding changes in land use and zoning designations,” but provides no mechanism for such changes in designations to be made, nor does it include any consideration of potential environmental effects resulting therefrom. Changing land use and zoning designations is not a simple task for local land use authorities. Accommodating the significant changes that will occur from land use, transportation, community structure, utilities, hazards, noise, aesthetics, and other significant changes to communities resulting from the Central Valley Wye will require substantial resources to be expended by local agencies. The Central Valley Wye will not simply result in changes in land use and zoning designations – these changes and full updates to general plan policies and land use and circulation maps, and updates to zoning codes and zoning designations will be needed to ensure that local agencies are properly integrating HSR into their future land use decisions and accounting for HSR in environmental studies and impact mitigation efforts.

CHSRA must provide assistance and funding for the planning efforts local land use agencies will need to undertake to update general plans, transportation plans, zoning, and other

⁸⁸ CAL. CODE REGS. tit. 14, § 15125(d).

290-727

related planning activities necessary as a result of the substantial permanent changes to land use, circulation, and other conditions caused by the development and operation of HSR facilities in the County. The Task Force’s most populated areas and most traveled roads are substantially affected by HSR. With HSR facilities becoming a permanent fixture in the County, the Task Force’s land use and planning agencies must update general plans, zoning codes, land use and zoning designations, and infrastructure and circulation plans to accommodate HSR.

290-728

I. **The DSEIR/EIS Fails To Fully Evaluate And Mitigate Aesthetics And Visual Resources**

The DSEIR/EIS includes IAMFs intended to address visual impacts. As discussed previously, the DSEIR/EIS fails to fully disclose impacts of the Central Valley Wye in the absence of these features, as required by CEQA. Furthermore, the IAMFs do not provide sufficient processes or performance standards to ensure the benefits assumed in the DSEIR/EIS. Attachment A of this comment letter includes revisions to AVR-IAMF#1 (Design Standards) and AVR-IAMF#2 (Context Sensitive Solutions) that provide process and performance criteria to ensure that local land use authorities are provided an opportunity to review and influence the aesthetic design of HSR facilities affecting their communities. In the absence of this process, the IAMFs are legally insufficient in addressing aesthetics and visual resources and cannot be relied upon to sufficiently minimize impacts.

290-729

J. **The Central Valley Wye Design Must Accommodate Utility Infrastructure**

DSEIR/EIS Impact PUE#6 discusses that existing utilities may be located within HSR right-of-way and that the right-of-way would be permanently fenced and secured after construction. The discussion provides that underground utilities that would conflict with HSR right-of-way would be relocated or reinforced sufficiently to accommodate HSR facilities. The impact discusses that access provisions would be made for utility service providers to access such utility systems for repair and replacement when needed.

Development of the Central Valley Wye would create a substantial impediment to future installation of utility infrastructure. The need for future infrastructure connectivity between service facilities (e.g., water treatment plants, wastewater treatment plants) has been established and is not speculative, and it is anticipated that the environmental effects associated with installation of infrastructure would be increased when design provisions, alignments, and other factors would need to accommodate HSR facilities. Thus, installation of such infrastructure or components to accommodate future installations (e.g., conduit or sleeves) crossing the HSR right-of-way during construction of HSR would provide opportunities to reduce environmental impacts that could otherwise occur. This issue has been raised by the Task Force in discussions with CHSRA staff, and staff has indicated a willingness to incorporate installation of infrastructure crossing HSR right-of-way during construction of HSR facilities. The DSEIR/EIS project description must be revised to include components for such utility infrastructure installation. Task Force member agencies would coordinate directly with CHSRA to provide

Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

California High-Speed Rail Authority
 October 28, 2019
 Page 44 of 57

California High-Speed Rail Authority
 October 28, 2019
 Page 45 of 57

290-729 infrastructure design plans. The DSEIR/EIS project description must be modified to incorporate such utility infrastructure to address the stated impacts.

290-730 **K. The DSEIR/EIS Fails To Disclose And Mitigate Significant Effects Associated With Emergency Response Services**

Section 3.11 of the DSEIR/EIS evaluates impacts of the Central Valley Wye on safety and security. A basis for the analysis and conclusions is the underlying erroneous assumption of the DSEIR/EIS that existing local emergency response services are adequate to provide the additional emergency response services required during construction and operation of HSR. In fact, emergency service providers in Madera County are neither trained nor equipped to respond effectively to the types of specialized emergency situations that would be associated with HSR. They do not have excess capacity in terms of personnel, vehicles, equipment, stations, or funding to provide the additional emergency response services associated with HSR. To provide for safety of Madera County residents and HSR users, emergency service providers will need specific supplemental training, acquisition of response equipment and vehicles, potential expansion of existing facilities and construction of new facilities. In the absence of a funding source, local emergency responders will have insufficient resources to provide the additional emergency services that will be required by HSR. Furthermore, the potential need for expansion of existing and/or construction of new facilities would result in potential effects on the environment that are not identified in the DSEIR/EIS. CHSRA must identify mitigation that provides a mechanism to assess the need for supplemental training, equipment, vehicles, and facilities needed for local emergency service providers and must provide a direct source of funding for the provision of those needs. CHSRA must also provide a source of funding for long-term ongoing training and equipment and facilities maintenance needed for local emergency service providers to respond to HSR emergencies. In the absence of such provisions, the Central Valley Wye will result in significant and unavoidable impacts on emergency services, resulting in increased risk to HSR passengers and local residents.

290-731 The DSEIR/EIS at Impact SS#2 acknowledges the potential for permanent increases in emergency response times in rural areas, including Madera County, associated with "longer reroutes and potentially longer response times [that] could occur for emergency response providers traveling across or in the Central Valley Wye construction and operations" areas. The evaluation notes that "the impact would be regional because responders from multiple jurisdictions may be involved" and identifies that "the distance between overcrossings or undercrossings would vary from less than 2 miles to approximately 5 miles where other roads are perpendicular to the proposed HSR alignment." Notwithstanding the acknowledgement of up to approximately 5 miles of additional travel distance for emergency responders, the DSEIR/EIS concludes that the roadway modifications would provide sufficient access and would not "be expected to affect the ability of local jurisdictions to meet response time goals, affect service ratios, or other performance objectives for emergency services." This conclusion is flawed and the DSEIR/EIS fails to evaluate and disclose impacts associated with delayed emergency services.

290-731 Increasing emergency service response travel distances by up to 5 miles would increase response travel times by 10 minutes or longer depending on the specific routes, traffic conditions, speed of safe travel, and other factors. It is inaccurate to conclude that such increases in response times are inconsequential and such increases would, in fact, result in significant impairment of local emergency response times.

290-732 **L. The DSEIR/EIS Fails To Properly Address Long-Term Socioeconomic Impacts On Madera County**

The Central Valley Wye would result in several adverse socioeconomic and community effects, including loss of jobs and housing, relocation of residents and businesses, reduced agricultural lands and productivity, reduced wages, and reduced property and income taxes, and the potential environmental impacts associated therewith. The project will also divide established communities and adversely affect disadvantaged communities and individuals. Although the DSEIR/EIS discusses these issues, the DSEIR/EIS's determinations that many of these impacts would be less than significant, avoided, or even beneficial are flawed.

"Lead agencies should analyze socioeconomic and potential impacts of a project on communities because social or economic impacts may lead to physical changes in the environment that are significant."⁸⁹ Economic harm, for example, can result in business closures or physical deterioration of a community. Where like circumstances exist, the Court in *Citizens for Quality Growth v. City of Mt. Shasta*⁹⁰ held "(the agency) should consider these problems to the extent that potential is demonstrated to be an indirect environmental effect of the proposed project." Further the Guidelines state, "if the construction of a new freeway or rail line divides an existing community, the construction would be the physical change, but the social effect on the community would be the basis for determining that the effect would be significant."⁹¹

Construction of the Central Valley Wye would result in short-term expenditures in Madera County. There are no assurances, however, that the construction workforce would draw from local residents and business in a manner that would create economic benefit to the County. Additionally, as noted in the DSEIR/EIS, "the Central Valley Wye alternatives ... do not include any interfaces with the public (such as stations) or a maintenance facility that could generate permanent employment." (DSEIR/EIS Clarifications and Errata, pg. 13.) Furthermore, no other HSR facilities have been definitely identified in Madera County that would generate permanent employment or other socioeconomic benefits in Madera County. We urge CHSRA to include local hire requirements in agreements with construction contractors working on various phases of HSR in Madera County. Madera County's Workforce Development Board should be consulted in coordination with the cities of Chowchilla and Madera, and Madera County governments

⁸⁹ Memorandum from Office of the Attorney General, Environmental Justice at the Local and Regional Level Legal Background, May 8, 2012, CAL. CODE REGS. tit. 14, § 15064 (c).
⁹⁰ *Citizens for Quality Growth v. City of Mt. Shasta*, 198 Cal.App.3d 433, 446 (1988).
⁹¹ CAL. CODE REGS. tit. 14, §§ 15131 (b), 15382.

Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

California High-Speed Rail Authority
October 28, 2019
Page 46 of 57

California High-Speed Rail Authority
October 28, 2019
Page 47 of 57

- 290-732 regarding available positions to insure that local residents benefit from available employment during the construction phase and long-term employment in any HSR-related facilities that may ultimately be located in Madera County.
- To date, there is no commitment for a permanent HSR station or stop in Madera County. Thus, any regional or eventual statewide transportation and socioeconomic benefits of the HSR system would be substantially diminished in Madera County. In fact, future economic prosperity that might have been more evenly distributed among all Central Valley counties could shift away from Madera County as a result of investment in HSR stations and facilities in other Central Valley counties.
- 290-733 It is imperative that CHSRA fully evaluate and address socioeconomic effects of the Central Valley Wye and that CHSRA implement measures to ensure that residents and businesses in Madera County share in the transportation and socioeconomic benefits of the HSR system. To implement HSR in a manner that avoids or minimizes the adverse socioeconomic effects in Madera County, the Task Force urges CHSRA to:
1. Establish the HMTF in Madera County to provide for efficiencies to the HSR system and to help offset the disproportionate environmental, economic, and community impacts of HSR in Madera County;
 2. Include "local hire" requirements in agreements with construction contractors working on various phases of HSR in Madera County, and specify consultation with Madera County's Workforce Development Board, the cities of Chowchilla and Madera, and Madera County regarding available positions to assist with ensuring local residents benefit from available employment associated with HSR construction and operation.
 3. Provide funding to local agencies in Madera County sufficient for updating land use plans, transportation plans, and other local planning documents as necessary due to HSR effects on land use compatibility, parcel acquisition and division, effects on established communities, and effects on the County's transportation network (existing and planned roads and bike/pedestrian facilities);
 4. Provide funding to local land use authorities in Madera County sufficient for updating zoning designations as necessary due to HSR effects on land use and properties;
 5. Provide financial assurances sufficient to fund local agency completion/cleanup of work initiated at various HSR construction sites if necessary due to HSR funding delays or shortfall;
 6. Provide for developing and permanently retaining an HSR Madera Station in Madera County to ensure continued value of infrastructure and access

- 290-738 provisions developed for the proposed temporary station and to enable HSR to serve residents and businesses in Madera County;
- 290-739 7. Provide funding for upgrades to local emergency service equipment and personnel training as needed to provide emergency response associated with HSR operations and facilities;
- 290-740 8. Provide a source of long-term ongoing funding for operation and maintenance of the Fairmead Elementary School property after transferring it back to Madera County for operation and maintenance as a community center, as proposed in the DSEIR;
- 290-741 9. Establish a mechanism for HSR construction practices that will minimize construction-related traffic effects (e.g., detours, closures, increased vehicle miles traveled [VMT]) with specific requirements for construction scheduling and phasing, and include defined processes for review and approval of construction traffic management plans by affected local agencies in Madera County;
- 290-742 10. Establish mechanism to ensure construction contractors are accountable to CHSRA and to local agencies for adherence to construction/traffic management plans and mitigation requirements;
- 290-743 11. Provide a mechanism to aid in funding the extension and connection of Avenue 17 westward to SR 145 to compensate for east-west road closures and the loss of connectivity resulting from HSR and to ensure emergency access and acceptable response times between areas east and west of HSR facilities;
- 290-744 12. Provide for the design, permitting, and reconstruction of the State Route (SR) 99/SR 152 interchange with a design that includes on- and off-ramps to both northbound and southbound SR 99;
- 290-745 13. Provide specific measures that will ensure permanent closures of local roads and road crossings are minimized;
- 290-746 14. Provide specific measures to reconstruct and improve existing local roads and intersections sufficient to mitigate construction impacts and to accommodate increased use due to closure of other roads and future traffic;
- 290-747 15. Provide analysis and measures sufficient to ensure the phased development of the HSR system, in consideration of initial components in Madera County and the Central Valley, does not adversely affect the region's ability to comply with Federal Clean Air Act Transportation Conformity requirements;

Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

California High-Speed Rail Authority
 October 28, 2019
 Page 48 of 57

California High-Speed Rail Authority
 October 28, 2019
 Page 49 of 57

- 290-748 16. Provide compensation to local agencies and community groups for the economic and community impacts of HSR in Madera County;
- 290-749 17. Provide compensation to local agencies for loss of property tax revenue from properties acquired for HSR facilities or otherwise decreased in value as a result of HSR (e.g., payments in lieu of taxes);
- 290-750 18. Provide compensation to local agencies and to communities for reduced jobs and income associated with permanent loss of agricultural land and productivity as a result of HSR;
- 290-751 19. Provide enhanced aesthetic features, with Task Force involvement, in the design of HSR structures and other infrastructure to be developed or reconstructed as a result of HSR, including but not limited to, interchanges, overpasses, and elevated track structures;
- 290-752 20. Provide a mechanism, with Task Force involvement, to design, fund, install, and maintain a minimum of eight (8) "Welcome to Madera County," "Welcome to the City of Chowchilla," and "Welcome to the City of Madera" high-quality, lighted signs along HSR facilities to promote Madera County and its cities to HSR users;
- 290-753 21. Provide a mechanism to ensure that surface water and groundwater rights associated with acquired or otherwise affected properties are sufficient for retaining local access to groundwater and aquifer for regional water supply and groundwater recharge needs;
- 290-754 22. Provide opportunities for shared utility use of the HSR corridor and fund and install utility connections when available and feasible for communities adversely affected by HSR (e.g., installation of conveyance facilities for water and sewer services to the affected community of Fairmead), and
- 290-755 23. Provide funding for training, equipment, vehicles, and facilities as needed for local emergency response agencies to supplement their capabilities to provide emergency response for HSR-related construction and operations.
- 290-756 NEPA requires federal agencies to determine if an undertaking would significantly affect the environment. NEPA establishes that the federal government will use all practicable means to ensure all Americans safe, helpful, productive and aesthetically and culturally pleasing

