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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO, CENTRAL DISTRICT

CITY OF BRISBANE, Petitioner and Plaintiff, v. CALIFORNIA HIGH-SPEED RAIL AUTHORITY; DOES 1 THROUGH 20, Respondents and Defendants.	Case No. **PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** [California Environmental Quality Act, Public Resources Code § 21000 et seq.; Code of Civil Procedure §§ 1085 and 1094.5; California Endangered Species Act, Fish and Game Code § 2081; Fish and Game Code § 1602]

Plaintiff and Petitioner CITY OF BRISBANE ("Petitioner," "City," or "Brisbane") brings this Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief (hereafter, "Petition") challenging Respondents and Defendants CALIFORNIA HIGH-SPEED RAIL AUTHORITY's ("Respondent" or "Authority") unlawful disregard of the provisions, protections, and requirements of the California Environmental Quality Act ("CEQA", Pub. Resources Code, § 21000 *et seq.*), the CEQA Guidelines ("Guidelines", Cal. Code Regs., tit. 14, § 15000 *et seq.*), and governing case law in approving the San Francisco to San José Project Section ("Project") of the proposed statewide California High-Speed Rail system. The City alleges as follows:

INTRODUCTION

1. Petitioner challenges the Authority's August 18, 2022 approval of the Project and the associated Environmental Impact Report/Environmental Impact Statement ("EIR/EIS") prepared for the Project pursuant to CEQA ("CEQA", Pub. Resources Code, § 21000 *et seq.*) and the National Environmental Policy Act ("NEPA", 42 U.S.C., § 4321 *et seq.*).

2. The Authority recklessly disregarded CEQA in certifying the EIR for the Project. It is clear the Authority predetermined aspects of the Project before conducting the environmental review. It is also clear that the Authority failed to analyze the environmental impacts of approved, but not yet developed, land uses that the Authority knows are inconsistent with the Project. The EIR/EIS is, therefore, defective as a matter of law and must be abandoned in favor of a new, comprehensive environmental analysis compliant with CEQA. Anything less is both illegal and a disservice to our environment and the people of California.

3. The Project would traverse the Brisbane Baylands, a critical 642 acre-site in the heart of Silicon Valley that state and City elected leaders have designated for thousands of new, much-needed homes to help the region address its unprecedented shortage of housing. The landowner also owns an adjacent parcel of land and agreed that the new residences on the Baylands will be built immediately adjacent to thousands of new residences on that adjacent parcel, thereby bringing nearly thousands of new homes to the heart of Silicon Valley. This historic agreement was ratified by the City's voters in November 2018.

4. The Authority's response to the voter-approved housing on the Baylands was to alter its siting criteria to ensure it can proceed to build a 121-acre Light Maintenance Facility ("LMF") on the Baylands to support daily rail operations despite the obvious fact that the LMF is environmentally incompatible with the new housing. Specifically, the Authority asserts that the EIR/EIS comprehensively analyzes the impacts on the environment of building and operating an LMF that will operate 24 hours a day, 7 days per week and 365 days a year on the Baylands, with a train coming into or out of the LMF about every 40 minutes. Yet, the EIR/EIS does not analyze the impacts of having this mega industrial facility built and operating in the same neighborhood as the new housing.

5. The EIR/EIS proposed, and the Authority only considered, two locations for its LMF, both within the Baylands: one site East of the Caltrain rail line ("East LMF" or "Alternative A") and one site West of the Caltrain rail line ("West LMF" or "Alternative B"). Analyzing two adjacent properties within the Baylands is not an adequate range of alternatives under CEQA, particularly when the Authority dismissed any analysis of alternative locations because it summarily determined they are not "optimal," a standard not found in CEQA. Moreover, the Authority failed to consider alternative locations for the LMF outside of the City, including feasible alternatives proposed and described within the City's EIR/EIS comment letters.

6. It is clear the Authority impermissibly pre-committed to siting the LMF in Brisbane prior to environmental analysis in violation of CEQA. (*Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116 [lead agency cannot commit, prior to environmental analysis, "to the project as a whole or to any particular features, so as to effectively preclude any alternatives or mitigation measures that CEQA would otherwise require to be considered, including the alternative of not going forward with the project."] Over two years prior to Project approval, the Authority's Chief Executive Officer, Brian P. Kelly, sent a letter to Brisbane's Mayor explaining: "While we understand that the City of Brisbane would prefer that we locate the [light maintenance] facility elsewhere, we have carefully and thoroughly reviewed numerous other options before settling on the locations in Brisbane."

