



CALIFORNIA HIGH-SPEED RAIL BRIEFING: APRIL 27-28, 2022, BOARD MEETING AGENDA ITEMS #9, #10, #11

TO: Chairman Richards and Board Members

FROM: Serge Stanich, Director of Environmental Services
Boris Lipkin, Northern California Regional Director
Gary Kennerley, Northern California Director of Projects

DATE: April 27, 2022

RE: Consider certifying the San Jose to Merced Final EIR/EIS and taking actions as required by CEQA and NEPA for selecting the Preferred Alternative for the San Jose to Merced Project Section

SUMMARY

Staff recommends that the California High-Speed Rail Authority (Authority) Board of Directors (Board) take three actions:

- Certify the San José to Merced Project Section Final Environmental Impact Report/Environmental Impact Statement (Final EIR/EIS), as described in more detail in this memorandum (Agenda Item #9).
- Approve the San José to Merced Project Section Preferred Alternative (Alternative 4, with a San José Diridon Station, Downtown Gilroy Station, and maintenance-of-way facility [MOWF] south of Gilroy), including associated facilities and refinements from Scott Boulevard in Santa Clara to Carlucci Road in Merced County (see Attachment A), and approve the related CEQA Findings of Fact, Statement of Overriding Considerations, and Mitigation Monitoring and Enforcement Plan (MMEP) (Agenda Item #10).
- Direct the Authority Chief Executive Officer (CEO) to issue the federal Record of Decision (ROD) under the Authority's National Environmental Policy Act (NEPA) Assignment responsibilities, identifying Alternative 4, as described above, as the Selected Alternative for the San José to Merced Project Section, documenting compliance with other related federal environmental laws, and including mitigation measures as identified in the MMEP (Agenda Item #11).

STRUCTURE OF THE MEETING

The April 27-28th Board meeting is structured as a 2-day meeting to ensure adequate time for thorough consideration of the San José to Merced Project Section Final EIR/EIS. On April 27th, staff will give a presentation to the Board about the San José to Merced Project Section Final EIR/EIS and proposed decisions (Agenda Item #2). Public comment on all San José to Merced Project Section agenda items will be taken after the staff presentation. After hearing the staff presentation and public comment, the Board will then have an opportunity to identify any issues or questions it would like staff to address the following day. The board meeting will then recess for lunch and resume in the afternoon to address other agenda items.