290-756 surroundings.⁹² For example, to implement this mandate, the Federal Highway Administration ("FHWA") in its implementation of NEPA⁹³ requires that:

... final decisions regarding projects are to be made in the best overall public interest, taking into account adverse environmental impacts including among others: (1) economic impacts on the regional and/or local economy such as the effects of the proposed alternatives on development, tax revenues and public expenditures, employment opportunities, accessibility, and retail sales; (2) impacts on the economic vitality of existing highway related businesses and results in impacts on the local economy; and (3) impacts on established business districts.⁹⁴

The CEQA/NEPA regulations echo this multi-faceted commitment in its definition of "effects." It defines effects and impacts as being synonymous and explains that effects include ecological (such as the effects on natural resources and on the components, structures and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative.⁹⁵

Under the CEQA prism, economic and social effects of a project can be used to determine the significance of physical changes caused by a project.⁹⁶

In a Transit Report, the FHWA evaluates the potential for demographic economic and fiscal impacts that could arise from the construction and the operation of its proposed transit corridor project. It describes baseline fiscal and economic conditions which include local and regional demographic and employment levels and property tax revenues. Those are the conditions by which the project alternatives are assessed. Also evaluated in the Transit Report are direct and indirect tax revenue impacts, construction related employment, total output, labor income impacts, and value-added construction related impacts in the county regional economy, cumulative impacts and potential mitigation measures for the project. In addition to documenting potential economic impacts due to the construction and operation of the transit system in the project study area as well as potential fiscal impacts associated with losses to the tax base due to property acquisitions required to construct the project, the analysis also included the potential for proposed alternatives to facilitate greater development of jobs and housing in proximity to the transit system. The Transit Report provides significance thresholds. With regard to tax sources and revenue, it states that property tax losses in excess of 1% of the project study area tax base would be considered an adverse effect under NEPA and a significant effect under CEQA.

⁹² 42 U.S.C. § 4331(b)(2) (1970).

⁹³ 23 U.S.C. § 109(h) (2015).

⁹⁴ Report from U.S. Department of Transportation, Federal Transit Administration and the Los Angeles County Metropolitan Transportation Agency, Economic and Fiscal Impacts Report for the East San Fernando Valley Transit Corridor (September 2015) (on file with U.S. Department of Transportation).

⁹⁵ 40 C.F.R. § 1508.8.

⁹⁶ CAL. CODE REGS. tit. 14, § 15131(b).

Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

California High-Speed Rail Authority
 October 28, 2019
 Page 50 of 57

California High-Speed Rail Authority
 October 28, 2019
 Page 51 of 57

290-756

In contrast to the Transit Report prepared for the referenced Southern California transit corridor project, which is a local project, the Central Valley Wye DSEIR/EIS fails to identify and analyze the demographic, economic and fiscal impacts that could arise from construction and long-term operation of HSR. Even something as simple as identifying and analyzing the total value of property acquisitions removed from the county tax base to determine if the total property tax losses resulted in an adverse effect under NEPA, was neither investigated nor analyzed by CHSRA. Similarly, a project of HSR magnitude warrants the same, if not a more robust identification of demographic, economic and fiscal impacts that would arise from the construction and long-term operation of this multibillion-dollar statewide project.

290-757

M. The DSEIR/EIS Socioeconomic Analysis Is Flawed In Its Assumptions Regarding The Benefits Given Uncertainties Associated With Development Of A Statewide HSR System

The DSEIR/EIS states that the “long-term assessment of sales tax revenues examined the ongoing sales tax revenues that could result from the purchase of goods and services associated with the continued operations and maintenance of the Central Valley Wye alternatives and from new economic development through improved connectivity with the rest of the state.” (Pg. 3.12-19.) As discussed elsewhere in this comment letter, doubt regarding the completion of the statewide HSR system preclude CHSRA from assuming that the system will be fully developed within the timeframes previously anticipated, if at all. The DSEIR/EIS socioeconomic analyses must reflect reasonably foreseeable outcomes of the HSR system based on current circumstances.

290-758

N. The DSEIR/EIS Fails To Fully Disclose Community Impacts And Relies On Insufficient Measures To Reduce Such Impacts

DSEIR/EIS Impact SO#1 discusses temporary impacts on communities and community cohesion. The impact discussion states that “access would continue to be provided for all residences and businesses.” However, construction of the Central Valley Wye would result in displacement of residences and businesses and Impact SO#1 fails to acknowledge that such displacement would occur as a result of construction. The DSEIR/EIS concludes that the temporary/construction related impact on community cohesion would be less than significant and, in part, relies on SO-IAMF#1 to reduce potential impacts. SO-IAMF#1 requires the construction contractor to include “measures that minimize effects on low-income households and minority populations” in a Construction Management Plan (“CMP”). The IAMF discusses that the CMP would include measures related to visual protection, air quality, safety, noise, and traffic, but does not provide, and the DSEIR/EIS does not explain, what such measures would consist of or how such measures would reduce and minimize effects on low-income households and minority populations. In the absence of specific measures or performance standards that would reduce impacts to specific acceptable levels, the IAMF is legally deficient and cannot be relied on to reduce impacts.

290-759

O. The DSEIR/EIS Relies On Insufficient Measures To Reduce Displacement And Relocation Impacts On Community Cohesion

DSEIR/EIS Impact SO#2 discusses that the project would result in the displacement of businesses and residents and relies on two IAMFs in the DSEIR/EIS to reduce the impact of these relocations on community cohesion.

SO-IAMF#2 provides for “displacement assistance” in compliance with federal law. However, the IAMF solely provides for a process to assist displaced residents but does not address or reduce the negative effects of such displacement on community cohesion. Nevertheless, the DSEIR/EIS relies on this IAMF as a means to reduce impacts on community cohesion.

Similarly, SO-IAMF#3 requires development of a “relocation mitigation plan,” but the plan’s focus is on “minimizing the economic disruption related to relocation” and does not address or reduce the effect of relocations on community cohesion. Yet the DSEIR/EIS analysis relies on this IAMF as a means to reduce impacts on community cohesion. Furthermore, the IAMF includes measures that are infeasible. For instance, one element of the relocation mitigation plan is to, “make a best effort to minimize the permanent closure of businesses and nonprofit agencies because of property acquisition.” However, the footprint of the Central Valley Wye and the relocations required as a result have already been identified; therefore, such a measure would have no practical effect.

Impact SO#2 must be revised to acknowledge the impacts associated with community cohesion without improperly relying on ineffective IAMFs.

290-760

P. The DSEIR/EIS Fails To Fully Disclose And Address Environmental Justice Impacts

Government Code section 11135 subd. (a) provides: “No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.” California agencies such as the CHSRA are prohibited by Government Code section 11135 from approving activities with disproportionately high and adverse effects on minority and low-income populations.

Title VI of the federal Civil Rights Act, Section 601, provides that “no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.” This provision prohibits discrimination in state or local programs or activities that receive federal funds. The CHSRA receives federal funding for the Merced to Fresno section and HSR. Section 602 of the Civil Rights Act allows a

Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

California High-Speed Rail Authority
 October 28, 2019
 Page 52 of 57

California High-Speed Rail Authority
 October 28, 2019
 Page 53 of 57

290-760 violation to be established by proof of disparate impact. Agencies receiving federal funds are required by Executive Order 12898 and Title VI of the Civil Rights Act of 1964 to avoid such impacts. The DSEIR/EIS fails to disclose or mitigate for significant impacts related to environmental justice issues.

290-761 **Q. The DSEIR/EIS Improperly Concludes That HSR Will Result In Disproportionate Benefits To Disadvantaged Communities**

The DSEIR/EIS (pp. 5-45, 46) states that, “the Central Valley Wye alternatives would result in local and regional benefits to the low-income and minority populations that constitute a large percentage of the region benefits would include improvements in mobility within the region, air quality improvements, and new employment opportunities during construction and operations. Because low-income and minority populations comprise the majority of the population within the area, **these project benefits are likely to accrue to a greater degree to low-income and minority populations.**” (Emphasis added.) This conclusion is flawed. First, as discussed elsewhere in this comment letter, uncertainties regarding completion of the statewide HSR system preclude CHSRA from assuming that the previously anticipated statewide benefits will actually occur. Furthermore, even if previously anticipated statewide benefits were achieved, there is no evidence to suggest that these benefits would somehow accrue to a greater degree to low-income or minority populations. Moreover, in the absence of a Madera County stop, community members will experience the negative effects of HSR without realizing benefits of the HSR system.

290-762 **R. The DSEIR/EIS Environmental Justice Analysis Relies On Speculative Mitigation Measures In Its Conclusion That Environmental Justice Impacts Would Be Less Than Significant**

The DSEIR/EIS concludes that “the mitigation measures proposed to address environmental justice effects on the community of Fairmead would reduce the negative effect of existing stressors in the community, improve the quality of life of Fairmead residents, and remove a constraint to development in Fairmead” (pg. 5-54).

The rural-residential community of Fairmead is located southeast of Chowchilla. The DSEIR/EIS identifies that 39 percent of the population live below the poverty level and that the community had a minority group representation of 80 percent in 2014 (pg. 3.12-25). The DSEIR/EIS does discuss environmental justice impacts. Although there are additional flaws in the analysis and conclusions in the environmental justice analysis, this focuses on the DSEIR/EIS mitigation measures.

Two mitigation measures are identified in the DSEIR/EIS “to minimize environmental justice impacts associated with construction” (pg. 5-41) of the alternatives that would affect the community of Fairmead. For the reasons discussed below, the mitigation measures as presented in the DSEIR/EIS are insufficient and the DSEIR/EIS must be revised to incorporate feasible

290-762 mitigation measures to reduce environmental justice impacts; otherwise, the DSEIR/EIS must conclude that the environmental justice impact is significant and unavoidable.

290-763 Mitigation Measure EJ-MM#1 envisions the potential acquisition of Fairmead Elementary school if and when closed by the Chowchilla Elementary School District, and the transfer of the school property to Madera County for operation and maintenance of the facility as a community center. The mitigation measure is entirely speculative, has no performance standards, provides no funding mechanisms, and has no relationship to construction impacts in the community of Fairmead for which the mitigation measure is intended to address. Additionally, the need for such a community center is not established and the nexus between construction impacts and the mechanism through which a community center would reduce those impacts has not been established. The absence of a long-term funding source for operation and maintenance of such a community center further discounts the viability of this measure. For such a measure to be effective and relied on as mitigation, the DSEIR/EIS must more specifically describe the relationship between the community center and the project impacts it would reduce and must describe a process to fully implement a community center with a long-term funding source. Otherwise, the DSEIR/EIS cannot rely on this mitigation measure to reduce environmental justice impacts, and the impact to disadvantaged communities must be identified as significant and unavoidable.

290-764 Mitigation Measure EJ-MM#2 identifies that CHSRA would provide funding assistance and work with Madera County to secure grant funds for Fairmead to connect to the nearest safe and reliable municipal water supply system. As with EJ-MM#1, this measure is speculative and has no relationship to construction impacts in the community of Fairmead for which the mitigation measure is intended to address. The DSEIR/EIS does not identify a source of municipal water or provide a water supply assessment to determine if sufficient supplies are available from a municipal water supply. The measure is not specific with regard to funding source, timing, facilities that might be required for such a system, and the DSEIR/EIS does not evaluate environmental impacts associated with the installation of water supply infrastructure that would be required for such water supply system. For such a measure to be effective and relied on as mitigation, the DSEIR/EIS must more specifically describe the relationship between the water supply and the project impacts it would reduce and must describe a process to fully implement the water supply. The DSEIR/EIS must also provide a water supply assessment demonstrating the availability of water from the municipal water provider that would serve the proposed water supply system and must evaluate the environmental effects of installing and operating the system. Otherwise, the DSEIR/EIS cannot rely on this mitigation measure to reduce environmental justice impacts, and the impact to disadvantaged communities must be identified as significant and unavoidable.

290-765 **VII. THE DSEIR/EIS FAILS TO PROVIDE A LEGALLY ADEQUATE CUMULATIVE IMPACTS ANALYSIS**

CEQA requires cumulative consideration of project impacts. More specifically, the statute states, “cumulatively considerable” means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects

Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

California High-Speed Rail Authority
October 28, 2019
Page 54 of 57

California High-Speed Rail Authority
October 28, 2019
Page 55 of 57

290-765

of other current projects, and the effects of probable future projects.”⁹⁷ Concurrently, NEPA requires that “the EIS must include full and fair discussion of significant environmental impacts and inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.”⁹⁸

An EIR must list and analyze all projects that may lead to cumulative impacts, including those “outside the control of the agency.”⁹⁹ An EIR also must define the geographic scope of the area affected by each type of cumulative impact and explain its use of any particular limitation on that scope.¹⁰⁰

Pursuant to CEQA Guidelines §15130, an agency must adequately assess the significant cumulative impacts of project by providing “a summary of projections contained in an adopted local, regional or statewide plan, or related planning document, that describes or evaluates conditions contributing to the cumulative effect.”¹⁰¹

The DSEIR/EIS “failure to update the project-specific analysis for the full Merced to Fresno section similarly fails to update the cumulative impact analysis. In addition, deficiencies in the project-specific analysis discussed in preceding sections must be remedied before a proper cumulative impact analysis can be completed.

290-766

VIII. THE DSEIR/EIS FAILS TO CONSIDER AND EVALUATE ALTERNATIVES THAT WOULD AVOID OR REDUCE IMPACTS OF THE PROPOSED PROJECT

CEQA mandates a lead agency adopt feasible alternatives or feasible mitigation measures that can substantially lessen the projects significant environmental impacts.¹⁰² For that reason, the core of an EIR is the mitigation and alternative sections. “The purpose of an environmental impact report is to identify the significant effects of a project on the environment, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided.”¹⁰³

The EIR must “describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project,

⁹⁷ CAL. PUB. RES. CODE, § 21083(b).

