

APPENDIX 4-A: CONCURRENCE LETTER



September 21, 2021

Jon Cicirelli, Director
City of San Jose Department of Parks, Recreation & Neighborhood Services
200 E. Santa Clara Street
San Jose, CA 95113

Dear Mr. Cicirelli:

On April 24, 2020, the California High-Speed Rail Authority (Authority) released a Draft Environmental Impact Report (EIR)/Environmental Impact Statement (EIS) for the San Jose to Merced Project Section of the statewide California High-Speed Rail (HSR) System in accordance with the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). This Draft EIR/EIS documents engineering, environmental analysis, public and agency involvement, and ensuring compliance with state and federal environmental laws and regulations for the proposed project. One federal law, Section 4(f), is the subject of this concurrence request. The Draft EIR/EIS also detailed preliminary determinations for Fuller Park, a Section 4(f) resource located in the City of San Jose. The Authority is currently preparing an Administrative Final EIR/EIS, which includes responses to comments received on the Draft EIR/EIS (including those received from the city) and updated Section 4(f) evaluations.

In addition, on July 10, 2020, the Authority released a Draft EIR/EIS for the San Francisco to San Jose Project Section of the California HSR System also in accordance with CEQA and NEPA. The San Francisco to San Jose Project Section alternatives are divided into geographic subsections. The fifth subsection is the San Jose Diridon Station Approach Subsection between Scott Boulevard in Santa Clara and West Alma Avenue in San Jose. To support a station-to-station analysis with logical termini for the San Francisco to San Jose Project Section, the analysis of the San Jose Diridon Station Approach Subsection was incorporated into San Francisco to San Jose Project Section Draft EIR/EIS. The San Jose Diridon Station Approach Subsection was fully analyzed as part of the San Jose to Merced Project Section Draft EIR/EIS and corresponding technical reports. As a result of incorporating the subsection analysis in both project sections, Section 4(f) resources including Fuller Park in the City of San Jose, are also included in the San Francisco to San Jose Project Section Draft EIR/EIS analysis.

The Authority's Preferred Alternative for the San Jose to Merced Project Section is Alternative 4, which is the same as Alternative A for the San Francisco to San Jose Project Section in the San Jose Diridon Station Approach Subsection. Alternative A is the Authority's Preferred Alternative for that project section. Thus, the Section 4(f) findings under both project sections for each resource are the same, and the Authority is requesting concurrence from the City for these resources for both project sections.

Section 4(f) of the United States Department of Transportation Act of 1966, as amended, and codified in 49 United States Code (U.S.C.) Section 303, declares that “it is the policy of the United States Government that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges and historic sites.” The Authority is responsible for Section 4(f) compliance for the HSR Program pursuant to 23 U.S.C. Section 237, under the NEPA Assignment Memorandum of Understanding (MOU) between the Federal Railroad Administration and the State of California, effective July 23, 2019, the Authority is the federal lead agency and is responsible for compliance with NEPA and other federal environmental laws, including Section 4(f) (49 U.S.C. § 303) and related U.S. Department of Transportation orders and guidance. In general, Section 4(f) specifies that the Authority may only approve a project that “uses” the resources mentioned above, if (1) there is no prudent and feasible alternative that avoids the use of Section 4(f) resources, and (2) the project includes all possible planning to minimize harm to those resources. In lieu of making these findings, the Authority also can approve the use of a Section 4(f) resource if it determines that the project will have a “*de minimis*” impact on that resource and the official with jurisdiction over the resource concurs in that determination. For parks, recreation areas, and refuges, the official with jurisdiction (OWJ) is the agency (or agencies) that owns or administers the property.

Additionally, the Authority may approve the temporary occupancy of a Section 4(f) property as minimal and not a use, if the “temporary occupancy” of the property meets the criteria under 23 U.S.C § 774.13(d): it would be of shorter duration than construction; there would be no change in ownership of the land; the scope of the work would be minor; there would be no temporary or permanent adverse changes to the activities, features, or attributes of the property; the property would be fully restored to a condition at least as good as it was prior to the project, that the temporary use would not interfere with the protected activities of the park; and the official with jurisdiction over the resource concurs in that determination.

The Authority has determined that Fuller Park located within the City of San Jose is a Section 4(f) resource; is within the resource study areas of both project sections; and that your agency is the OWJ with respect to this resource. The purpose of this letter is to request concurrence with findings the Authority has made with respect to the *de minimis* finding for Fuller Park, and the minimal nature of the temporary occupancy for Fuller Park. The basis for these findings was originally detailed in Chapter 4, Section 4(f)/6(f) of the San Jose to Merced and San Francisco to San Jose Project Section Draft EIR/EISs¹ and which have been subsequently revised in the Administrative Final EIR/EISs for both project sections based on written and oral comments received on the

¹ Chapter 4, Section 4(f)/6(f), of the San Jose to Merced Project Section Draft EIR/EIS is available at the Authority’s website: https://hsr.ca.gov/programs/environmental/eis_eir/draft_san_jose_merced.aspx and Chapter 4, Section 4(f)/6(f), of the San Francisco to San Jose Project Section Draft EIR/EIS is available at: <https://hsr.ca.gov/programs/environmental-planning/project-section-environmental-documents-tier-2/san-francisco-to-san-jose-project-section-draft-environmental-impact-report-environmental-impact-statement/>.