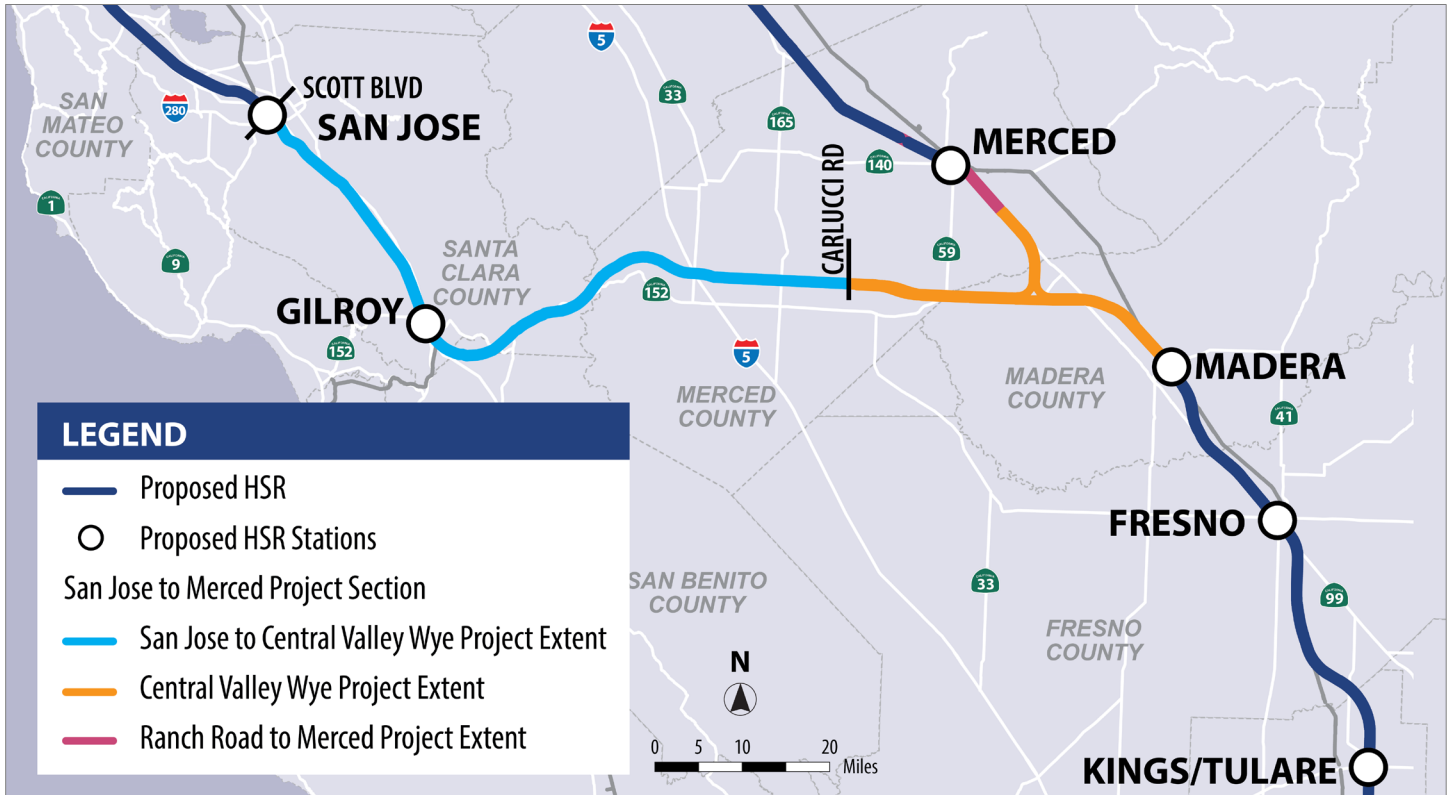
On April 28, staff will present a summary of public comments and issues and questions identified by the Board the prior day, and staff's responses (Agenda Item #8). The Board will then deliberate about the Final EIR/EIS and consider certifying the Final EIR/EIS, as noted above (Agenda Item #9). If the Board certifies the Final EIR/EIS, the Board will then deliberate about the San José to Merced Project Section Preferred Alternative and

will consider approving it; adopting the associated CEQA Findings of Fact, Statement of Overriding Considerations, and MMEP (Agenda Item #10); and directing the CEO to issue the NEPA ROD (Agenda Item #11).

BACKGROUND

The San José to Merced Project Section is part of Phase 1 of the statewide California High-Speed Rail (HSR) System between San Francisco and Los Angeles/Anaheim. The San José to Merced Project Section (depicted as the San Jose to Central Valley Project Extent in Figure 1 below) would connect to the already-approved portions of the HSR system starting from Carlucci Road and running the length of the Central Valley between Merced and Palmdale. This Project Section would extend approved segments of the high-speed rail system from Northern California (Santa Clara County) through the Central Valley to Southern California (Los Angeles County).

Figure 1



Note to Figure 1: The SR 152 (North) to Road 11 Wye Alternative is the Selected Alternative for the Merced to Fresno Section: Central Valley Wye.

The Authority is the project sponsor and owner and is the lead agency under both CEQA and NEPA. Previous NEPA documents and approvals were completed in collaboration with the Federal Railroad Administration (FRA) as the NEPA lead agency. On July 23, 2019, the State of California and the FRA finalized the NEPA Assignment Memorandum of Understanding (MOU). This MOU assigns to the Authority most responsibilities formerly held by the FRA regarding the California HSR System federal environmental review and approval process. The MOU empowers the Authority to perform NEPA review and authorization for all ongoing and new environmental documents that are being developed for the remaining project sections of the California HSR System, as well as for other passenger rail projects that directly connect to the HSR system.