⁹⁸ 40 C.F.R. §1502.1.

⁹⁹ CAL. PUB. RES. CODE, § 15130(b)(1).

¹⁰⁰ CAL. PUB. RES. CODE, § 15130(b)(3).

¹⁰¹ *Rialto Citizens for Responsible Growth v. City of Rialto*, 206 Cal.App.4th 859 (2012); *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority*, 57 Cal.4th 439 (2013); *Clover Valley Foundation v. City of Rocklin*, 197 Cal.App.4th 260 (2011); *County of San Diego v. Grossmont-Cuyamaca Community College District*, 141 Cal.App.4th 86 (2006).

¹⁰² CAL. PUB. RES. CODE, § 21002; CAL. CODE REGS. tit. 14, §§ 15062(a)(3), 15126.6(a); *Sierra Club v. Gilroy City Council*, 222 Cal.App.3d 30, 41 (1990).

¹⁰³ CAL. PUB. RES. CODE, § 21002.1(a); see CAL. PUB. RES. CODE, § 21061.

290-766

and evaluate the comparative merits of the alternatives.”¹⁰⁴ The alternatives discussion must focus on alternatives that of orders substantially lessen any significant effects of the project.¹⁰⁵

The range must be sufficient “to permit a reasonable choice of alternative so far as environmental aspects are concerned.”¹⁰⁶ Although no rule governs the number of alternatives that must be considered, the range is covered by the “rule of reason.”¹⁰⁷ The range of alternatives must be selected and discussed in a manner that allows for meaningful public participation and informed decision-making.¹⁰⁸ The fact that CEQA does not require a specific number of alternatives does not excuse the agency’s failure to rep to present any feasible, less environmentally damaging options to the proposed project.¹⁰⁹

In addition to a reasonable range of alternatives, those alternatives evaluated within the EIR must be “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors,” as well as feasibly accomplishing most of the basic objectives of the project and avoiding or substantially lessening one or more of the significant effects.¹¹⁰ After analyzing alternatives within an EIR, the determination of whether an alternative is feasible is made in two stages.¹¹¹ The first step involves identifying a range of alternatives that will satisfy basic project objectives while reducing significant impacts.¹¹² Alternatives that are not “potentially feasible” are excluded at this stage, as there is no point in studying alternatives that cannot be implemented.¹¹³ In the second stage, the final decision on the project, the agency evaluates whether the alternatives are actually feasible.¹¹⁴ At this point, the agency may reject as infeasible alternatives that were identified in the EIR as potentially feasible.¹¹⁵

¹⁰⁴ CAL. CODE REGS. tit. 14, § 15126.6(a).

¹⁰⁵ CAL. CODE REGS. tit. 14, § 15126.6(b); *Goleta Valley, supra*, 52 Cal.3d at p. 556 [“EIR must consider alternatives that “offer substantial environmental advantages”].

¹⁰⁶ *San Bernardino Valley Audubon Soc’y v. County of San Bernardino*, 155 Cal.App.3d 738, 750 (1984); see *Sierra Club v. Contra Costa County*, 10 Cal.App.4th 1212, 1217-18, 1222 (1992); [“EIR that only considered two alternatives for less development was not a range of reasonable alternatives”].

¹⁰⁷ CAL. CODE REGS. tit. 14, § 15126.6(a)(f); *Marin Municipal Water District v. K.G. Land Corp.*, 235 Cal.App.3d 1652, 1664 (1991) [“CEQA establishes no categorical legal imperative as to the scope of alternatives to be analyzed in an EIR”].

¹⁰⁸ *Marin Municipal Water District, supra*, 10 Cal.App.3d at p. 1664.

¹⁰⁹ See *Sierra Club v. Contra Costa County, supra*, 10 Cal.App.4th at pp. 1217-18 [“EIR that only considered two alternatives for less development was not a range of reasonable alternatives”].

¹¹⁰ CAL. CODE REGS. tit. 14, §§ 15126.6(c), 15364; see *Goleta Valley, supra* 52 Cal.3d at 566.

¹¹¹ See *Mir Mar Mobile Community v. City of Oceanside*, 119 Cal.App.4th 477, 489-490 (2004); *California Native Plant Society v. City of Santa Cruz*, 177 Cal.App.4th 957, 981 (2009); CAL. CODE REGS. tit. 14, § 15126.6(c).

¹¹² *Native Plant Society, supra*, 177 Cal.App.4th at p. 981; *Mir Mar Mobile Community, supra*, 119 Cal.App.4th at p. 489; CAL. CODE REGS. tit. 14, § 15126.6(a).

¹¹³ *Native Plant Society, supra*, 177 Cal.App.4th at p. 981; *Mir Mar Mobile Community, supra*, 119 Cal.App.4th at p. 489, [“alternatives analyzed in the EIR need not be actually feasible, but rather need only be “potentially feasible”].

¹¹⁴ *Id.* see CAL. CODE REGS. tit. 14, § 15091(a)(3).

¹¹⁵ *Native Plant Society, supra*, 177 Cal.App.4th at p. 981.

Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

California High-Speed Rail Authority
October 28, 2019
Page 56 of 57

290-766

Similar to CEQA, NEPA regulations have explicit requirements regarding the adequacy of the alternatives analysis within the EIS. Specifically, NEPA requires that an EIS "rigorously explore and objectively evaluate all reasonable alternatives."¹¹⁶ To be adequate, an environmental impact statement must consider every reasonable alternative.¹¹⁷ An EIS is rendered inadequate by the existence of a viable but unexamined alternative.¹¹⁸ Further, if the lead agency initially considers alternatives that could meet the purpose and need of the proposed action but decides to not pursue them, the EIS must describe the reasons for the elimination of those alternatives.¹¹⁹ As stressed under both NEPA and CEQA, it is especially important for the lead agency to fully document the reasons for eliminating the alternative from additional detailed study in order to fully inform the public.

The DSEIR/EIS does not comply with CEQA requirements to consider alternatives that would reduce impacts of the proposed project. CEQA requires an alternatives evaluation to identify and evaluate alternatives to the proposed project that would avoid or reduce significant environmental effects of a proposed project. The DSEIR/EIS identifies that the proposed project would result in significant environmental effects but fails to consider alternatives to the proposed project that would avoid or lessen those significant effects. The alternatives evaluation process described in the DSEIR/EIS discusses the method used to select the preferred alternative/proposed project among the other alternatives but is not a CEQA alternatives analysis. Such analysis must be conducted to consider whether alternatives are available to avoid or reduce significant effects of the proposed project.

The DSEIR/EIS does not explain how the proposed project (Central Valley Wye Alternative 4) results in a change or new impacts as compared to impacts identified in the 2012 EIR/EIS and the DSEIR/EIS does not disclose how the Central Valley Wye alternatives would change previously identified impacts in the 2012 EIR/EIS.

As a result, the Alternatives evaluation does not comply with CEQA or NEPA requirements to identify alternatives that would reduce the impacts of the proposed project.

¹¹⁶ 40 C.F.R. § 1502.14 (emphasis added).

¹¹⁷ Friends of Endangered Species v. Jantzen, 760 F.2d 976, 988 (9th Cir. 1985).

¹¹⁸ Methow Valley Citizens Council v. Regional Forester, 833 F.2d 810, 815 (9th Cir. 1987), rev'd on other grounds sub nom. Robertson v. Methow Valley Citizens Council, 490 U.S. 332 (1989).

¹¹⁹ 40 C.F.R. § 1502.14(a).

California High-Speed Rail Authority
October 28, 2019
Page 57 of 57

IX. CONCLUSION

Madera County and the Wye Madera County Task Force are interested in ensuring that any development of HSR facilities in the County be accomplished in a manner that complies with CEQA and NEPA, including the minimization of adverse effects and maximization of benefits to the communities. The Task Force urges CHSRA to consider the legal deficiencies outlined in this letter related to environmental and socioeconomic issues, and to coordinate with the Task Force to ensure that these issues are adequately addressed prior to final approval decisions associated with the Central Valley Wye.

Very truly yours,



Diane Kindermann Henderson

DKH/wj

cc: Ronald L. Barory, Administrator Federal Railroad Administration
Wye Madera County Task Force

Enclosure

Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

ATTACHMENT A
IMPACT AVOIDANCE AND MINIMIZATION FEATURE REVISIONS

Below are specific requested revisions (in underline/strike-through text) to certain Impact Avoidance and Minimization Features (IAMFs) presented in the Merced to Fresno Section: Central Valley Wye Draft Supplemental Environmental Impact Report/Environmental Impact Statement (DSEIR/EIS) pertaining to Aesthetics, Agriculture, and Transportation that must be incorporated to ensure the IAMFs sufficiently define implementation responsibilities, provide opportunities for local agency input and approval, and establish clear requirements and performance standards.

290-767

Aesthetic and Visual Quality IAMFs

AVR-IAMF#1: Design Standards

Prior to construction the contractor ~~would~~ document, through issue of a technical memorandum, how the Authority's adopted design standards and guidelines, such as the Authority Technical Memorandum Aesthetic Guidelines for Non-Station Structures (Authority 2011a; TM 200.06), ~~have been employed to mitigate visual impacts. TM 200.6 provides guidance regarding a minimum aesthetic quality of long-lasting infrastructure are proposed to be integrated to the design sufficient to achieve aesthetic acceptability to the satisfaction of the Authority and the local land use authority (i.e., city or county) within the relevant segment(s)/portions of HSR. TM 200.6 provides guidance regarding a minimum aesthetic quality of long-lasting infrastructure. Prior to the Authority's approval of the design measures identified in the contractor technical memorandum, the Authority shall provide an opportunity for the local land use authority to review the contractor's technical memorandum(s) and the proposed design therein, and the Authority shall consider and incorporate specific design recommendations provided by the local land use authority sufficient to ensure aesthetic quality and acceptability of design. The contractor shall be required to implement and adhere to the accepted aesthetic design provisions.~~

290-768

AVR-IAMF#2: Context-Sensitive Solutions

Prior to construction the contractor ~~would~~ document, through issue of a technical memorandum, how the Authority's Urban Design Guidelines for the California High Speed Train Project (Authority 2011b), which discusses the principles of context-sensitive solutions to guide the design of stations, ~~have been employed to mitigate visual impacts through context-sensitive design are proposed to be integrated to the design sufficient to achieve aesthetic acceptability and context-sensitive design to the satisfaction of the Authority and the local land use authority (i.e., city or county) within the relevant segment(s)/portions of HSR. Prior to the Authority's approval of the design measures identified in the contractor technical memorandum, the Authority shall provide an opportunity for the local land use authority to review the contractor's technical memorandum(s) and the proposed design therein, and the Authority shall consider and incorporate specific design recommendations provided by the local land use authority sufficient to ensure context-sensitive design, aesthetic quality, and acceptability of design. The contractor shall be required to implement and adhere to the accepted aesthetic and context-sensitive design provisions.~~ This approach is equally applicable to elevated guideways.

290-769

AVR-IAMF#3: Design Review Process

~~Prior to construction, the contractor would document that the Authority's Aesthetic Design Review Process (TM 200.07) has been followed to guide the development of non-station area structures. Documentation would be through issuance of a technical memorandum to the Authority.~~

290-769

[Comment to CHSRA: With incorporation of revisions suggested above, this IAMF should be eliminated and references to this IAMF in the DSEIR should be replaced with references to AVR-IAMF#1 and #2.]

290-770

Agricultural and Farmland IAMFs

AG-IAMF#1: Restoration of Important Farmland Used for Temporary Staging Areas Affected by Construction

All farmland (including, but not limited to, farmland designated by the Department of Conservation as Prime, Unique, Farmland of Statewide Importance, or Grazing Land) temporarily affected by construction activities shall be returned to a condition equal to or better than its pre-construction condition. The Authority shall include this requirement in all design-build construction contracts and the Authority shall be responsible for ensuring compliance with this IAMF. Prior to any ground-disturbing activities at the site of a temporary construction staging area or any other location of temporary construction disturbance located on Important Farmland, the contractor ~~would~~ prepare a farmland restoration plan addressing specific actions, sequence of implementation, parties responsible for implementation and funding and scheduling requirements, for successful achievement of farmland restoration for temporary impacts. Affected farmland and any related access, irrigation supply, and other related facilities, shall be restored equivalent to (or better than) its pre-disturbance production potential. Actions ~~would~~ include, but shall not be limited to, removing and stockpiling the top 18 inches, or more as may be necessary, of soil for replacement on-site during a component of restoration activities. ~~Before beginning construction use, Prior to disturbance of sites on Important Farmland, the contractor would~~ submit the restoration plan to the Authority and the landowner for review and obtain Authority (and if applicable, the landowner) approval prior to disturbance. The restoration plan ~~would~~ describe measures to be taken to restore the farmland and shall describe a method for verifying through monitoring and comparison to performance standards that farmland has been sufficiently restored. The Authority shall not approve the restoration plan until providing an opportunity to the land owner and local Farm Bureau to review and provide comments on the proposed restoration plan. The restoration plan shall include time-stamped photographic documentation of the pre-construction conditions of all temporary staging areas and any other location where temporary disturbance will occur.

290-771

~~All construction access, mobilization, material laydown, and staging areas on Important Farmlands would be returned to a condition equal to the pre-construction staging condition. This requirement is included in the design-build construction contract requirements.~~

AG-IAMF#2: Permit Assistance

Prior to disturbance-causing activities affecting any segment/portion of a confined animal facility, the Authority ~~would~~ assign a representative to act as a single point of contact to assist each confined animal facility owner during the process of obtaining new or amended permits or other regulatory compliance necessary to the continued operation or relocation of the facility. The Authority ~~would~~ consider and ~~may~~ provide compensation for relocation and acquisition of any necessary new or amended regulatory permits when acquisition of a confined animal site would require either relocation of the facility or amendment of its existing regulatory permits. The Authority ~~would~~ create a permit assistance center for landowners and operators whose operations would be out of compliance with permits because of the HSR. This permit center ~~would~~ focus on helping the permit holder modify or ensuring operators are able to obtain any new permits that are or permit modifications required because as a result of the HSR impacts.

Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

290-772 **AG-IAMF#3: Farmland Consolidation Program**

The Authority ~~would~~ shall establish and administer a farmland consolidation program to sell remnant parcels to neighboring landowners for consolidation with adjacent farmland properties. ~~Upon request, the Authority would~~ ~~offer, and provide if the offer is accepted, assistance to the owners of remnant parcels in selling those remnants to adjacent landowners. The goal of the program is~~ shall provide for continued agricultural use on the maximum feasible amount of remnant parcels that otherwise may not be economic to farm. The program ~~would focus on~~ shall be applicable and available to all severed remainder parcels, including those that were under Williamson Act or Farmland Security Act contract at the time of right-of-way acquisition and have become too small to remain in the local Williamson Act or Farmland Security Act program. The program ~~would~~ shall assist landowners in obtaining lot line adjustments where appropriate to incorporate remnant parcels into a larger parcel that is consistent with size requirements under the local government regulations.

The program ~~would~~ shall operate for a minimum of 5 years after construction of the section is completed, and longer as may be necessary to accomplish the requirements specified herein. The Authority ~~would~~ shall document implementation of this measure through issuance of a compliance memorandum after the minimum operation period each year and until all requirements of 5 years ~~has elapsed. This measure are satisfied for all affected parcels. The document would~~ annual compliance memorandum shall demonstrate that the requirements of this measure are being satisfied and shall be filed annually with Environmental Mitigation Management and Assessment system (EMMA) and copies shall be submitted to the local land use authority and farm bureau.

290-773 **Transportation IAMFs**

TR-IAMF#1: Obtain and Comply with Local Agency Encroachment Permits for All Construction Activities Affecting Local Roads

All Authority contractors shall obtain encroachment permits from the applicable land use agency (city or county) for any and all work or other activities within or affecting local roads and the contractor shall comply with all conditions established through the encroachment permit process. The Authority shall include this requirement in its contracts with construction contracts, and the Authority shall be responsible for ensuring its contractors comply with this requirement. The local agency encroachment permit process shall include the local agencies review and approval/acceptance of CTPs and the requirements and provisions specified therein.

290-774 **TR-IAMF#1: Protection/Restoration of Public Roadways Damaged during Construction Sufficient to Accommodate Future Traffic Volumes**

The Authority shall ensure that any roads damaged during construction of the HSR, its related facilities, or in conjunction with other infrastructure improvements needed for or as a result of HSR are repaired to equal or better than the road's original condition with sufficient structural and design capacity for projected future traffic volumes including increased traffic volumes resulting from closure of other roads due to HSR.

Prior to initiation of construction on a given portion of an HSR facility, the contractor ~~would~~ shall identify all routes to be used for access to the given construction and shall provide a photographic survey and engineer's assessment documenting the condition of the public roadways along ~~truck~~ routes to be used for providing access to the proposed project site. The construction areas, as part of the required local agency encroachment permit process and prior to initiation of construction activities, the contractor shall submit the photographic survey ~~would be submitted for approval and engineer's assessment to the agency responsible for local road maintenance authority for review and the Authority approval.~~ The contractor ~~would~~ shall be responsible for the repair of any structural damage to public roadways caused by HSR construction or construction access, returning any

290-774 damaged sections to the equivalent of their original pre-HSR construction structural condition or better. The contractor would survey the condition of the public roadways along truck routes providing access to the project site after construction is complete. The contractor would complete a before- and after-survey report and submit it to the Authority for review, indicating the location and extent of any damage.

290-775 **TR-IAMF#2: Construction Transportation Plan**

The contractor ~~would~~ shall prepare a detailed construction transportation plan (CTP) for minimizing the impact of construction and construction traffic on adjoining and nearby, and any other potentially affected roadways in ~~close consultation and with approval by the local jurisdiction having authority over the site~~ subject area of construction. The Authority ~~would~~ shall review and approve the CTP before the contractor commences any construction activities. ~~This plan would, and the Authority shall be responsible for ensuring implementation and compliance with the provisions of the CTP. CTPs shall address, in detail, the activities to be carried out in each construction phase, with the requirement of~~ minimizing effects on local circulation, maintaining traffic flow the maximum extent feasible during all times and especially during peak travel periods. Such activities would include Elements of each CTP shall address, but are not be limited to, the routing and scheduling of materials deliveries, materials staging and storage areas, construction employee arrival and departure schedules, employee parking locations, and minimization of any temporary road closures, if any. ~~The end detour route distances and travel times. Each CTP would~~ shall provide traffic controls pursuant to the California Manual on Uniform Traffic Control Devices sections on temporary traffic controls (Caltrans 2014c) and ~~would~~ shall include a traffic control plan that includes, at a minimum, the following elements:

- Temporary signage to alert drivers and pedestrians to the construction zone
- Flag persons or other methods of traffic control to ensure efficient and safe movement
- ~~Traffic~~ Reduced traffic speed limitations in the construction zones
- ~~Temporary road closures~~ Provisions for traffic management during to minimize the number and duration of temporary road closures and provisions for maintaining or providing alternative access to properties during the ~~closure~~ any road closures
- Detour provisions for temporary road closures—alternating one-way traffic ~~would~~ shall be considered as an alternative to temporary closures where practicable and where it would result in better traffic flow than would a detour
- Identified routes for construction traffic and provisions to ensure the use of such routes by construction workers and material delivery truck drivers
- Provisions for safe pedestrian and bicycle passage ~~through work areas~~
- Provisions for convenient ~~detour~~ and safe detours for pedestrian and bicycle transportation
- Provisions to minimize additional distance and travel times for pedestrians and bicyclists
- Provisions to minimize access disruption to residents, businesses, customers, delivery vehicles, and buses to the extent practicable—where road closures are required during construction, limit to the hours that are least disruptive to access for the adjacent land uses
- Provisions for ~~maintaining or providing alternative~~ farm equipment access
- Provisions for 24-hour ~~access by emergency vehicle~~ vehicle access within and through construction areas

Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

290-775

- ~~Safe~~Provisions for safe vehicular and pedestrian access to local businesses and residences during construction. ~~The plan would provide~~
- ~~Provisions~~ for scheduled transit access where construction would otherwise impede such access.
- Where an existing bus stop is within the work zone, the contractor would provide a temporary bus stop at a safe and convenient location away from where construction is occurring in close coordination with the transit operator. ~~Adequate measures would be taken to separate students and parents walking to and from the temporary bus stop from the construction zone.~~
- ~~Advance~~Provisions to separate students and parents walking to and from temporary bus stops from construction areas and roads.
- ~~Provisions for advance~~ notification to ~~the~~ local school districts of construction activities and
- Provisions for rigorously maintained traffic control at all school bus loading zones, to provide for the safety of schoolchildren.
- Review existing or planned safe routes to schools with school districts and emergency responders to incorporate roadway modifications that maintain existing traffic patterns and fulfill response route and access needs during project construction and HSR operations.
- ~~Identification~~Provisions to avoid or minimize potential safety risks to children associated with project construction. Development of these provisions shall involve identification and assessment of the potential safety risks of project construction to children, especially in areas where the project ~~is or~~ construction-related activities will be located near homes, schools, day care centers, and parks, or other locations where children can reasonably be anticipated to be present.
- ~~Promotion~~Provisions to promote of child safety within and near the project area. For example, ~~Such provisions shall include, but shall not be limited to, providing~~ crossing guards ~~could be provided~~ in areas where construction activities are located near schools, day care centers, and parks, or other locations where children can reasonably be anticipated to be present.

CTPs would consider and account for the potential for overlapping construction projects.

CTPs shall consider and account for the potential for overlapping or adjacent construction activities associated with HSR. Such overlapping or adjacent construction activities shall be minimized through scheduling to avoid cumulative effects of construction. Contractors and the Authority shall coordinate with local agency planning and road departments to develop construction schedules and commitments to 1) minimize the duration of construction and related effects on traffic for any given portion of HSR construction; and 2) avoid to the maximum extent feasible adjacent construction that would have cumulative effects of increased travel time/distances and/or decreased safety for motorists, bicyclists, pedestrians, and transit.

290-776

TR-IAMF#3: Off-Street Parking for Construction-Related Vehicles

The contractor would/should identify and secure temporary construction easements from property owners and shall obtain any required authorizations from the local land use authority as necessary to provide adequate off-street parking for all construction-related vehicles, including worker vehicles, throughout the construction period to minimize impacts on ~~public~~ that could otherwise be associated

290-776

with on-street parking areas. If adequate parking cannot be provided on their adjacent to a construction site, the contractor ~~would designate~~ shall identify and secure easements from property owners and any required authorizations from the local land use authority as necessary to provide a remote parking area and the contractor shall arrange for the use a shuttle bus to transfer construction workers ~~between the remote parking area and from the job~~ construction site. ~~This measure would~~ These requirements shall be addressed/included in the CTP and the Authority shall be responsible for ensuring contractor compliance.

290-777

TR-IAMF#4: Maintenance of Pedestrian Access

The contractor ~~would~~ shall prepare specific construction-period pedestrian access management plans to address maintenance of pedestrian access during the construction period. Actions that limit pedestrian access ~~would~~ and which shall be avoided or minimized to the maximum extent feasible include, but are not be limited to, sidewalk closures, bridge closures, crosswalk closures, ~~or~~ pedestrian recruiting at intersections, placement of construction-related material within pedestrian pathways or sidewalks, and other actions that may affect the mobility or safety of pedestrians during the construction period. If sidewalks are maintained along the construction site frontage, the plan shall identify and the contractor shall provide covered walkways and fencing between construction areas and the walkways. If sidewalks are maintained along roads that will be used by construction vehicles, the plan shall identify and the contractor shall provide barriers between walkways and adjacent roads. The plan objective ~~would be to~~ shall maintain pedestrian access ~~where to the maximum extent feasible~~ (i.e. while meeting design, safety, and Americans with Disabilities Act requirements). ~~This measure would~~. These requirements shall be addressed/included in the CTP all CTPs, and the Authority shall be responsible for ensuring contractor compliance.

290-778

TR-IAMF#5: Maintenance of Bicycle Access

The contractor would prepare specific construction-period bicycle access management plans to address maintenance of bicycle access during the construction period. Actions that limit bicycle access ~~would~~ and which shall be avoided or minimized to the maximum extent feasible include, but are not be limited to, bike lane closures or narrowing, bike path closures or narrowing, closure or narrowing of streets that are designated bike routes, bridge closures or narrowing or closing a bike lane or shoulder on a bridge to remain open, placement of construction-related materials within designated bike lanes or along bike routes, and other actions that may affect the mobility or safety of bicyclists during the construction period. ~~Maintain~~ The plan shall maintain bicycle access ~~where to the maximum extent feasible~~ (i.e. while meeting design, safety, and Americans with Disabilities Act requirements). ~~This measure would~~. These requirements shall be addressed/included in the CTP all CTPs, and the Authority shall be responsible for ensuring contractor compliance.

290-779

TR-IAMF#6: Restriction on Construction Hours

The contractor ~~would~~ shall limit construction material deliveries between 7 a.m. and 9 a.m. and between 4 p.m. and 6 p.m. on weekdays to minimize impacts on traffic on roadways during morning and evening peak traffic hours. The contractor would/should limit the number of construction employees arriving or departing the site between the hours of 7 a.m. and 8:30 a.m. and 4:30 p.m. and 6 p.m. ~~Areas where these restrictions would~~ These requirements shall be implemented ~~would be determined~~ as part of the CTP. ~~Based on~~ included in all CTPs. With Authority and local agency review of the CTP and approval, the restricted hours may be altered in an individual CTP due to local travel patterns while achieving the purpose of minimizing traffic effects during peak traffic periods.

290-780

TR-IAMF#7: Construction Truck Routes

The contractor ~~would determine~~ shall ensure that all construction-related equipment and materials are delivered to the site on the appropriate truck routes as specified the CTP, and ~~would~~ shall prohibit heavy construction vehicles from using alternative routes to ~~get to the site~~ without prior approval

Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

- 290-780 | from the local land use authority. Truck routes ~~would~~shall be established away from schools, day care centers, and residences, ~~and~~ along routes with the least impact ~~as determined by the Authority~~ as determined by the Authority. ~~These measures are unavoidable. This measure would~~and the local land use authority. ~~These requirements shall be addressed~~included in the CTP/all CTPs.
- 290-781 | **TR-IAMF#8: Construction During Special Events**
 The contractor ~~would~~shall provide a mechanism to prevent roadway construction activities from reducing roadway capacity during major athletic events or other special events that substantially (10 percent or more) increase traffic on roadways affected by project construction. Mechanisms ~~may~~include ~~arranging for the presence of police officers~~ directing to direct traffic, ~~provisions for establishing special-event parking, use of within-the-curb parking, or shoulder lanes for through-traffic and traffic cones. This measure would be addressed in the CTP.~~This measure shall be addressed in all CTPs.
- 290-782 | **TR-IAMF#9: Protection of Freight and Passenger Rail during Construction**
 The contractor ~~would~~shall repair any structural damage to freight or public railways that may occur during the construction period and return any damaged sections to their original structural condition. If necessary, during construction a “shoofly” track would be constructed to allow existing train lines to bypass any areas closed for construction activities. Upon completion, tracks would be opened and repaired or new mainline track would be constructed, and the “shoofly” would be removed. Contractor repair responsibility would be included in the design/build contract. Impacts to roads associated with any such shoofly shall be assessed by the contractor and the Authority, whom collectively shall identify plans consistent with the requirements of CTSs, and shall coordinate review and obtain approval from the local land use agency.
- 290-783 | **TR-IAMF#10: Maintenance of Transit Access**
 The contractor ~~would~~shall prepare specific construction management plans to address maintenance of transit access during the construction period. Actions that limit transit access ~~would~~and which shall be avoided or minimized to the maximum extent feasible, include, but ~~are not to~~be limited to, roadway lane closures or narrowing, closure or narrowing of streets that are designated transit routes, bus stop closures ~~or access restrictions~~, bridge closures, placement of construction-related materials within designated transit lanes, bus stop or layover zones or along transit routes, and other actions that may affect the mobility or safety of bus transit during the construction period. ~~Main~~The plan shall maintain transit access ~~where~~to the maximum extent feasible ~~(i.e., while meeting design, safety, and Americans with Disabilities Act requirements). This measure would~~. These requirements shall be addressedincluded in the CTP/all CTPs, and the Authority shall be responsible for ensuring contractor compliance.