7. The Authority's approved site for the LMF requires excavation of over 2 million cubic yards of municipal waste from the former Brisbane landfill, of which 200,000 cubic yards would be hazardous and require transport to a Class I landfill located in Kern County. This amount of excavation represents a minimum of 13,000 truckloads of hazardous materials that would be excavated from the former landfill, loaded onto trucks, and transported through multiple communities over 200 miles offsite to a hazardous waste landfill in Kern County. This creates significant impacts to air quality, greenhouse gas, noise, safety and security, transportation, hazardous materials and wastes, none of which were disclosed in the Draft EIR/EIS or analyzed in the Final EIR/EIS.

8. The Project's required transportation of approximately 13,000 truckloads of hazardous waste would span the majority of the state, passing through disadvantaged communities that have been historically disproportionately affected by environmental impacts. The EIR/EIS fails to analyze any of the Project's impacts, which include air quality and greenhouse gas impacts, on these environmental justice communities. At bottom, the Project is inconsistent with critical state policy priorities, including Governor Newsom's commitment to environmental protection and environmental justice.

9. The EIR/EIS fails to discuss the potential existence of a Native American burial site within the Project footprint and fails to analyze the Project's potential environmental impacts on this important and sensitive site. The Authority's lack of analysis disregards the indigenous history of this area and such groups' sacred burial traditions.

10. One of the Project's most significant environmental impacts relates to safety and security hazards associated with replacement of the City's existing Tunnel Avenue bridge with a new bridge, necessitating relocation of the City's existing Fire Station No. 81. The Draft EIR/EIS determined that bridge construction, which would block emergency access for police and fire first responders to efficiently access locations in Brisbane east of the Caltrain right-of-way, was a significant and unavoidable safety impact. The Final EIR/EIS proposed a new, different means of staging bridge construction and relocation of the Brisbane fire station. As stated in the City's comment letter on the Final EIR/EIS, Fire Chief Ron D. Myers determined the new proposed

relocation of the fire station is infeasible, "does not meet the minimum safety standards for fire station design, location, emergency response egress and roadway entry and is unacceptable to the North County Fire Authority." The new plan for relocation of the fire station creates a new set of significant public safety impacts not disclosed in the Draft EIR/EIS and not fully evaluated in the Final EIR/EIS.

11. As detailed herein, the Authority abused its discretion under CEQA by certifying an EIR that is legally inadequate to support its approval of the Project. Petitioner brings this action pursuant to Code of Civil Procedure section 1094.5 and Public Resources Code sections 21167 and 21168, seeking an order from this Court directing the Authority to comply with CEQA and to adequately evaluate and mitigate the Project's impacts to the environment, the City, and its residents.

THE PARTIES

12. Plaintiff and Petitioner City of Brisbane is a local government entity organized and existing under the Constitution and laws of the State of California and located within the County of San Mateo, California. The City will be severely, negatively impacted by the Project, including impacts to public health, safety and security, noise, transportation, air quality, biology and biodiversity, land use and aesthetics. The City has a direct and beneficial interest in the Authority's compliance with CEQA and the CEQA Guidelines. This interest will be directly and adversely affected by the Project approval, which would cause substantial and irreversible harm to the health and welfare of City residents.

13. The public trust doctrine provides that certain natural resources are held by the state in special status and public officials have an affirmative, ongoing duty to safeguard the long-term preservation of those resources for the benefit of the general public. The City has standing to raise a claim of harm to the public trust under the Fish and Game Code, as natural resources subject to public trust protection are within the City, including tidelands of the San Francisco Bay, Visitacion Creek, the Brisbane Lagoon, and fish and wildlife occurring within the City.

14. The maintenance and prosecution of this action will confer a substantial benefit on the public by protecting the public from the environmental harms alleged herein. The City has an

interest in protecting the region's environment and brings this action on behalf of itself as a municipal entity and on behalf of its citizens and the general public.

15. Defendant and Respondent California High-Speed Rail Authority is a state public agency under Public Resources Code section 21063 and is responsible for planning, designing, constructing, and operating the California High-Speed Rail System. Respondent is authorized and required by law to hold public hearings to determine whether CEQA applies to projects within its jurisdiction, to determine the adequacy of and certify environmental documents prepared pursuant to CEQA, and to determine whether a project is compatible with environmental laws.