Therefore, as part of this action, staff proposes the Board approve for construction and operation the Preferred Alternative (Alternative 4, with a San José Diridon Station, Downtown Gilroy Station, and South Gilroy Maintenance-of-Way Facility) and its associated facilities and refinements from Scott Boulevard in Santa Clara to Carlucci Road in Merced County.

PRIOR BOARD ACTION

Three Project Extents. The San José to Merced Project Section as a whole previously comprised three “project extents” as shown in Figure 1 (see previous page), including (1) the San Jose to Central Valley Wye

Project Extent (Scott Boulevard in Santa Clara to Carlucci Road in Merced County); (2) the Central Valley Wye Project Extent (connecting the east-west portion of HSR from the San Francisco Bay Area to the Central Valley with the north-south portion from Merced to Fresno); and (3) the Ranch Road to Merced Project Extent (Ranch Road in the south to the Merced Station in the north).

Ranch Road Extent 2012 Approval. On May 3, 2012, through resolutions #HSRA 12-19 and #HSRA 12-20, the Authority certified the 2012 Merced to Fresno Final EIR/EIS as compliant with CEQA and approved the Hybrid Alternative for the north-south alignment of the Merced to Fresno Section and the Downtown Merced and Downtown Fresno Mariposa Street station locations, including the Ranch Road to Merced Station Project Extent. On that same day and in those same resolutions, the Authority deferred a decision on the Central Valley Wye Project Extent (see Figure 1) and directed staff to conduct further study and analysis to determine whether the Central Valley Wye Project Extent alternatives evaluated in the 2012 Final EIR/EIS should be changed, augmented, or eliminated and additional alternatives considered.

Central Valley Wye Extent 2020 Approval. On September 10, 2020, through resolutions #HSRA 20-06 and #HSRA 20-07, the Authority approved the Preferred Alternative for the Central Valley Wye Extent (SR 152 (North) to Road 11 Wye), certified a Final Supplemental EIR/EIS ("Final Supplemental EIR/EIS") to the Merced to Fresno Final EIR/EIS pursuant to CEQA, and approved issuance of a NEPA Record of Decision, all for the Central Valley Wye Project Extent.

San Jose to Merced Project Extent Proposed Approval. The San Jose to Merced Project Section EIR/EIS therefore studies the last of the three extents, the San Jose to Central Valley Wye Project Extent, as depicted in Figure 1. This Project Extent is now the San Jose to Merced Project Section, starting from Scott Road in Santa Clara to the north and terminating at Carlucci Road in Merced County, where the extent connects to the two previously-approved extents in Merced County. On September 17, 2019, the Board concurred with Authority staff's recommendation to identify Alternative 4 as the San José to Merced Project Section Preferred Alternative [resolutions #HSRA 19-06 (NEPA) and #HSRA 19-05 (CEQA)]. Pursuant to Board approval, the Draft EIR/EIS published on April 24, 2020, identified Alternative 4 as the Preferred Alternative.

DISCUSSION

The Authority circulated the Draft EIR/EIS for the San José to Merced Project Section for public review and comment between April 24, 2020, and June 23, 2020. The Draft EIR/EIS evaluates impacts and proposes mitigation for four end-to-end alternatives (Alternatives 1, 2, 3, and 4) and, consistent with Board direction, identifies Alternative 4 as the Preferred Alternative for the HSR alignment. Consistent with Board authorization on minor revisions to the Preferred Alternative (Resolution #HSRA 19-09), the CEO or his delegate approved minor refinements to the Preferred Alternative, described as the Diridon Design Variant (DDV) and the Tunnel Design Variant (TDV) in the Draft EIR/EIS.

