anticipated that the BBNJ Agreement may be adopted at the conclusion of negotiations in this session. Additional information on the BBNJ process is available at *www.un.org/bbnj.*

We are inviting interested U.S. stakeholders to this virtual public meeting to share views about the BBNJ IGC, in particular to provide information to assist the U.S. Government in developing its positions. We will provide a brief overview of the upcoming negotiations and listen to the viewpoints of U.S. stakeholders. The information obtained from this session will help the U.S. delegation prepare for participation in the resumed fifth IGC session.

Authority: 22 U.S.C. 2656.

Elizabeth Kim,

Director, Office of Ocean and Polar Affairs, Department of State.

[FR Doc. 2022–27938 Filed 12–22–22; 8:45 am]

BILLING CODE 4710–09–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36642]

Patriot Rail Company LLC, SteelRiver Transport Ventures LLC, Global Diversified Infrastructure Fund (North America) LP, First State Infrastructure Managers (International) Limited, and Mitsubishi UFJ Financial Group, Inc.—Control Exemption—Delta Southern Railroad, Inc.

Patriot Rail Company LLC (Patriot), SteelRiver Transport Ventures LLC; Global Diversified Infrastructure Fund (North America) LP; First State Infrastructure Managers (International) Limited; and Mitsubishi UFJ Financial Group, Inc. (MUFG) (collectively, Patriot Rail), have filed a verified notice of exemption pursuant to 49 CFR 1180.2(d)(2) to acquire control of Delta Southern Railroad, Inc. (DSRR), a Class III rail carrier.[1] Through this transaction, Patriot Rail would acquire from West Branch Intermediate Holdings, LLC (West Branch), a noncarrier, a controlling interest in DSRR. Patriot Rail currently controls 31 Class III rail carriers (the Patriot Short Lines).[2]

The transaction may be consummated on or after January 6, 2023, the effective date of the exemption.[3]

According to the verified notice, through a Stock Purchase Agreement, Patriot would acquire a controlling interest in DSRR through Patriot's purchase of all DSRR's issued and outstanding stock. Patriot states that the proposed transaction involves a stock acquisition and would have no effect on DSRR's corporate entity status.

The verified notice indicates that: (1) none of the Patriot Short Lines connect with DSSR; (2) the transaction is not part of a series of anticipated transactions that would connect any of the Patriot Short Lines or DSRR; and (3) the transaction does not involve a Class I rail carrier. The proposed transaction is therefore exempt from the prior approval requirements of 49 U.S.C. 11323 pursuant to 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. 11326(c) does not provide for labor protection for transactions under 49 U.S.C. 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than December 30, 2022 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36642, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Patriot Rail's representative, John M. Scheib, Gentry Locke, 919 E Main Street, Suite 1130, Richmond, VA 23219.

According to Patriot Rail, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: December 20, 2022.

By the Board, Cynthia T. Brown, Acting Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2022–28031 Filed 12–22–22; 8:45 am]

BILLING CODE 4915–01–P

[1] The verified notice states that DSRR owns and operates two lines: the first rail line begins at Tallulah, La., and continues to Lake Providence, La.; the second line extends from Monroe, La., to Sterlington, La. Maps depicting the DSRR lines are contained in Exhibit B of the verified notice.

[2] Exhibit C of the verified notice of exemption lists the short line carriers indirectly controlled by Patriot Rail. Maps depicting the Patriot Short Lines are contained in Exhibit D of the verified notice.

[3] On September 28, 2022, Lake Providence Port Commission (LPPC) replied in opposition to the verified notice, requesting that the Board postpone the effective date and ''ultimately reject Patriot Rail's petition insofar as it would permit [West Branch and DSRR] to disrupt'' the feeder line application proceeding in Docket No. FD 36447, in which LPPC is attempting to acquire one of DSRR's lines. (LPPC Reply 1–2.) By decision served October 14, 2022, this proceeding was placed in abeyance until further order of the Board, and Patriot Rail, DSRR, and LPPC were directed to meet and confer on the issues raised in Docket No. FD 36647. *Patriot Rail Co. LLC,—Control Exemption—Delta S. R.R.,* FD 36447 et al., slip op. at 2 (STB served October 14, 2022). By decision served December 20, 2022, the Board denied LPPC's request to reject the notice of exemption and lifted the abeyance in this proceeding.

SURFACE TRANSPORTATION BOARD

[Docket No. FD 35724; Docket No. FD 35724 (Sub-No. 1)]

California High-Speed Rail Authority—Construction Exemption—In Merced, Madera, and Fresno Counties, Cal.; California High-Speed Rail Authority—Construction Exemption—In Fresno, Kings, Tulare, and Kern Counties, Cal.; Decision

On September 17, 2021, the California High-Speed Rail Authority (Authority), a Class III non-operating rail carrier, filed a petition to reopen Docket No. FD 35724 (Merced Petition) and a petition to reopen Docket No. 35724 (Sub-No. 1)[1] (Fresno Petition). In Docket No. FD 35724, the Board in 2013 granted the Authority an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 to construct approximately 65 miles of high-speed passenger rail line between Merced, Cal., and Fresno, Cal. (the Merced to Fresno Section),[2] and in Docket No. FD 35724 (Sub-No. 1), the Board in 2014 granted the Authority an exemption to construct approximately 114 miles of high-speed passenger rail line between Fresno and Bakersfield, Cal. (the Fresno to Bakersfield Section).[3]

In its September 2021 petitions to reopen those dockets, the Authority sought the Board's approval for an

[1] These proceedings are not consolidated. A single decision is being issued for administrative convenience.

[2] *Cal. High-Speed Rail Auth.—Constr. Exemption—in Merced, Madera, & Fresno Cntys., Cal.* (*June 2013 Decision*), FD 35724 (STB served June 13, 2013).

[3] *Cal. High-Speed Rail Auth.—Constr. Exemption—in Fresno, Kings, Tulare, & Kern Cntys., Cal.* (*Aug. 2014 Decision*), FD 35724 (Sub-No. 1) (STB served Aug. 12, 2014).

addition to the Merced to Fresno Section and a modification to the Fresno to Bakersfield Section, neither of which were previously considered by the Board. In a decision served on February 11, 2022 (*February 2022 Decision*), the Board found that the Authority provided new evidence and demonstrated changed circumstances that warranted reopening the two proceedings. The Board granted the petitions to reopen and solicited comments on the transportation merits of the proposed additions and modifications to the sections. No comments on the transportation merits were filed.

The Authority, as the current lead agency under National Environmental Policy Act (NEPA), 42 U.S.C. 4321 to 4370m–11, and the National Historic Preservation Act (NHPA), 54 U.S.C. 300101–307108, and the Federal Railroad Administration (FRA), as the previous lead agency under NEPA and NHPA, conducted environmental and historic reviews of the proposed modifications. The Board, through its Office of Environmental Analysis (OEA), participated as a cooperating agency. The environmental and historic reviews considered the environmental and historic impacts the proposed route modifications would have, potential alternatives, and whether different or additional conditions should be recommended to mitigate the impacts. OEA prepared an Environmental Memorandum in each of these proceedings summarizing the environmental and historic reviews and making final recommendations to the Board. OEA's Environmental Memoranda are appended to this decision.

In this decision, the Board authorizes the Authority's proposed changes to these construction projects, subject to the final recommended mitigation measures set forth in OEA's environmental memoranda.

Background

On March 27, 2013, and September 26, 2013, the Authority filed petitions seeking exemptions under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 to construct the Merced to Fresno Section and the Fresno to Bakersfield Section, respectively. Both sections are components of the California High-Speed Rail (HSR) System. The HSR System consists of eight rail line sections that, together, ultimately would comprise a high-speed rail line from San Francisco, Cal., to Anaheim, Cal. (Merced Pet. 2.) The Merced to Fresno Section and the Fresno to Bakersfield Section are the first and only two sections of the HSR System for which the Authority has sought construction authority from the Board. (*See* Fresno Pet. 2 n.4.) The Board authorized the construction of the Merced to Fresno Section in the *June 2013 Decision* and the construction of the Fresno to Bakersfield Section in the *August 2014 Decision,* subject to extensive environmental mitigation conditions to avoid or minimize the projects' potential environmental impacts. (*See* Merced Pet. 3; Fresno Pet. 3.)

The Merced to Fresno Section. The Merced to Fresno Section connects the Downtown Merced Station to the Downtown Fresno Mariposa Avenue Station along a mostly north-south alignment and includes a wye to allow an east-west connection to the proposed San Jose to Merced section of the HSR System.[4] (Merced Pet. 2.) FRA and the Authority conducted a joint environmental review pursuant to NEPA and the California Environmental Quality Act (CEQA), Cal. Pub. Res. Code section 21000–21189.3, and issued an Environmental Impact Report/Environmental Impact Statement (EIR/EIS),[5] after which FRA subsequently issued its Record of Decision (ROD) in 2012.[6] However, finding that part of the alignment merited further study,[7] FRA deferred final consideration of the Central Valley Wye (CVY), which would connect the north-south Merced to Fresno Section with the proposed east-west San Jose to Merced section. (Merced Pet. 2–3; *see also* ROD 19.)

As the lead Federal agency, FRA initiated the consultation process under Section 106 of NHPA (54 U.S.C. 306108) for the Merced to Fresno Section prior to OEA's involvement. *June 2013 Decision,* FD 35724, slip op. at 27. During that process, FRA consulted with the California State Historic Preservation Officer (SHPO), the Advisory Council on Historic Preservation (ACHP), and other interested parties. *Id.* The parties executed a Programmatic Agreement (PA) setting out a general process for Section 106 compliance for the proposed entire 800-mile system on June 11, 2011.[8] *Id.* The Section 106 consultation process, as well as evaluations conducted during the NEPA review, identified properties that are included in, or eligible for inclusion in, the National Register of Historic Places (National Register) that would be adversely affected by construction and operation of the Merced to Fresno Section. *Id.* FRA, the SHPO, and the Authority[9] then executed a Memorandum of Understanding (MOA)[10] that outlines additional surveys, historic property treatment, mitigation measures, and other efforts. *Id.* Subsequently, the parties executed a First Amendment to the MOA in 2013 to add OEA, for the Board, as a party. *Id.*

OEA conducted an independent analysis of the Final EIS prepared by FRA and the Authority and, following this review, recommended that the Board adopt the Final EIS for the

[4] The term ''wye'' refers to the Y-like formation that is created at the point where train tracks branch off the mainline to continue in different directions. The transition of mainline track to a wye requires splitting two tracks into four tracks that cross over one another before the wye legs can diverge in opposite directions to allow two-way travel. For the Merced to Fresno Section, the two tracks traveling east-west from the proposed San Jose to Merced Section must become four tracks—a set of two tracks branching toward Merced to the north and a set of two tracks branching toward Fresno to the south.

[5] The environmental documents were titled EIR/EIS to meet the obligations of both CEQA and NEPA, respectively. The Board is only required to comply with NEPA; accordingly, hereafter this decision will refer to the environmental documentation prepared in these cases as ''EISs.''

[6] The FRA's 2012 ROD is available on the Authority's website at *hsr.ca.gov/wp-content/uploads/docs/programs/merced-fresno-eir/final_EIR_MerFres_FRA09182012.pdf.*

[7] As noted in the Final EIS, the selection of the alignment for the wye connection impacted the environmental analysis for both the Merced to Fresno Section and the San Jose to Merced section. FRA, *Final Merced to Fresno Section Project EIR/EIS* 2–3, April 20, 2012, *railroads.dot.gov/environmental-reviews/california-hsr-merced-fresno/merced-fresno-final-eireis.* The alignment of the latter section, which would impact the ultimate location of the wye connection, was being studied and analyzed at the time of the *June 2013 Decision. See id.* Since then, the Authority has identified a preferred alternative for the San Jose to Merced section, for which it published a Draft EIS on April 24, 2020. The public comment period on that Draft EIS closed on June 23, 2020. *See* California High-Speed Rail Authority, *Project Section Environmental Documents—San Jose to Merced, 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/.*

[8] With the PA set to expire on July 21, 2021, the Signatories to the PA executed the First Amendment to the PA on July 21, 2021. In addition to extending the duration of the document, the amendment added OEA, for the Board, as an Invited Signatory to the agreement and designated the Authority as lead federal agency to Section 106 consultation and implementation.