16. Petitioner does not know the true names or capacities of the persons or entities sued as DOES 1 through 20, inclusive, and therefore sues these Respondents by their fictitious names. Petitioner will amend the Petition to set forth the names and capacities of the DOE Respondents along with any additional appropriate allegations when such information is ascertained.

JURISDICTION, VENUE, AND EXHAUSTION OF ADMINISTRATIVE REMEDIES

17. Jurisdiction of this Court is invoked pursuant to California Code of Civil Procedure sections 1085 and 1094.5, Public Resources Code sections 21167, 21168, 21168.5, and 21168.9, and Public Utilities Code section 185038. This Court has jurisdiction over the Authority because it is an agency, established by the legislature of the State of California, with its headquarters located in the City and County of Sacramento.

18. Venue is proper in this Court because this legal and equitable action brought against the HSR Authority is brought in the County of Sacramento pursuant to California Public Utilities Code section 185038.

19. This action was timely filed within 30 days after the Authority's publication of the Notice of Determination following the August 18, 2022 certification of the Project's EIR/EIS and approval of the Project.

20. Prior to filing this Petition, the City served Respondent with a notice of intention to commence a proceedings against it for violations of CEQA in connection with its approval of the Project. A true and correct copy of the notice, together with proof of service, is attached to this

Petition as Exhibit A and incorporated herein by this reference. By serving the notice, the City has complied with California Public Resources Code section 21167.5.

21. Petitioner is sending a copy of the Petition to the California Attorney General concurrently with its filing, thereby complying with the requirements of Public Resources Code section 21167.7. A true and correct copy of this written notice is attached to this Petition as Exhibit B.

22. Petitioner has complied with the requirements of Public Resources Code section 21167.6 by simultaneously filing a notice that it is electing to prepare the administrative record regarding the HSR Authority's actions on and approval of the Project that is the subject of this Petition. A true and correct copy of this written notice is attached to this Petition as Exhibit C.

23. Concurrently with this Petition, the City is filing the request for a CEQA hearing, as required by Public Resources Code section 21167.4, subd. (a). A true and correct copy of this written notice is attached to this Petition as Exhibit D.

24. The City has exhausted all administrative remedies prior to bringing this action. The City objected to approval of the Project in writing at all stages of the administrative proceedings, including but not limited to, letters submitted to the HSR Authority on September 8, 2020, June 9, 2021, September 8, 2021, and August 16, 2022 and Brisbane Councilmember Lentz testified before the Authority at its hearing on August 17, 2022. All issues raised in this Petition were timely raised before Respondent by the City or by other stakeholders and/or members of the public. (Pub. Resources Code, § 21177.)

25. Petitioner has no administrative remedy and has no plain, speedy, or adequate remedy in the ordinary course of law because the City and its residents are suffering irreparable harm from the Project unless the Court grants this Petition.

FACTUAL BACKGROUND

I. BACKGROUND TO THE CALIFORNIA HSR PROJECT AND THE SAN FRANCISCO TO SAN JOSÉ PROJECT SECTION

26. The California Legislature passed the High-Speed Rail Act in 1996, forming the California High-Speed Rail Authority as a state governing body responsible for planning,

designing, constructing, and operating the California High-Speed Rail System ("HSR System"). The Authority's mandate under the High-Speed Rail Act is to develop a HSR System that coordinates with the state's existing transportation network, including intercity rail and bus lines, regional commuter rail lines, urban rail and bus transit lines, highways, and airports.

27. The Authority proposes to construct, operate, and maintain this approximately 800-mile electric-powered HSR System that would connect the Bay Area and Central Valley to Southern California. The Authority proposes to implement the California HSR System in two phases: Phase 1 would connect San Francisco to Los Angeles and Anaheim; Phase 2 would extend the HSR System from the Central Valley to Sacramento and from Los Angeles to San Diego.