The Draft EIR/EIS consisted of:

- **Volume 1:**
 - Introductory text about the San José to Merced Project Section and the environmental process, including the project purpose and need and objectives.
 - Detailed description of the San José to Merced Project Section, alternatives considered, refinements or variants for each alternative, and all related and supporting HSR facilities, such as stations, maintenance facilities, and electrification infrastructure.
 - Detailed environmental impacts and mitigation analysis of the San José to Merced Project Section alternatives across numerous environmental resource areas, including biological resources, noise and vibration, aesthetics and visual resources, air quality and greenhouse gases, cultural resources, and cumulative effects.
 - Detailed Section 4(f) and environmental justice analyses.
 - Summary of public and agency outreach efforts.
- **Volume 2:**
 - Technical appendices supporting Volume 1.
- **Volume 3:**

- Preliminary design drawings and alignment plans/map upon which the environmental analysis is based.

During the Draft EIR/EIS environmental review process, the Authority received 746 submissions containing 4,889 individually identified comments from the public, tribal representatives, and government agencies both in writing and in verbal comments during public testimony. The purpose of the public review process is for the public and interested agencies to review the analysis and provide comment and feedback about environmental impacts, alternatives, and mitigation. Key comments on the Draft EIR/EIS included the following topics: alternatives, consistency with other plans, displacements, at-grade crossings, emergency vehicle response, environmental justice, air quality, noise and vibration, rights-of-way, Section 4(f), wildlife crossings, and wildlife habitat and movement.

The Authority circulated a Revised Draft EIR/Supplemental Draft EIS for public review and comment from April 23, 2021, to June 9, 2021. The Revised Draft EIR/Supplemental Draft EIS was limited to new information about the monarch butterfly and the Southern California and Central Coast populations of mountain lion as candidate species under the federal and state Endangered Species Acts, respectively, and new mitigation measures to address impacts on wildlife resulting from lighting and noise during construction and project operation. Approximately 226 individual comments (contained in 16 submissions) were received in writing from the public and government agencies during the Revised Draft EIR/Supplemental Draft EIS review process. Key comments on the Revised Draft EIR/Supplemental Draft EIS addressed impacts on wildlife movement and habitat (mountain lion, monarch butterfly, other listed species, and mitigation to reduce impacts), including suggested additional mitigation measures.

On February 25, 2022, the Authority issued the Final EIR/EIS and posted it on the Authority's website at <https://hsr.ca.gov/programs/environmental-planning/project-section-environmental-documents-tier-2/san-jose-to-merced-project-section-draft-environmental-impact-report-environmental-impact-statement/>. The Authority provided broad public notice of the availability of the Final EIR/EIS on the Authority's website, in newspapers of general circulation in the project area, in direct mailings to property owners and tenants near the project, in direct mailings to commenters on the Draft EIR/EIS and Revised Draft EIR/Supplemental Draft EIS, and in email notification to persons who had subscribed to the project mailing list. In addition, notice was published in the Federal Register. The Final EIR/EIS is considered a "full" final because it consists of the same Volumes 1 through 3 as the Draft EIR/EIS, each with text revisions as detailed below. Volume 3, Preliminary Engineering for Project Design Record, was updated to incorporate minor design refinements such as to the Guadalupe River Bridge, the DDV and TDV and to correct mislabeling. The Final EIR/EIS also includes a fourth volume (Volume 4), which includes reproductions of comments received during the Draft EIR/EIS and RDEIR/SDEIS public comment periods and the Authority's responses to these comments. In addition, this volume provides the Authority's Standard Responses that address the most frequently raised issues. Standard Responses are provided in Chapter 17 of the Final EIR/EIS and are also included in Attachment B to this memorandum.

In the Final EIR/EIS, each resource section or chapter contains a summary of the substantive revisions that have been made to that section or chapter since the circulation of the Draft EIR/EIS. To the extent practicable, a vertical line is provided in the page margin to indicate substantive changes to the EIR/EIS.

Authority staff provided the Board with a complete copy of the Final EIR/EIS for its review in February. Elements of the Final EIR/EIS in paper form are also included with this memorandum for the Board's convenience (see Attachments B and C).