[9] ACHP chose not to participate.

[10] Due to access restrictions, surveys for archaeological properties were incomplete and, therefore, additional National Register-eligible properties could have been present. The regulations implementing Section 106 allow for the development of an MOA when the effects of an undertaking cannot be fully determined prior to approval of an undertaking. *June 2013 Decision,* FD 35724, slip op. at 27. When there would be an adverse effect, the MOA can also establish responsibilities for the treatment of historic properties, implementation of mitigation measures, and ongoing consultation efforts. *Id.*

Merced to Fresno Section, which included the decision to defer consideration of the alignment of the CVY.[11] (Merced Pet. 3.) OEA also recommended that the Board find that OEA's participation in the MOA would satisfy the Board's obligations under Section 106. In the *June 2013 Decision,* the Board agreed with OEA's recommendations, adopted FRA and the Authority's Final EIS (subject to environmental conditions, including environmental conditions developed by OEA), found that the MOA would satisfy the Board's obligations under Section 106, and granted the Authority's petition for exemption. Both FRA's 2012 ROD and the Board's *June 2013 Decision* approved portions of the north-south alignment and the Downtown Merced and Downtown Fresno Mariposa Station locations, but they intentionally did not address the area known as the ''wye connection,'' which includes the location of the north-south track in that area. (*See* ROD 22.)

The Authority states that, since the *June 2013 Decision,* it has conducted significant additional analysis on the alignment of the wye connection to the proposed San-Jose-to-Merced section.[12] (Merced Pet. 4.) Of 17 possible alignments, the Authority and FRA selected four options for additional analysis. (*Id.* & n.10.) Based on that analysis and input from interested parties, the SR 152 (North) to Road 11 Wye Alternative was selected as the preferred alternative for the CVY. (*Id.*) The CVY Final Supplemental EIS was issued by the Authority on August 7, 2020, and the Authority issued its Supplemental ROD on the CVY in September 2020, subject to environmental mitigation measures. (*Id.*) The additional analysis, according to the Authority, allowed it to refine alternative alignments for the CVY that ''minimized impacts on farmland and communities and balanced environmental impacts with concerns for travel time and construction costs.'' (*Id.* at 6.) The Board (through OEA) participated as a cooperating agency for the CVY Final Supplemental EIS.

Citing these developments that followed the *June 2013 Decision* as new evidence and changed circumstances, the Authority requested that the Board reopen the proceeding in Docket No. FD 35724 to consider the CVY. The Authority also requested that the Board review and adopt the supplemental environmental and historic review completed by the Authority and FRA, pursuant to 40 CFR 1506.3. (Merced Pet. 6.) In the *February 2022 Decision* reopening Docket No. FD 35724, the Board stated that it would review the supplemental environmental and historic review and decide whether to adopt the Final Supplemental EIS. The Board also solicited comments on the transportation merits of the CVY. No comments on the transportation merits were received.

The Fresno to Bakersfield Section. The Authority and FRA conducted a joint environmental review for the Fresno to Bakersfield Section, with the Board, through OEA, acting as a cooperating agency. (Fresno Pet. 2.) In 2014, a Final EIS was issued, and FRA issued its ROD. (*Id.*)

As lead agency at the time, FRA initiated section-specific NHPA review for the Fresno to Bakersfield section. *August 2014 Decision,* FD 35724 (Sub-No. 1), slip op. at 20. The Section 106 consultation process, as well as evaluations conducted during the NEPA review, identified properties that are included, or eligible for inclusion, in the National Register that would be adversely affected by construction and operation of the Preferred Build Alternative. FRA, the Authority, the Board (through OEA), the U.S. Army Corps of Engineers, the SHPO, and ACHP executed an MOA on May 14, 2014, that outlines additional surveys, historic property treatment, mitigation measures, and other efforts that will take place prior to construction of the Fresno to Bakersfield Section. *Id.*

OEA recommended that the Board adopt the Final EIS, with several additional environmental mitigation measures. (*Id.* at 2–3.) OEA also recommended that the Board find that OEA's participation in the MOA process would satisfy the Board's obligations under Section 106. In the *August 2014 Decision,* the Board accepted OEA's recommendations, adopted the Final EIS and OEA's recommended mitigation measures, found that the MOA would satisfy the Board's obligations under Section 106, and authorized construction of the Fresno to Bakersfield Section.

In June 2014, the City of Bakersfield (the City) filed a lawsuit against the Authority, claiming, among other things, that ''the Preferred Alternative identified in the Fresno to Bakersfield Section Final EIS would severely affect the City's ability to utilize existing city assets, including its corporation yard, senior housing, and parking facilities at Rabobank Arena, Theatre and Convention Center; would render unusable one of the city's premier health care facilities; and would affect the Bakersfield Commons project, a retail/commercial/residential development.'' (Fresno Pet. 3–4 (quoting the description of the lawsuit in Suppl. ROD Section 1.3.2 at 1–9.)) After the Board issued its *August 2014 Decision,* the Authority and the City entered into a settlement agreement, dated December 19, 2014. (Fresno Pet. 4.) According to the Authority, as part of the settlement agreement, the Authority agreed ''to develop and study alternative routes that would address the City's concerns as well as the design needs of the Authority.'' (*Id.*)

The Authority states that, following the settlement agreement, it worked with the City and other stakeholders to develop the alternative (the Locally Generated Alternative, or LGA) that is now the subject of its exemption request. (*Id.*) The LGA consists of a 23.13-mile alternative alignment between the cities of Shafter, Cal., and Bakersfield, Cal., and a new location of the Bakersfield Station at F Street. (*Id.*) The Authority, as lead NEPA agency, conducted an environmental review of the modification (with the Board, through OEA, participating as cooperating agency) and issued a combined Final Supplemental EIS and Supplemental ROD on October 31, 2019. (*Id.* at 5.) The Authority represents that the proposed modifications would not disturb the remainder of the Fresno to Bakersfield Section authorized in the *August 2014 Decision.* (Fresno Pet. 4.)

The Authority sought to reopen Docket No. FD 35724 (Sub-No. 1), the Fresno to Bakersfield Section proceeding, to allow the Board to consider the LGA. In addition, the Authority requests that the Board review and adopt the environmental and historic review of the LGA completed by the Authority, pursuant to 40 CFR 1506.3. (Fresno Pet. 6.) In the *February 2022 Decision* reopening the proceeding, the Board stated that it would review the supplemental environmental and historic review and decide whether to adopt the Final Supplemental EIS. The Board also solicited comments on the

[11] When the Authority petitioned the Board for authority to construct the Merced to Fresno Section in March 2013, the environmental review under NEPA for that section had already been completed by the Authority and FRA. Consequently, the Board did not participate in the environmental review as a cooperating agency. However, as described further in this decision, the Board (through OEA) acted as a cooperating agency for the CVY Final Supplemental EIS.

[12] Pursuant to 23 U.S.C. 327, under a NEPA Assignment Memorandum of Understanding between FRA and the State of California, effective July 23, 2019, the Authority became the lead agency for compliance with NEPA and other federal laws for the HSR System, including the issuance of EISs and RODs under NEPA. Accordingly, the supplemental environmental reviews for both HSR sections were conducted by the Authority, not FRA.

transportation merits of the LGA, but none were filed.

Discussion and Conclusions

Rail Transportation Analysis

The construction of new railroad lines requires prior Board authorization, through either a full application and certificate under 49 U.S.C. 10901 or, as requested here, an exemption under 49 U.S.C. 10502 from the prior approval requirements of section 10901. Section 10901(c) directs the Board to grant authority for a rail line construction proposal unless it finds the proposal ''inconsistent with the public convenience and necessity.'' *See Alaska R.R.—Constr. & Operation Exemption—a Rail Line Extension to Port MacKenzie, Alaska,* FD 35095, slip op. at 5 (STB served Nov. 21, 2011), *aff'd sub nom. Alaska Survival* v. *STB,* 705 F.3d 1073 (9th Cir. 2013). Thus, there is a statutory presumption that rail construction projects are in the public interest and should be approved unless shown otherwise. *N. Plains Res. Council* v. *STB,* 668 F.3d 1067, 1091–92 (9th Cir. 2011); *Mid States Coal. for Progress* v. *STB,* 345 F.3d 520, 552 (8th Cir. 2003).

Under section 10502(a), the Board must exempt a proposed rail line construction from the prior approval requirements of section 10901 when it finds that (1) those procedures are not necessary to carry out the rail transportation policy of 49 U.S.C. 10101, and (2) either (a) the proposal is of limited scope or (b) the full application procedures are not needed to protect shippers from an abuse of market power.

In the *June 2013 Decision* and the *August 2014 Decision,* the Board found that the Authority met the standards of 49 U.S.C. 10502 for exemptions from the prior approval requirements of 49 U.S.C. 10901 for the construction of the proposed Merced to Fresno Section and the proposed Fresno to Bakersfield Section, respectively. In both decisions, the Board concluded that the requested exemptions would reduce the need for Federal regulation (49 U.S.C. 10101(2)), ensure the development of a sound rail transportation system with effective competition to meet the needs of the shipping public (49 U.S.C. 10101(4)), foster sound economic conditions in transportation (49 U.S.C. 10101(5)), reduce regulatory barriers to entry (49 U.S.C. 10101(7)), and encourage and promote energy conservation (49 U.S.C. 10101(14)). *See June 2013 Decision,* FD 35724, slip op. at 22–23; *Aug. 2014 Decision,* FD 35724 (Sub-No. 1), slip op. at 12–13. The Board also found that although parties argued that certain other aspects of the rail transportation policy would be affected, no evidence was provided supporting the claims. *See June 2013 Decision,* FD 35724, slip op. at 23; *Aug. 2014 Decision,* FD 35724 (Sub-No. 1), slip op. at 14. The Board found that potential health and safety impacts (49 U.S.C. 10101(8)) were fully analyzed during the environmental review processes and that the extensive environmental mitigation that would be imposed on the projects would eliminate or minimize potential impacts on public health and safety to the extent practicable. *See June 2013 Decision,* FD 35724, slip op. at 24; *Aug. 2014 Decision,* FD 35724 (Sub-No. 1), slip op. at 14. Finally, the Board found that regulation of the proposed construction projects was not necessary to protect shippers or the traveling public from the abuse of market power. *See June 2013 Decision,* FD 35242, slip op. at 24–25; *Aug. 2014 Decision,* FD 35724 (Sub-No. 1), slip op. at 14–15. The Authority sought, and the Board granted authority to reopen to reconsider the exemptions, based on a finding of substantially changed circumstances. However, no party has challenged the Board's 2013 or 2014 conclusions on the transportation merits of the proposals, and there is nothing in the record since 2013 and 2014 that would call those conclusions into question. The Board therefore reaffirms the 2013 and 2014 conclusions here with regard to the transportation merits of the Merced to Fresno and Fresno to Bakersfield Sections, as modified, and now turns to consideration of the environmental and historic aspects of the proposed modifications to the project.

