



DEFENSE OF PLACE

A PROJECT OF THE RESOURCE RENEWAL INSTITUTE

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August 5, 2004

Chairman Joseph E. Petrillo and
Members of the High-Speed Rail Authority
Attn: California High-Speed Train
Draft Program EIR/EIS Comments
925 L Street, Suite 1425
Sacramento, CA 95814

Via fax and mail (916) 322-0827

Dear Chairman Petrillo and Members of the High-Speed Rail Authority:

Defense of Place works to assure that protected lands stay protected in perpetuity and is deeply concerned with the unprecedented impacts to parks, wild life refuges and open space. Because of Defense of Place's focus, the organization's primary area of concern and analysis lies within section 3.16 of the DEIR and the impacts of the High Speed Train on Section 4(f) and 6(f) resources. Defense of Place is particularly concerned with the 55-89 Section 4(f) and 6(f) resources that the DEIR claims will be highly impacted by the High Speed Train (3.16-6) and with the larger range of approximately 142-181 4(f) and 6(f) resources that would be impacted when medium impacts are considered.¹

Californians strongly value their parks, open space, wildlife refuges and other protected lands. California voters have recently supported initiatives giving billions of dollars to further acquire preservation lands for future generations. Propositions 204, 12, 40, and 50 together allocated about \$3.2Billion for a broad array of land acquisition and restoration projects. These allocations include funding to the several state conservancies and the Wildlife Conservation Board (WCB), as well as for ecosystem restoration, agricultural land preservation, urban forestry, and river parkway programs.² California's open, scenic, and wild places are a driving force behind the state's \$80 billion tourism industry.³ Access to open and protected places is a major factor in

¹ While the DEIR does not count the medium impacts in Section 3.16 even though some of these impacts have a high potential for constructive use, these medium impacts are included in the Regional Technical reports.

² California Legislative Analyst's office

http://www.lao.ca.gov/analysis_2004/resources/res_03_cc_resourcebonds_anl04.htm 8/5/04

³ California Lodging Industry Association. <http://www.clia.org/> 8/5/04

attracting businesses, workers and tax paying residents.⁴ California clearly values and depends on permanent protection for lands already set aside for preservation.

Because of the high value Californians place on protected landscapes, it is quite surprising that Section 3.16 of the DEIR avoids thorough analysis of the impacts of the various alternatives on section 4(f) and 6(f) resources. Section 3.16 specifically names only a very small percentage of the total number of 4(f) and 6(f) resources that would be impacted by the HST. Section 3.16 does not adequately compare the impacts of the HST versus the modal alternative in terms of their impacts on section 4(f) and 6(f) resources. The analysis simply compares the total *number* of these resources impacted without regard to the quality, size, or nature of the impacts. This type of analysis is completely inadequate because it gives equal weight to large wilderness parks such as Henry Coe State Park as it does to small city parks that may be smaller than an acre.

The number of protected places that the High Speed Train would negatively impact is unprecedented for a single public works project. If it continues as planned, it sets a horrible precedent for severely impacting a vast collection of resources that have been set aside for the enjoyment of future generations. Many of these places were set aside and are enjoyed because of unique qualities that would be difficult if not impossible to mitigate. This “taking” of protected lands of such an unprecedented scale would not only undermine the public’s faith in existing conservation efforts and institutions, but it would also undermine their faith in future conservation endeavors. If fifty, one hundred, or one hundred and fifty “protected” places are undermined by this single project, how are Californians going to be convinced to financially support future purchases of land for conservation when their faith in California’s ability to set aside land for future generations is severely compromised by this project? While the California High Speed Train is a laudable goal for the State, if every effort isn’t made to avoid protected places in the train’s path, land conservation efforts in California will be irreparably harmed.

Judging from the level of analysis of Section 3.16, there is little evidence of the “special effort” required to preserve protected places as stipulated by section 4(f) of the DOT Act of 1966 (49 U.S.C. § 303.) Section 3.16 of the DEIR should be revised and re-circulated.

Basic method of evaluation is flawed and does not meet the “primary goal” of section 3.16

The primary goal of the analysis was the identification of Section 4(f) and 6(f) resources on or very close to the proposed HST and Modal Alternative alignment options and the relative potential impacts of the alternatives on these resources. (3.16-2)

The first part of this goal is identification of 4(f) and 6(f) resources and the second part is the relative impacts of the alternatives on these resources.

