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November 6, 2013

California High Speed Rail Authority Board
Chairman Dan Richard and Honorable Board Members
c/o Mr. Mark McLoughlin
770 "L" Street, Suite 800
Sacramento, CA 95814

Federal Railroad Administration
Joseph C. Szabo, Administrator
c/o Mr. David Valenstein
MS-20, W38-303
1200 New Jersey Avenue, SE
Washington, DC 20590

Surface Transportation Board
Chairman Elliot and Honorable Board Members
395 E Street, SW
Washington, DC 20423

Mr. Horace Greczmiel
Associate Director for NEPA Oversight
Council on Environmental Quality
Executive Office of the President
722 Jackson Place N.W.
Washington D.C. 20503

RE: Supplement to October 3 2013 Letter Re High Speed Train System
Programmatic EIR/EIS and Fresno-Bakersfield Revised Draft EIR/EIS; and
Coordination of Project Planning and Environmental Review

Chairman Richard, Chairman Elliot, Administrator Szabo, Director Greczmiel and
Honorable Board Members:

Our firm represents Citizens for California High Speed Rail Accountability (CCHSRA), Kings County, and the Kings County Farm Bureau. We wrote to you on October 3, 2013 about our concern that the Revised Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement: Fresno to Bakersfield (Fresno-Bakersfield Revised Draft EIR/EIS) of the California High Speed Rail Authority (Authority) describes a project with different alignments and features than is currently

proposed for the High Speed Train (HST) system. As previously explained, major modifications to the project and changes in circumstances have occurred since the revised draft EIR/EIS was released in July 2012. The final version of this EIR/EIS is reportedly scheduled for release in January 2014.

We described the significant changes in the project and the circumstances including the contemplated elevated rail system over the Kings River, a trenched alignment around 13th Avenue in Hanford, and the new information about potentially significant geotechnical impacts that represent significant changes in the design and environmental impacts of this segment of the HST. Since that time, we have become aware of significant issues that further substantiate our view that the Fresno-Bakersfield Revised Draft EIR/EIS must be revised and recirculated.

After our previous letter had been delivered, we hoped an effort would be made to resolve or at least address the issues we raised; however no such effort has been made to date. We remain more than willing to discuss these concerns with your General Counsel, or any appropriate staff members you would designate.

We are also disappointed that, despite CCHSRA's reasonable request, the Authority has chosen not to make remote viewing locations available for its November 7, 2013 hearing at which a choice of a preferred alternative for the Fresno-Bakersfield alignment will be considered. Instead, the Authority is holding its hearing in Sacramento approximately 170 miles away from Fresno (and even further away from other portions of the proposed alignment). The lack of a satellite location hampers the ability of the public to participate in the Authority's proceedings. We based the request in part on the fact that incorrect information was delivered by phone by Authority staff member Camarena to Carol Waters of CCHSRA that the alignment selection would take place on November 15th, thus leading many people to formulate their plans based on this anticipated date. Also, the courtesy of having remote satellite locations is extended to Authority Board members when they are unable to attend in person at Authority Board meetings.

As we previously stated, in accordance with the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) the Authority, the Federal Rail Administration (FRA), and the Surface Transportation Board (STB) must revise the Fresno-Bakersfield Revised Draft EIR/EIS for the Fresno to Bakersfield segment to reflect changes in design and newly identified significant impacts, and re-release the draft for public review. (40 C.F.R. § 1502.9 [NEPA]; Pub. Resources Code § 21092.1 [CEQA].) You should also prepare a supplemental programmatic system-wide EIR/EIS since the one approved in 2005 did not properly address at the program level alternatives and mitigation measures for impacts that are now apparent from further analysis. (40 C.F.R. § 1502.9 [NEPA]; Pub. Resources Code § 21092.1.)

Below we discuss how recently obtained information supports our prior request that you to revise, recirculate, and supplement the environmental review as appropriate, and that you coordinate with Kings County and other affected jurisdictions.

I. Changes In The Project's Circumstances, Its Design, and Feasible Alternatives Require Supplemental Environmental Review and Recirculation of Draft Documents.

A. NEPA and CEQA Require Revision of the Revised Draft EIS/EIR and Recirculation Because of Changes to the Project, New Information, and Changes in Circumstances Disclosing Significant Impacts.

We previously explained that under NEPA, federal agencies reviewing major federal actions must take a "hard look" at environmental consequences of the proposed project, and prepare an adequate draft EIS. (Chatten-Brown & Carstens (CBC) Letter of October 3, 2013, p. 3, citing *Kleppe v. Sierra Club* (1976) 427 U.S. 390, 410; *Marsh v. Oregon Natural Resources Council* (1989) 490 U.S. 360, 374.) CEQA also requires that EIRs provide a thorough investigation and adequate analysis of project impacts in which a public agency finds out and discloses all that it reasonably can about project impacts. (Tit. 14. Cal. Code Regs. §§ 15144 and 15151.) Under both NEPA and CEQA, when significant new facts emerge about a project or alternatives to it, or the circumstances in which it is proposed, the environmental review documents for it must be supplemented, if they have already been approved (40 C.F.R. § 1502.9 [NEPA]; Public Resources Code § 21166 [CEQA]), or recirculated if they have not yet been approved (40 C.F.R. § 1502.9 [NEPA]; Public Resources Code section 21092.1).

1. Project Management Oversight Documents Confirm the Significance of Changes That Have Occurred, Or Problems That Have Been Identified Internally But Not Publicized Since the Release of the Fresno-Bakersfield Draft EIR/EIS in July 2012.