Environmental and Historic Analysis

NEPA requires Federal agencies to examine the environmental effects of proposed major Federal actions and to inform the public concerning those effects. *Balt. Gas & Elec. Co.* v. *Nat. Res. Def. Council,* 462 U.S. 87, 97 (1983). Under NEPA and related environmental laws, the Board must consider significant potential beneficial and adverse environmental impacts in deciding whether to authorize railroad construction as proposed, deny the proposal, or grant it with conditions (including environmental mitigation conditions). *Tex. Ry. Exch.—Constr. & Operation Exemption—Galveston Cnty., Tex.,* FD 36186 et al., slip op. at 5 (STB served Jan. 17, 2020). While NEPA prescribes the process that must be followed, it does not mandate a particular result. *Robertson* v. *Methow Valley Citizens Council,* 490 U.S. 332, 350 (1989). Once the environmental effects, if any, of a proposed action have been adequately identified and evaluated, an agency may conclude that other values outweigh those environmental effects. *Id.*

Section 106 of NHPA requires Federal agencies to ''take into account the effect of'' their licensing decisions (in this case, whether to grant the Authority's request for an exemption, also called the ''undertaking'' under NHPA) on properties included in, or eligible for inclusion in, the National Register, and prior to the approval of an undertaking, to afford the ACHP a reasonable opportunity to comment. *See* 54 U.S.C. 306108. Consultation with the SHPO is also required. *See* 36 CFR 800.2(a)(4) & (c)(1), 800.3(c)(3). If the undertaking would have an adverse effect on historic properties, the agency (here, the Authority, as lead agency) must continue to consult to possibly mitigate the adverse effect. *See* 36 CFR 800.6(a).

The Environmental and Historic Review Process—CVY. As explained in more detail in OEA's Environmental Memorandum to the Board for the CVY (CVY Memorandum) (Appendix A), the Authority, as the lead agency under NEPA, conducted an environmental review of the CVY (with the Board, through OEA, participating as a cooperating agency). Of 17 possible CVY alignments, four build alternatives were selected for additional environmental review. The Authority issued a Draft Supplemental EIS in September 2019 for a 45-day public comment period, and a Final Supplemental EIS on August 7, 2020.[13] Based on this environmental review process, on September 16, 2020, the Authority issued its Supplemental ROD, in which the Authority selected the State Route 152 (North) to Road 11 Wye alignment as its preferred and environmentally preferable alternative for the CVY. (Suppl. ROD 31–32.) The remaining portions of the Merced to Fresno Section that were authorized by the Board in the *June 2013 Decision,* north of the CVY from Ranch Road to the Merced Station and south of the CVY from Avenue 19 to the Fresno Station, are unaffected by the Supplemental ROD. The Authority's Supplemental ROD also imposes extensive mitigation conditions through its Mitigation & Monitoring Enforcement Plan (MMEP) for the CVY, which supplements the mitigation required by the 2012 MMEP for the Merced to Fresno Section. (Suppl. ROD 29; *id.* at App. D.)

[13] The Draft and Final Supplemental EISs for the CVY are available on the Authority's website at *hsr.ca.gov/programs/environmental-planning/project-section-environmental-documents-tier-2/merced-to-fresno-central-valley-wye/.*

As for the Section 106 process, since the *June 2013 Decision,* a Second Amendment to the MOA was executed in 2017 to improve the process. However, because the CVY was contemplated as part of the Merced to Fresno section at the time the MOA was executed for the Merced to Fresno Section, there was no need to amend the MOA further to address the CVY. Indeed, the SHPO approved the Authority's assessment of adverse effects to historic resources from the CVY in 2018 in *Merced to Fresno Section: Central Valley Wye Final Supplemental Section 106 Findings of Effect Report.* (Suppl. ROD 40.)

In its Environmental Memorandum, OEA concludes that (1) OEA's substantive comments and suggestions were incorporated into the Draft and Final Supplemental EISs for the CVY; (2) the EISs adequately assess the potential environmental impacts associated with the CVY and meet the standards of the Council on Environmental Quality's (CEQ's) NEPA regulations and the Board's own environmental regulations at 49 CFR part 1105; and (3) the State Route 152 (North) to Road 11 Wye alignment represents the preferred and environmentally preferable alternative for the CVY. *See* App. A, CVY Env't Mem. section 6.1–6.3. OEA further concludes that execution of the MOA and the First and Second Amendments to the MOA, their filing with ACHP, and subsequent implementation of their terms satisfy the requirements of Section 106 (36 CFR 800.6(c)) for the Merced to Fresno Section, including the CVY. OEA does not recommend any additional mitigation but recommends that the Board adopt and impose conditions requiring compliance with the MMEP, the mitigation plan developed by the Authority, and the mitigation contained in the Section 106 MOA, as amended.

Accordingly, OEA recommends that, in order to satisfy its NEPA and Section 106 obligations, the Board adopt the Draft and Final Supplemental EISs in any decision granting the Authority's request to construct the CVY and impose the mitigation developed by the Authority, through its MMEP and the MOA, as amended.

The Board's Analysis of Environmental and Historic Issues—CVY. The Board adopts the analysis and conclusions in OEA's Environmental Memorandum on the CVY, the Draft and Final Supplemental EISs, and the final recommended mitigation measures. As explained in detail in OEA's memorandum, while the Draft and Final Supplemental EISs show that there would be certain unavoidable impacts from the CVY modification (including residential and business relocations, impacts to agriculture lands, and impacts to aesthetic and visual resources), the Authority adopted an approximately 126-page MMEP in its Supplemental ROD that specifies means to avoid, minimize, or mitigate likely environmental harm caused by construction and operation of the proposed CVY modification.[14] The Authority's Supplemental ROD obligates it to comply with all the mitigation measures in the MMEP. The Board is satisfied that OEA, together with the Authority and other parties, have taken the requisite hard look at the potential environmental impacts associated with the CVY and properly determined that the recommended environmental mitigation for the CVY will adequately address the potential impacts of the proposal.

The Board also adopts OEA's conclusion that execution of the MOA and the First and Second Amendments to the MOA, their filing with ACHP, and subsequent implementation of their terms satisfy the requirements of Section 106 for the Merced to Fresno Section, including the CVY.

The Environmental and Historic Review Process—LGA. As detailed in OEA's Environmental Memorandum to the Board for the LGA (LGA Memorandum) (Appendix B), the Authority, as the current lead agency under NEPA, and FRA, as the previous lead agency under NEPA, conducted an environmental review of the LGA (with the Board, through OEA, participating as a cooperating agency). FRA issued a Draft Supplemental EIS in November 2017 for a 60-day public comment period and held a public hearing on December 19, 2017, to receive oral testimony and comments. The Authority issued a combined Final Supplemental EIS and Supplemental ROD on October 31, 2019.[15] The Draft Supplemental EIS and Final Supplemental EIS assess the potential environmental impacts of the LGA and compare those impacts to those of the previously approved component of the Fresno to Bakersfield Section that the LGA would replace.

As to the Section 106 process, the parties expanded the process to include the LGA in a First Amendment to the MOA that the parties executed on January 4, 2017.

In the Supplemental ROD, the Authority approved the LGA, including the F Street Station in Bakersfield, as its preferred and environmentally preferable alternative for this portion of the Fresno to Bakersfield Section. (Suppl. ROD 6–1.) The remaining portion of the Fresno to Bakersfield Section that was authorized by the Board in the *August 2014 Decision* is unchanged and unaffected by the Supplemental ROD. The Authority's Supplemental ROD also imposes extensive mitigation conditions through its MMEP for the LGA. (Suppl. ROD 5–1; *id.* at App. C.)

In its Environmental Memorandum for the LGA, OEA concludes that (1) OEA's substantive comments and suggestions were incorporated into the Draft and Final Supplemental EISs; (2) the EISs adequately assess the potential environmental impacts associated with the LGA modification and meet the standards of CEQ's NEPA regulations and the Board's own environmental regulations at 49 CFR part 1105; and (3) the LGA represents the preferred and environmentally preferable alternative for the 23-mile portion of the Fresno to Bakersfield Section. *See* App. B, LGA Env't Mem. section 6.1. OEA also concludes that execution of the MOA and First Amendment to the MOA, their filing with ACHP, and subsequent implementation of their terms satisfy the requirements of Section 106 for the Fresno to Bakersfield Section, including the LGA. OEA does not recommend any additional mitigation but recommends that the Board adopt and impose conditions requiring compliance with the MMEP, the mitigation plan developed by the Authority, as amended, and the mitigation contained in the Section 106 MOA, as amended. OEA further recommends that the Board remove a mitigation measure, which prohibits pile driving near Mercy Hospital, imposed in the *August 2014 Decision* because the measure pertains specifically to the component of the Fresno to Bakersfield Section that the LGA would replace.

Accordingly, OEA recommends that, in order to satisfy its NEPA and Section 106 obligations, the Board adopt the Draft and Final Supplemental EISs in any decision granting the Authority's request to construct the LGA modification and impose the mitigation developed by the Authority, through its

[14] The MMEP is attached to the Supplemental ROD as Appendix D and is available on the Authority's website at *hsr.ca.gov/wp-content/uploads/docs/programs/merced-fresno-eir/A-10_CVY_ROD_APP_D_MMEP.pdf.*

[15] The Authority's Supplemental ROD is available on its website at *hsr.ca.gov/programs/environmental-planning/project-section-environmental-documents-tier-2/fresno-to-bakersfield-locally-generated-alternative/.*

MMEP,[16] as amended [17] and the MOA, as amended. *See* App. B, LGA Env't Mem. section 6.1, 6.3.

The Board's Analysis of Environmental and Historic Issues—LGA. The Board adopts the analysis and conclusions in the LGA Environmental Memorandum and the Draft and Final Supplemental EISs including the final recommended mitigation measures.[18] As explained in detail in the LGA Environmental Memorandum, while the Draft and Final Supplemental EISs show that there would be certain unavoidable impacts from the LGA modification (including road closures, residential and business relocations, noise impacts, and impacts to agriculture lands, aesthetic and visual resources, community cohesion, and environmental justice populations), the Authority adopted an approximately 180-page MMEP, as amended, in its Supplemental ROD that specifies extensive means to avoid, minimize, or mitigate likely environmental harm caused by construction of the proposed LGA modification.[19] *See* App. B, LGA Env't Mem. section 4.0, 6.2, 6.3. As a result, the LGA represents the environmentally preferable modification to the Fresno to Bakersfield Section. The Authority's Supplemental ROD obligates it to comply with all the mitigation measures in the amended MMEP. The Board is satisfied that OEA, together with the Authority and other parties, have taken the requisite hard look at the potential environmental impacts associated with the LGA and properly determined that the final recommended environmental mitigation will appropriately address the potential impacts of the proposal.

The Board adopts OEA's conclusion that execution of the MOA and First Amendment to the MOA, their filing with ACHP, and subsequent implementation of their terms, satisfy the requirements of Section 106 for the Fresno to Bakersfield Section, including the LGA.

This action, as conditioned, will not significantly impact the quality of the human environment or the conservation of energy resources.

It is ordered:

1. In Docket No. FD 35724, under 49 U.S.C. 10502, the Board exempts construction of the Authority's proposed route addition to the Merced to Fresno Section from the prior approval requirements of 49 U.S.C. 10901.

2. In Docket No. FD 35724 (Sub-No. 1), under 49 U.S.C. 10502, the Board exempts construction of the Authority's proposed route modifications to the Fresno to Bakersfield Section from the prior approval requirements of 49 U.S.C. 10901.

3. In Docket No. FD 35724, the Board adopts the environmental mitigation measures set forth in OEA's Environmental Memorandum regarding the CVY (Appendix A) and imposes them as conditions to the exemption granted here.

4. In Docket No. FD 35724 (Sub-No. 1), the Board adopts the environmental mitigation measures set forth in OEA's Environmental Memorandum regarding the LGA (Appendix B) and imposes them as conditions to the exemption granted here.

5. Notice will be published in the **Federal Register** on December 23, 2022.

6. Petitions for reconsideration must be filed by January 9, 2023.

7. This decision is effective on its service date.

Decided: December 19, 2022.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.

Jeffrey Herzig,

Clearance Clerk.

