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OF COUNSEL  
Gary A. Patton

February 21, 2012

John Mason  
California High-Speed Rail Authority  
770 L Street, Suite 800  
Sacramento, CA 95814  
Attention: Bay Area to Central Valley HST Partially Revised Program EIR Comment

RE: Comments Submitted on Behalf of Community Coalition on High-Speed Rail  
Sent By Email – [BayArea-CentralValley@hsr.ca.gov](mailto:BayArea-CentralValley@hsr.ca.gov)

Dear Mr. Mason:

This comment letter is submitted on behalf of the Community Coalition on High-Speed Rail ("CC-HSR"). CC-HSR is a grassroots, non-profit corporation, based on the San Francisco Peninsula, that is working to make sure that the proposed California High Speed Rail project doesn't adversely affect the economy, environment, or quality of life of California's existing communities. In addition to comments contained in a letter to be separately submitted by CC-HSR and other organizations, CC-HSR has the following comments on the *Bay Area to Central Valley High-Speed Train Partially Revised DRAFT Program Environmental Impact Report* released for public comment on January 6, 2012:

1. As you know, the California High-Speed Rail Authority ("Authority") has now been ordered by the Superior Court in Sacramento County to rescind its approval of the most recent program level EIR for the Bay Area to Central Valley portion of the proposed high-speed train project. So far, the Authority has not yet taken that action. CC-HSR believes that seeking comments on a new draft document, when another and different document is currently certified as *the* program level EIR for the Bay Area to Central Valley portion of the proposed high-speed train project, is premature. We believe that the Authority may properly solicit comments on a new Draft EIR document only after the Board of Directors of the Authority has taken action to decertify the current document, and has directed that a new document be circulated, properly describing the project the Authority is then proposing. We object to the effort to "rush" this document through the environmental review process required by the California Environmental Quality Act (CEQA), and believe that all members of the public should be given at least 45 days to review a document that the Authority's Board of Directors has specifically ordered be circulated, to address the legal deficiencies identified by the Superior Court, and generally to provide an adequate environmental review of the proposed action, as further outlined in this comment letter.

2. The importance of the point made in Comment #1 is highlighted by the fact that the Authority has made major modifications to its proposed project since the certification of the current EIR document for the Bay Area to Central Valley portion of the statewide project. One important change included in the “Business Plan” issued by the Authority in November 2011 identifies a “blended system” approach in the Bay Area. Despite the claims made in the current Draft EIR, beginning on page 5-3, this modification to the project, as now contemplated by the Authority, not been properly analyzed in the *Bay Area to Central Valley High-Speed Train Partially Revised DRAFT Program Environmental Impact Report* circulated for comment on January 6, 2012. As an example, the use of the “blended system” approach on the Peninsula would result in significant impacts to residents, businesses, and communities by way of possible street closures, noise, vibration, and related effects. These have not been outlined and analyzed, as CEQA requires. That deficiency in the description of and analysis of the new project now being contemplated by the Authority must be remedied, and a revised draft document must then be recirculated for further public comment.
  
3. Comment #2 reflects the requirements of the California Environmental Quality Act (CEQA), which demands that the Draft EIR made available for public comment accurately reflect the actual “project” being proposed. According to reliable information, including many news reports quoting the Chairperson of the Authority and the Governor of the State of California, the Authority is planning shortly to revise its proposed project once again – and in potentially very significant ways. If it does so, the Draft EIR circulated for comment must accurately outline the actual “project” being proposed for implementation by the Authority. It is worth emphasizing that the “agency” which is proposing the project is the Authority. Actions of the staff and consultants to the Authority, not ratified or endorsed by any action of the Authority’s Board of Directors, are not the kind of actions that can support the kind of responsible environmental review that CEQA demands. In short, the public needs to know what the actual “project” is that the Authority proposes, before it can be asked to make comments on a Draft environmental document. The fact that the document currently being circulated for comments is a so-called “program level” EIR does not obviate this fact. The overall project being proposed has changed significantly since the Program Level EIR for the rest of the state was certified (without challenge) in July 2008. Since an important portion of the proposed system was not determined at that time (namely, the Bay Area to Central Valley portion of the proposed statewide system), any “program level” EIR for that segment must reflect the currently-proposed statewide project. Again, that project is not accurately disclosed or analyzed in the current Draft EIR. If the project is again changed by the Authority, prior to certification of the program level EIR for the Bay Area to Central Valley section of the project, the Draft EIR circulated for public comment must describe and analyze the then-proposed project.
  
4. The fact that comments are being made by individuals and groups not residing in the geographic area covered the Bay Area to Central Valley Draft EIR underscores the importance of Comment #3. Because the Authority did not certify a program level EIR for the entire statewide project in 2008, the changes now being proposed are of critical importance to those potentially affected in all areas of the state. The “program” for the

entire state, in other words, is not yet clear, and when significant changes are made in the project, those changes must be analyzed in a program level EIR, and everyone in the state must be given an adequate opportunity to understand what is being proposed and to comment. The changes in the statewide project made by the most recent “Business Plan” affect the statewide “program,” and have not been adequately documented, described, or analyzed in accordance with the requirements of CEQA. If further significant changes are made in the near future, before the certification of the program level EIR for the Bay Area to Central Valley portion of the statewide project (and this is what statements from the Chairperson of the Authority indicate will happen), then the EIR document must also describe and analyze the actual project then being proposed, and the public must be given an opportunity to comment.