CEQA does not require public review and comment for a Final EIR. Instead, CEQA requires that the proposed response to any comment received from a state or local public agency be provided to that public agency at least 10 days prior to certification of the Final EIR. The Authority satisfied that requirement by mailing a letter and USB flash drive containing the Final EIR/EIS, including responses to comments received during the Draft EIR/EIS and Revised Draft EIR/Supplemental Draft EIS review periods, to state and local public agencies that provided comments in late February, approximately 50+ days before the Board's proposed April 27-28, 2022 decisions on the Final EIR/EIS. The Final EIR/EIS was also made available to the general public on the Authority website and at repository locations along the project section corridor on February 25, 2022.

NEPA requires that a Final EIS be made publicly available at least 30 days prior to the NEPA lead agency issuing a ROD. The Authority satisfied this requirement by issuing the Final EIR/EIS on February 25, 2022, more than 30 days in advance of the proposed April 27-28, 2022 consideration of a ROD.

REQUESTED ACTIONS

CEQA

The purpose of CEQA is to ensure the public and government decision-makers are informed, through CEQA documents, of the potential environmental consequences of a proposed government action. Public comment on draft EIRs helps provide information and feedback on the proposed action to the public and ultimately decision-makers.

The first step is for the Board to certify that the Final EIR/EIS is adequate as an informational document about environmental consequences of the proposed project (Agenda Item #9). That certification takes the form of the draft resolution #HSRA 22-10 included herein as Attachment D. This action states that the Final EIR/EIS was completed in compliance with CEQA and has been presented to the Board, that the Board has reviewed and considered the information, and that the document represents the Authority's independent judgment. Certification of the Final EIR/EIS is a prerequisite to approving the project, but certification by itself does not approve the project.

The second step (Agenda Item #10) is for the Board to consider whether to approve the Preferred Alternative (Alternative 4 with a San José Diridon Station, Downtown Gilroy Station, Maintenance-of-Way Facility south of Gilroy, and associated facilities and refinements), as generally depicted in Attachment A, after considering the environmental consequences disclosed in the San José to Merced Project Section Final EIR/EIS. That approval takes the form of draft resolution #HSRA 22-11 included herein as Attachment E. This step also involves making written acknowledgments (called "Findings") about the environmental consequences (as stated in the Final EIR/EIS) that will flow from the approval and requiring feasible mitigation to minimize those consequences. For environmental consequences that cannot be mitigated, this step also involves making written conclusions that the benefits of implementing the project outweigh the unmitigated consequences—called a Statement of Overriding Considerations. The Findings, Statement of Overriding Considerations, and a mitigation table (called a Mitigation Monitoring and Enforcement Plan or MMEP)¹ are included in Exhibits B and C to the draft resolution #HSRA 22-11, included herein as Attachment E.

NEPA

The purpose of NEPA is to ensure agencies consider the significant environmental consequences of their proposed actions and inform the public about the decision-making.

Pursuant to the Authority's NEPA Assignment, the Board will also take a third action to consider whether to direct the Authority CEO to issue a ROD (Agenda Item #11). A Draft ROD is included as part of the materials provided prior to this meeting. Under NEPA and the NEPA Assignment MOU, the ROD indicates selection of a preferred alternative²—Alternative 4 with a San José Diridon Station, Downtown Gilroy Station, the Maintenance-of-Way Facility south of Gilroy, and associated facilities and refinements—as the alternative that best serves the purpose and need for the San José to Merced Project Section and minimizes economic, social, and environmental impacts. The Draft ROD also documents several federal decisions on the project, including required determinations under several federal laws, including but not limited to Section 4(f) of the Department of Transportation Act, the Clean Air Act, the Clean Water Act, the Endangered Species Act, and the National Historic Preservation Act. This direction to issue a ROD takes the form of draft resolution #HSRA 22-12, included herein as Attachment F.