BILLING CODE 4915–01–P

[16] The Board imposed the mitigation in the MMEP in the *August 2014 Decision.*

[17] The MMEP, as amended, is attached to the Supplemental ROD as Appendix C, and is available on the Authority's website at *hsr.ca.gov/wp-content/uploads/docs/programs/fresno-baker-eir/FBLGA_ROD_Attachment_C_MMEP.pdf.*

[18] The final recommended mitigation measures include removal of the condition related to pile driving near Mercy Hospital. The Board adds two new measures to assure compliance with the Authority's final environmental and Section 106 mitigation.

[19] As the LGA Environmental Memorandum explains, the LGA would have substantial impacts on minority and low-income populations even after mitigation measures are taken. *See* App. B, LGA Env't Mem. sec. 4.0 (citing Draft Suppl. EIS). Such mitigation measures include installing sound barriers; acquiring property easements; locating suitable replacement properties and facilities; adding landscaping to screen structures, light, glare, and blocked views. (Suppl. ROD Section 6–8.) Continued environmental justice outreach in adversely affected neighborhoods could also provide resident feedback that may be used to further mitigate some of these impacts. (*See* Suppl. ROD, Attachment C, MMEP, Table 1 at 1–49, SO–MM#6.) Input from these communities would be used to refine the LGA during ongoing engineering design efforts. (*Id.*)

Appendix A

SURFACE TRANSPORTATION BOARD

Washington, DC 20423

Office of Environmental Analysis

MEMORANDUM

TO: Martin Oberman, Chairman

Michelle Schultz, Vice Chairman

Patrick Fuchs, Member

Karen Hedlund, Member

Robert Primus, Member

CC: Mai Dinh, Director, Office of Proceedings

Scott Zimmerman, Deputy Director, Office of Proceedings

FROM: Danielle Gosselin

Director, Office of Environmental Analysis

DATE: November 9, 2022

SUBJECT: Docket No. FD 35724, California High-Speed Rail Authority – Construction Exemption – in Merced, Madera, and Fresno Counties, Cal.: Petition to Reopen to Consider the Central Valley Wye - **Environmental and Historic Review Process and Recommendations**

This memorandum summarizes the environmental review conducted for the California High-Speed Rail Authority's (Authority) proposed construction of the Central Valley Wye (CVY), a modification to the previously approved high-speed passenger rail line between Merced, Cal. and Fresno, Cal. (the Merced to Fresno Section) of the California High-Speed-Rail (HSR) system.[1] This memorandum also presents the Office

[1] Should the Authority receive authorization to construct the CVY, it would acquire a common carrier obligation to provide service over the CVY even though it has not expressly sought operating authority. Moreover, if the Authority decides to delegate

of Environmental Analysis' (OEA) final recommendations to the Board regarding adoption of the Draft and Final Supplemental Environmental Impact Statements (EIS) for the CVY modification, the selection of the preferred and environmentally preferable alternative for the CVY, and environmental mitigation measures.

1.0 INTRODUCTION

The approximately 65-mile Merced to Fresno Section connects the Downtown Merced HSR (Merced) Station to the Downtown Fresno Mariposa Avenue HSR (Fresno) Station along a generally north-south alignment. The section includes the approximately 50-mile CVY (located approximately 10 miles south-southeast of the Merced Station), a Y-like formation that would connect the Merced to Fresno Section to the San Jose to Merced Section to the west. See attached map. The CVY would enable HSR trains to travel seamlessly and at full speed in different directions (e.g., Merced to Fresno, San Jose to Fresno, San Jose to Merced, and vice versa).

On June 13, 2013, the Board granted an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10901 for the Authority's construction of the Merced to Fresno Section.[2] However, a decision on the preferred CVY alternative intentionally was not made at that time because, as the Board recently explained, a selected alignment for the CVY had yet to be determined and potential CVY alignment alternatives were still being studied and analyzed when the Board's June 2013 decision was issued. See Cal. High-Speed Rail Auth.—Constr. Exemption—in Merced, Madera, & Fresno Cntys., Cal. (Feb. 2022 Decision), slip op. at 2-4, 5-6, FD 35724 (STB served Feb. 11, 2022). The additional environmental review of the CVY has now been completed and on September 17, 2021, the Authority filed a petition to reopen the above-referenced proceeding seeking Board approval of a specific CVY modification (the State Route 152 [North] to Road 11 Wye alignment).[3] In addition, the Authority requests that the Board review and adopt the environmental and historic review of the CVY completed by the Authority, in which OEA participated for the Board as a cooperating agency.

In the Feb. 2022 Decision, the Board granted the petition to reopen and solicited comments on the transportation merits of the proposed CVY modification. No comments were received.

2.0 ENVIRONMENTAL REVIEW OF THE CENTRAL VALLEY WYE

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operational responsibilities for the CVY to another entity, that entity would need to request operating authority from the Board before beginning operations. See Port of Moses Lake—Constr. Exemption—Moses Lake, Wash., FD 34936, slip op. at 2 & n.1 (STB served Aug. 27, 2009) (citing Big Stone-Grant Indus. Dev. & Transp., L.L.C.—Constr. Exemption—Ortonville, Minn., FD 32645 (ICC served Sept. 26, 1995)).

[2] Cal. High-Speed Rail Auth.—Constr. Exemption—in Merced, Madera, & Fresno Cntys., Cal. (June 2013 Decision), FD 35724 (STB served June 13, 2013).

[3] The remaining portions of the Merced to Fresno Section, north of the CVY from Ranch Road to the Merced Station and south of the CVY from Avenue 19 to the Fresno Station, are unaffected by the Authority's petition to reopen.

The Authority and the Federal Railroad Administration (FRA) conducted a joint environmental review of the Merced to Fresno Section under the National Environmental Policy Act (NEPA) (42 U.S.C. §§ 4321 – 4370h). In 2012, a Final EIS was issued, and FRA issued its Record of Decision (ROD) authorizing construction of the section subject to the extensive mitigation in its Mitigation & Monitoring Enforcement Plan (MMEP).[4] In its ROD, FRA selected the Hybrid Alternative with the Downtown Merced Station and Downtown Fresno Mariposa Avenue Station as its preferred and environmentally preferable alternative. However, finding that further environmental review was needed before a specific CVY alignment could be selected, FRA's ROD intentionally deferred a decision on the CVY.

After issuance of FRA's ROD, the Authority sought approval from the Board to construct the Merced to Fresno Section (minus the CVY) in 2013.[5] Because the Final EIS was issued without OEA's participation as a cooperating agency, OEA conducted an independent review of the document, subsequently recommending that the Board adopt the Final EIS and impose the MMEP along with several additional environmental mitigation measures if it authorized the section. In its June 2013 Decision, the Board accepted OEA's recommendations, adopted the Final EIS, imposed the MMEP and OEA's recommended additional mitigation measures, and authorized construction of the Merced to Fresno Section, but intentionally made no decision about the CVY.

In its petition to reopen, the Authority explains, as lead agency under NEPA,[6] that it conducted an environmental review of the CVY (with the Board, through OEA, participating as a cooperating agency). Of 17 possible CVY alignments, four build alternatives were selected for additional environmental review. The Authority issued a Draft Supplemental EIS in September 2019 for a 45-day public comment period, and a Final Supplemental EIS on August 7, 2020.[7] Based on this environmental review process, the Authority selected the State Route 152 (North) to Road 11 Wye alignment as its preferred and environmental preferable alternative for the CVY.

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[4] FRA's 2012 ROD is available on the Authority's website at https://hsr.ca.gov/wp-content/uploads/docs/programs/merced-fresno-eir/final_EIR_MerFres_FRA09182012.pdf

[5] The Authority's ROD is available on its website at https://hsr.ca.gov/wp-content/uploads/docs/programs/merced-fresno-eir/A-06_CVY_ROD_Final.pdf

[6] The environmental review, consultation, and other actions required by applicable federal environmental laws for the CVY are being or have been carried out by the State of California pursuant to 23 U.S.C. § 327 and a Memorandum of Understanding (MOU) dated July 23, 2019, and executed by FRA and the State of California. Pursuant to the MOU, the Authority is the lead federal agency. Prior to July 23, 2019, FRA was the lead federal agency.

[7] The Draft and Final Supplemental EISs for the CVY are available on the Authority's website at https://hsr.ca.gov/programs/environmental-planning/project-section-environmental-documents-tier-2/merced-to-fresno-central-valley-wye/

3.0 THE AUTHORITY'S SUPPLEMENTAL RECORD OF DECISION

The Authority issued its Supplemental ROD for the CVY modification on September 16, 2020. In the Supplemental ROD, the Authority approved the CVY with the State Route 152 (North) to Road 11 Wye alignment as its preferred and environmentally preferable alternative. The remaining portions of the Merced to Fresno Section authorized by the Board in the June 2013 Decision, north of the CVY from Ranch Road to the Merced Station and south of the CVY from Avenue 19 to the Fresno Station, are unaffected by the Supplemental ROD. See attached map. The Authority's Supplemental ROD also imposes extensive mitigation conditions through its MMEP for the CVY, which supplements the mitigation required by the 2012 MMEP for the Merced to Fresno Section.

4.0 OVERVIEW OF KEY ENVIRONMENTAL TOPICS

Below, OEA provides an overview of key environmental topics associated with the proposed CVY modification addressed in the Draft and Final Supplemental EISs and the Authority's Supplemental ROD. Generally, the key topics are resource areas that could experience potentially significant impacts (both adverse and beneficial) from construction and operation of the preferred alternative for the proposed CVY modification (i.e., the State Route 152 [North] and Road 11 Wye).

Air Quality and Climate Change. According to the Draft and Final Supplemental EISs, construction of the CVY preferred alternative would result in an increase in emissions of criteria pollutants and greenhouse gas emissions. However, implementation of mitigation imposed by the Authority would offset construction-related Clean Air Act (42 U.S.C. Chapter 85) criteria pollutant emissions. These mitigation measures include emissions requirements for construction vehicles, dust control measures, and the placement of plants to make concrete (which can degrade localized air quality) at least 1,000 feet from sensitive receptors. Additionally, the Authority would be required to purchase emission credits to offset the impacts through a Voluntary Emission Reduction Agreement with the San Joaquin Valley Air Pollution Control District, as well as offsets for emissions within the San Francisco Bay Area Basin (Supp. ROD, pp. 21 and 22). Also, as a component of Phase 1 of the HSR project, operation of the CVY would result in a net benefit to air quality by diverting trips from transportation modes with higher emissions (i.e., automobile trips and commercial air flights) to high-speed rail, which has lower emissions (Supp. ROD, p. 22).

Noise and Vibration. Construction activities associated with the CVY preferred alternative would result in noise impacts, but these impacts would be temporary and mitigated through implementation of design features and mitigation measures. After mitigation, the Authority anticipates that construction vibration impacts would be less than significant, and that noise impacts from temporary road closures and the associated diversion of traffic would result in the exposure of only two sensitive noise receptors to increases that exceed Federal Highway Administration Noise Abatement Criteria (Supp. ROD, p. 22). Once Phase 1 of the proposed HSR system is fully operational from San Francisco to Los Angeles, approximately 35 single-family residences near the CVY would experience severe noise impacts notwithstanding the mitigation measures imposed by the Authority (which include building sound insulation and the purchase of noise

easements[8] under mitigation measure NV-MM#3) (Supp. ROD, pp. 22 and 23). The Authority determined that the use of noise barriers was not feasible because of the rural setting and large distances between individual residences (Final Supp. EIS, pp. 3.4-38, 3.4-39 and 3.4-45).

Biological Resources. Construction and operation of the CVY preferred alternative would result in impacts on biological resources and wetlands. The Authority's mitigation measures would reduce these impacts by requiring pre-construction surveys for special-status species, salvage and relocation of special-status species, seasonal work restrictions, and providing compensatory mitigation for loss of habitat and wetlands (Final Supp. EIS, p. 3.7-162).