Section 3.16 of the DEIR fails to meet the first part of the goal because the analysis fails to actually provide a complete list identifying by name the 4(f) and 6(f) resources on or very close to the proposed HST and Modal Alternative alignment options. Section 3.16 provides an

⁴ Lerner, Steve and Poole, William. “Open Space Investments Pay Big Returns.” *Land and People* Spring 1999

aggregate comparison of the *number* of 4(f) and 6(f) resources impacted, but doesn't actually "identify" the resources impacted by each alternative because it fails to provide a list naming each of these resources.

Section 3.16 fails to meet the second part of the goal because the comparison simply tallies the aggregate number of impacts to 4(f) and 6(f) resources and compares the total *number* of impacts between the different alternatives without regard to the quality and nature of those impacts. Using this methodology, a hypothetical alternative highly impacting Yosemite, Joshua Tree, and Point Reyes would be considered less damaging than another hypothetical alternative highly impacting four City parks in an urban area such as San Mateo County. The tally method used fails to adequately address "the relative potential impacts of the alternatives on these resources."

Section 3.16 of the DEIR compared the number of Section 4(f) and 6(f) resources that would be impacted by the HST versus the modal and no action alternatives with brief mention of the impacts to the parks in the various regions of the HST study. Simply comparing the number of Section 4(f) and 6(f) resources impacted between the various transportation alternatives is insufficient because it gives equal weight to very large wilderness parks such as Henry Coe State Park as it does to small city parks that are less than a few acres. The modal alternative will likely damage a large number of city parks that could be mitigated, but is very unlikely to highly impact a wilderness park such as Henry Coe (which cannot be mitigated) because transportation corridors do not go through such places already. Therefore the comparison between the total number of Section 4(f) and 6(f) resources negatively impacted is not a meaningful indication of the total impact of the alternatives. A simple tally of the impacts on Section 4(f) and 6(f) resources between the different transportation alternatives deprives the DEIR of any meaningful information about the nature of the extremely large number of impacts to these resources.

State Parks system receives unfair burden of negative impacts on Section 4(f) and 6(f) resources

Defense of Place would like to acknowledge and concur with the excellent analysis presented in the DEIR comments letter of the California Department of Parks and Recreation dated August 19th. Regional technical reports on 4(f) and 6(f) resources show that the HST would negatively impact 22 State Parks. This number is in addition to the future State Parks that would be natively impacted such as the Taylor Yards or Cornfields Property that aren't even mentioned in the DEIR. This represents a significant percentage of the total number of parks within the State Park system. The State Park system plays a vital role in the State of California providing services ranging from recreation to habitat protection. The cumulative impact of the HST on the State Parks seems to be entirely negative, as none of the proposed stations would likely lead to improved access to parks within the system. In addition to not considering the potential impacts of the HST within each of the parks themselves, the DEIR fails to consider any of the impacts that the proposed HST alignments could have on the State Parks system as a whole. Defense of Place encourages future drafts of the EIR to include analysis of the impacts to the State Parks as a whole.

Proposed routes through Henry Coe State Park violate California Wilderness Act

Two of the proposed Bay Area Alignment Options go through Henry Coe State Park and its Orestimba Wilderness. The DEIR fails to consider the California Wilderness Act of 1974 (Public Resources Code 5093.30 through 5093.40) and the legal implications of creating a railroad right of way through the Orestimba Wilderness. The California Wilderness Act specifically prevents the construction of new roads or motorized transport through Wilderness Areas. The intention of the California Wilderness Act was specifically to put certain places with natural and aesthetic value because of their wild condition off limits from future development.

The DEIR fails to even mention that the proposed routes would violate the California Wilderness Act, the most stringent law available for protecting land in California.

Even consideration of placing a High Speed Train corridor through such an area completely disregards this special designation. While CEQA allows for consideration of reasonable alternatives for a project, because of the Wilderness designation the consideration of a High Speed Train corridor through the area is unreasonable and should not be further considered.

Deferring analysis of Section 4(f) and 6(f) resources is unacceptable

Because protected areas are such a high priority for Californians, simply deferring discussion and analysis on the specific impacts to Section 4(f) and 6(f) resources to the project level EIR is insufficient. Section 3.16 states, “In subsequent project-level analysis, should a decision be made to proceed with the HST Alternative, Section 4(f) and 6(f) resources, potential uses and impacts, and appropriate mitigation measures would be identified in detail.” (3.16-2)

These resources provide amenities such as: important recreation opportunities, barriers and buffers from urban sprawl, an experience of areas with unique qualities, wildlife habitat and migration corridors, an escape from urban environments and many other important amenities to both humans and wildlife. These amenities are the reason why Section 4(f) and 6(f) resources are set aside for future generations. The negative impacts on both the Section 4(f) and 6(f) resources themselves and the amenities they provided should have been considered in the DEIR and not be deferred to future analysis.