Pursuant to the Public Records Act, Californians Advocating Responsible Rail Design recently obtained Project Management Oversight (PMO) progress reports prepared by T.Y. Lin and shared them with our clients. These Progress Reports identified numerous issues that should have been made publicly available. Examples of how the Progress Reports helped identify problems possibly before they become intractable include the following:

a. PMO Report #38- February 2013

The PMO reported that the Regional Consultant submitted more than 40 changes to the Merced-Fresno section of the alignment. (PMO Progress Report #38, p. 8.) There is a discussion ongoing about the potential delays and potential litigation for changes

made without CEQA and/or NEPA review:

The RC submitted design change memoranda for four locations (Olive, Belmont, McKinley, & Golden State Boulevard) with analysis in Jan 2013. They received PMT/AG comments, which are now being addressed. Authority/PMT/AG need to consider schedule vs. litigation risks in determining level of detail in the analysis. Also need to consider litigation risk (i.e. newly affected parcels, and permitting/[National Historic Preservation Act] Sec 106 requirements) when determining need for and timing of additional CEQA/NEPA review. PMT reviewing need for 40+ additional design changes.

(PMO Progress Report, #38, p. 8.) The risk of future litigation could be reduced by providing the required amount of coordination with the public including local agencies. As matters stand now, the changes made to the Merced-Fresno alignment require that the EIR/EIS for the Merced-Fresno section be supplemented and recirculated for public review.

b. PMO Report # 39- March 2013.

The PMO confirmed that the Authority has not finalized the "footprint" that is utilized to define the project. (Progress Report # 39, p. 8.) Therefore the Authority has not properly described to the reader of the Fresno-Bakersfield EIR/EIS the project footprint in the Project Description. As reported by the PMO, only after the footprint is identified can various requirements be described:

These requirements include a 15-foot permanent easement on either side of viaduct and trench structures for maintenance, and access along embankments and cuttings. Based on agreements with the EMT, the permanent environmental footprint is being modified for the Final EIR/EIS; however, the late application of these new criteria has impacted the final delivery schedule for the environmental footprint. The RC is working to finalize the footprint, including engineering, ROW, and other environmental input.

(PMO Progress Report # 39, p. 8.) This confirms the insufficiency of the project description in the July 2012 version of the Fresno-Bakersfield EIR/EIS.

Furthermore, the project description is insufficient because the Authority has not clarified the road speed required by each county. (PMO Progress Report # 39, p. 11.) The road speed will impact the dimensions and safety of many of the overpass and underpass structures.

Status of County Road 65 MPH requirement: PMT/HSR (Diana Gomez and staff) are in a process of meeting with all the cities and counties to negotiate a design

speed that is workable with the HSR alignment.

(PMO Progress Report # 39, p. 11.)

The Project Management Team (PMT) informed the Regional Consultant (RC) (which is URS in the Fresno-Bakersfield area) that design criteria in Technical Memorandum 2.1.2 was being revised to increase the distance between the end of a horizontal curve and the beginning of a vertical curve because "Segment lengths and attenuation time have a direct impact on rider comfort, a fundamental system consideration." The impacts of not providing enough length between transitions would increase what could be considered a "roller-coaster effect" on the riders of the train. Increasing the lengths of times between transitions would mean adjustments in the alignment. Adjustments in the alignments could introduce new impacts, change existing impacts and require different and new mitigation measures. (PMO Progress Report #41, p. 8.) Whereas, failure to make any adjustments could impact the service level of the high speed train system with a likely outcome of slower trains and failure to meet travel time requirements.

We would also like to caution the Authority that ignoring compliance with internal technical specification adds a severe safety concern to the traveling public. With the recent tragedy in Spain, the Authority should take precautions to provide the safest and technically sound system given that Central Valley will require the greatest speeds (upwards of 220 mph) to accommodate to the "blended" approach in the northern and southern stretches of the system.

c. PMO Report # 40- April 2013.

The PMO reports that there is some confusion regarding coordination with the California Public Utilities Commission (CPUC). (PMO Report #40, p. 14.) We believe it is critical that the Authority coordinate with the CPUC to determine future energy demands on the system, however it is more critical to coordinate with the CPUC for design and safety reasons. This is highlighted in the Hanford East alignment, which currently is staff's preferred alignment, where the tracks cross a set of high power electrical lines that are in alignment with 7 1/2 Avenue in Kings County. This topic is further discussed below.

d. PMO Report # 41- May/June 2013.

The Report indicates that the RC and the PMT reviewed roadway design changes that have the potential to result in new environmental impacts. (PMO Report #41, p. 9.) It was further stated that the RC and PMT have "*incorporated these changes into the environmental footprint for the FEIR/EIS.*" (PMO Report, p. 9.) This would indicate that new environmental impacts have been included in the Fresno-Bakersfield Revised Draft

EIR/EIS and will require further public review. There is a great risk that the Draft EIR/EIS could be introducing new significant impacts without public review, including review by local jurisdictions such as Kings County and the City of Hanford.

2. Overhead Electrical Powerline Issues Are a Significant Impact That Has Been Insufficiently Analyzed and Mitigated.

The staff's recent identification of the Hanford East Alignment as the preferred alignment raises the serious issue that the siting of the High Speed Train System near and among high voltage overhead electrical power lines has not been adequately analyzed or mitigated.

The current design of the Hanford East alignment crosses a 115,000-Volt High-Voltage Transmission Line in several locations at an angle or in a perpendicular direction as it weaves in and out the power lines.² The High-Voltage Line is identified as the Kingsburg-Waukena HV Transmission Line and runs north and south through eastern Kings County. This power line is owned and operated by PG&E and carries a large amount of the electrical supply up and down the Central Valley, supplying power to Fresno, Visalia, Hanford, Tulare, Bakersfield and many other small communities along the way.

Given that the track bed and the subsequent train facilities are approximately 35 feet above natural grade, the train will run directly into the power lines. Thus, they will have to be relocated or undergrounded. Also there are overpass structures slated for approximately every mile along the Hanford East alignment. These overpasses are also approximately 35 feet above natural grade to the bottom of the overpass structure. This means that the overpasses will be directly within the high power lines at every mile. The Fresno-Bakersfield Revised Draft EIR/EIS states that any impacts due to relocation of power lines is not significant and that the inconvenience to residents and power users will be minimal. The problem is that there was no detailed discussion of what was impacted, how it was to be addressed and what the impacts would be. The reader has no way of making an informed evaluation if the impact would be minimal.