Response to Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019)

290-660

The Authority is duly considering and responding to all comments from the Task Force, as well as all comments provided by its constituent agencies. The Final Supplemental EIR/EIS, once certified by the Authority as lead agency, will be available for use by CEQA responsible agencies.

290-661

All comments received during the CEQA and NEPA comment periods are treated equivalently and are duly responded to in the Final Supplemental EIR/EIS joint document.

290-662

The Authority acknowledges the interests of the Task Force as identified in the comment. In addition to several specific responses to detailed comments in this letter, please also refer to:

CVY-Response-GENERAL-6: Small Business Employment Benefits

CVY-Response-SO-01: HSR Project Will Lower Property Values Due to Nearby Alignment

CVY-Response-AGRICULTURE-2: Farmland Impacts - Remnant Parcels

CVY-Response-GENERAL-5: Phased Implementation, Interim Operating Plans and Draft 2020 Business Plan

290-663

Here and in subsequent comments, the commenter asserts that changed circumstances require not only the 2012 Merced to Fresno but also the 2005 Statewide programmatic environmental documents to be substantially revised.

As described in Chapter 2, the Authority and the Federal Railroad Administration (FRA) prepared two programmatic or "Tier 1" environmental documents for the statewide HSR system. These Tier 1 documents supported the two agencies making decisions on corridors and station locations to advance for further study in "Tier 2" EIR/EISs. The Authority divided the statewide HSR system into individual project sections for Tier 2 environmental review, one of which was the Merced to Fresno Project Section. The Authority and FRA completed the Final EIR/EIS and approved portions of the Merced to Fresno Project Section in 2012. The Authority and FRA identified their plan to provide further environmental review of Central Valley Wye alternatives in both the Draft and the Final EIR/EISs for the Merced to Fresno Project Section and in the agencies' respective approval documents.

Because only the Central Valley Wye portion of the Merced to Fresno Project Section geography would have any change as a result of the Authority's proposed changes to the prior Wye Design Options and east-west alignments in the Final EIR/EIS, the analysis in the Supplemental EIR/EIS was appropriately focused on this geographic area.

Please refer to CVY-Response-GENERAL-7: Relationship Between the Merced to Fresno Final EIR/EIS and Central Valley Wye Final Supplemental EIR/EIS Document, as well as CVY-Response-GENERAL-5: Phased Implementation, Interim Operating Plans and Draft 2020 Business Plan.

290-664

Please refer to the response to submission MF2-290, comment 661.

Response to Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

290-665

The Authority respectfully disagrees that it is required to revisit and prepare a new Tier 1 or Program EIR/EIS. The Merced to Fresno Project Section Final EIR/EIS and this Supplemental EIR/EIS are appropriately tiered from the prior Tier 1 EIR/EIS documents. Neither NEPA nor CEQA require a lead agency to continuously update a Tier 1 EIR/EIS. The Authority also disagrees with the comment that it is required to prepare a subsequent EIR under CEQA that updates the entire prior analysis of the Merced to Fresno Project Section as a whole. The Supplemental EIR/EIS is appropriately focused on proposed project changes related to the Central Valley Wye. Please refer to the response to submission MF2-290, comment 663.

The comment's reference to changed circumstances describes "uncertainties associated with the statewide HSR system." The potential uncertainty in funding the statewide HSR system is not a changed circumstance. The Authority has consistently represented a phased approach to implementation of the HSR system, building the Phase 1 system between San Francisco and Los Angeles/Anaheim incrementally over time as funding becomes available.

290-666

In this comment, the commenter largely recites portions of the CEQA Guidelines and asserts that the Central Valley Wye supplemental document is not limited to "minor additions" and thus should have been circulated as a "subsequent" EIR instead of a "supplemental EIR."

CEQA does not require a response to comments that recite legal standards. The Authority does not agree that it was required to use a subsequent EIR rather than a supplemental EIR. Chapters 1 and 2 of the Supplemental EIR/EIS provide the history of the Merced to Fresno Project Section EIR/EIS and the planning efforts particular to the Central Valley Wye. The geographic focus of the Supplemental EIR/EIS on the Central Valley Wye area, and the proposed changes to the project within that geographic area, was reasonable.

Please also refer to CVY-Response-GENERAL-7: Relationship Between the Merced to Fresno Final EIR/EIS and Central Valley Wye Final Supplemental EIR/EIS Documents as well as the responses to submission MF2-290, comment 663 and comment 665. Please also refer to responses to submission MF2-290, comments 668 to 691, discussing more specific comments about the adequacy of the Supplemental EIR/EIS under CEQA.

Response to Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

290-667

The comment recites NEPA requirements for preparation of a supplemental EIS and contends this Supplemental EIR/EIS does not meet those standards.

NEPA does not require a response to comments that recite legal standards. Chapters 1 and 2 of the Supplemental EIR/EIS provide the history of the Merced to Fresno Project Section EIR/EIS and the planning efforts particular to the Central Valley Wye. The geographic focus of the Supplemental EIR/EIS on the Central Valley Wye area, and the proposed changes to the project within that geographic area, was reasonable.

Please refer to the response to submission MF2-290, comments 663 and 665. Please also refer to responses to submission MF2-290, comments 668 to 691, discussing more specific comments about the adequacy of the Supplemental EIR/EIS under NEPA.

290-668

This comment raises legal arguments addressing the adequacy of the Draft Supplemental EIR/EIS. Because this comment raises legal arguments rather than environmental issues, a response is not required here. Please also refer to the response to submission MF2-290, comment 665.

290-669

Please refer to the response to submission MF2-290, comment 663. The Supplemental EIR/EIS analyzes the impact of HSR operations in the Merced to Fresno Project Section based on an assumption of the Phase 1 system between San Francisco and Los Angeles/Anaheim being constructed and beginning operations in 2029 and reaching full operations by 2040. The service plan assumptions are included in Appendix 6A. The analysis of operations is conservative. If it takes longer for the Phase 1 system to be funded, constructed, and operational, the level of operations-related impacts described in the EIR/EIS will occur later in time. Put another way, the impacts and benefits of HSR in the horizon year of 2040 may be less than described in the Supplemental EIR/EIS.

A final selection of the Central Valley Wye will not influence the selection of an alternative in the San Jose to Merced Project Section because all Central Valley Wye alternatives share a common western endpoint at Carlucci Road.

290-670

Please refer to the response to submission MF2-245, comment 136.

290-672

Please refer to the response to submission MF2-245, comment 136. Text has been added to Section 2.3 to clarify the continued reliance on the 2016 Business Plan Ridership Forecasts.

Please also refer to Standard Response: CVY-Response-GENERAL- 5: Interim Operating Plans and 2019 Project Report Update regarding considerations of interim service.

290-673

Please refer to CVY-Response-GENERAL-5: Phased Implementation, Interim Operating Plans and Draft 2020 Business Plan.

Response to Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

290-674

Consistent with its enabling legislation, the Authority is continuing to pursue a statewide HSR system, with a priority on Phase 1 between San Francisco and Los Angeles/Anaheim. The reference in the comment to Board Meeting materials from October 15, 2019, for an Early Train Operator "Side by Side Interim Analysis" does not detract from the Authority's continued efforts for a statewide HSR system between San Francisco and Los Angeles/Anaheim. As the memorandum for this agenda item explains, in May 2019, the Authority Board requested a side-by-side study to investigate and compare options for potential early service investments in the Central Valley, San Francisco Bay Area, and Los Angeles/Anaheim HSR corridors. The analysis was prepared to provide support for future Board investment decisions. The potential for early HSR service, prior to completion of the entire Phase 1 system is not new. The Authority has consistently focused on how it can offer HSR service incrementally, in advance of the entire Phase 1 system being operational, as described in its Business Plans as early as 2012, and through to 2020.

The Authority respectfully disagrees with the commenter's assertion that the October 2019 Board materials show significant impacts not discussed in the Merced to Fresno Final EIR/EIS, that impacts will be more severe than described in the Final EIR/EIS, or that mitigation measures may be infeasible due to lack of funding. The comment does not specify what impacts would be new or more severe than those described in the Merced to Fresno Final EIR/EIS, or in the current Supplemental EIR/EIS. Further, the comment merely speculates that required mitigation measures, whether those identified in the Merced to Fresno Final EIR/EIS or this Supplemental EIR/EIS will not be implemented due to funding constraints.

Please also refer to the response to submission MF2-290, comment 666.

290-675

Please refer to the response to submission MF2-290, comments 663, 666, and 674. The Authority has considered the 2018 Business Plan, 2019 Project Update Report, and materials from the October 2019 Authority Board meeting as cited in the comment.

290-676

Please refer to the response to submission MF2-290, comments 663, 666, and 674. Please also refer to the response to submission MF2-245, comment 136.

Text has been added to Section 2.3 to clarify that if the ridership levels are lower than the 2016 Business Plan forecasts used for the environmental analysis, certain adverse impacts and certain benefits of HSR will be lower.

290-677

Please refer to the response to submission MF2-245, comment 133.

290-678

Please refer to the response to submission MF2-245, comment 137.

290-679

Please refer to the response to submission MF2-245, comment 105.

290-680

Please refer to the response to submission MF2-245, comment 105.

Response to Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

290-681

The comment suggests the following significant effects are not sufficiently evaluated and disclosed in the Draft Supplemental EIR/EIS with its geographically limited focus:

- Disproportionate adverse effects on disadvantaged communities
- Increased demand for emergency services and potential need for new emergency service facilities
- Local land use plan inconsistencies and failure to address them
- Potential effects on beneficial use of surface and groundwater rights and supplies and potential changes in groundwater recharge.

The comment does not explain what about the Draft Supplemental EIR/EIS analysis is insufficient, other than suggest the Authority was required to revisit and update its analysis for the entire Merced to Fresno Project Section. The Supplemental EIR/EIS evaluates environmental justice in Chapter 5; emergency response in Section 3.11, land use in Section 3.13; and hydrology and water resources in Section 3.8. These chapters and sections appropriately address the above topics in the geographic context of the Central Valley Wye alternatives where the Authority has proposed a project change. Please also refer to Standard Response: CVY-Response-GENERAL-7: Relationship between the Merced to Fresno Final EIR/EIS and Supplemental EIR/EIS documents.

290-682

The Authority respectfully disagrees with the commenter's suggestion that there is a need for the Authority to postpone decisions on individual project sections of the HSR system and re-evaluate the entire Statewide HSR system in a new program EIR based on information the comment refers to from an October 2019 Authority Board presentation.

The Authority's 2005 Program EIR/EIS (Tier 1) provided a foundation from which the Authority and the Federal Railroad Administration (FRA) made decisions on train technologies, vehicle types, and the selection of corridors and station locations for most of the state for further study in Tier 2, or project-level, EIR/EISs. Through the 2008 Bay Area to Central Valley Program EIR/EIS (Tier 1) and 2012 Bay Area to Central Valley Partially Revised Final Program EIR, the Authority and FRA selected corridors and station locations between the San Francisco Bay Area and Central Valley for further study in Tier 2 EIR/EISs. The NEPA purpose and need and CEQA project objectives, underlying those Tier 1 EIR/EISs remain as valid today as when the documents were finalized. California continues to face significant increases in intercity travel demand that the existing transportation systems (airports, highway network, conventional rail) cannot meet.

Uncertainties about funding for the entirety of the Phase 1 HSR system do not undermine the validity of the Tier 1 EIR/EISs or the decisions the Authority and FRA made based on them.

The Authority has structured its Tier 2 EIR/EIS process to environmentally evaluate individual project sections of the system. The Authority is proceeding to complete all Tier 2 EIR/EISs for the Phase 1 HSR system by the end of 2022. Completion of the Tier 2 EIR/EISs will ensure the remainder of the HSR system, beyond the current construction in the Central Valley, will be ready for implementation when funding becomes available.

Please also refer to the response to submissions MF2-290, comment 674 regarding the October 2019 Board materials referenced in the comment.

Response to Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

290-683

Please refer to the responses to submission MF2-245, comment 137.

290-684

The Authority respectfully disagrees with the comment. The Draft Supplemental EIR/EIS provided information sufficient to enable meaningful public comment. Please refer to the responses to submission MF2-290, comments 663 and Standard Response: CVY-Response GENERAL-7: Relationship between the Merced to Fresno Final EIR/EIS and the Supplemental Final EIR/EIS documents.

290-685

Please refer to the responses to submission MF2-290, comments 672, 674 and the response to submission MF2-245, comment 134.

290-686

Please refer to the responses to submission MF2-290, comments 672, 674, and the response to submission MF2-245, comment 134.

290-687

Please refer to the response to submission MF2-245, comment 132.

290-688

The comment provides legal argument contending the Authority is treating the Central Valley Wye as a stand-alone project, and that the Draft Supplemental EIR/EIS does not function as a supplement under CEQA. No response to the legal argument in the comment is required. Regarding the factual comments about the scope of the Supplemental EIR/EIS, please refer to the responses to submission MF2-245, comment 132 and 133.

290-689

The Draft Supplemental EIR/EIS was complete and ready for publication under both NEPA and CEQA in June 2018 and was provided to the FRA for signature. However, the Authority did not assume NEPA Assignment until July 23, 2019, when the MOU with the FRA was executed. The technical reports, including the Biological Assessment and cultural resources reports, were all finalized prior to NEPA assignment in coordination with and approval from the FRA.

The Final Supplemental EIR/EIS, including the Section 4(f) Evaluation, has been revised to clarify the Authority's role and responsibilities under NEPA consistent with the July 2019 MOU.

The language required by Section 3.1.2 of the MOU is provided on the signature page (second page) of the Draft Supplemental EIR/EIS. In addition, the Notice of Availability, agency and public notices, and newspaper ads contained similar language as required by Section 3.2.6 of the MOU.

Response to Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

290-691

The comment does not specifically identify how or why the document is legally deficient as a result of its readability. As explained in Section 3.1.2, Changes in Analysis since the Merced to Fresno Final EIR/EIS, there are some differences in the document structure between the 2012 Merced to Fresno Final EIR/EIS and the Draft Supplemental EIR/EIS. These differences in structure are outlined and described so the reader can readily discern what has changed. Contrary to what the comment states, the Draft Supplemental EIR/EIS does provide a description of the methods for analysis along with a description of any substantive differences between the Draft Supplemental EIR/EIS and the Merced to Fresno Final EIR/EIS. Potential temporary and permanent impacts resulting from construction and operation are provided for each of the Central Valley Wye alternatives and each section contains an impact summary for NEPA as well as CEQA significance conclusions. Proposed mitigation measures are also provided in the seventh subsection of each section.