Basis for Requested Actions

The Final EIR/EIS has undergone extensive preparation efforts, including thorough consideration of the comments received on the Draft EIR/EIS and Revised Draft EIR/Supplemental Draft EIS. Staff recommends that the Final EIR/EIS is an adequate informational document in compliance with CEQA, NEPA, and other applicable federal and state requirements. As explained in Chapter 8 of the Final EIR/EIS, the Preferred Alternative is an appropriate approval choice because, among other build alternatives considered in the Final EIR/EIS, this alignment would have the lowest overall environmental impacts: the fewest displacements of residences, businesses, community facilities, and agricultural structures; would result in the least conversion of agricultural farmland to nonagricultural uses (and thus have the lowest impact on agricultural employment);

¹ The MMEP is consistent with the CEQA requirements for mitigation monitoring and reporting as set forth in Section 15097 of the CEQA Guidelines (California Code of Regulations Title 14, Division 6, Chapter 3).

² The draft ROD uses the term "Selected Alternative" to refer to the Preferred Alternative.

and would cause the least change in aesthetics and visual quality. The Preferred Alternative would also result in the lowest impacts on wetlands and other aquatic habitats providing high-value habitat for a diverse array of species, and it is also the alternative that the U.S. Army Corps of Engineers has identified to be the Least Environmentally Damaging and Practicable Alternative under the Clean Water Act. The Preferred Alternative would result in the lowest impacts to Section 4(f) resources (only one park and four historic properties were determined to have a permanent use) and National Register of Historic Places-listed or -eligible built environment historic resources. The Preferred Alternative would also have the lowest capital cost, and it is the only alternative that would also provide the opportunity to extend electrified Caltrain service to South San José and Southern Santa Clara County.

With respect to Section 4(f) findings, the Final EIR/EIS concluded no constructive use of Section 4(f) resources by the Preferred Alternative. The Preferred Alternative would result in the following uses under Section 4(f): 1 park/recreational resource (Fuller Park) was determined to have *de minimis* impacts, 2 parks (Coyote Creek Parkway County Park and Field Sports County Park) were determined to have a temporary occupancy, 1 park (Coyote Creek Parkway County Park) was determined to have a permanent use, 4 historic properties (Southern Pacific Depot [Diridon Station/Hiram Cahill Depot], Cozzi Family Property, Madrone Underpass, and Live Oak Creamery) were determined to have a permanent use, and 1 historic property (San Martin Winery) was determined to have a *de minimis* impact. The remaining properties did not have a Section 4(f) use. The Preferred Alternative is the alternative that would cause the least overall harm to Section 4(f) resources.

LEGAL APPROVAL

The Office of Chief Counsel has verified that the Board is legally authorized to take the actions requested by the Board items. Attorneys under the direction of the Chief Counsel have been involved in the development of the Final EIR/EIS and the certification and approval documents presented in this item. Legal counsel is not aware of any outstanding issues from a NEPA or CEQA perspective in the San José to Merced Project Section decision documents that would prevent consideration and action by the Board. Furthermore, as to the draft ROD document, legal counsel concludes that it is legally sufficient as required by NEPA, the NEPA Assignment MOU (and associated application), and the FRA Procedures for Considering Environmental Impacts.

BUDGET AND FISCAL IMPACT

Construction costs for the San José to Merced Project Section are outside the scope of the Expenditure Authorization approved by the Authority’s Board on December 16th, 2021, and therefore do not affect the currently authorized capital outlay budget.

2021-22 Fiscal Year Budget Impact

Contract Name	Contract Number	FY Budget	Budget Change	Funding Source
N/A	N/A	N/A	N/A	N/A

Total Program Budget Impact

Contract Name	Contract Number	FY Budget	Budget Change	Funding Source
N/A	N/A	N/A	N/A	N/A

Capital Cost Estimate

The estimated capital cost of the Preferred Alternative for the San José to Merced section in the Final EIR/EIS is \$18.993 billion in 2021 dollars (2021\$). This cost is inclusive of all elements in the environmental document and is an increase from earlier estimates based on the refinement of design and project development that has taken place since those estimates were developed. In this project section, the cost increases have primarily been driven by additional viaduct and structures being added including to facilitate wildlife movement, increased right-of-way costs incorporating lessons learned from experience in the Central Valley, refinements for grade separation designs due to 3rd party requirements, and related costs for these items such as professional services and contingency. These refinements reflect the coordination with stakeholders in the project section to refine the design and to minimize disruptions to the surrounding communities and environments.