² Electromagnetic fields traveling too close to each other and in different directions potentially cause arcing failures. (http://en.wikipedia.org/wiki/Electromagnetic_interference "mutual inductance between two radiated electromagnetic fields will result in EMI [ElectroMagnetic Interference]"; Federal Record of Decision California High-Speed Train System, November 18, 2005, p. 21) If the current design of the HSR calls for 37-foot clearance above grade for necessary infrastructure with a 5,000-Volt HSR power transmission cable, is there enough clearance under the existing high voltage lines to avoid arching and flaming failure? For example, the HSR crosses under the HV lines at an angle between Idaho and Jackson Avenues in the City of Hanford.

Lastly, the Hanford East alignment station location places the high speed system directly adjacent to the power lines and the metal structures they are supported on. With the station track being approximately 40 feet above grade, the train will be at the same elevation of the power lines. The Draft EIR/EIS did not mention the safety concerns associated with high speed trains being adjacent to high voltage power lines, as significant headwind forces could be created by high speed trains. Nor does the Draft EIR/EIS discuss the potential for long-term impacts such as metal fatigue cause by the vibration impacts emanating from the high speed rail system. Lastly, there is no discussion of the impacts that construction poses near the power lines given the elevated viaduct in that location is directly adjacent to the power lines and there is very little room to construct the system while maintaining a safe distance away from the power lines.

The Fresno-Bakersfield Revised Draft EIR/EIS considers electrical substations to be "high risk". (Draft F-B EIR/EIS Page 3.16-11.) However, the Draft EIR/EIS does not identify the new Mascot Station located at the southwest corner of 7 1/2 Avenue and Grangeville Boulevard in the City of Hanford. This is a new SCE high power substation to serve the eastern section of Hanford that we have been informed cost \$25 million to construct and was completed recently. The new station also includes new power lines that parallel the Kingsburg-Waukena 115kV lines. Therefore given the definitions identified in the Draft EIR/EIS, the public analyzed the Draft EIR/EIR with a "high risk" facility missing.

The California Public Utilities Commission (CPUC) regulates public electric utilities in California. General Order 131-D sets forth provisions that must be adhered to when public electric utilities construct any new electric-generating plant or modify an existing electric-generating plant, substation, or electric transmission, power, or distribution line. The Project is also subject to CPUC General Order No. 95. This CPUC General Order Rule for Overhead Electric Line Construction formulates uniform requirements for overhead electrical line construction, including overhead catenary construction, the application of which will ensure adequate service and secure safety to persons engaged in the construction, maintenance, operation or use of overhead electrical lines and to the public in general. A Permit to Construct must be obtained from the CPUC, except when planned electrical facilities would be under 200 kilovolts (kV) and are part of a larger project that has undergone sufficient CEQA review. The requirement for this permit could add significantly (possibly years) to the construction time schedule and significant costs to the project budget.

The Fresno-Bakersfield Revised Draft EIR/EIS reports that thirty-three transmission and power lines owned by PG&E cross the BNSF Alternative corridor. (Draft EIR/EIS, p. 18.) Four additional transmission lines occur within proposed HST stations, one at the potential Kings/Tulare Regional Station—East Alternative and three at the Bakersfield Station. The EIR/EIS reports there are two substations in the study area,

both in Kings County: one station owned by Southern California Edison approximately 900 feet north of Front Street and a second substation, owned by PG&E, at the northwestern corner of the intersection of Kent Avenue and South 11th Avenue. However, the identification of electrical facilities does not identify what exact lines are impacted and how. The Mascot Station is omitted altogether. The EIR/EIS does not mention the impacts associated with overpasses and other facilities that may interfere with the transmission lines. For example, overpasses that will intersect the power lines with the crest of the overpass very close to the power lines.³ The analysis of the newly created proximity of planned overpasses and power lines must consider that specialized farm equipment that is taller and wider than routine highway traffic may use the overpasses and underpasses. For example, a 15 foot clearance is needed for a cotton picker and a combine.

The Fresno-Bakersfield Revised Draft EIR/EIS in a section labeled “Impact PU&E#5 – Conflicts with Existing Utilities” states that many utilities are within or cross the study area for the proposed HST and associated facilities, as listed in Tables 3.6-14 and 3.6-15 for high-risk and low-risk utilities, respectively. (F-B Draft EIR/EIS, p. 51.) The project would not be compatible with most of these existing utilities so agreements would have to be reached to relocate them or place them underground. However, the EIR/EIS concludes the effect of the project on utility providers and their customers would have negligible intensity under NEPA, and impacts would be less than significant under CEQA. (F-B Draft EIR/EIS, p. 51.) The EIR/ EIS states that if utilities cannot be relocated or modified within the construction footprint defined in Chapter 2, Alternatives, supplemental environmental analysis would be conducted, if necessary. However, there is no valid reason the ability to relocate and modify utilities cannot be identified now as it must be in the project level Fresno-Bakersfield EIR/EIS. Such analysis and mitigation may not be deferred to the future. Elevating, relocating, or burying the lines would require extensive environmental review, may raise eminent domain issues and other impacts, and could add enormous, currently-undisclosed costs to the project. Such analysis must be not deferred since the results of the analysis could significantly impact the feasibility of the preferred alignment.

3. Information About Allegations By the City of Los Angeles of Shoddy Construction Involving the Prime Contractor Chosen by the Authority Have Become Available.