28. In 2012, Caltrain, which provides commuter rail service along the San Francisco Peninsula, and the Authority agreed to electrify the existing Caltrain corridor, share the tracks, and maintain the corridor as primarily a two-track railroad, which is referred to as the Blended System. This agreement was codified in state law through Senate Bill 1029 (2012) and Senate Bill 557 (2013). The Blended System is characterized by operation on a predominantly two-track system primarily within the existing Caltrain right-of-way, utilizing existing and in-progress infrastructure improvements developed by Caltrain for its Caltrain Modernization Program, including electrification of the Caltrain corridor between San Francisco and San José. As part of the Blended System, the Authority is planning to expand Millbrae-SFO Station from the existing two outboard Caltrain platforms to four shared tracks with two Caltrain platforms and a center high-speed rail platform.

29. On July 23, 2019, the State of California and the Federal Rail Authority ("FRA") entered into a Memorandum of Understanding that delegated FRA's responsibilities to the State to implement NEPA and other federal statutes, regulations, and executive orders and to issue a record of decision for each of the individual, project-specific environmental reviews.

30. The Authority and FRA utilized a tiered environmental review process, whereby the broad, statewide HSR System program is analyzed in "Tier 1" environmental documents and the particular details of individual projects are analyzed in subsequent, project-specific "Tier 2" environmental documents. The *Final Program Environmental Impact Report/Environmental*

Impact Statement for the Proposed California High-Speed Train System provided a programmatic analysis of implementing the HSR System across the state. This Project's EIR/EIS is a "project-level (Tier 2) EIR/EIS that examines the San Francisco to San José Project Section…as part of the larger, 800-mile HSR system planned throughout California."

31. The Project-specific environmental document presents the Project's alignment, design options, and operational facilities, such as the LMF. The Project would travel through San Francisco, San Mateo, and Santa Clara Counties to provide HSR service from the Salesforce Transit Center in San Francisco to Diridon Station in San José along approximately 49 miles of the Caltrain corridor. The Project section would include infrastructure to support the Project, such as an LMF, a heavy maintenance facility, and maintenance of way facilities.

32. The Project proposes to construct and operate an approximately 121-acre LMF within the City. A maintenance building would provide storage areas for reserve equipment, workshops, and office space. A power generator, sewage system, cistern, collection point, and electrical substation would be north of the maintenance building. To visualize the magnitude of the impact on the City, the approximately 121-acre footprint of the LMF is ten times the size of Oracle Park, home of the San Francisco Giants.

33. The Project-specific Draft EIR/EIS for the San Francisco to San José Project section was released on July 10, 2020 for a public review and comment period, which ended on September 9, 2020. The City submitted a comment letter dated September 8, 2020 detailing how the Draft EIR/EIS was deficient and failed to meet the requirements of CEQA and other environmental laws. The City's comment letter attached detailed reports prepared by consultant experts in support of the City's comments, which emphasize the numerous inadequacies of the Draft EIR/EIS both within Brisbane and beyond.

34. Upon receiving comments on the Draft EIR/EIS, the Authority prepared a Revised/Supplemental Draft EIR/EIS ("Revised EIR/EIS"). The Revised EIR/EIS presents (1) a new biological resource analysis for the monarch butterfly, a candidate for listing under the federal Endangered Species Act, present in the San Francisco to San José study area, as well as (2) an

analysis of a design variant for the Millbrae Station, neither of which were included in the Draft EIR/EIS.

35. The Revised EIR/EIS became available for a public review on July 23, 2021 and the comment period ended on September 8, 2021. The City submitted a comment letter on the Revised EIR/EIS detailing its failure to comply with the requirements of CEQA by failing to recognize the many significant impacts of the Project's proposed location for the LMF within the City and the substantial burdens the Project would place on the community.

36. The Authority released the Final EIR/EIS on June 10, 2022. The Final EIR/EIS, like the Draft EIR/EIS, fails to satisfy an EIR's fundamental objective: to provide a sufficient degree of analysis to provide decision makers with information that enables them to make a decision that takes account of environmental consequences. The Final EIR/EIS does not cure legal deficiencies of the Draft EIR/EIS but instead introduces significant new information and impact analyses, as well as modifications to the project design in and around the Brisbane LMF. Among other things, the Final EIR/EIS contradicts the Draft EIR/EIS, revises the Project description, which still remains incomplete, sets forth impact conclusions based on inadequate or nonexistent studies and plans, and inadequately evaluates alternatives. The Final EIR/EIS fails to respond to many of the City's significant environmental comments on the Draft EIR/EIS in direct violation of CEQA (Pub. Resources Code, §§ 21091, subd. (d), 21092.5; Guidelines, § 15088.)