Regarding the relationship between the analysis in the Supplemental EIR/EIS and the analysis in the Merced to Fresno Final EIR/EIS, Section 1.1 explains to the reader how the two documents relate to each other, provides a figure showing the Merced to Fresno Project Section as a whole and the Wye area deferred for further study in 2012 (Fig. 1-1), and a figure showing the Central Valley Wye Alternatives and related infrastructure in the context of the Merced to Fresno Project section north/south alignment. Please also refer to Standard Response: CVY-Response GENERAL-7: Relationship between the Merced to Fresno Final EIR/EIS and the Final Supplemental EIR/EIS documents.

290-692

The Merced to Fresno Final EIR/EIS, Chapter 1, subsection 1.5 and Standard Response MF-Response-GENERAL-1: Tiering and Level of Detail in Analysis and Mitigation, explain the Authority's tiering process and how the Merced to Fresno Final EIR/EIS builds on earlier technology, corridor and station location decisions made in the Authority's programmatic or "Tier 1" EIR/EISs. That text provides a tiering roadmap by explaining how the Merced to Fresno Project Section was consistent with the Tier 1 corridor and station location decisions and fits within the statewide HSR system, but provided a more detailed, Tier 2 or project-level environmental analysis of implementing HSR in the more limited geography of the Merced to Fresno Project Section.

The following summarizes the Merced to Fresno Final EIR/EIS explanation of tiering and provides further clarification:

The Final Program Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the Proposed California High-Speed Train System (2005 Statewide Program EIR/EIS) provided a programmatic analysis of implementing the HSR system across the state and compared it to the impacts of a no project alternative and a "modal alternative" that involved expanding airports, freeways, and conventional rail to meet the state's future transportation needs. The HSR alternative included consideration of different train technologies and vehicle types, as well as potential corridors and station locations. At the conclusion of the 2005 Statewide Program EIR/EIS, the Authority and FRA made the following decisions:

2005 Tier 1 Decisions

Selection of transportation option	Selected the HSR alternative over the modal alternative (expanded airports and freeways) and the no project alternative (do nothing) to serve California's growing transportation needs.
---	--

Response to Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

290-692

Selection of train technology	Selected very high speed, electrified steel-wheel-on-steel-rail technology over magnetic levitation; lower speed, electrified steel wheel on steel rail; and lower speed diesel (non-electrified) steel-wheel-on-steel-rail technology.
Selection of preferred alignment corridors	Selected preferred corridors for most of the statewide system to be studied in more detail in Tier 2 EIR/EISs. Deferred selection of preferred corridors for Bay Area to Central Valley to a second Tier 1 EIR/EIS process.
Selection of preferred station locations	Selected station locations along the preferred corridors to be studied in more detail in Tier 2 EIR/EISs.
Adoption of mitigation strategies	Adopted broad mitigation strategies to be refined and applied at Tier 2, as part of project planning and development and environmental review.

Sources: Authority/FRA 2005.

After completing the 2005 Statewide Program EIR/EIS, the Authority and FRA prepared a second program EIR/EIS to identify corridor and station locations for the HSR connection between the Bay Area and the Central Valley, examining connections through the Pacheco Pass, the Altamont Pass, or both (i.e., the *Final San Francisco Bay Area to Central Valley High-Speed Train Final Program Environmental Impact Report/Environmental Impact Statement* [2008 Bay Area to Central Valley Final Program EIR/EIS]). In 2008, the Authority and FRA selected a Pacheco Pass connection, with corridors and station locations to be further examined in Tier 2 environmental reviews. As a result of litigation, the Authority prepared additional programmatic environmental review for the Bay Area and the Central Valley section, and again selected the Pacheco Pass connection (in the *Bay Area to Central Valley Partially Revised Final Program Environmental Impact Report*).

290-692

2008/2012 Tier 1 Decisions

Selection of preferred alignment corridors	Selected preferred corridors for connecting the Bay Area to the Central Valley north of Fresno to be studied in more detail in Tier 2 EIR/EIS.
Selection of preferred station locations	Selected stations locations along the preferred corridors to be studied in more detail in Tier 2 EIR/EISs.
Adoption of mitigation strategies	Adopted broad mitigation strategies to be refined and applied at Tier 2, as part of project planning and development and environmental review.

Source: FRA 2008; Authority 2012

These Tier 1 decisions established the broad framework for the HSR system that serves as the foundation for the Tier 2 environmental review of individual projects.

As noted in the Merced to Fresno Final EIR/EIS, MF-Response General-1, there is no requirement to incorporate the program EIR/EISs by reference. Rather, the Authority is using CEQA and NEPA tiering rules to move from the Tier 1 to the Tier 2 EIR/EISs.

Response to Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

290-693

The Authority respectfully disagrees that the Draft Supplemental EIR/EIS contained an inadequate description of the project purpose and need under NEPA, and objectives under CEQA. Section 1.2 explains that the text is presenting the purpose and need from the Merced to Fresno Final EIR/EIS, with some updates to reflect new information and current conditions.

Please refer to the responses to submission MF2-245, comment 132, 133, and 134.

290-694

Please refer to the responses to submission MF2-290, comments 663 and 674.

290-695

Please refer to the responses to submission MF2-290, comments 663 and 674.

290-696

Please refer to the response to submission MF2-245, response 133 as well as CVY-Response-GENERAL-7: Relationship Between the Merced to Fresno Final EIR/EIS and Central Valley Wye Final Supplemental EIR/EIS Document.

290-697

The Authority respectfully disagrees with the comment suggesting that its approach to environmental analysis of the Central Valley Wye has resulted in improper piecemealing under CEQA. The prohibition in CEQA against piecemealing a project is to prevent the environmental consequences of the whole of the project from being disclosed. The opposite has occurred here. The Merced to Fresno Draft and Final EIR/EISs analyzed two design options for the Central Valley Wye, but the Authority elected to defer a decision on that component of the Merced to Fresno Project Section and provide more consideration of Wye alternatives, more environmental analysis, and more opportunity for public input and disclosure. Figure 1-1 shows the geographic limits of the Authority's 2012 decision on a north/south alignment for the Merced to Fresno Project Section, the relationship of that decision to the Central Valley Wye, and the anticipated additional analysis of the Wye. The Authority has been transparent about its approach to providing more analysis of the Central Valley Wye, including documenting its decision to do so in its May 3, 2012, Resolution 12-20.

The Authority has therefore appropriately focused the Supplemental EIR/EIS on the Central Valley Wye component of the Merced to Fresno Project Section, shown in Figure 1-2, because the Authority proposes to make a new a discretionary decision to select a Central Valley Wye alternative, consistent with the plans it described back in 2011 in the Merced to Fresno Draft EIR/EIS and 2012 in the Merced to Fresno Final EIR/EIS and decision documents. No similar new discretionary decision is proposed for the north/south alignment, much of which is already under construction. A decision on the Central Valley Wye does not affect the previously disclosed impacts of the north/south alignment from the Final EIR/EIS. Similarly, the current construction of the Merced to Fresno Project Section does not affect the analysis in this Supplemental EIR/EIS on the Central Valley Wye.

As to the relationship between the environmental analysis in the Merced to Fresno Final EIR/EIS and Supplemental EIR/EIS, please refer to CVY-Response-GENERAL-7: Relationship Between the Merced to Fresno Final EIR/EIS and Central Valley Wye Final Supplemental EIR/EIS Documents.

Response to Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

290-698

Please refer to the response to submission MF2-247, comment 177 regarding the Authority's Impact Avoidance and Minimization Features (IAMFs) and how they are discussed in the environmental analysis.

290-699

Each of the proposed changes to certain IAMFs in Attachment A to submission MF2-290 has been considered as a separate comment in the respective sections cited. The identical list of proposed changes to IAMFs was submitted by the commenter in submission MF2-245. Regarding transportation, please refer to the responses to submission MF2-245, comments 155 through 166. Regarding aesthetics, please refer to the responses to submission MF2-245, comments 127 and 149 through 151. Regarding agriculture, please refer to the responses to submission MF2-245, comments 152 through 154.

290-700

The comment suggests the mitigation measures in the Supplemental EIR/EIS are insufficiently detailed, deferred, and/or lack performance standards. The commenter does not identify any particular mitigation measures that it believes are inadequate. The Draft Supplemental EIR/EIS provides adequate detail on the nature of mitigation measures to allow for the consideration of how such measures address identified environmental effects. Refer to, for example, Mitigation Measure AG-MM#1, which provides extensive detail and a performance standard.

290-701

Please refer to the response to submission MF2-245, comment 105.

290-702

The Authority respectfully declines to incorporate the terms of these proposed revisions to the IAMFs because they would be inconsistent with federal and state authority. Please also refer to response to comment MF2-290, comment 699 regarding the revisions proposed in Attachment A to the comment letter.

290-703

Please refer to the response to submission MF2-245, comment 140.

290-704

Please refer to the response to submission MF2-245, comment 140.

The Authority acknowledges that road modifications will require local transportation plans to be updated. The Authority will coordinate with local planning agencies and the Madera County Transportation Commission to supply required information and data, traffic modeling, and transportation plans during final design that can be used to update local transportation plans. The request for direct funding to update long-term transportation planning documents in Madera County is noted. However, funding to update local transportation plans is not necessary to avoid or mitigate a physical environmental impact.

Response to Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

290-705

As required by TR-IAMF#2, during final design, the project contractor will prepare a detailed CTP, which will describe protection of public roadways during construction; sequencing construction operations, temporary closures, and detours; provisions for off-street parking for construction-related vehicles as well as parking during special events; maintenance of pedestrian, bicycle, and transit access; and restrictions on construction hours and truck routes. As set forth in TR-IAMF#2, the CTP would be developed and implemented in close consultation with affected jurisdictions, offering ample opportunity for local jurisdictions' concerns to be understood and incorporated. In addition, specific traffic control plans will be prepared during each phase of construction.

As stated on page 3.2-13 and in several impact discussions, the Authority will continue to coordinate with local jurisdictions through final design to identify construction impacts, mitigation requirements, facility designs, traffic control plans, and construction monitoring activities. Please also refer to the response to submission MF-245, comment 117.

290-706

Please refer to the response to submission MF2-245, comment 117.

As stated on page 3.2-13 and in several impact discussions, the Authority will continue to coordinate with local jurisdictions, including the Chowchilla Department of Public Works, through final design to identify construction impacts, mitigation requirements, facility designs, traffic control plans, and construction monitoring activities.

290-707

Please refer to the response to submission MF2-245, comment 119.

A detailed discussion of potential permanent impacts on the response time of emergency service providers is provided in Section 3.11, Impact SS#2, Permanent Interferences with Emergency Response Times. The request for funding has been noted but is not required to mitigate a significant environmental impact.

290-708

Please refer to the response to submission MF2-245, comment 120.

290-709

Please refer to the response to submission MF2-247, comment 184.

290-710

Please refer to the response to submission MF2-245, comment 122.

Response to Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

290-711

The Authority respectfully disagrees with the comment that the Draft Supplemental EIR/EIS insufficiently addresses impacts to agricultural resources, including consistency with plans.

The Central Valley Wye Draft Supplemental EIR/EIS provides a NEPA analysis for both direct and indirect impacts on Important Farmland and land under Williamson Act or Farmland Security Zone contract, discussed in Section 3.14.6, Environmental Consequences, and summarized in Section 3.14.8, Impacts Summary for NEPA Comparison of Alternatives. This analysis takes into account local impacts, as quantified in the Natural Resources Conservation Service (NRCS) Land Evaluation and Site Assessment (LESA) analysis and geographic information systems analysis for acreage impacts as a result of temporary use, permanent conversion, creation of remnant parcels, and impacts on land under Williamson Act contract; and as analyzed qualitatively for disruption of agricultural infrastructure, interference with aerial spraying activities, and wind-induced effects. These impacts are also considered in the statewide context, acknowledging that loss of Important Farmland is a statewide concern. The analysis also provides CEQA impact conclusions for these topics.

The Draft Supplemental EIR/EIS also identifies and provides an analysis of inconsistencies between the Central Valley Wye and local plans and policies related to agricultural resources. This analysis is summarized in Section 3.14.3, Compatibility with Plans and Laws, and presented in detail in Appendix 3.14-A, Agricultural Farmland Local and Regional Plans and Laws Consistency Analysis. Constructing HSR in the Merced to Fresno Project Section will require the conversion of agricultural land to non-agricultural uses. The Supplemental EIR/EIS therefore identified this conversion as not consistent with Madera County and Chowchilla General Plan policies that promote retaining agricultural land for agricultural use. Figure 3.14-1 depicts the Central Valley Wye alternatives on a map showing Important Farmlands, which illustrates how it is not possible for the Authority to avoid converting Important Farmland. Impact AG#2 describes the conversion of Important Farmland to HSR, and characterizes it as a significant impact under CEQA.

The commenter suggests that Madera County land use planning agencies will be required to update their general plans, but does not identify any physical impact on the

290-711

environment that has been insufficiently addressed in the Draft Supplemental EIR/EIS.

290-712

The NRCS LESA analysis was performed for the Central Valley Wye study area only, not including the area for the entire Merced to Fresno Project Section. Because there were no other changes to the Merced to Fresno study area currently proposed, the LESA analysis for the Central Valley Wye focused on its study area, rather than including any of the study area from the Merced to Fresno environmental analysis.

The commenter incorrectly states that “an impact rating score of 160 points [is] given increasingly higher levels of protection.” To clarify, guidance for the NRCS LESA analysis states that for projects that have alternatives with scores over 160 that receive federal funding and that convert Important Farmland to nonagricultural uses, the alternative with the lowest score should be selected. The guidance does not specify that projects with scores over 160 should be given “increasingly higher levels of protection” as the comment suggests.

Response to Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

290-713

The Merced to Fresno Final EIR/EIS identified the permanent conversion of Important Farmland, characterized it as significant under CEQA, and proposed mitigation that the Authority and FRA subsequently adopted, AG-MM#1. This Final Supplemental EIR/EIS provides an analysis of the the Central Valley Wye alternatives that similarly describes the permanent conversion of Important Farmland, characterizes it as significant under CEQA, and proposes AG-MM#1. These impact discussions fully disclose the impacts related to conversion of agricultural land.