³ The HSR alignment aligns with the high voltage line along the east side drip line heading north to south. The HSR crosses the east-west Elder, Flint and Fargo Avenues. Over crossings are planned for these roads to cross the HSR. The over crossings are scheduled to be 40-ft high pushing vehicle traffic up into the HV lines that the roads also cross. Will the clearance between the peak of the over crossing and the HV lines be enough? The HSR heads south still along the HV lines across Hanford-Armona Road, Houston, Iona, Idaho and Jackson Avenues causing the same concerns

The Authority has approved a contract with a company being sued by the City of Los Angeles last month for faulty construction on a large public works project, the runway at Los Angeles International Airport. The Authority's chosen contractor is Tutor Perini Corporation as reported on August 20, 2013:

Tutor Perini Corporation (NYSE:TPC), a leading civil and building construction company, today announced that its joint venture has executed a contract with the California High-Speed Rail Authority (Authority) for the design and construction of the initial Madera to Fresno segment of the California high-speed rail system. The contract is valued at approximately \$985 million, plus an additional \$53 million in provisional sums.

(<http://investor.perini.com/phoenix.zhtml?c=106886&p=irol-newsArticle&ID=1848687&highlight=>). Tutor-Perini is the same company as Tutor-Saliba since they combined. (<http://www.tutorsaliba.com/news/perini-and-tutor-saliba-combine.html>.)

Tutor-Saliba, and thus Tutor-Perini, is being sued by the City of Los Angeles for shoddy construction work on a \$250 million runway project at Los Angeles International Airport:

The city is suing four major contractors that built the \$250-million south runway at Los Angeles International Airport, alleging that widespread construction flaws are causing the runway to wear out prematurely. They are R & L Brosamer, HNTB Corp., CH2M Hill Inc. and a joint venture involving Tutor-Saliba Corp. and O & G Industries Inc.

(http://www.laobserved.com/archive/2013/10/morning_buzz_thursday_101_9.php. This was reported in the Los Angeles Times. (<http://www.latimes.com/local/lanow/la-me-ln-lax-runway-suit-20131016,0,3057309.story>.)

The City of Los Angeles' experience is not an isolated incident with this contractor by a single public agency, since several other public agencies encountered similar problems. (<http://www.insidesocal.com/aviation/2013/10/18/tutor-saliba-accused-of-poor-construction-work-on-lax-runway-has-been-sued-before/>.) For example, the Los Angeles Times in 2010 reported legal proceedings against Tutor-Saliba related to the Los Angeles County Metropolitan Transportation Agency (a.k.a. Metro or MTA, in whose headquarters you had your October Board hearing) went on for nearly a decade. (<http://articles.latimes.com/2010/feb/14/local/la-me-mta-legal-costs14-2010feb14>) "Many MTA board members (say) contractor Tutor-Saliba tried to cheat the agency out of millions of dollars by submitting a low bid and then asking for dozens of change orders and other requests that dramatically increased the price of constructing parts of the Red Line subway," the Los Angeles Times reported. (*Ibid.*) Therefore, the Authority

must be prepared for the foreseeable possibility that there could be defective construction involved in the high speed rail project, and that it will be required to pay far more than stated in the initial bid amount.

Rules that allowed Tutor-Perini with a proposal that ranked poorly for technical reasons but was lowest in cost to be chosen by the Authority were apparently changed without Board review or approval. (<http://www.modbee.com/2013/04/28/2691569/agency-sneaked-in-change-to-bidding.html> ["In March 2012, the authority's board decreed that even if all five teams submitted bids, only the three most 'technically competitive' firms could compete based on the cost to build the 29-mile segment in Madera and Fresno counties. The teams with the lowest technical scores would be dropped and their price envelopes returned unopened. That rule, however, didn't stick. In August — months before contractors submitted bids — the authority's executive staff quietly altered the process without formal action by the board."]) The Kings County Water District is challenging as invalid the contractor selection process through a cross-complaint in the validation action brought by the Authority. (Cross-Complaint filed June 18, 2013, *High-Speed Rail Authority, High-Speed Passenger Train Finance Committee v. All Persons Interested, etc.*, Sacramento County Superior Court Case No. 34-2013-00140689.)

A recent article in the Record Searchlight, a Redding, California newspaper titled "Lack of Permits Irks County Supervisor- Frustration Builds on Bridge Project " addressed problems a county had with a Tutor-Perini project. District Supervisor Bill Schappel stated "Sometimes the lowest bid isn't the best bid." He further went on to say "...I don't respect their business ethics at all. I really don't." In that case, Tutor Perini "low-balled" the bid by \$20 million and failed to secure any of the required permits for construction. The firm further inflamed community members by littering their community with construction equipment in tourist sensitive areas.

Just as the safety of runways at an airport is critically important, the safety of the high speed rail system should be ensured beyond reproach. Therefore, the Authority should take steps to guard against the possibility that construction defects will be discovered years after work on the rail system is potentially completed, as well as steps to protect itself financially from future claims by a contractor with a history of such claims.

4. Historic Resource Impacts Have Been Revealed That Were Denied in Earlier Review Documents.

The Authority approved the Merced to Fresno section of the HSR which analyzes the alignment from Merced to south of the intersection of Highway 99 and Highway 41. However, the Archeological Treatment Plan (ATP) for the Merced to Fresno EIR/EIS only went from Merced to Amador Street in Fresno, which is north of the end of the full Merced-Fresno alignment. Thus, the shortfall of the ATP left the area around the

proposed HSR station south of Amador Street in Fresno outside of the scope of analysis. This area generally corresponds to an area referred to as the Fresno Chinatown area. Instead, this section from south of Amador Street to Bakersfield was addressed, albeit inadequately, in the Fresno-Bakersfield Revised Draft EIR/EIS.