April 2020 and July 2020 Draft EIR/EISs. A summary of the Authority's findings is set forth below. As noted, the Authority's Preferred Alternative is Alternative 4 for San Jose to Merced and Alternative A for San Francisco to San Jose, which is the same for both project sections in the San Jose Diridon Station Approach Subsection. For simplicity, in the following discussions, references to findings for the Preferred Alternative apply to and are the same for both project sections.

Fuller Park *De Minimis* and Temporary Occupancy Exception Findings

The Preferred Alternative would be at grade and on an embankment adjacent to the park, permanently affecting 0.03 acre (2.6 percent) of the park as shown on Figure 1. The area permanently affected would be acquired by the Authority and includes 0.02 acre currently used for UPRR operations located west of Delmas Avenue. The 0.02 acre contains the existing train control site and an unpaved access road from Fuller Avenue. The Preferred Alternative would shift the existing site approximately 20 feet west and provide a new access road from Fuller Avenue. The Authority would also use this area for a train control site. This permanent easement would maintain public passage when not in use for service vehicles or maintenance of the train control site. This portion of the park does not contain any recreational facilities and is currently used for train operations. East of Delmas Avenue, 0.01 acre of the park adjacent to the current Caltrain right-of-way would be incorporated into the HSR right-of-way. This area is on the northeastern edge of the park, directly adjacent to the existing right-of-way, and does not contain any recreational facilities (Figure 1).

Preferred Alternative construction in these areas would not require closure of the park and the park would remain open for continued use during construction and operations. Access to the park from Fuller Street would not be temporarily or permanently affected. Existing vegetation and/or landscaping within the construction area would be temporarily disturbed, but the affected portions would be restored to pre-construction conditions. Prior to any ground-disturbing activities at the park, a restoration plan would be prepared by the Authority addressing specific actions, sequence of implementation, parties responsible for implementation, and successful achievement of restoration for temporary impacts, such as replanting trees and vegetation that would be removed. Before beginning construction, the contractor would submit the restoration plan for review and obtain Authority approval. The Authority would provide the restoration plan to the City of San Jose Department of Parks, Recreation & Neighborhood Services for review and comment before implementation.

Also, east of Delmas Avenue, another 0.01 acre would be used as an access temporary construction easement (TCE). This area is also on the northeastern edge of the park adjacent to the existing right-of-way and does not contain any recreational facilities (Figure 1). The Authority has determined that the temporary occupancy of Fuller Park under the Preferred Alternative meets the criteria for temporary occupancy that are so minimal so as to not constitute a use (i.e., occupancy would be of shorter duration than construction; there would be no change in ownership of the land; scope of the work would be minor such that both the nature and magnitude of changes to the Section 4(f)

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resource are minimal; there would be no anticipated permanent adverse physical changes to the property, nor will there be interference with the protected activities, features, or attributes of the property on either a temporary or permanent basis; the property temporarily being used would be fully restored to a condition at least as good as it was prior to the project).

The permanent and temporary occupancy impacts under the Preferred Alternative on Fuller Park would not adversely affect the protected activities, features, or attributes that qualify the park for protection under Section 4(f). Therefore, with the City of San Jose Department of Parks, Recreation & Neighborhood Service's concurrence, the Authority has concluded that the permanent impacts on Fuller Park under the Preferred Alternative would be *de minimis* and intends to approve the determination that the temporary occupancy exception meets the criteria for a temporary occupancy that is "so minimal so as to not constitute a use" pursuant to 23 C.F.R. 774.13(d).

Based on the information set forth above, the Authority has determined that the Preferred Alternative would not adversely affect or otherwise restrict the public's use of the trail or park, nor would it adversely affect the features, attributes, or activities that make the resources eligible for Section 4(f) protection. The Authority seeks your concurrence in this determination. A concurrence clause is provided at the end of this letter for this purpose.

We respectfully request your reply to this matter within 30 days of receipt of this letter. We look forward to continuing our successful working relationship with you as we work to deliver the nation's first HSR project.

Please return a scanned copy of this letter by email to Brett.Rushing@hsr.ca.gov.