37. On August 18, 2022, despite various reports, proposals, and written objections recommending otherwise, the Authority approved the Project and certified the Project's EIR/EIS (Resolution HSRA 22-19); approved the Preferred Alternative (Alternative A with Caltrain Stations modified for HSR at 4th and Kind Streets and in Millbrae, an East Brisbane Light Maintenance Facility, the Millbrae Station Design, and associated facilities) and the related CEQA Findings of Fact, Statement of Overriding Considerations, and Mitigation Monitoring and Enforcement Plan for the Project (Resolution HSRA 22-20); and selected Alternative A and directed the Chief Executive Officer to sign a Draft Record of Decision under NEPA and issue a Final Record of Decision for the Project (Resolution HSRA 22-21).

II. BACKGROUND TO BRISBANE BAYLANDS DEVELOPMENT

38. The Project section would traverse San Mateo County, in which the City of Brisbane is located. The City is located next to the San Francisco Bay on the lower slopes of San Bruno Mountain and is bordered to the north by San Francisco and to the south by South San Francisco. The Project is proposed to cut through the City, navigate the path along the existing Caltrain corridor, and would utilize the City's existing Bayshore Caltrain Station. The Project proposes construction of an approximately 121-acre LMF within the portion of the City known as the Baylands.

39. The EIR/EIS discusses two alternatives for the LMF site that are both proposed within the City's Baylands development site, an approximately 642-acre area of the City bordered on the west by Bayshore Blvd., north by the City and County of San Francisco, east by the U.S. 101, and south by the southern end of the Brisbane Lagoon. The Baylands provides for a transit-oriented variety of residential, employment- and revenue-generating uses, natural resource management, and public and semi-public facilities. The City prepared and certified a first tier EIR for the development of the Brisbane Baylands in July 2018.

40. On July 19, 2018, the Brisbane City Council approved GP-1-18, an amendment to the City's General Plan concerning the Baylands, which was submitted to the City voters as a City Council-sponsored initiative. On November 6, 2018, Brisbane voters approved Measure JJ related to GP-1-18, which amended the City's General Plan to allow for development of 1,800-2,200 residential homes, 6.5 million square feet of commercial/office development, 500,000 square feet of hotel use, and extensive open space and park land on the environmentally-sensitive Baylands. The development parameters approved for the Baylands in GP-1-18 are relevant to the regional growth projections and the state-mandated sustainable communities strategy for the nine-county San Francisco Bay Area, known as "Plan Bay Area," that designates the Baylands along with adjacent proposed and approved development to the north in San Francisco as part of a bi-County "Priority Development Area."

41. The City released its draft 2023-2031 Housing Element for public review on August 5, 2022. The Housing Element constitutes a part of the City's General Plan that must be

certified by the California Department of Housing and Community Development ("HCD"), which is the state agency responsible for determining the regional housing need for each region's planning body. According to the City's draft 2023-2031 Housing Element, the City is required to provide 1,588 homes, allocated by income classifications, which include very low and low income categories. Baylands Development Inc. has submitted a Specific Plan for the development of the Baylands that proposes 2,200 homes pursuant to GP-1-18. The City is actively reviewing the proposal recognizing that it is important to the landowner, the region, and the state as the City and landowner work to implement the historic agreement that opened a portion of the Baylands to, post-remediation, environmentally safe residential development.

42. The Notice of Preparation ("NOP") of an EIR for the Brisbane Baylands Specific Plan was issued on February 24, 2020. Despite the NOP's release approximately five months before the Project's Draft EIR/EIS, the HSR EIR/EIS failed to consider the most recent version of the Baylands development in conjunction with the proposed Project. Both sites considered for the approximately 121-acre LMF are within the planned mixed-use residential and commercial development area.

III. BRIEF CEQA BACKGROUND

43. CEQA establishes a comprehensive scheme to provide long-term protection of the environment and notify the public of a project's potential impacts on the environment. It prescribes review procedures a public agency must follow before approving or carrying out certain projects. (Pub. Resources Code, § 21000, subd. (a).)

44. The Legislature has made clear that an EIR is "an informational document" and that its purpose "is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project." (Pub. Resources Code, § 21061; Guidelines, § 15003, subds. (b)-(e).)