After Authority staff apparently realized that they were planning to award a construction contract that went from Avenue 17 in Madera to American Avenue (south of Fresno) they realized there was a small section not covered in the first ATP. They were given notice by the Chinatown Revitalization Organization that there are potential cultural resources in the area. An ATP addendum report then concentrated on a section south of Amador Street to just south of Highway 41, which corresponds to the area where Chinatown can be found. This addendum report stated:

The Fresno to Bakersfield Section technical reports revealed that there are no known archaeological resources located within the proposed construction footprint; however, review of the historic Sanborn Fire Insurance maps for the Fresno to Bakersfield Section technical reports indicated that a portion of Fresno Chinatown is located within the construction boundary. Extensive archival research and a review of previous studies indicate the presence of two archaeologically sensitive areas, including anticipated property types such as residential features and privies associated with Chinatown, eligible for the National Register of Historic Places (NRHP), that were not addressed in the ATP. The sensitive areas were defined based on historic map research and previous investigations within Fresno Chinatown in locations where sediments with archaeological potential intersect with the anticipated vertical Area of Potential Effects (APE), as defined in the Final ATP (Authority and FRA 2012a).

(Merced to Fresno section Draft Archaeological Treatment Addendum No. 1, p. 1-1, available as the date of this letter at https://dl.dropboxusercontent.com/u/52109137/MF_ATP_Addendum-1__SHPO_Review-013013%5B1%5D-1.pdf.) This statement shows that the Draft Fresno-Bakersfield EIR/EIS and the Final Merced-Fresno EIR/EIS were flawed and missing key information about potentially significant impacts. Whereas they reported no known archaeological resources in the proposed construction area, a more thorough search of maps and reports showed that there are cultural resources present including buildings and potential artifacts. It also shows that the use of an addendum ATP for the Merced-Fresno segment approval was inappropriate since an addendum may only be used for reporting minor information or changes. Using an addendum ATP is improper in this context where significant impacts were reported which had previously been undisclosed. The Merced-Fresno EIR/EIS should have been supplemented and recirculated. The Fresno-Bakersfield Revised Draft EIR/EIS must be revised and recirculated. The information from the ATP addendum should be included in the Cultural Resources section of the Fresno-Bakersfield EIR/EIS and the document

recirculated.

Thus far, the impact of construction and operations on existing cultural resources has not been analyzed in a publicly circulated document- either the Merced-Fresno EIR/EIS or the Fresno-Bakersfield EIR/EIS. This omission must be rectified. The HSR alignment poses an engineering risk in that the vibrations and construction stressors may cause damage to local buildings and artifacts. Vibrations from operations can also cause building damage. During construction the loss of business could severely impact the businesses on the west of the tracks (an area already struggling to survive), therefore causing them to close and creating blight in Fresno's Chinatown area. Since many business owners and residents in the area are from minority populations, this could create disparate impacts that must be avoided pursuant to Executive Order 12898. (See "*Does high-speed rail threaten cultural heritage?*" October 28, 2013, Chen Jia (China Daily USA).) http://usa.chinadaily.com.cn/opinion/2013-10/28/content_17063947.htm .)

The National Historic Preservation Act Section 106 process requires the Authority and the State Historic Preservation Office to coordinate with local parties of interest. In this case the Chinatown Revitalization organization was never contacted and their questions were not meaningfully answered.

5. Air Quality Impact Mitigation Would Be Impermissibly Deferred.

We have learned that the Voluntary Emissions Reduction Agreement (VERA) between the Authority and the San Joaquin Valley Air Pollution Control District has not been completed yet, and likely will not be completed until December 19, 2013 or later. Therefore, the project may not legally be approved until the VERA is actually completed.

A VERA is critical to project approval and compliance with CEQA and NEPA because the EIR/EIS's air quality analysis depends upon this measure for mitigation of construction air quality impacts.

The County of Kings has been informed by air district staff that the VERA is tentatively scheduled to go to the Air Board on December 19th. The terms of the VERA must be included in the EIR/EIS and circulated to the public and public agencies so that they may review this critically important sole mitigation measure for significant construction air quality impacts. Without such public review, the EIR/EIS would violate CEQA and NEPA, and neither the FRA nor STB may make a legally adequate General Conformity Determination.

The deferral of mitigation measures that feasibly could be developed prior to project approval, and thus be made available for public review prior to approval, is impermissible under CEQA and NEPA. (*San Joaquin Raptor Rescue Center v. County of*

Merced (2007) 149 Cal.App.4th 645, 670 [EIR for aggregate mine and processing operation improperly deferred mitigation for impacts to vernal pool habitat]; *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 281; *Conservation Law Foundation v. United States Dep't of Air Force* (D.N.H. 1994) 864 F. Supp., [impact statement essentially failed to evaluate air quality mitigation measures], aff'd in part and rev'd in part on other grounds sub nom. *Conservation Law Foundation v. Busey* (1st. Cir. 1996) 79 F.3d 1250.)

The Authority's approval of the Fresno-Merced EIR/EIS included mitigation measure AQ-MM #4 that allegedly committed the Authority to offset to net zero its criteria pollutant emissions from construction that exceed General Conformity thresholds. The September 2012 Merced to Fresno Section: Federal General Conformity Determination relied on this statement that the air quality mitigation measure of a VERA would be approved. (September 2012 Merced-Fresno Section: Federal General Conformity Determination, p. 12-1.)

In August 2012, Mark McLoughlin, Interim Deputy Director of Environmental Planning for the Authority stated "The Authority has prepared a draft VERA and provided it to the District; the parties are currently working towards finalizing and approving it later this year. As the VERA is the method to offset emissions, no construction work will begin until it is executed." (August 13, 2012 letter to Mr. David Valenstein of FRA attached to September 2012 Merced to Fresno Section; Federal General Conformity Determination.) This deferral of the execution of the VERA violated the prohibition of CEQA and NEPA on impermissible deferral of the formulation of mitigation measures. Any potential approval of the Fresno-Bakersfield project on the basis of this same mitigation measure, without an actual commitment to a VERA, would further aggravate this violation.

6. The Choice of the Hanford East Alignment as the Preferred Alternative Requires Recirculation of the Revised Fresno-Bakersfield EIR/EIS and Supplementation of the Programmatic EIR/EIS.