5. The Authority claims that comments on the *Bay Area to Central Valley High-Speed Train Partially Revised DRAFT Program Environmental Impact Report* should be limited to the materials contained within that document. We disagree. The standard that is set in *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4<sup>th</sup> 1112 is that public comment must be allowed if there is new information or changed circumstances that have arisen since the EIR was last circulated, which is the case here. CC-HSR objects to the Authority’s effort to dissuade the public from making comments as allowed by law.
6. The *Bay Area to Central Valley High-Speed Train Partially Revised DRAFT Program Environmental Impact Report* states, at page 1-4, that the Authority is working on a “project level” EIR for a section of the proposed project from San Jose to Merced. Once the Authority has rescinded its approval of the EIR found invalid in the recent decisions of the Superior Court mentioned on page 1-1, there will not be any adopted alignment between San Jose and the Central Valley. This comment reinforces the earlier comments: the Authority is acting like it can make up its mind on what route it will use between the Bay Area and the Central Valley before it has completed a legally-sufficient EIR. This is a fundamental violation of CEQA.
7. The Authority also believes, apparently, that it can continue to work on a “project level” EIR for an alignment that has not yet been legally selected, and then disregard the information it develops in doing that “project level” analysis as it makes a determination of what route it will select at the “program level.” Again, this is a fundamental violation of CEQA. While it is true, as the Draft EIR says at Page 1-4, that the “court has not required the Authority to halt its second-tier, project-level environmental studies for the Bay Area to Central Valley sections...,” this does not mean that the court has validated a process by which the Authority can ignore information that is relevant to the program level determination, when that information is actually and currently available. Environmental work done on both the San Jose to Merced section and the San Jose to San Francisco section must be analyzed in the program level document, and the current Draft EIR is deficient because it has not done that. CC-HSR asks that all pertinent information be reviewed and included in a new Draft Program Level EIR for the Bay Area to Central Valley portion of the statewide project, and that the revised document then be circulated for public comment. Concerns of communities on the San Francisco Peninsula have been

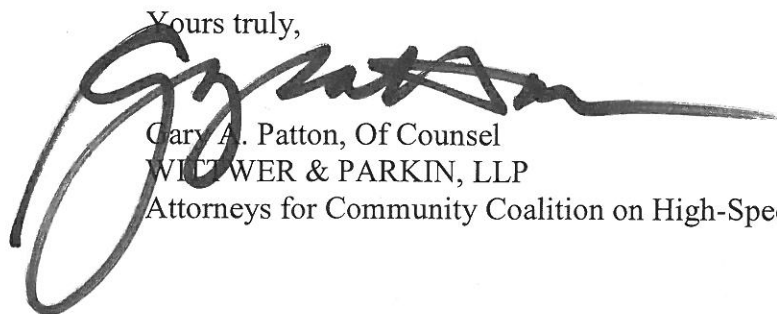
shortchanged in this program level review because of the failure of the Authority to consider the information developed in its so-called "Alternatives Analysis." This is a serious deficiency and must be corrected.

8. The apparent rejection of below grade options along the Caltrain alignment on the Peninsula (one of the conclusions of the Authority's "Alternatives Analysis") will result in a certainty of noise, vibration, and other impacts to Peninsula communities which must be documented, and explained (and upon which public comments must be permitted), so that the Authority can properly determine whether an alternative that eliminates or reduces the use of the Caltrain right of way is not a preferable way to connect the Bay Area to the Central Valley. Again, the current environmental impact analysis is inadequate and fails to meet the requirements of CEQA.
9. On page 5-3, the *Bay Area to Central Valley High-Speed Train Partially Revised DRAFT Program Environmental Impact Report* notes that new information has been developed on the use of the Altamont Corridor, subsequent to the Authority's 2010 Revised Final Program EIR for the Bay Area to Central Valley portion of the statewide system. Again, the Authority is not allowed to disregard this information, as it does its environmental review at the program level. The current Draft environmental document does not examine the implications of the new information that the Authority now has on the Altamont alignment, and it must do so, to comply with CEQA. The Authority needs to redo the current Draft EIR, to take account of that information, and then circulate the revised document for public comment.

The CC-HSR respectfully requests the Authority to proceed as follows: (1) take the actions required by the Superior Court and rescind the Authority's previous certification of the EIR for the Bay Area to Central Valley portion of the proposed statewide HST system; (2) simultaneously vacate the Authority's determination to achieve the Bay Area to Central Valley connection through the Pacheco Pass alignment; (3) subsequent to the promulgation of the next version of the Authority's "Business Plan," outlining the "project" that the Authority wishes to pursue, utilize all available information, including information generated by the Authority in its work on "project level" environmental analyses, and it work on the Altamont Corridor Rail Project, to complete a program level EIR for the Bay Area to Central Valley portion of the proposed project; and (4) circulate that new Draft EIR for public comment, accepting comments on all the environmental issues related to the project as then defined by the Authority.

Thank you for taking these comments into consideration, and for fully complying with the requirements of the California Environmental Quality Act.

Yours truly,



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Attorneys for Community Coalition on High-Speed Rail