Socioeconomics and Communities. Construction and operation of the CVY preferred alternative would displace residences and businesses and would result in unavoidable adverse impacts on community cohesion due to road closures that would disrupt pedestrian, bicycle, and transit circulation patterns for the community of Fairmead (Supp. ROD, p. 25). The Authority's mitigation, however, would require the Authority, after consultation with the community of Fairmead, to include appropriate features into the CVY design to assist in maintaining community cohesion, including the installation of vehicular crossings, multiuse trails, new sidewalks, roadway and sidewalk improvements, and streetlights and landscaping (Final Supp. EIS, Mitigation Measure SO-MM#2, p. 3.12-72).

The preferred CVY alternative would also require the displacement of approximately 62 residential units, seven commercial and industrial businesses and convert approximately 2,145 acres of Important Farmland (Final Supp. EIS, pp. 3.12-47, 3.12-50, 3.12-51, and 3.14-20). However, as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. Chapter 61), the Authority would assist displaced residents and businesses financially and with advisory services related to relocation (Final Supp. EIS, p. 3.12-49).

Agricultural Lands. The preferred CVY alternative would result in the permanent conversion of agricultural land to nonagricultural uses, severance of large agricultural properties, and conflicts with farmland protection contracts (Draft Supp. EIS, p. 3.14-29). Approximately 2,145 acres of Important Farmland, including 831 acres of Prime Farmland (designated under the Farmland Protection Policy Act, 7 U.S.C. §§ 4201-4209), would be directly converted to HSR right-of-way and related facilities (Final Supp. EIS, p. 3.14-20). However, these impacts are below Natural Resources Conservation Service thresholds that would otherwise require the consideration of other alternatives (Final Supp. EIS, p. 3.14-21). The Authority also has agreed to purchase agricultural conservation easements from willing sellers that would preserve Important Farmland in an amount commensurate with the quantity and quality of converted farmlands (Supp. ROD, p. 27).

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[8] The noise easement provision provides that when other noise mitigation is neither effective nor feasible, the Authority could enter into agreements with property owners to financially compensate them for future noise conditions if the property owners agree not to petition the Authority regarding future noise levels and disruptions (Final Supp. EIS, p. 3.4-39).

Aesthetics and Visual Resources. Construction of the preferred CVY alternative would result in the removal of established palm trees from the Robertson Boulevard Tree Row in Chowchilla, CA, a visually prominent and historic resource first planted in 1913. The CVY would disturb approximately 4,088 linear feet of the tree row, extending the existing tree gap at the SR 152 interchange from approximately 1,700 feet to 3,600 feet. Mitigation measures related to the design of the CVY would reduce but not eliminate this potential impact (Supp. ROD, p. 27, Final Supp. EIS, p. 3-15-42). The CVY would also traverse the community of Fairmead, and HSR infrastructure would introduce permanent changes to the aesthetic and visual quality of existing residential views there. To minimize these impacts, as mitigation, the Authority would be required to provide landscape screening and replanting of landscape vegetation disturbed by the CVY construction (Final Supp. EIS, pp. 3.16-44 and 3.16-46).

Environmental Justice. The preferred CVY alternative would result in adverse impacts to low-income and minority populations residing along the HSR corridor with the greatest effects occurring to those populations in the community of Fairmead. However, if its mitigation is implemented, the Authority concludes that there would not be disproportionately high and adverse effects on Fairmead. The Authority's mitigation measures include providing funding to construct a community center in Fairmead and supporting the development of a community water and sewer service, which the community currently lacks. Specifically, the Authority would be required to provide funding to connect Fairmead to the Chowchilla Wastewater Treatment Plant and to the nearest safe and reliable municipal water supply system. The Authority would also implement resource-specific measures to reduce residential displacement, noise, wetland, biological, and agricultural impacts (Supp. ROD, pp. 36 through 38).

5.0 THE HISTORIC REVIEW PROCESS

Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. § 306108) requires federal agencies to "take into account the effect of" their licensing decisions (in this case, whether to grant the Authority's request for an exemption, also called the "undertaking" under NHPA) on properties included in, or eligible for inclusion in, the National Register of Historic Places (National Register), and prior to the approval of an undertaking, to afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment. Consultation with the State Historic Preservation Officer (SHPO) is also required. If the undertaking would have an adverse effect on historic properties, the agency must continue to consult to possibly mitigate the adverse effects.

As the lead federal agency for Section 106 consultation at the time, FRA initiated the Section 106 consultation process for the Merced to Fresno Section prior to OEA's involvement. During that process, FRA consulted with the California SHPO, ACHP, federally recognized Tribal organizations and other interested parties. The parties executed a Programmatic Agreement (PA) setting out a general process for Section 106 compliance for the entire HSR project on July 21, 2011. With the PA set to expire on July 21, 2021, the Signatories to the PA executed the First Amendment to the PA on July 21, 2021. In addition to extending the duration of the document, the amendment added OEA, for the Board, as an Invited Signatory to the agreement, and designated the Authority as lead Federal agency to 106 consultation and implementation.

The Section 106 consultation process, as well as evaluations conducted during the NEPA review, identified properties that are included in, or eligible for inclusion in, the National Register that would be adversely affected by the CVY. Due to access restrictions, surveys for archaeological properties are incomplete; therefore, additional National Register-eligible properties could be present. The regulations implementing Section 106 allow for the development of a Memorandum of Agreement (MOA) when the effects of an undertaking cannot be fully determined prior to approval of an undertaking. When there would be an adverse effect, the MOA can also establish responsibilities for the treatment of historic properties, implementation of mitigation measures, and ongoing consultation efforts. In this case, FRA, the Authority, the U.S. Army Corps of Engineers (USACE), SHPO, and ACHP executed an MOA in 2012, that outlines additional surveys, historic property treatment, mitigation measures and other efforts that will take place prior to construction of the Merced to Fresno Section. Subsequently, the parties executed a First Amendment to the MOA in 2013 to add OEA, for the Board, as a party to the MOA. A Second Amendment to the MOA was executed in 2017 to improve the 106 process. Execution of the MOA and the First and Second Amendments to the MOA, their filing with ACHP, and subsequent implementation of their terms, satisfy the requirements of Section 106 (36 C.F.R. § 800.6(c)) for the Merced to Fresno Section, including the CVY, and OEA concludes that no additional mitigation outside the 106 process is required.

6.0 OEA'S FINAL ENVIRONMENTAL RECOMMENDATIONS

6.1 Supplemental EIS Adoptions

As a cooperating agency in the Supplemental EIS process, OEA concludes that: (1) OEA's substantive comments and suggestions on the administrative drafts of the Draft and Final Supplemental EISs were incorporated; (2) the EISs adequately assesses the potential environmental impacts associated with the CVY modification and meet the standards of CEQ's NEPA regulations and the Board's own environmental regulations at 49 C.F.R. Part 1105; and (3) the State Route 152 (North) to Road 11 Wye alignment represents the preferred and environmentally preferable alternative for the CVY. Accordingly, OEA recommends that, in order to satisfy its NEPA and Section 106 obligations, the Board adopt the Draft and Final Supplemental EISs in any decision granting the Authority's request to construct the CVY modification and impose the mitigation developed by the Authority, through its MMEP, as well as additional mitigation measures recommended by OEA, discussed below.

6.2 Preferred and Environmentally Preferable Alternative

In its Supplemental ROD, the Authority approved the SR 152 (North) to Road 11 Wye alternative for the CVY modification. The approved alternative also represents the Authority's preferred and environmentally preferable alternative. The SR 152 (North) to Road 11 Wye was one of four build alternatives carried forward for detailed analysis in

the Draft and Final Supplemental EISs.[9] In making its decision, the Authority noted that its preferred alternative for the CVY modification best satisfies the purpose, need, and objectives of the proposed action and minimizes potential impacts on the environment in comparison to the other three build alternatives. Thus, the Authority identifies the SR 152 (North) to Road 11 Wye modification as both its preferred and environmentally preferable CVY alternative under NEPA (Supp. ROD, pp. 19 and 20). OEA concurs with the Authority's conclusions and summarizes the advantages of the Authority's preferred alternative over the other build alternatives evaluated in the Draft and Final Supplemental EISs below:

- Three of the four build alternatives for the CVY modification, including the preferred alternative, would benefit regional traffic safety and circulation by grade separating many roads and would divert intercity trips from the regional road system to high-speed rail (Supp. ROD, p. 20).
- Overall, the preferred alternative for the CVY modification would result in fewer impacts to key natural environmental features than the other build alternatives, including reduced impacts to wetlands, vernal pools, riparian and stream habitat, special-status wildlife invertebrate species, special-status plant communities, wildlife movement corridors and waterbody crossings (Supp. ROD, p. 20, Final Supp. EIS, p. 8-13).
- Regarding potential impacts to waters of the United States, the USACE and the U.S. Environmental Protection Agency (USEPA) concurred that the preferred CVY alternative is the preliminary Least Environmentally Damaging Practicable Alternative; and therefore, would be consistent with the USACE's Clean Water Act, Section 404 permitting program and the USEPA's Section 404(b)(1) Guidelines (40 C.F.R. Part 230) (Supp. ROD, pp. 20).
- The preferred alternative for the CVY modification would directly convert the least amount of Important Farmland (2,145 acres). The direct impacts to Important Farmland under the other three build alternatives would range from 2,182 to 2,305 acres (Final Supp. EIS, p. 8-12).
- Regarding displacement, the preferred CVY alternative would displace 62 residential units and 191 residents: the fewest among the four build alternatives. Residential displacements under the other three build alternatives range from 65 to 119 residential units and 213 to 391 residents (Final Supp. EIS, p. 8-11).
- In coordination with the community of Fairmead, the Authority identified and developed mitigation to offset impacts associated with the preferred alternative for the CVY modification. With mitigation, the Authority concludes that its preferred alternative would not result in disproportionately high and adverse effects on the community of Fairmead (Final Supp. EIS, p. 5-55).

6.3 Mitigation

While the Draft and Final Supplemental EISs show that there would be certain unavoidable impacts from the CVY modification (including residential and business relocations, impacts to agriculture lands, and aesthetic and visual resources), the

[9] The other three build alternatives included the SR 152 (North) to Road 13 Wye, SR 152 (North) to Road 19 Wye, and Avenue 21 to Road 13 Wye.

Authority adopted an approximately 126-page MMEP in its Supplemental ROD that specifies means to avoid, minimize or mitigate likely environmental harm caused by construction and operation of the proposed CVY modification.[10] The Authority's Supplemental ROD obligates it to comply with all the mitigation measures in the MMEP. OEA believes that the mitigation in the MMEP is adequate to address the potential impacts.