In April 2013, Authority staff identified numerous areas in which the Hanford West Bypass, which was then the recommended preferred alternative, was superior to the BNSF (Hanford East Bypass). ("Preliminary Staff Recommended Preferred Alternative," April 4, 2013.) The Hanford West Bypass was stated to impact fewer acres of U.S. jurisdictional waters (10.76 versus 12.44), less important farmland (809 acres versus 1075 acres), less Williamson Act land (96 acres versus 582 acres), fewer confined animal facilities (4 versus 15); and fewer housing displacements (50 versus 62). Now, Authority staff presents a very different picture of impacts, including changing the numbers for "aquatic resources" and "community resources" impacted. (Compare table 1 and table 2 in April 2013 staff report with table 1 and 2 in November 2013 staff report.) Therefore, the EIR/EIS should be recirculated so the public and public agencies may have sufficient

time to review and comment upon the new information provided. For example, the Hanford East alignment would impact Kit Carson School on the east side of Kings County whereas the prior preferred alternative would not so now that the alignment is identified those impacts must be addressed. Furthermore, the Programmatic EIR/EIS must be supplemented and recirculated since it showed a different alignment, west of Hanford, as the preferred alternative. (Programmatic EIR/EIS, figure 6.3-4A.) The Programmatic EIR/EIS also showed, but the Fresno-Bakersfield EIR/EIS did not analyze, an alignment that followed the SR 99. (*Ibid.*)

B. Feasible Alternatives, Not Merely Variations on A Single Alternative, Should Be Analyzed in a Publicly Reviewed Document.

1. An Adequate Analysis of Alternatives Must be Circulated in the EIR/EIS.

We had stated in our prior letter that the current legal situation, with the Authority having received an adverse ruling in litigation about Proposition 1A (*Tos et al. v. California High Speed Rail Authority*, Sacramento Superior Court Case No. 34-2011-00113919-CU-MC-GDS, p. 7) (“the *Tos* litigation”), gives the Authority an opportunity to reevaluate alternatives in a public process.⁴ Such alternatives should not have been omitted from the earlier processes, but it is not too late to revisit them in a public process. The current Revised Fresno-Bakersfield EIR presents variations on a single alternative—i.e., an alignment through the Hanford area, as if they were alternatives to the project, without addressing alternatives that would effectively avoid many of the impacts that would be created.

⁴ We agree with the plaintiffs in the *Tos* litigation that the Authority violated Proposition 1A. We also object that if the Authority approves further segments including the Fresno-Bakersfield segment or awards further contracts, it would be further violating the requirements of Proposition 1A. We incorporate all of the allegations set forth in the *Tos* litigation Complaint (Petition for Writ of Mandate in *Tos et al. v. California High Speed Rail Authority, et al.*, Sacramento Superior Court case no. 34-2011-00113919-CU-MC-GDS) as if set forth fully herein. Judge Quentin Kopp’s declaration in support of the *Tos* plaintiffs was prescient of Judge Kenny’s August 2013 ruling as he stated the HSR project “has been distorted in a way directly contrary to the high speed rail plan the Authority attempted to implement while I was Chairman, namely, a true HSR system containing all the features, terms and protections desired by the Legislature and honoring restrictions placed upon use of Proposition 1A bond proceeds by the Legislature. Accordingly, it is my opinion the project is not lawfully eligible to receive Proposition 1A bond funds.” (Declaration of Quentin L. Kopp, dated February 15, 2013.) We believe it likely Judge Kenny’s ruling would be upheld if there is an appeal.

We are aware of the Authority's 2012 Alternatives analysis report, General Counsel Thomas Fellenz's July 13, 2002 letter to Kings County, and the transcript of a June 2013 meeting involving the County of Kings and Chairman Richard attempting to explain why State Route 99 (SR 99) and Interstate Highway 5 (I-5) were eliminated from analysis in the programmatic and project level EIR/EISs. However, the fact that there may be analysis and comparison of alternatives in various documents not included in the EIR/EISs does not salvage either the Programmatic EIR/EIS or the Fresno-Bakersfield EIR-EIS. In *I-291 Why? Association v. Burns*, 372 F. Supp. 223 (D. Conn. 1974), *aff'd*, 517 F.2d 1077 (2d Cir. 1975), the court concluded that post-EIS studies by a local employee of FHWA could not save a defective EIS, in part because the studies were not circulated to other interested agencies, such as the Environmental Protection Agency (EPA) and the Council on Environmental Quality (CEQ). "The circulation and review requirements are critical features of NEPA's effort to insure informed decision making by providing procedural inputs for all responsible points of view on the environmental consequences of a proposed major federal action." (*I-291 Why? Association v. Burns*, 372 F. Supp. at 223.) The Second Circuit agreed: "These studies could not cure these particular inadequacies because they were not circulated for review and comment in accordance with procedures established to comply with NEPA." (*I-291 Why? Association v. Burns*, 517 F.2d at 1081; *see also Appalachian Mountain Club v. Brinegar*, 394 F. Supp. 105, 122 (D.N.H. 1975) [supplemental information not circulated in the same manner as a draft EIS cannot validate an otherwise deficient draft EIS]; *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 442.)

2. The Feasible Alternatives of Construction in the I-5 or SR-99 Corridors Were Improperly Omitted from the Programmatic EIR/EIS and the Fresno-Bakersfield EIR-EIS.

We previously wrote to encourage you to publicly examine the I-5 Corridor or SR-99 Corridor routing. (CBC Letter, October 3, 2013, p. 16.) We remind you that a French high speed rail company made a serious proposal that would have involved construction of a high speed rail system along the I-5 corridor, but this proposal was apparently rejected by Authority staff without being presented to the Board or mentioned in public documents. At least one member of the public, Michael LaSalle, commented about this proposal. (October 13, 2012 comment of Michael LaSalle, p. 5 ["In July, 2012, the *Los Angeles Times* reported that SNCF, a French firm and the developer of France's high-speed rail system, expressed the opinion that an I-5 alignment was a far more direct and cost-effective route to connect the Bay Area and Southern California."]) We look forward to your Final EIR/EIS response to this and other comments.