Sincerely,



Brett Rushing
Supervising Environmental Planner
Brett.Rushing@hsr.ca.gov

CONCURRENCE:

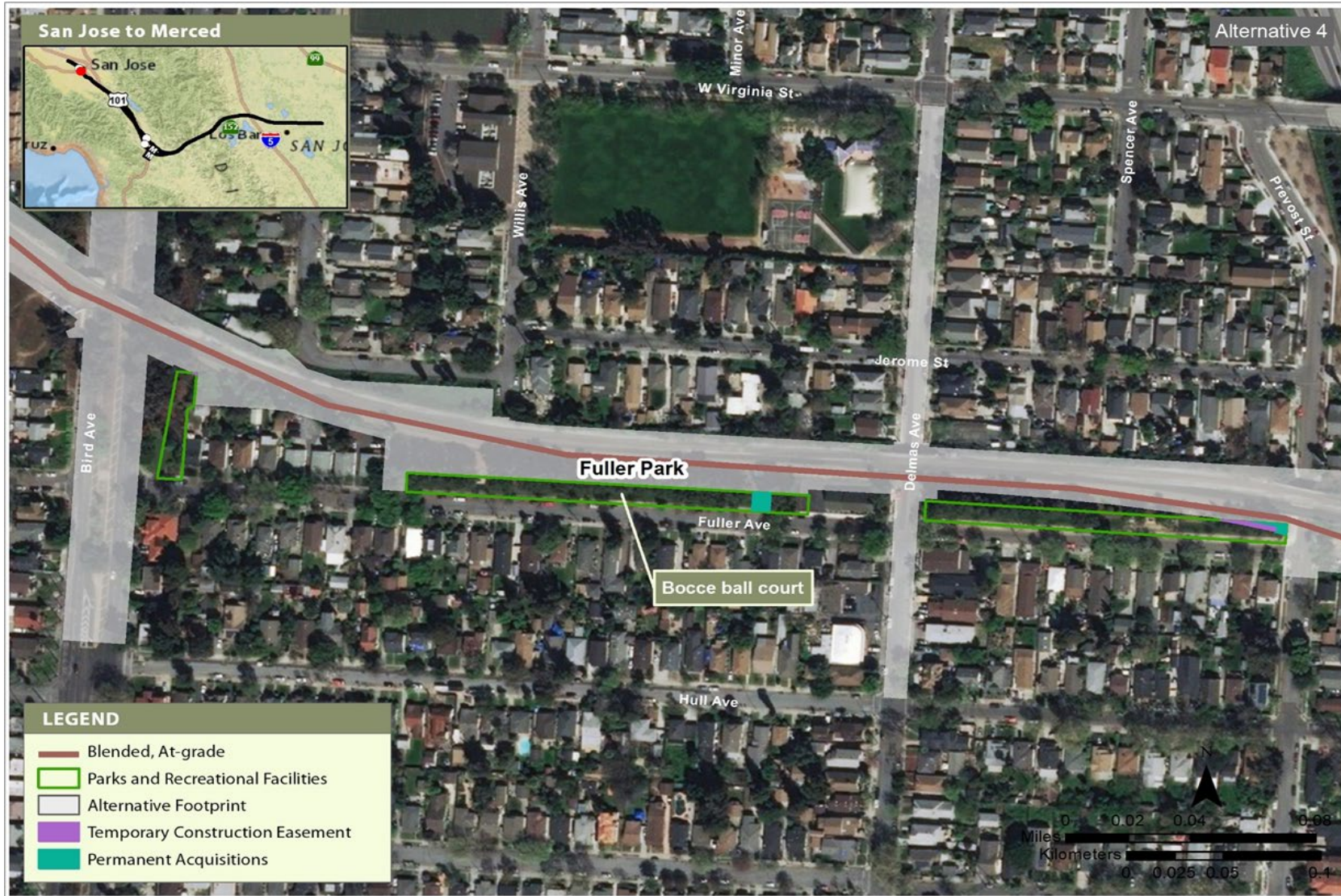
Based on the information set forth in this letter and on the documents referenced herein, the City of San Jose Department of Parks, Recreation & Neighborhood Services concurs with the Authority's determinations that the San Jose to Merced Project Section and the San Francisco to San Jose Project Section would not adversely affect the activities, features, or attributes that make Fuller Park eligible for Section 4(f) protection. Therefore, the City of San Jose Department of Parks, Recreation & Neighborhood Services concurs in the Authority's determinations that the San Jose to Merced Project Section as well as the San Francisco to San Jose Project Section, would have *de minimis* impact on Fuller Park, and that the temporary occupancy of Fuller Park would be so minimal so as to not constitute a use in accordance with Section 4(f) of the U.S. Department of Transportation Act of 1966.



09/28/2021

Jon Cicirelli, Director
City of San Jose Department of Parks,
Recreation & Neighborhood Services

Date



Note: The Authority's Preferred Alternative (Alternative 4 and Alternative A) are the same for the San Jose to Merced Project Section and the San Francisco to San Jose Project Section, respectively in the San Jose Diridon Station Approach Subsection.

Figure 1 Fuller Park