In any decision granting the Authority's request to construct the CVY modification, OEA recommends that the Board impose two mitigation measures to assure compliance with the Authority's final environmental and Section 106 mitigation, as follows:

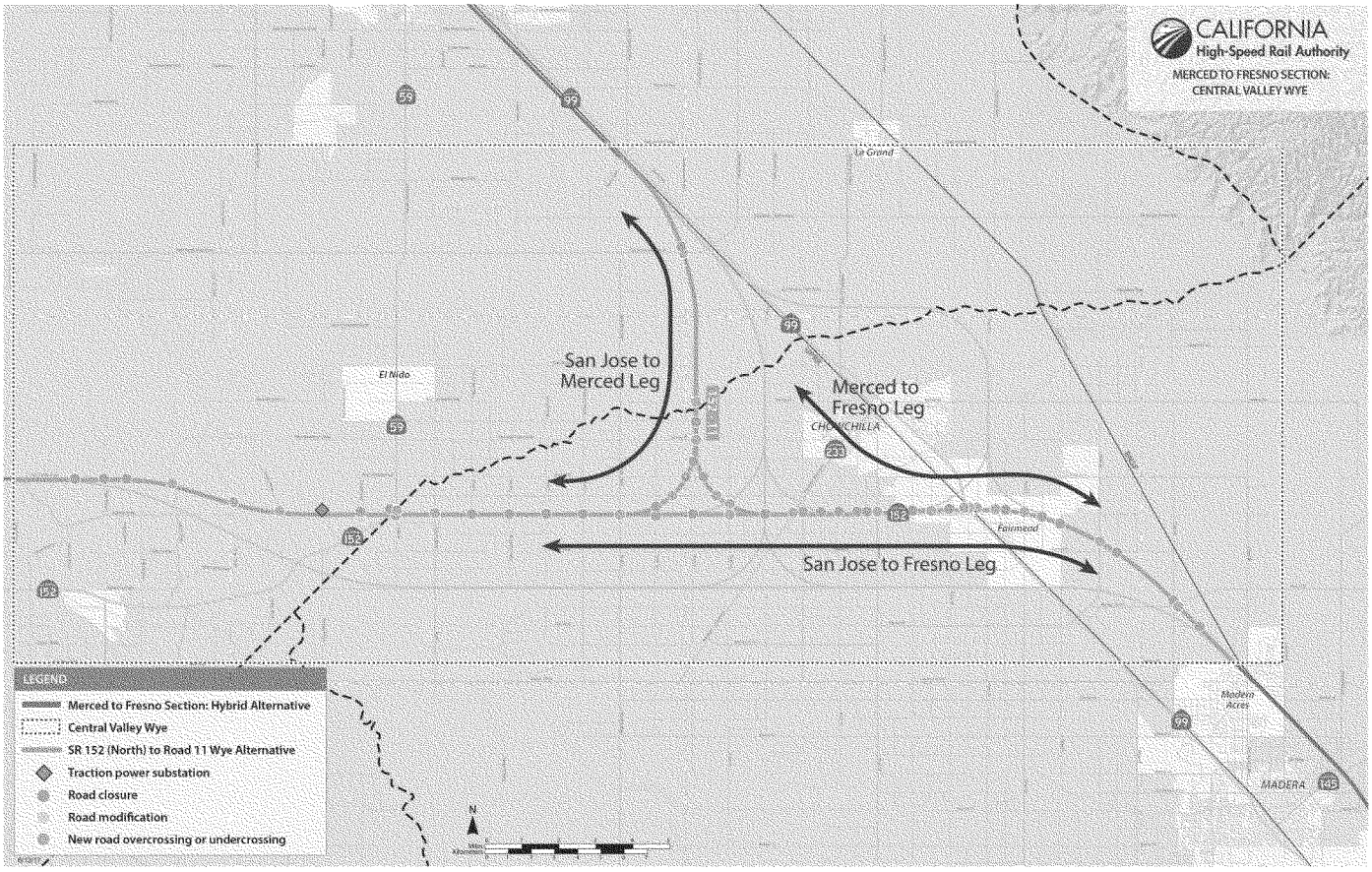
- The California High-Speed Rail Authority shall comply with the Mitigation & Monitoring Enforcement Plan, as amended, which is included in Appendix D to the Authority's Supplemental Record of Decision, dated September 16, 2020.

- The California High-Speed Rail Authority shall comply with the Programmatic Agreement and Memorandum of Agreement, and subsequent amendments, developed through the Section 106 process of the National Historic Preservation Act.

[10] The MMEP is attached to the Supplemental ROD as Appendix D, and is available on the Authority's website at https://hsr.ca.gov/wp-content/uploads/docs/programs/merced-fresno-eir/A-10_CVY_ROD_APP_D_MMEP.pdf

The Central Valley Wye Component (SR 152 [North] to Road 11 Alternative) of the Merced to Fresno Section

Docket No. FD 35724, California High-Speed Rail Authority – Construction Authority – in Merced, Madera, and Fresno Counties, Cal.



Appendix B

SURFACE TRANSPORTATION BOARD

Washington, DC 20423

Office of Environmental Analysis

MEMORANDUM

TO: Martin Oberman, Chairman

Michelle Schultz, Vice Chairman

Patrick Fuchs, Member

Karen Hedlund, Member

Robert Primus, Member

CC: Mai Dinh, Director, Office of Proceedings

Scott Zimmerman, Deputy Director, Office of Proceedings

FROM: Danielle Gosselin

Director, Office of Environmental Analysis

DATE: November 9, 2022

SUBJECT: Docket No. FD 35724 (Sub-No. 1), California High-Speed Rail Authority – Construction Exemption – in Fresno, Kings, Tulare and Kern Counties, Cal.: Petition to Reopen to Consider the Locally Generated Alternative - **Environmental and Historic Review and OEA Recommendations**

This memorandum summarizes the environmental review conducted for the California High-Speed Rail Authority's (Authority) proposed construction of the Locally Generated Alternative (LGA) modification in the above-mentioned proceeding.[1] As

[1] Should the Authority receive authorization to construct the LGA, it would acquire a common carrier obligation to provide service over the LGA even though it has not expressly sought operating authority. Moreover, if the Authority decides to delegate operational responsibilities for the LGA to another entity, that entity would need to request operating authority from the Board before beginning operations. See Port of

discussed below, the LGA is a modification to a portion of the 114-mile Fresno to Bakersfield Section of the proposed California High-Speed Rail (HSR) project authorized by the Board in 2014. The LGA modification is approximately 23 miles long, or roughly 20 percent of the Fresno to Bakersfield Section. See attached map. The remaining 80 percent of the Fresno to Bakersfield Section is unchanged and unaffected by the Authority's proposed modification. This memorandum also presents the Office of Environmental Analysis' (OEA) final recommendations to the Board regarding adoption of the Supplemental Draft and Final Environmental Impact Statements (EIS) for the LGA modification, the selection of the LGA modification as the preferred and environmentally preferable alternative into the City of Bakersfield, Cal. (City), and environmental mitigation measures.

1.0 INTRODUCTION

On August 12, 2014, the Board granted an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10901 for the Authority's construction of the approximately 114-mile Fresno to Bakersfield Section.[2] On September 17, 2021, the Authority filed a petition to reopen the above-referenced proceeding seeking Board approval of a modification to the Fresno to Bakersfield Section that was not previously considered by the Board (i.e., the LGA). In addition, the Authority requests that the Board review and adopt the environmental and historic review of the LGA completed by the Authority, in which OEA participated as a cooperating agency.

In a decision served February 11, 2022, the Board granted the petition to reopen and solicited comments on the transportation merits of the proposed LGA modification.[3] No comments were received.

2.0 ENVIRONMENTAL REVIEW OF THE FRESNO TO BAKERSFIELD SECTION AND THE LGA

The Authority sought approval to construct the Fresno to Bakersfield Section of the HSR system in 2013. The Authority and the Federal Railroad Administration (FRA) conducted a joint environmental review under the National Environmental Policy Act (NEPA) (42 U.S.C. §§ 4321 – 4370h) with the Board, through OEA, acting as a cooperating agency. In 2014, a Final EIS was issued, and FRA issued its Record of

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Moses Lake—Constr. Exemption—Moses Lake, Wash., FD 34936, slip op. at 2 & n.1 (STB served Aug. 27, 2009) (citing Big Stone-Grant Indus. Dev. & Transp., L.L.C.—Constr. Exemption—Ortonville, Minn., FD 32645 (ICC served Sept. 26, 1995)).

[2] Cal. High-Speed Rail Auth.—Constr. Exemption—in Fresno, Kings, Tulare, & Kern Cntys., Cal. (August 2014 Decision), FD 35724 (Sub-No. 1) (STB served Aug. 12, 2014). The Fresno to Bakersfield Section is one of eight sections that would comprise Phase 1 of the proposed HSR project.

[3] Cal. High-Speed Rail Auth.—Constr. Exemption—in Fresno, Kings, Tulare, & Kern Cntys., Cal. (Feb. 2022 Decision), FD 35724 (Sub-No. 1) (STB served Feb. 11, 2022).

Decision (ROD) authorizing the construction and imposed extensive mitigation outlined in its Mitigation & Monitoring Enforcement Plan (MMEP). OEA recommended that the Board adopt the Final EIS and impose the MMEP along with several additional environmental mitigation measures if it authorized the project. In its August 2014 Decision, the Board accepted OEA's recommendations, adopted the Final EIS, imposed the MMEP and OEA's recommended additional mitigation measures, and authorized construction of the Fresno to Bakersfield Section as part of the interstate rail network.

In its petition to reopen, the Authority states that the City filed a lawsuit against the Authority in June 2014, claiming, among other things, that "the Preferred Alternative identified in the Fresno to Bakersfield Section Final EIS would severely affect the City's ability to utilize existing city assets, including its corporation yard, senior housing, and parking facilities at Rabobank Arena, Theatre and Convention Center; would render unusable one of the city's premier health care facilities; and would affect the Bakersfield Commons project, a retail/commercial/residential development." (Pet. 3-4.) After the Board issued its August 2014 Decision, the Authority and the City entered into a settlement agreement, dated December 19, 2014. (Id. at 4.) According to the Authority, as part of the settlement agreement, the Authority agreed "to develop and study alternative routes that would address the City's concerns as well as the design needs of the Authority." (Id.)

The Authority states that, following the settlement agreement, it worked with the City and other stakeholders to develop the LGA that is now the subject of its request to reopen the exemption proceeding. (Id.) The LGA consists of a 23.13-mile alternative alignment from just north of Poplar Avenue in Shafter, Cal., then south to and including a new F Street Station located at the intersection of 34th Street and L Street in the City (see attached map). The LGA would replace the component of the Fresno to Bakersfield Section from just north of Poplar Avenue in Shafter, CA, then south to the Truxton Avenue Station in the City. The Authority refers to that previously approved portion as the "May 2014 Project." The remainder of the Fresno to Bakersfield Section from just north of Poplar Avenue then north to the Downtown Fresno Mariposa Street Station is unchanged and unaffected by the LGA, and the Authority requests no Board action on that portion of the Fresno to Bakersfield Section.

The Authority, as the current lead agency under NEPA,[4] and FRA, as the previous lead agency under NEPA, conducted an environmental review of the LGA (with the Board, through OEA, participating as a cooperating agency). FRA issued a Draft Supplemental EIS in November 2017 for a 60-day public comment period and held a public hearing on December 19, 2017, to receive oral testimony and comments. The

[4] The environmental review, consultation, and other actions required by applicable federal environmental laws for this project are being or have been carried out by the State of California pursuant to 23 U.S.C. § 327 and a Memorandum of Understanding (MOU) dated July 23, 2019, which was executed by FRA and the State of California. Pursuant to the MOU, the Authority is the lead federal agency for environmental review under federal environmental laws. Prior to July 23, 2019, FRA was the lead federal agency.

Authority issued a combined Final Supplemental EIS and Supplemental ROD on October 31, 2019. The EISs assess the potential environmental impacts of the LGA and compare those impacts to those of the May 2014 Project.

3.0 AUTHORITY'S SUPPLEMENTAL RECORD OF DECISION

The Authority issued its Supplemental ROD for the LGA on October 31, 2019.[5] In the Supplemental ROD, the Authority approved the LGA including the F Street Station in Bakersfield as its preferred and environmentally preferable alternative for this portion of the Fresno to Bakersfield Section. The remaining portion of the Fresno to Bakersfield Section authorized by the Board in the August 2014 Decision is unchanged and unaffected by the Supplemental ROD. The Authority's Supplemental ROD also imposes extensive mitigation conditions though its MMEP, as amended.

4.0 OVERVIEW OF KEY ENVIRONMENTAL TOPICS

Below, OEA provides an overview of key environmental topics associated with the proposed LGA that are addressed in the Draft and Final Supplemental EISs and the Authority's Supplemental ROD. Generally, the key topics are resource areas that could experience potentially significant impacts (both adverse and beneficial) from construction and operation of the proposed LGA.