Apparently, the SNCF October 9, 2010 presentation to the Authority staff is available (http://transdef.org/Blog/Whats_hot_assets/SNCF%20Presentation.pdf),

but so far as we know it is not available in the Authority's environmental documentation. Some members of the public are aware of the proposed feasible alternative, but not all who review the EIR/EIS. (<http://marketurbanism.com/2012/07/10/what-i-learned-today-about-sncf-and-california-hsr/> [“SNCF, the highly experienced French national high-speed rail operator, apparently had a plan for California's HSR network, but was turned off by the highly politicized routing. Namely, they wanted to make a straight shot from LA to San Francisco by running along the flat, government-owned I-5 corridor with spurs out to the eastern Central Valley, whereas the California High Speed Rail Authority (CHSRA) and state politicians wanted the main line to go through every little town in the Central Valley, directly.”]) This proposal would have the advantage of not requiring state funding. We believe this proposal should be revisited. Even if it is not currently being offered, if the Authority expresses a willingness to explore it (especially now that Judge Kenny's ruling casts doubt on the ability of the Authority to use Proposition 1A funds), we anticipate that the proposal could be reassembled.

Other reports submitted and discussed by the Train Riders Association of California (TRAC) also highlight the benefits of an I-5 alignment. In their December 2012 newsletter (which can be found at <http://www.calrailnews.com/crn/1212/crn1212.pdf>), TRAC highlights that the I-5 alternative offers superior service, travel times at a lower cost and less environmental and economic impact to the Central Valley.

Also, recent reports have indicated that a proposal by Elon Musk for a high speed transportation system have progressed since it was first announced in August 2013. (“Elon Musk's Hyperloop Now Has A Company: Ambitious Plans for 2015 Demo,” posted October 31, 2013 at <http://www.latinospot.com/articles/30866/20131031/elon-musks-hyperloop-now-has-a-company-plans-for-2015-demo.htm>.) This proposal apparently would be completely privately financed. (<http://motherboard.vice.com/blog/is-elon-musks-hyperloop-already-killing-californias-high-speed-rail>.)

While either of these two proposals may be viewed as infeasible (and the Authority is required to publicly articulate the reasons it believes they would be infeasible), each of them have the advantage of not requiring the commitment of billions of dollars of state or federal funds in the future. In light of Judge Kenny's ruling, we suggest that you formally consider these alternatives.

The preferred alternative alignment proposed by staff would have impacts on resources protected by section 4(f) of the Department of Transportation Act (49 U.S.C. 303) Such resources, referred to as “Section 4(f) properties,” can only be used for federal-funded transportation projects if there is no feasible and prudent alternative and all possible planning has been taken to avoid the use of a 4(f) property or minimize harm to them. Without an analysis in the programmatic EIR/EIS or Fresno-Bakersfield Revised EIR/EIS of the potential use of the SR-99 or I-5 Corridor or a tunnel alternative

to avoid the 4(f) properties impacted by the preferred alternative, the Authority, FRA, and STB would not be able to comply with the Department of Transportation Act.

3. The Feasible Alternative of Tunneling or Trenching to Avoid Impacts in the City of Hanford Area Should be Analyzed in the EIR/EIS.

In our prior letter, we questioned why the Authority has not considered either a tunnel or trenching option through the City of Hanford area, which would greatly reduce the surface impacts including to the agricultural community. (CBC Letter, October 3, 2013, p. 16.) In response to a Public Records Act request, our client obtained a single email message to the Authority addressing this subject. This single email stated four scenarios of construction of a three-mile long tunnel would increase costs in a range between \$950 million for a single-track twin tunnel to \$1.5 billion for a double track 50 foot inside diameter tunnel. These were “estimates and underlying quantities should be consider [sic] ballpark for general discussion only.” (Email correspondence dated August 20, 2013 from Kinzie Gordon of URS to Diana Gomez of the Authority.) This cursory analysis is woefully insufficient. There was no discussion of the enormous costs for mitigation of surface impacts that would be avoided by utilizing a tunnel alternative, nor of the time, and therefore costs, that potentially would be saved in project construction since there may be less opposition (including litigation) and fewer eminent domain proceedings required for a tunnel option. The BNSF alignment through Hanford was the preferred alternative in the Programmatic EIR/EIS approved in 2005. In order to change this preference, a supplement to the Programmatic EIR/EIS must be prepared to explain why such an alternative is no longer the preferred alternative.

Since the overall price tag of the high speed train project in the Central Valley has fluctuated and is “now pegged at \$68 billion, but certain to grow” (<http://www.sacbee.com/2013/10/17/5830825/dan-walters-california-bullet.html>) an increase of \$1 to \$1.5 billion associated with tunnel construction would not render the project infeasible. It likely would render the project more palatable to local jurisdictions and communities, along with mitigating many of the impacts associated with an at-grade or elevated system. Furthermore in the Hanford area, a tunnel option would allow the Authority to intersect the Downtown Amtrak station, which is critical to the economic vitality of Hanford. It would also avoid leapfrog development outside the City of Hanford’s General Plan jurisdiction area and within the County. Thus, such an alternative should be analyzed in order to reduce its impacts.

Furthermore, the staff report states that the Preferred Alternative is estimated to cost approximately \$7.174 billion in 2010 dollars. (Staff Recommendation, p. 3-19.) It is our understanding that the Authority has available to in no more than \$6 billion in grant funding (including \$2.6 billion in federal grants for the Fresno-Bakersfield segment), and that it does not have Proposition 1A funding available due to Judge Kenny’s ruling.