Route selection doesn't adequately avoid Section 4(f) and 6(f) resources

“Because the proposed HST system would cross urbanized and developed areas, a variety of Section 4(f) and 6(f) resources could be affected. The proposed HST system alignment options were developed with the intent of avoiding these resources to the extent feasible.” (3.16-3)

While avoiding 4(f) and 6(f) resources is stated as a priority in the DEIR and should be a guiding principal for determining High Speed Train routes, in practice this has not happened consistently. One of the reasons stated for eliminating the Altamont Pass Route was because of the negative impacts of going through Don Edwards San Francisco Bay National Wildlife Refuge. While the concern is valid, the routes going through San Jose proposed as an alternative would not only still go through the Refuge, but they would also likely go through wilderness areas in Henry Coe State Park. Thus while concern for Section 4(f) and 6(f) resources was used to disqualify one

alternative, the lack of concern for these resources in choosing a route resulted in an alternative with a greater negative impact (Don Edwards Refuge in addition to Henry Coe.) Minimizing the impacts on Section 4(f) and 6(f) resources should be a major priority for evaluating all possible routes of the California High Speed Train and should be used consistently.

DEIR lacks thorough documentation of measures to avoid harming protected lands or mitigation efforts

Section 4(f) of DOT Act of 1966 (49 U.S.C. § 303) states “the program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use.” Beyond scant discussion of measures to minimize the impacts on Henry Coe State park, there is no thorough discussion of measures to reduce the impact on the other 54-89 Section 4(f) and 6(f) resources that would be highly impacted by the HST. In the regional technical reports, soundwalls are listed as a possible way to mitigate the impacts of the HST on specific 4(f) and 6(f) resources, but this is entirely inadequate. Both Federal and State laws require replacement lands where conversions of 6(f) lands are proposed for transportation projects. In the DEIR no such discussion of replacement lands is present. Further, because of the indeterminate nature of the routes, it is hard to believe that mitigation costs of acquiring replacement lands are adequately addressed in the cost chapter of the EIR. For example, replacement costs for lands in the Orestimba Wilderness in Henry Coe State park would be radically different than the replacement costs of 4(f) and 6(f) resources on the competing Pacheco Pass route.

DEIR fails to give average citizens accessible and beneficial information about the impact on parks, open space, wildlife preserves and other protected places

The DEIR discussion of the issue of parks, open space, wildlife refuges and otherwise “protected” areas, has been entirely inadequate. Section 3.16, specifically dealing with protected places, was titled “Section 4(f) and 6(f) Resources.” This title is unclear to the general public and only clear to those very familiar with transportation planning laws and Land Water Conservation Fund terminology; many park advocates entirely missed the section because of its title. Further, names of the specific parks that would be highly impacted by the high-speed rail, other than a small number of “signature” parks, were absent in the main body of the DEIR and could only be found buried in the technical reports of the regional studies.

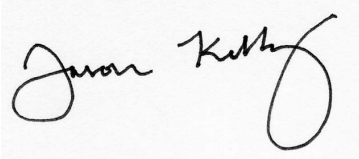
Despite the fact that regional technical analyses specifically listed the names of the Section 4(f) and 6(f) resources that would be negatively impacted by the HST, the DEIR fails to list these resources by name. This is a strange omission. The timing of the DEIR was originally set to coincide with a voter referendum for November of 2004 (now postponed) and would have been the most comprehensive document available to inform voters and environmental organizations about the environmental impacts of the High Speed Train. The names of these protected places impacted by the train should have been included to better inform concerned citizens about the impacts to protected places in their own communities.

Conclusion

The magnitude of the impacts on Section 4(f) and 6(f) from the California High Speed Train is unprecedented for public works projects in California. Due to the fact that the HST will highly impact 55-89 parks, protected open space, nature preserves and wildlife refuges the DEIR should have produced a more thorough analysis. At the very least the analysis should have: 1) met the goals stated in its Section 3.16. 2) Adequately addressed issues related to state and federal laws related to Section 4(f) and 6(f) resources. 3) Considered the impacts of violating the California Wilderness Act. 4) Listed the names of the parks potentially impacted by the HST.

Because of these significant omissions from section 3.16 of the DEIR, the entire section should be re-written and re-submitted.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Kibbey", is written over a light gray rectangular background.

Jason Kibbey
Director, Defense of Place