Transportation. Construction of the LGA would result in temporary road closures and delays. Once constructed, the LGA would benefit regional traffic safety and circulation by grade separating many roads. Regionally, the LGA is expected to benefit the transportation system by diverting intercity trips from the regional roadway system to high-speed rail. These diverted trips would reduce the overall number of vehicle trips on the regional roadway system. The HSR project would also reduce demand and substitute for commercial air travel in California. However, operation of the Fresno to Bakersfield Section as modified by the LGA would result in 16 roadway segments and intersections operating below level of service standards (established by the Transportation Research Board's *Highway Capacity Manual*). Ten permanent road closures would also result in urban and rural areas where the roads intersect with the LGA (Supp. ROD, p. 4-1; Draft Supp. EIS, p. 8-12). Avoidance, minimization, and mitigation measures imposed by the Authority's ROD, such as requiring roadway widening, restriping, and installation of traffic signals would minimize these potential adverse impacts (Supp. ROD, p. 4-1).

Air Quality and Climate Change. Construction of the LGA would result in an increase in emissions of criteria pollutants and greenhouse gas emissions. However, implementation of mitigation imposed by the Authority would offset construction-related Clean Air Act criteria pollutant emissions to less than significant levels. The Authority would also purchase emission credits to offset the impacts through a Voluntary Emission Reduction Agreement with the San Joaquin Valley Air Pollution Control District (Draft Supp. EIS, pp. 3.3-25 through 3.3-33; Supp. ROD, p. 4-2). As a component of Phase 1 of the HSR project, operation of the LGA would result in a net benefit to air quality because

[5] The Authority's ROD is available on its website at https://hsr.ca.gov/programs/environmental-planning/project-section-environmental-documents-tier-2/fresno-to-bakersfield-locally-generated-alternative/

it would result in lower mobile source air toxics, greenhouse gases, volatile organic compounds, nitrogen oxides, carbon monoxide, and particulate matter emissions by diverting trips from transportation modes with higher emissions (i.e., automobile trips and commercial air flights) to high-speed rail, which would have lower emissions (Draft Supp. EIS, pp. 3.3-33 through 3.3-44; Supp. ROD, p. 4-2).

Noise and Vibration. Construction activities associated with the LGA would result in noise impacts, but these impacts would be temporary and mitigated through implementation of design features and mitigation measures. After mitigation, the Authority anticipates that construction vibration impacts would be less than significant (Draft Supp EIS, p. 3.4-24; Supp. ROD, p. 4-2). With the operation of up to 225 trains per day once Phase 1 of the HSR system is fully operational from San Francisco to Los Angeles, the LGA would have severe noise impacts on approximately 152 noise-sensitive receptors, including 149 residences, after the mitigation imposed by the Authority is implemented (Draft Supp. EIS, p. 3.4-10; Supp. ROD, p. 4-2). That noise mitigation includes sound barriers, sound insulation, acquisition of noise easements,[6] and special track work at crossovers (Supp. ROD, p. 4-2; MMEP, Table 1, pp. 1-6 and 1-7).

Biological Resources. Although the LGA does not overlap any designated or proposed critical habitat units, LGA construction would result in both permanent and temporary impacts to riparian habitat, and lands that have been determined to support, or could support, special-status species or habitats of concern. However, mitigation measures adopted by the Authority would mitigate these impacts (Supp. ROD, p. 4-3). The Authority's 65 biological mitigation measures include the purchase of credits at habitat mitigation banks, conducting a special-status species re-establishment program, and compliance with certain permit requirements (Supp. ROD, p. 4-3; MMEP, Table 1, pp. 1-8 through 1-44).

Socioeconomics and Communities. Although the LGA would largely follow existing highway and rail corridors, its construction and operation would result in residential, business, and other displacements (Draft Supp. EIS, p. 3.12-46). The LGA would require the displacement of approximately 86 residential units (representing approximately 262 residents) (Draft Supp. EIS, pp. 3.12-52, 3.12-55, and 3.12-58). The residential displacements include 23 units within the community of Oildale, which is home to a large percentage of disabled residents and households with a female head of household. Because these populations are considered sensitive, the Authority's relocation plans and resources would take into account and address the special needs of such households (Draft Supp. EIS, Mitigation Measure SO-MM#1, p. 3.12-64). The Authority's assistance includes locating suitable replacement properties that are comparable to those currently occupied by these residents and constructing suitable replacement facilities if necessary. In cases where residents wish to remain in the immediate vicinity, the Authority would be required to take measures to purchase vacant land or buildings in the area and consult with local authorities over matters such as

[6] The noise easement provision provides that when other noise mitigation is neither effective nor feasible, the Authority could enter into agreements with property owners to financially compensate them for future noise conditions if the property owners agree not to petition the Authority regarding future noise levels and disruptions (Draft Supp. EIS, p. 3.4-44).

zoning, permits, and moving of homes and replacement of services and utilities, as appropriate (MMEP, Table 1, p. 1-45).

The LGA would also require the displacement of approximately 377 commercial and industrial businesses, affecting approximately 3,132 employees. These displacements would include 192 businesses in unincorporated areas of Kern County, 118 in the city of Bakersfield, 25 in the city of Shafter, and 42 in the community of Oildale (Draft Supp. EIS, p.3.12-55). The Authority conducted an assessment in December 2015 to identify the number of suitable properties that could serve as replacement properties for these displaced businesses, and it identified approximately 921 vacant properties, a surplus of 544 over the number of anticipated business displacements (Draft Supp. EIS, pp. 3.12-56 and 3.12-57).

Agricultural Lands. The LGA would result in the permanent conversion of agricultural land to nonagricultural uses, severance of large agricultural properties, and conflicts with farmland protection contracts (Draft Supp. EIS, p. 3.14-29). Approximately 372 acres of Important Farmland, including over 370 acres of Prime Farmland (designated under the Farmland Protection Policy Act, 7 U.S.C. §§ 4201-4209), would be directly converted to nonagricultural use (Draft Supp. EIS, p. 3.14-29). However, these impacts are below Natural Resources Conservation Service thresholds that would otherwise require the consideration of other alternatives (Draft Supp. EIS, p. 3.14-30).

Aesthetics and Visual Resources. Portions of the LGA would be constructed using elevated concrete guideways, elevated grade-separated crossings and retained embankments having an average height of 60 feet. In urban areas where extensive road networks must be maintained, the elevated guideway would be necessary to ensure that a fully grade-separated HSR project is constructed (Draft Supp. EIS, pp. 2-6 through 2-9). These elevated guideways and retained embankments in particular would permanently lower the visual quality in both rural and urban areas. The LGA's new features would contrast with the existing rural views, obstruct scenic views, and introduce new sources of light and glare. The potential visual impacts of the elevated guideways would be particularly evident at the Shafter Museum; Burbank Street and Verdugo Lane in rural San Joaquin Valley; Norris Road in North Bakersfield; Kern River Parkway Bike trail crossing; and Sumner Street at Baker Street in downtown Bakersfield (Draft Supp. EIS, p. 3.16-51). Even with implementation of the Authority's mitigation---which includes consulting with local jurisdictions during the station design process, designing HSR parking structures to integrate visually with adjacent areas, designing elevated guideways and columns with decorative architectural features, and planting trees and other landscape materials to soften and buffer the appearance of HSR structures---some impacts on aesthetics and visual resources would remain (MMEP, Table 1, pp. 1-51 through 1-57; Supp. ROD, p. 4-6).

Environmental Justice. Construction and operation of the LGA would result in disproportionately high and adverse effects on minority and low-income populations in the urban areas of Shafter, Oildale, and Bakersfield. Where mitigation measures adopted by the Authority would not adequately reduce the impacts in areas with minority and low-income populations, disproportionately high and adverse effects on minority and low-income populations would remain with respect to noise, socioeconomics, and aesthetics and visual resources (Draft Supp. EIS, p. 5-51).

In particular, even with mitigation such as noise barriers, potential noise impacts would remain severe for approximately 152 sensitive receptors, the majority of which are located in minority and low-income areas. These receptors would be eligible for either sound insulation or payment of property for noise easements per Mitigation Measure N&V-MM#3. These measures would reduce potential noise impacts but would not completely eliminate disproportionately high and adverse noise impacts on minority and low-income populations. (Draft Supp. EIS, p. 5-52).

As noted in the Socioeconomics discussion above, the LGA would require the displacement of approximately 86 residential units, including 23 units within the community of Oildale, which is home to a large percentage of disabled residents and households with a female head of household. Because these populations are considered sensitive, the Authority's relocation plans and resources would take into account and address the special needs of such households (Draft Supp. EIS, Mitigation Measure SO-MM#1, p. 3.12-64). As noted above, the Authority's mitigation measures include providing special assistance to these residents in locating replacement properties (MMEP, Table 1, p. 1-45). The Authority would also continue to conduct substantial environmental justice outreach activities in adversely affected neighborhoods to obtain resident feedback on potential impacts and suggestions for mitigation measures. Input from these communities would be used to refine the LGA during ongoing engineering design efforts (Supp. ROD, Attachment C, MMEP, p. 1-49, SO-MM#6).

The LGA's guideways with elevated structures, raised embankments, retaining walls, and associated overpasses, would remain as substantial visual and aesthetic impacts even with mitigation measures to minimize potential impacts (Supp. Draft EIS, p. 5-52). Because mitigation measures would not eliminate adverse impacts within areas containing minority and low-income populations when compared to the larger project area, the LGA would have a disproportionately high and adverse impact on environmental justice communities. Because of the substantial nature and height of the elevated HSR structures, which would be up to approximately six stories high, no additional practical mitigation measures were identified in the Supplemental EISs to reduce these potential impacts (Supp. Draft EIS, p. 5-52).

However, to ensure that project-related job opportunities are provided to minority and low-income populations, the Authority has approved a community benefits policy to support employment of individuals who reside in disadvantaged areas and those designated as disadvantaged workers. This would help to remove potential barriers to small businesses, disadvantaged business enterprises, disabled veteran business enterprises, women-owned businesses, and microbusinesses that want to participate in building the HSR project (Draft Supp. EIS, pp. 3.12-49 and 3.12-50).

5.0 THE HISTORIC REVIEW PROCESS

Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. § 306108) requires federal agencies to "take into account the effect of" their licensing decisions (in this case, whether to grant the Authority's request to reopen and reissue an exemption, also called the "undertaking" under NHPA) on properties included in, or eligible for inclusion in, the National Register of Historic Places (National Register), and prior to the approval of an undertaking, to afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment. Consultation with the State Historic Preservation Officer (SHPO) is also required. If the undertaking would have an

adverse effect on historic properties, the agency must continue to consult to possibly mitigate the adverse effects.

As the lead federal agency for Section 106 consultation at the time, FRA initiated the Section 106 consultation process for the Fresno to Bakersfield Section prior to OEA's involvement. During that process, FRA consulted with the California SHPO, ACHP, federally recognized Tribal organizations and other interested parties. The parties executed a Programmatic Agreement (PA) setting out a general process for Section 106 compliance for the entire HSR project on July 21, 2011. With the PA set to expire on July 21, 2021, the Signatories to the PA executed the First Amendment to the PA on July 21, 2021. In addition to extending the duration of the PA, the amendment added OEA, for the Board, as an Invited Signatory to the agreement, and designated the Authority as lead federal agency to 106 consultation and implementation.

The Section 106 consultation process, as well as evaluations conducted during the NEPA review, identified properties that are included in, or eligible for inclusion in, the National Register that would be adversely affected by the LGA. Due to access restrictions, surveys for archaeological properties are incomplete; therefore, additional National Register-eligible properties could be present. The regulations implementing Section 106 allow for the development of a Memorandum of Agreement (MOA) when the effects of an undertaking cannot be fully determined prior to approval of an undertaking. When there would be an adverse effect, the MOA can also establish responsibilities for the treatment of historic properties, implementation of mitigation measures, and ongoing consultation efforts. In this case, FRA, the Authority, the Board (through OEA), the U.S. Army Corps of Engineers (USACE), SHPO and ACHP executed an MOA on May 14, 2014, that outlines additional surveys, historic property treatment, mitigation measures and other efforts that will take place prior to construction of the Fresno to Bakersfield Section. Subsequently, the parties executed a First Amendment to the MOA on January 4, 2017, to expand the historic review process to include the LGA. Execution of the MOA and First Amendment to the MOA, their filing with ACHP, and subsequent implementation of their terms, satisfy the requirements of Section 106 (36 C.F.R. § 800.6(c)) for the Fresno to Bakersfield Section, including the LGA, and OEA concludes that no additional mitigation is required.