As described in Impact SO#19, Permanent Impacts on Regional Employment, on page 3.12-67 of the Draft Supplemental EIR/EIS, the HSR project would improve state and regional connectivity while facilitating access to employment and educational opportunities, creating job opportunities throughout the region. The HSR project is expected to result in net employment growth, which would benefit the regional economy, including the economy of Madera County.

The Authority acknowledges that there could be some permanent impacts on the agricultural economy, as described in Impact SO#20, Permanent Impacts on Agricultural Economy, on pages 3.12-68 and 3.12-69 of the Draft Supplemental EIR/EIS. The Authority would alleviate the impacts through financial compensation, provided during the right-of-way acquisition process, and help property owners file claims so they can receive compensation for economic losses related to farm productivity.

The impact discussions provide a full and adequate representation of the potential economic impacts that could occur as a result of construction and operation of the Central Valley Wye alternatives.

290-714

Please refer to the responses to submission MF2-245, comments 152, 153, and 154. The IAMFs as presented in the Draft Supplemental EIR/EIS are appropriate and effective standard practices that reduce impacts on Important Farmland as part of the proposed Central Valley Wye alternatives. For example, Impact AG#1 on temporary conversion of agricultural land to non-agricultural use explains that AG-IAMF#1 would require the construction contractor to restore Important Farmland temporarily used for construction to as close to pre-construction conditions as possible so that parcels remain viable for agricultural use, and do not become additional, permanently converted Important Farmland. Similarly, Impact AG#3, on remnant parcels, explains that AG-IAMF#3 is the Authority's Farmland Consolidation Program, in which it provides neighboring landowners the ability to acquire remnant parcels so that such parcels remain in agricultural use.

Response to Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

290-715

The Merced to Fresno Final EIR/EIS, Chapter 3.3, provided a discussion of anticipated air quality impacts of constructing the project section as a whole. Chapter 3.3 of this Supplemental EIR/EIS evaluates the air quality impacts of constructing the Central Valley Wye portion of the Merced to Fresno Project Section, including the increased construction associated with the extension of the project section to Carlucci Road on the west. The analysis focuses on the Central Valley Wye component of the section because this is the area proposed for a new discretionary decision on an alignment.

The Draft Supplemental EIR/EIS presented a discussion of cumulative impacts for air quality and global climate change starting on page 3.19-8 under subsection 3.19.6.2 (Air Quality and Global Climate Change). The resource study area for air quality was the San Joaquin Valley Air Basin and the San Francisco Bay Area Air Basin. For global climate change, the resource study area was the state of California. The cumulative impact analyses were conducted consistent with CEQA requirements that past, present and foreseeable future projects be considered.

With respect to the Clean Air Act and General Conformity, projects whose net construction- and operations-period criteria pollutant emissions fall below General Conformity de minimis levels are deemed to conform to the State Implementation Plan. The Authority has entered into an MOU with the SJVAPCD to offset project construction emissions to zero via SJVAPCD's Voluntary Emission Reduction Agreement program. As such, project construction emissions would be offset to zero. A copy of this MOU has been included as an attachment to this Final Supplemental EIR/EIS. With respect to long-term project operations, the proposed project would result in a net reduction in all criteria pollutant emissions, as detailed in the Draft Supplemental EIR/EIS in Table 3.3-19 on page 3.3-66. As such, the proposed project would not impede the region's ability to demonstrate conformity under the federal Clean Air Act.

An air toxics HRA was prepared for this project, and is discussed under subsection Impact AQ#6: Temporary Direct Impacts on Air Quality - Localized Health Impacts, starting on page 3.3-34 in the Draft Supplemental EIR/EIS. As disclosed therein, impacts on human health would be less than significant. The HRA was prepared consistent with SJVAPCD and California Office of Environmental Health Hazard Assessment guidelines.

290-716

The commenter refers to Table 3.3-24 and suggests the table shows an overly optimistic estimate of air pollution reduction from HSR operations. Impact AQ #7, which includes Table 3.3-24, describes how operations of the HSR Phase 1 system, including the Central Valley Wye, will lead to reduced air pollution emissions from automobiles, power plants, and aircraft. If the Central Valley Wye is constructed and operates as part of a more limited HSR system for a period of years, the air pollution reductions described in Impact AQ #7 would be less, but would continue to accrue over time, including past the 2040 horizon year included in the environmental analysis. The analysis, however, does not rely on indirect emissions decreases to demonstrate that direct air pollution emissions from HSR operations would be less than significant. First, HSR trains would be 100 percent electricity powered, and as such, would have no exhaust emissions. Second, per the 2013 Policy Directive POLI-PLAN-03, the Authority has adopted a goal to purchase 100 percent of the HSR system's power from renewable energy sources. For these reasons, project direct emissions would be negligible. As such, air quality impacts from HSR operations would be less than significant even if the Central Valley Wye were part of a more limited initial operation of the HSR.

Response to Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

290-717

This comment regarding NOX emissions, and the MOU[1] that the Authority has entered into with the SJVAPCD to offset all project construction emissions to net zero via the SJVAPCD's Voluntary Emission Reduction Agreement) program, raises four issues. Each issue is addressed below, separately:

Regarding health effects related to NOX (and other criteria pollutant) emissions, the commenter asserts that health effects are not sufficiently disclosed; however, the health effects of criteria pollutants (that include NOX) and diesel particulate matter are discussed in the Draft Supplemental EIR/EIS starting on page 3.3-64 under the subheading Impact AQ#6: Temporary Direct Impacts on Air Quality - Localized Health Impacts. Described therein, localized dispersion modeling demonstrated that criteria pollutant concentrations (that include NOX concentrations) would not exceed NAAQS nor CAAQS. As explained on page 3.3-4 of the Draft Supplemental EIR/EIS, these air quality standards are established to protect human health. As such, impacts to human health would be less than significant.

Regarding SJVAPCD's ability to provide the required offsets in the timeframe and location sufficient to mitigate project regional emissions impacts during construction, by virtue of entering into the agreement, the SJVAPCD acknowledges that sufficient offsets are available.

With respect to matching the VERA offset reductions to specific local emissions locations during construction, this is not necessary because VERA offset reductions are required to mitigate project regional emissions. Regional emissions reductions can occur anywhere within the San Joaquin Valley Air Basin. Local pollutant concentrations would not exceed NAAQS nor CAAQS, and as such, would be less than significant. Also note that there would be no ozone formation related to project construction emissions, since project construction emissions would be offset to zero via the VERA program.

With respect to the commenter's final point, the commenter is conflating regional pollutant emissions and local pollutant concentrations. Even without a VERA program offset agreement, local pollutant concentrations would be less than significant. This is because dispersion modeling demonstrates that criteria pollutant concentrations would not exceed NAAQS nor CAAQS. As explained on page 3.3-4 of the Draft Supplemental

290-717

EIR/EIS, the NAAQS and CAAQS are established to protect human health. Since there would be no pollutant emissions that exceed NAAQS or CAAQS at any location, there would be no disproportionate effect on disadvantaged communities.

[1] A copy of this MOU has been included as an attachment to this Final Supplemental EIR/EIS.

290-718

Given that the Authority has entered into an agreement with the SJVAPCD to offset all project construction emissions (that include VOC emissions) to net zero via the SJVAPCD's Voluntary Emission Reduction Agreement (VERA) program, VOC emissions during construction would be offset to zero with or without the utilization of super-compliant or Clean Air paint. Use of super-compliant or Clean Air paint would simply lower the quantity of offsets required to reduce project VOC emissions during construction. As such, there is no need to quantify the potential VOC emissions reduction related to implementation of this measure, and no such quantifications were made. The VERA program will require that all project construction-period emissions, including VOC emissions related to application of architectural coatings, be calculated in real time as part of the emissions offsets accounting process.

Response to Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

290-719

Madera County General Plan Air Quality Element Policy A1.1.4 states the following: "During project review, approval, and implementation, work with Caltrans, ARB, SJVAPCD, and MCTC to minimize the air quality, mobility, and social impacts of large-scale transportation projects on existing communities and planned sensitive land uses."

Madera County General Plan Air Quality Element Policy C1.1.1 states the following: "Assess and mitigate project air quality impacts using analysis methods and significance thresholds recommended by the SJVAPCD and require that projects do not exceed established SJVAPCD thresholds."

The proposed project is consistent with both policies for the following reasons. First, the Authority has entered into an MOU with the SJVAPCD to offset project construction emissions to zero via SJVAPCD's Voluntary Emission Reduction Agreement program. As such, project construction emissions would be offset to zero.

Second, HSR trains would be 100 percent electricity powered and, as such, would have no exhaust emissions.

Third, per the 2013 Policy Directive POLI-PLAN-03, the Authority has adopted a goal to purchase 100 percent of the HSR system's power from renewable energy sources.

For these three reasons cited above, project direct emissions would be negligible. Air quality impacts would remain less than significant, even without anticipated indirect emissions reductions.

290-720

The commenter's assertion is not accurate. Construction-period greenhouse gas (GHG) emissions and impacts are discussed starting on page 3.3-60 under the subheading Impact AQ#4: Permanent Direct and Indirect Impacts on Global Climate Change - Greenhouse Gas Emissions. Operations-period GHG emissions and impacts are discussed starting on page 3.3-75 under the subheading Impact AQ#9: Continuous Permanent Direct and Indirect Impacts on Global Climate Change - Greenhouse Gas Emissions - On-Road Vehicle, Power Plant, Electrical Equipment, and Aircraft Emissions.

The GHG analysis (1) quantified GHG emissions for project construction and operation, (2) discussed project GHG emissions relative to the baseline condition, (3) made a significance determination based on substantial evidence, and (4) discussed project consistency with statewide, regional, and local plans.

The commenter also raises the issue of upstream, or life-cycle, analysis [of GHG emissions]. Neither CEQA nor NEPA require the quantification of upstream emissions. However, California specifically addresses "Industry Sector" GHG emissions in its 2017 Climate Change Scoping Plan. Per the Scoping Plan, GHG emissions related to cement, steel and glass production are included amongst the Industry Sector emissions addressed in the plan. Therefore, while not specifically accounted for as part of this proposed project's CEQA and NEPA environmental review requirement, a large part of upstream GHG emissions related project construction would be accounted for in the State's 2017 Climate Change Scoping Plan.

290-721

Please refer to the response to submission MF2-290, comment 716.

Please also refer to CVY-Response-GENERAL-7: Relationship Between the Merced to Fresno Final EIR/EIS and Central Valley Wye Final Supplemental EIR/EIS Documents.

Response to Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

290-722

Section 10.1.3 of the FRA High Speed Ground Transportation Noise and Vibration Assessment manual states that for general assessment, pieces of equipment are assumed to operate at the center of the project, or centerline, in the case of a guideway or highway construction project. The reason that construction noise analysis is based on the centerline is because most of the work that will be performed in constructing the tracks and structures to support the tracks are near the centerline. The manual assumes that there would be multiple pieces of construction equipment operating concurrently for each construction activity; however, the major noise emitting equipment like concrete saws, rail saws, augurs, cranes, work trains, and excavators are expected to be working near the centerline and more specifically not near the outer limits of the construction site.

As noted on page 3.4-26, NV-MM#1, the construction monitoring program would implement temporary noise barriers when applicable. The barriers should provide 5 decibels or higher noise reduction to the impact area. Furthermore, the monitoring program permits the contractor to reschedule operations to minimize noise during sensitive hours.

290-723

The Authority developed the cited mitigation measure in recognition of the potential for final design and equipment considerations to result in differences from what was assumed in the environmental document. The Draft Supplemental EIR/EIS was prepared based on the best available information and does not reflect speculation. The cited mitigation measure provides further assurance that any final design or equipment changes are fully and appropriately assessed under pertinent requirements of CEQA and NEPA.

Furthermore, the project description in Chapter 2 is very clear that the proposed alignments would be used exclusively by electric-powered trains. The possibility raised by the commenter that louder diesel-powered trains would use the Central Valley Wye alignments is entirely speculative and therefore the impacts of such a speculative scenario are not included in the Draft or Final Supplemental EIR/EIS.

The Authority previously evaluated, as part of the Fresno to Bakersfield Project Section, whether utilization of the initial construction in the Central Valley for Amtrak would lead to higher noise impacts than with HSR operations and determined that it would not. Please refer to the Fresno to Bakersfield Final EIR/EIS, General Response #13. A portion of that response is excerpted below for reference.

For the noise analysis of the non-electrified interim use option, the noise level for the non-electrified passenger train was estimated to be 90 dBA Lmax at 100 feet throughout the length of the ICS. This noise level is based on 40 CFR 201 Section 201.12(b) requirements for maximum noise emission standards for interstate rail carriers rather than the lower expected noise emissions of such a train, so the estimate conservatively overstates noise as a reasonable upper limit.

Using this noise emission level, The Fresno to Bakersfield Project section modeled all the sites between Fresno and Rosedale in the Bakersfield metropolitan area that are representative of the range of sensitive receptors present along the full ICS. These receptor sites were residences and institutional facilities where people are sensitive to noise such as schools, churches, and rest homes. The same receptors used for the analysis of HST noise impacts were used for the non-electrified passenger train service. The modeling showed that the noise projected for the HST would be greater or equal

Response to Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

290-723

than the noise projected for a non-electrified passenger train operating at 125 mph for all noise sensitive sites. Therefore, noise impacts to sensitive receptors along the ICS would be less for a non-electrified passenger train than for the HST and this would hold true for the Fresno to Merced Section.

290-724

As stated in Section 3.4 of the Draft Supplemental EIR/EIS, sound barriers will be installed in locations where they would avoid or lessen severe impacts on at least 10 receivers. There are no such locations along any of the Central Valley Wye alternatives (refer to page 3.4-38 of the Draft EIS/EIR). Moreover, the cited mitigation measure is program-wide (in other words, not specific to the Central Valley Wye) and therefore should not be interpreted to mean that barriers will be installed. Accordingly, no analysis of secondary effects of sound barriers was necessary for the Supplemental EIR/EIS.

290-725

The commenter asserts that policy consistency analysis cannot be considered complete or meaningful unless the environmental document "...present[s] and consider[s] the full text and context of each policy..." The Authority respectfully disagrees with this assertion. The commenter asserts that the findings of "consistent" are incomplete but does not provide any specific instance in which a consistency determination was incorrect. Please also note that local government land use plans are not applicable to the HSR project because the HSR project is a state and federal government project, and, as such, is not subject to local governments' jurisdictional issues of land use. The Draft Supplemental EIR/EIS does assess the extent to which the alternatives would be consistent or inconsistent with such plans. A finding of inconsistency should not be considered equivalent to a significant environmental impact under CEQA.