Since the capital costs of the Preferred Alternative are beyond the Authority's means, we suggest analyzing additional, less expensive alternatives. As we noted in our prior letter, the I-5 Corridor "offers the shortest distances, *lowest capital costs*, fastest . . . travel times, and highest overall ridership forecasts." (CBC October 3, 2013 Letter, p. 14, citing California HSR Corridor Evaluation and Environmental Constraints Analysis, Taylor et al., Journal of Transportation Engineering, Jan./Feb. 1997, p. 6, emphasis added.) Lower costs for I-5 were also noted by TRAC. (<http://www.calrailnews.com/crn/1212/crn1212.pdf>, p. 5 ["Because the geographic layout of the [non- I-5 Corridor] line is so wasteful, with 100 extra miles of route and unnecessary grade and seismic hazards, no private capital is willing to undertake the ridership risk."])

It is our understanding based upon the City of Santa Clarita's presentation at the Board hearing of October 14, 2013 that a tunnel option is being considered for the Santa Clarita area of the High Speed Train system. We request that the City of Hanford area within Kings County be shown the same consideration.

C. Kings County Repeats its Requests For Coordination.

Our prior letter requested that the Authority coordinate with the County of Kings. At the last Board meeting, Frank Oliveira of CCHSRA stated that the Authority had failed to answer the questions the County of Kings had posed for a long time, since at least April 17, 2012. The County also posed questions at a June 4, 2013 meeting with the Authority. Board Chairman Richard responded in October 16, 2013 correspondence to Mr. Oliveira that various questions had been answered. However, as a October 30, 2013 email message from County Counsel Colleen Carlson to Chairman Richard and the Authority staff clarifies, issues from the June 2013 meeting remain unanswered and answers related to the 2012 questions were non-responsive. Detailed and responsive answers, i.e., those that tend to work toward a resolution, to the questions Ms. Carlson identifies would be appreciated as a preliminary to meeting among representatives of the Authority, the County, CCHSRA, and the Farm Bureau about these questions.

The Authority staff report lists numerous agencies that have been meeting with FRA and the Authority: USFWS, CDFW, the San Joaquin Central Valley Flood Control Board, USACE, the State Historic Preservation Office, the State Water Resources Control Board, the EPA, CARB, and the San Joaquin Valley Air Pollution Control District. (November 2013 Authority Staff Report, p. 3-28.) It is telling that meetings are not reported to coordinate with the County of Kings, the City of Hanford, the City of Bakersfield, and other jurisdictions to coordinate the alignments. Instead, it is reported under the "Project Area Local Governments" heading that "Kings County and the City of Hanford do not support an HST alignment in Kings County and would prefer the HST to follow SR 99 or I-5." (Staff Report, p. 2-2.) We request that the Authority undertake a coordination process with Kings County in order to address the reasons Kings County currently does not support an HST alignment through its jurisdiction. It is our hope that

FRA, STB, and CEQ can help facilitate this process.

D. Procedural Issues Related to the Authority's Potential Decisions in November and December.

We realize that you are considering a preferred alignment on November 7. Your staff report appears to contemplate approval of the Final EIR/EIS in January 2014. However, approval without recirculation of a legally adequate environmental review document would violate the requirements of CEQA as we have outlined above and in prior correspondence. We also advise you that Judge Kenny will be having a hearing of the Proposition 1A litigation on November 8, 2013, the day after your November 7th hearing. Any decision from Judge Kenny potentially enjoining expenditures on the project would likely have a profound impact on your schedule. No matter when you intend to review and potentially approve the Fresno-Bakersfield alignment, we make the procedural requests below.

1. We Request a Copy of All Notices Issued By the Authority, FRA, and STB Related to the California High Speed Train System.

We request a copy of all future notices issued by the Authority, including but not limited to notification if the Authority files a Notice of Determination about the Project for any reason, pursuant to Public Resources Code section 21092.2. We request a copy of any notice issued by FRA or STB related to further consideration of the California High Speed Train System.

2. Responses to Agency and Other Public Comments Should be Released With Sufficient Time to Review Them Prior to Certification.

Regulations adopted pursuant to the California Public Resources Code require that the Authority provide responses to public agency questions at least 10 days prior to certification of the EIR/EIS. State CEQA Guidelines section 15088 reads in pertinent part that "the lead agency shall provide a written proposed response to a public agency on comments made by that public agency at least 10 days prior to certifying an environmental impact report." (State CEQA Guidelines § 15088, subd. (b).) Since it appears the Authority may certify the Final EIR/EIS in December or January, the Authority should release the responses to comments with sufficient time for the public and public agencies to review them. This is obviously a complex project with extensive documentation and extensive public and public agency comments. It would be appropriate to provide at least a 90 day period for review of the responses to public and public agency comments before the Authority considers certifying the Final EIR/EIS. As we have stated before, this is a once-in-a-century opportunity of a project potentially involving massive expenditures of public funds. The public should not be shortchanged

with a rushed review and approval process, especially during the year end holiday season.

Conclusion.

FRA, STB, and the Authority have failed to appropriately analyze high speed rail alignments through Kings County and ways to effectively avoid or mitigate their impacts. The continued review of the HST project now should encompass the significant changes that have occurred to the project and its circumstances. With these recent changes in the project and its circumstances, CCHSRA, Kings County, and the Kings County Farm Bureau request that these changes be reflected in a Revised Draft EIR/EIS for the Fresno-Bakersfield alignment and a supplemental HST programmatic EIR/EIS that are both released to the public for a public review period of at least 90 days.

Thank you for your consideration of these views. We look forward to your responses.

Sincerely,



Douglas P. Carstens

Cc:

Environmental Protection Agency
US Army Corps of Engineers
US Fish and Wildlife Service
California Department of Conservation
California State Water Resources Control Board
California Department of Fish and Wildlife
California Department of Transportation
Congressman David Valadao
Congressman Kevin McCarthy
Congressman Jeff Denham
Senator Andy Vidak
Assemblymember Rudy Salas
Assemblymember Jim Patterson