6.0 OEA'S FINAL ENVIRONMENTAL RECOMMENDATIONS

6.1 Supplemental EIS Adoptions

As a cooperating agency in the Supplemental EIS process for the LGA modification, OEA concludes that: (1) OEA's substantive comments and suggestions on the administrative drafts of the Draft and Final Supplemental EISs were incorporated; (2) the EISs adequately assesses the potential environmental impacts associated with the LGA modification and meet the standards of CEQ's NEPA regulations and the Board's own environmental regulations at 49 C.F.R. Part 1105; and (3) the LGA represents the preferred and environmentally preferable alternative for the 23-mile portion of the Fresno to Bakersfield Section. Accordingly, OEA recommends that, in order to satisfy its NEPA and Section 106 obligations, the Board adopt the Draft and Final Supplemental EISs in any decision granting the Authority's request to construct the LGA modification and

impose the mitigation developed by the Authority, through its MMEP (as amended), as well as the additional mitigation measures recommended by OEA, discussed below.

6.2 Preferred and Environmentally Preferable Alternative

In its Supplemental ROD, the Authority approved the LGA modification including the F Street Station as a replacement for the May 2014 Project including the Truxton Street Station. In making this decision, the Authority noted that the LGA modification best satisfies the purpose, need, and objectives of the proposed action and minimizes potential impacts on the environment by utilizing existing transportation corridors where practicable and incorporating appropriate mitigation measures. Thus, the Authority identifies the LGA modification as both its preferred and environmentally preferable alternative under NEPA (Final Supp. EIS, pp. 8-10 and 8-14). OEA concurs with the Authority's conclusions and summarizes the advantages of the LGA modification over the previously authorized May 2014 Project below.

Although the LGA modification would result in 16 roadway segments and intersections operating below level of service standards compared to 11 under the May 2014 Project, the LGA would only result in 10 permanent road closures compared to 14 for the May 2014 Project (Draft Supp. EIS, p. 8-12). Like the May 2014 Project, overall, the LGA modification would benefit regional traffic safety and circulation by grade separating many roads and would divert intercity trips from the regional road system to high-speed rail (Supp. ROD, p. 4-1).

After mitigation, the LGA modification would impact 152 noise-sensitive receptors, which is approximately half the 305 noise-sensitive receptors that would be impacted by the May 2014 Project. Potential natural resources impacts would be substantially less under the LGA. The LGA modification would directly impact approximately 62 and 990 acres of special status plant and special status wildlife habitat, respectively, compared to 112 and 1,656 acres, respectively, for the May 2014 Project. The LGA modification would also impact 372 acres of Important Farmland, 113 fewer acres than the May 2014 Project (Draft Supp. EIS, p. 8-12).

Regarding potential impacts to waters of the United States, the USACE and USEPA concurred that the LGA modification is the Least Environmentally Damaging Practicable Alternative and therefore, would be consistent with the USACE's Clean Water Act, Section 404 permitting program and the USEPA's Section 404(b)(1) Guidelines (40 C.F.R. Part 230) (Supp. ROD, pp. 38-39).

Regarding socioeconomic impacts, the LGA modification would displace 377 commercial and industrial businesses and 86 housing units. The May 2014 Project would displace a similar number of businesses (i.e., 392) but substantially more housing units (i.e., 384). Both the LGA modification and the May 2014 Project would have disproportionate impacts on minority and low-income communities. The May 2014 Project would impact 8 to 10 housing units (of approximately 25 to 30 housing units) in the environmental justice community of Crome (Final EIS, p. 3.12-62; Draft Supp. EIS, p. S-18)), while the LGA would impact 23 housing units in the environmental justice community of Oildale (Draft Supp. EIS, pp. 8-12 and 8-13). The Authority's MMEP, as amended, includes a mitigation measure to provide enhanced assistance to the dislocated residents of Oildale, including assistance in locating replacement homes or locating

nearby vacant lots to which existing homes could be moved (Draft Supp. EIS, Mitigation Measure SO-MM#1, p. 3.12-64).

6.3 Mitigation

While the Draft and Final Supplemental EISs show that there would be certain unavoidable impacts from the LGA modification (including road closures, residential and business relocations, noise impacts, and impacts to agriculture lands, aesthetic and visual resources, and environmental justice populations), the Authority adopted an approximately 180-page MMEP, as amended, in its Supplemental ROD that specifies means to avoid, minimize or mitigate likely environmental harm caused by construction of the proposed LGA modification.[7] The Authority's Supplemental ROD obligates it to comply with all the mitigation measures in the amended MMEP. OEA believes that the mitigation in the MMEP is adequate to address the potential impacts.

In any decision granting the Authority's request to reopen and modify the exemption previously issued, thereby authorizing construction of the LGA, OEA recommends that the Board impose two mitigation measures to assure compliance with the Authority's final environmental and Section 106 mitigation, as follows:

- The California High-Speed Rail Authority shall comply with the Mitigation & Monitoring Enforcement Plan, as amended, which is included in Appendix C to the Authority's Supplemental Record of Decision, dated October 31, 2019.

- The California High-Speed Rail Authority shall comply with the Programmatic Agreement and Memorandum of Agreement, and subsequent amendments, developed through the Section 106 process of the National Historic Preservation Act.

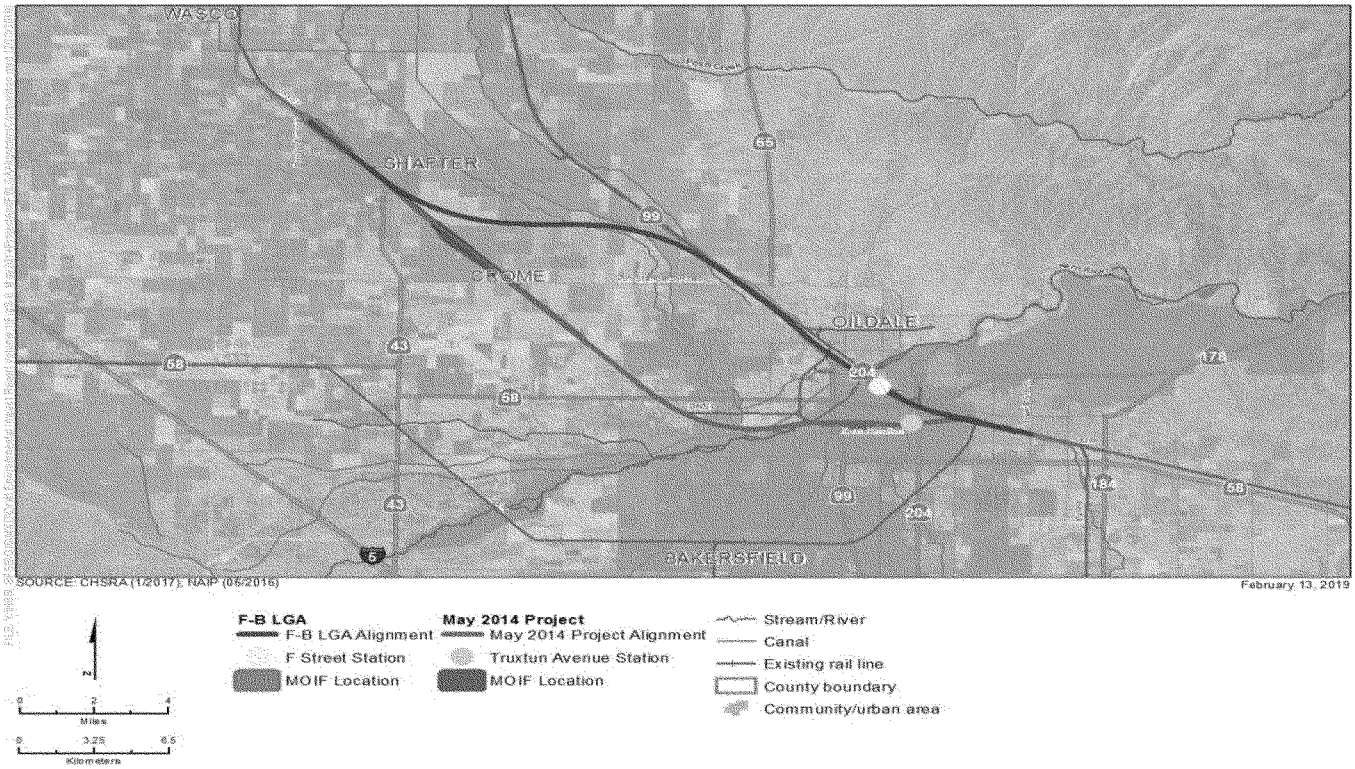
Additionally, in any decision granting the Authority's request for authority to construct the LGA modification, OEA recommends that the Board remove the following mitigation measure imposed in its August 2014 Decision because this measure pertains specifically to the May 2014 Project and would no longer be applicable:

- During project-related construction, the California High-Speed Rail Authority is prohibited from using pile driving within 300 feet of the south side of Mercy Hospital's existing building located at 2215 Truxton Avenue, Bakersfield, California.

[7] The MMEP, as amended, is attached to the Supplemental ROD as Appendix C, and is available on the Authority's website at https://hsr.ca.gov/wp-content/uploads/docs/programs/fresno-baker-eir/FBLGA_ROD_Attachment_C_MMEP.pdf

Figure 1 - Fresno to Bakersfield May 2014 Project and Locally Generated Alternative Comparison

Docket No. FD 35724 (Sub No. 1), California High-Speed Rail Authority – Construction Authority – in Fresno, Kings, Tulare and Kern Counties, Cal.



[FR Doc. 2022–28114 Filed 12–22–22; 8:45 am]

BILLING CODE 4915–01–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Request To Release Airport Property

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on request to release airport property for land disposal at the Liberal Mid-America Regional Airport (LBL), Liberal, Kansas.

SUMMARY: The FAA proposes to rule and invites public comment on the release and sale of one parcel of land at the Liberal Mid-America Regional Airport (LBL), Liberal, Kansas.

DATES: Comments must be received on or before January 23, 2023.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Amy J. Walter, Airports Land Specialist, Federal Aviation Administration, Airports Division, ACE–620G, 901 Locust Room 364, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to: Brian Fornwalt, Airport Manager, Liberal Mid-America Regional Airport, 302 Terminal Road, P.O. Box 2199, Liberal, KS 67901, (620) 626–0188.

FOR FURTHER INFORMATION CONTACT: Amy J. Walter, Airports Land Specialist, Federal Aviation Administration, Airports Division, ACE–620G 901 Locust Room 364, Kansas City, MO 64106, (816) 329–2603, *amy.walter@faa.gov.*

The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release approximately 1.50 acres of airport property at the Liberal Mid-America Regional Airport (LBL) under the provisions of 49 U.S.C. 47107(h)(2). The Airport Manager has requested from the FAA the release of a 1.50 acre parcel of airport property be released for sale for commercial development. The FAA determined the request to release and sell property at Liberal Mid-America Regional Airport (LBL) submitted by the Sponsor meets the procedural requirements of the Federal Aviation Administration and the release and sale of the property does not and will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than thirty days after the publication of this Notice.

The following is a brief overview of the request:

Liberal Mid-America Regional Airport (LBL) is proposing the release and sale of a 1.50 acre parcel of airport property. The release of land is necessary to comply with Federal Aviation Administration Grant Assurances that do not allow federally acquired airport property to be used for non-aviation purposes. The sale of the subject