To develop a capital cost estimate using a business plan methodology, staff applied a series of potential optimizations where there may be opportunities to reduce certain costs as design and project development continues to advance. These areas included potential structural design criteria refinements, evaluation of reduced tunnel spacing, and adjustments to rights-of-way. Staff also escalated the costs from the Final EIR/EIS 2021 dollars, to year-of-expenditure (YOE) dollars. The cost using business plan methodology for this project section is \$19.647 billion (YOE\$).

Environmental Document Cost	2021\$ (billions)
Environmental Document Cost	\$ 18.993
Adjustment to Reconcile to 2022 Draft Business Plan	
Design and Minimization Refinements ³ :	\$ (4.197)
<i>Viaduct & Structures (Wildlife Movement and Design Criteria)</i>	\$ (1.150)
<i>Grade-Separations Refinements - East of Gilroy (due to third-party requirements)</i>	\$ (0.544)
<i>ROW and Utilities</i>	\$ (2.010)
<i>Professional Services</i>	\$ (0.309)
<i>Contingency</i>	\$ (0.185)
Optimizations / Value Engineering Opportunities	\$ (1.101)
Environmental and Post-ROD costs moved to Baseline	\$ (0.413)
Adjusted Total for 2022 Draft Business Plan Scope	\$ 13.282
2022 Draft Business Plan Reconciliation	YOE\$ (billions)
Adjusted Total for 2022 Draft Business Plan Scope	\$ 14.929
Design and Minimization Refinements	\$ 4.718
Updated Capital Cost	\$ 19.647
Cost Range in 2022 Draft Business Plan	\$ 10.033 – \$ 17.422

Reviewer Information

Reviewer Name and Title	Signature
Brian Annis, Chief Financial Officer	Original signed April 20, 2022
Alicia Fowler, Chief Counsel	Original signed April 20, 2022

STAFF RECOMMENDATION

Staff recommends that the Board adopt the attached draft resolutions #HSRA 22-10, #HSRA 22-11, and #HSRA 22-12:

- #HSRA 22-10 (Attachment D) certifies the completeness and adequacy of the San José to Merced Project Section Final EIR/EIS for compliance with CEQA.
- #HSRA 22-11 (Attachment E) approves the San José to Merced Project Section Preferred Alternative -- Alternative 4 with a San José Diridon Station, Downtown Gilroy Station, MOWF south of Gilroy -- and associated facilities and refinements; adopts the drafts of the CEQA Findings of Fact, Statement of Overriding Considerations, and MMEP; and directs staff to file a CEQA Notice of Determination with the State Clearinghouse.
- #HSRA 22-12 (Attachment F) directs the Authority CEO to issue the federal ROD under the Authority's NEPA Assignment responsibilities, identifying Alternative 4 with a San José Diridon Station, Downtown Gilroy Station, MOWF south of Gilroy, and associated facilities and refinements as the Selected

³ Design refinements occurred before release of the Draft EIR/EIS for this project section.

Alternative and documenting compliance with other related federal environmental and resource protection laws, and including mitigation measures as identified in the MMEP.

ATTACHMENTS

- Attachment A: Map of the Preferred Alternative
- Attachment B: Standard Responses to Most Frequently Raised Comments
- Attachment C: Executive Summary of the San Jose to Merced Project Section Final EIR/EIS
- Attachment D: Draft Resolution #HSRA 22-10
- Attachment E: Draft Resolution #HSRA 22-11
 - Exhibit A – Map of the Preferred Alternative
 - Exhibit B – Draft CEQA Findings of Fact and Statement of Overriding Considerations
 - Exhibit C – Draft Mitigation Monitoring and Enforcement Plan
- Attachment F: Draft Resolution #HSRA 22-12
 - Exhibit A – Draft Record of Decision for the San José to Merced Project Section