290-726

Please refer to the responses to submission MF2-247, comment 184 and submission MF2-290, comment 725. Please also note that local government land use plans are not applicable to the HSR project because the HSR project is a state and federal government project, and, as such, is not subject to local governments' jurisdictional issues of land use.

290-727

Please refer to the responses to submission MF2-247, comment 184 and submission MF2-290, comment 725.

290-728

Please refer to the response to submission MF2-247, comment 177 regarding the commenter's assertion that the IAMFs provided in the Draft Supplemental EIR/EIS do not meet the standards of mitigation measures under CEQA and cannot be relied upon to sufficiently minimize impacts. Please also refer to the responses to submission MF2-245, comments 147 through 151 regarding the similar earlier comments from the commenter as well the commenter's proposed revisions to AVR-IAMF#1 and AVR-IAMF#2.

290-729

While the commenter correctly cites Impact PUE#6, the timing of other needed infrastructure improvements is uncertain relative to the likely construction of the Central Valley Wye alternatives.

In the next design phase, the Authority will identify and establish a process by which local utility agencies can maintain access below the railroad right-of-way, similar to how Caltrans provides opportunities for local agencies to maintain infrastructure access at Caltrans's facilities. From this process, new utility crossings will be located where justified and necessary by the local agencies. Please also refer to the response to submission MF2-296, comment 595.

Response to Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

290-730

Please refer to the response to submission MF2-245, comment 115.

290-731

The Authority's policy is to provide roadway overpasses approximately every 2 miles, resulting in no more than 1 mile of out-of-direction travel for vehicles to cross the HSR tracks. However, in rural areas, the distance between overcrossings or undercrossings would vary from fewer than 2 miles to approximately 5 miles where other roads are perpendicular to the proposed HSR alignment. The project design would include coordination with emergency responders to incorporate roadway modifications that maintain existing traffic patterns and fulfill response route needs, resulting in negligible effects on response times by service providers.

290-732

Please refer to the response to submission MF2-242, comment 79.

290-733

Please refer to:

CVY-Response-GENERAL-6: Small Business Employment Benefits.

CVY-Response-SO-01: HSR Project Will Lower Property Values Due to Nearby Alignment

Please also refer to Standard response: CVY-Response-GENERAL-4: Heavy Maintenance Facility.

290-734

Please refer to the responses to submission MF2-242, comment 79 and submission MF2-290, comment 732.

290-735

The request for funding to update local plans is noted and will be considered by the Authority outside the environmental review process.

290-736

The request for funding to update local zoning designations is noted and will be considered by the Authority outside the environmental review process.

290-737

Please refer to the response to submission MF2-245, comment 113.

290-738

Please refer to the response to submission MF2-245, comment 114.

290-739

Please refer to the response to submission MF2-245, comment 115.

290-740

Please refer to the response to submission MF2-245, comment 116.

290-741

Please refer to the response to submission MF2-245, comment 117.

290-742

Please refer to the response to submission MF2-245, comment 118.

Response to Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

290-743

Please refer to the response to submission MF2-245, comment 119.

The comment suggests changes to proposed roadway closures as well as compensation for closure-related issues.

The Authority's policy is to provide roadway overpasses approximately every 2 miles, resulting in no more than 1 mile of out-of-direction travel for vehicles to cross the HSR tracks. However, in rural areas, the distance between overcrossings or undercrossings would vary from fewer than 2 miles to approximately 5 miles where other roads are perpendicular to the proposed HSR alignment. The project design would include coordination with emergency responders to incorporate roadway modifications that maintain existing traffic patterns and fulfill response route needs, resulting in negligible effects on response times by service providers. Section 3.11.6, Environmental Consequences (Safety and Security), of the Draft Supplemental EIR/EIS provides additional detail regarding emergency response time during HSR operations.

290-744

Please refer to the response to submission MF2-245, comment 120.

290-745

Please refer to the response to submission MF2-245, comment 121.

290-746

Please refer to the response to submission MF2-245, comment 122.

290-747

Please refer to the response to submission MF2-245, comment 141 regarding the applicability of Transportation Conformity and General Conformity.

With respect to the Clean Air Act and General Conformity, projects whose net construction- and operations-period criteria pollutant emissions fall below General Conformity *de minimis* levels are deemed to conform to the State Implementation Plan. The Authority has entered into an MOU with the SJVAPCD to offset project construction emissions to zero via SJVAPCD's Voluntary Emission Reduction Agreement program. As such, project construction emissions would be offset to zero. A copy of this MOU has been included as an attachment to this Final Supplemental EIR/EIS. With respect to long-term project operations, the proposed project would result in a net reduction in all criteria pollutant emissions, as detailed in the Draft Supplemental EIR/EIS in Table 3.3-19 on page 3.3-66. As such, the proposed project would not impede the region's ability to demonstrate conformity under the federal Clean Air Act.

290-748

Please refer to the response to submission MF2-245, comment 124.

290-749

Please refer to the response to submission MF2-245, comment 125.

290-750

Please refer to the response to submission MF2-245, comment 124.

290-751

Please refer to the response to submission MF2-245, comment 127.

290-752

Please refer to the response to submission MF2-245, comment 128.

290-753

Please refer to the response to submission MF2-245, comment 129.

Response to Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

290-754

Please refer to the response to submission MF2-245, comment 130.

290-755

Please refer to the response to submission MF2-245, comment 115.

290-756

The comment asserts that the Draft Supplemental EIR/EIS “fails to identify” and analyze the demographic, economic, and fiscal impacts that could arise from construction and long-term operation of HSR.

The demographic, economic, and fiscal impacts of the project are analyzed and disclosed in several components of the Draft Supplemental EIR/EIS, including but not limited to Section 3.12, Socioeconomics and Communities. Within Section 3.12, Impacts SO#9 through SO#16 assess demographic, economic, and fiscal impacts consistent with of pertinent federal and state requirements.

290-757

The comment asserts that the socioeconomic analysis is flawed because it assumes the HSR system will be fully developed. The Authority respectfully disagrees with this comment. Chapter 3.12 in the Draft Supplemental EIR/EIS evaluates economic impacts of Central Valley Wye construction, including effects such as employment, school district funding, agricultural economic effects, and impacts on property and sales tax revenues. These construction-related effects, positive and negative, are not influenced by construction of other sections of the HSR.

The Draft Supplemental EIR/EIS also evaluates operations-related economic impacts on regional employment, the agricultural economy, and property and sales tax revenues. These operational impacts are assumed for the Central Valley Wye as part of the overall statewide system. Impacts SO#19 and SO#22 identify beneficial economic operations period effects. In the event that the Authority temporarily operates a smaller initial HSR system, such as only within the Central Valley, such benefits would be lesser. Similarly, the adverse operational period effects (refer to Impacts SO#20 and SO#2) would likely be incrementally lower for a smaller initial operating system. The full extent of economic benefits and adverse effects would likely not be realized until the statewide system extends into the San Francisco Bay Area and the Los Angeles basin.

Consistent with the CEQA Guidelines, no CEQA conclusions were included for economic impacts in the Supplemental EIR/EIS.

Response to Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

290-758

Please refer to the response to submission MF2-242, comment 66.

Section 3.12's analysis related to community cohesion and displacement is organized in the following numbered impacts: Impact SO#1: Temporary Impacts on Communities—Community Cohesion; Impact SO#2: Permanent Impacts on Communities—Community Cohesion; Impact SO#3: Displacements and Relocations of Residences; Impact SO#4: Displacements and Relocations of Commercial and Industrial Businesses; Impact SO#5: Displacements and Relocations of Agricultural Operations; Impact SO#6: Displacements and Relocations of Community and Public Facilities.

The commenter is correct that, with respect to Impact SO#1, the Draft SEIR/EIS concludes that the temporary impacts to community cohesion caused by construction (as distinct from the permanent impacts caused by operation) are less than significant under CEQA. The analysis of Impact SO#1 explains that IAMFs including SO-IAMF #1 (as set forth in full in Appendix 2-B) will help address certain impacts, but discloses that construction-related traffic, noise, and visual quality issues will cause annoyance and potentially affect the quality of life of residents. However, for the particular category of temporary impacts to community cohesion caused by construction, this would not result in the physical division of an existing community, which is the criterion for evaluating a significant impact under CEQA.

The commenter observes that where a residence or business will be relocated, it is unclear to what extent, during construction, "continued access" will be maintained for such a residence or business (that is being relocated). As a logical matter, if a residence or business has been relocated, that residence or business no longer has a need for continued access to the prior location. However, the Draft SEIR/EIS clearly acknowledges and analyzes displacements within Impacts SO#3 - #6, evaluating displacements for various types of land uses, explaining the relocation process and describing the benefits available to assist residents and businesses/non-profits subject to relocation.

290-759

Please refer to the responses to submission MF2-242, comment 66 and submission MF2-290, comment 758.

SO-IAMF#2 describes the Authority's compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended (Uniform Act). Assisting residents, businesses and non-profits with relocations, including through financial and technical assistance as provided for under SO-IAMF#2, would minimize potential impacts on communities as a result of such displacements. Similarly, SO-IAMF#3, describing the relocation mitigation plan, would likewise minimize potential impacts on communities by facilitating relocations. Displacement (and associated relocations) are not, in and of themselves, impacts under CEQA, based on Section 15064(e) of the CEQA Guidelines. Nevertheless, the Authority has analyzed the permanent impacts of the project on community division in Impact SO#2, concluding that even with the beneficial effects of SO-IAMFs #2 and #3, there will be a significant impact under CEQA.

SO-IAMF#3, describing the relocation mitigation plan, is not infeasible: physical relocation of a business or non-profit does not have to mean permanent closure of that business or non-profit's ongoing operations.

290-760

The commenter does not cite any specific deficiency regarding the environmental justice conclusions in the Draft Supplemental EIR/EIS. The Draft Supplemental EIR/EIS discusses environmental justice in Chapter 5. Section 5.8 describes the preliminary determination that with mitigation for the community of Fairmead, there would be no disproportionately high and adverse effects. Please also refer to the response to submission MF2-242, comment 281 and MF2-290, comment 761.

Response to Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

290-761

The commenter states that the conclusion of project-related benefits noted in the environmental justice chapter is flawed.

First, Chapter 5 of the Draft Supplemental EIR/EIS made a preliminary environmental justice determination, which is based primarily on an assessment of whether low-income and minority populations would experience disproportionately high and adverse effects as a result of construction or operation of any of the Central Valley Wye alternatives. The preliminary determination of disproportionately high and adverse effects is based primarily on the effects that would be experienced in the community of Fairmead. The preliminary determination cited the potential effects of the SR 152 alternatives as well as the highly specific mitigation measures developed following extensive outreach with the community of Fairmead.

After citing the adverse effects and benefits, the preliminary determination also cites the benefits associated with the mitigation measures associated with the SR 152 alternatives. The preliminary determination does not cite the general benefits indicated by the commenter. However, the Authority notes that such benefits would be expected long-term for the statewide project as a whole, and that the initial operating concepts would also provide benefits in terms of construction-related employment, and improved regional mobility and air quality. Please also refer to the response to submission MF2-290, comment 757.

The Final Supplemental EIR/EIS includes the Authority's final environmental justice determination, stating that low-income and minority populations would not experience disproportionately high and adverse effects as a result of construction or operation of any of the Central Valley Wye alternatives. This conclusion is based on the revised discussion of mitigation measures, in particular, those measures proposed to address the environmental justice effects on the community of Fairmead.

290-762

Please refer to the response to submission MF2-247, comment 234.

290-763

Please refer to the response to submission MF2-247, comment 234.

290-764

Please refer to the response to submission MF2-247, comment 234.

290-765

The Authority respectfully disagrees that the cumulative impacts analysis is insufficient for failure to update the analysis for the entire project section. Section 3.19.1 explains that it describes new and relevant information for cumulative impacts of the Central Valley Wye component of the Merced to Fresno Project Section, including with reference to adjacent sections of the HSR system. Section 3.19.4.3 describes that analysts updated the cumulative project lists from the Merced to Fresno Final EIR/EIS, including in Merced, Madera, and Fresno Counties, and considered cumulative projects outside the geographic area of the Central Valley Wye. The analysis, however, reasonably focuses on the Central Valley Wye alternatives and their contribution to cumulative effects as part of the Merced to Fresno Project Section within Madera and Merced Counties because this is the portion of the Project Section for which the Authority proposes to make a new discretionary decision.

290-766

Please refer to the response to submission MF2-245, comment 139. Please also refer to Standard Response: CVY-Response-GENERAL-2: Alternatives Analysis and Selection for CVY regarding considerations of corridor selection. Additionally, this comment raises legal arguments addressing the adequacy of the Draft Supplemental EIR/EIS and cites legal authority pursuant to CEQA and NEPA. These legal comments and recitations of the law do not require a response.

Response to Submission 290 (Kristen Kortick, Abbott & Kindermann, Inc. on behalf of Wye Madera Task Force, October 28, 2019) - Continued

290-767

Please refer to the response to submission MF2-245, comment 149.

290-768

Please refer to the response to submission MF2-245, comment 150.

290-769

Please refer to the response to submission MF2-245, comment 151.

290-770

Please refer to the response to submission MF2-245, comment 152.

290-771

Please refer to the response to submission MF2-252, comment 153.

290-772

Please refer to the response to submission MF2-252, comment 154.

290-773

Please refer to the response to submission MF2-245, comment 155.

290-774

Please refer to the response to submission MF2-245, comment 156.

290-775

Please refer to the response to submission MF2-245, comment 157.

290-776

Please refer to the response to submission MF2-245, comment 159.

290-777

Please refer to the response to submission MF2-245, comment 160.

290-778

Please refer to the response to submission MF2-245, comment 161.

290-779

Please refer to the response to submission MF2-245, comment 162.

290-780

Please refer to the response to submission MF2-245, comment 163.

290-781

Please refer to the response to submission MF2-245, comment 164.

290-782

Please refer to the response to submission MF2-245, comment 165.

290-783

Please refer to the response to submission MF2-245, comment 166.