45. "'The EIR is the heart of CEQA' and the integrity of the process is dependent on the adequacy of the EIR.'" (*Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1045 ("*Treasure Island*").) An EIR should be prepared

with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which "intelligently takes account of environmental consequences." (Guidelines, § 15151.)

46. A lead agency preparing an EIR must use its "best efforts to find out and disclose all that it reasonably can." (Guidelines, § 15144.) An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. . . . The courts have looked…for adequacy, completeness, and a good faith effort at full disclosure. (Guidelines, § 15151.)" (*Treasure Island, supra,* 227 Cal.App.4th 1036, 1045.)

47. An EIR must present a fact-based analysis, not just the lead agency's conclusions or opinions. (*Sierra Club v. County of Fresno* (2018) 6 Cal. 5th 502, 522 ("*Friant Ranch*").) Specific data must be presented when it is required for a meaningful analysis of a significant impact and it is reasonably feasible to provide the specific data. (*Id.* at p. 519.)

FIRST CAUSE OF ACTION

(Violations of the California Environmental Quality Act)

48. Petitioner hereby realleges and incorporates the allegations set forth in each of the paragraphs above.

A. The Project Description Is Inconsistent, Incomplete, and Unstable and Is Inadequate Under CEQA

49. The EIR/EIS fails to meet basic CEQA standards for describing a proposed project accurately and with sufficient detail to allow for meaningful analysis. CEQA requires project descriptions to be accurate, stable, and finite. (Guidelines, § 15124.). "[A]n accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity." (*San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730.) Without an accurate and complete project description, decisionmakers and the public cannot fully understand a project's potential impacts on the environment.

50. The project description fails to adequately describe the Project's technical characteristics, which prejudicially violates CEQA's requirements to provide an accurate, stable,

and finite description of the project. (*Stopthemillinniumhollywood.com v. City of Los Angeles* (2019) 39 Cal.App.5th 1, 18-19.)

51. The project description fails to "adequately apprise all interested parties of the true scope of the Project" and approval was a prejudicial abuse of discretion that violates CEQA. (*City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1454-55.) The Project description insufficiently omits essential Project features that form the basis of the EIR/EIS's impact analysis including, but not limited to:

a. The modification of street patterns providing access to Brisbane's downtown area.

b. The Brisbane LMF would operate 24-hours per day, 7 days per week, and require night lighting for worker safety and security, but the EIR/EIS fails to describe the daily number of trains that would utilize the LMF. These operational characteristics are not disclosed in the project description.

c. The project description should have included automobile trip generation estimates for the Brisbane LMF that gives a true picture of the number and timing of trips associated with LMF operation. The EIR/EIS states trip generation from the LMF was based on trip rates for a general light industrial use. The LMF is not a "general light industrial" use, but rather is a 24-hour, 7-days-per-week operation. The Authority could have, and should have, estimated the number of employees that would be working at the facility during any given shift, times for shift changes, and operational details, which would provide a more realistic analysis of anticipated LMF traffic impacts. This omission in the description of the Project results in a failure to inform the public of actual traffic conditions that the community could expect from 24-hour operations at the LMF rather than a "general light industrial" use that is not proposed as the Project.

d. Construction of the East LMF would remove Golden State Lumber's existing lay-down area for off-loading and storing lumber shipped by rail and eliminate the ability to load and unload rail cars.

e. Construction of the West LMF would excavate soils near the former Brisbane landfill that are likely contaminated and would require special disposal as hazardous waste, which is not included in the project description.

f. Emergency and public access during the reconstruction of the Tunnel Avenue bridge and Tunnel Avenue in the vicinity of the East and West LMF sites and during LMF construction.

52. Furthermore, the Final EIR/EIS dramatically changed the inadequate project description presented in the Draft EIR/EIS. The Final EIR/EIS presents internal inconsistencies that prohibit an accurate, stable, and finite project description, information that contradicts the Draft EIR/EIS, and new technical information that significantly revises the Project. The EIR/EIS deficiencies that preclude an accurate, stable, and finite project description include the following:

a. The construction of the East LMF is described differently in the Draft EIR/EIS and Final EIR/EIS. For the first time, the Final EIR/EIS states East LMF construction would require excavation of 2.08 million cubic yards of municipal waste from the former Brisbane landfill including 208,300 cubic yards of hazardous waste that would require transport to a Class I landfill, the closest of which is located in Kern County, more than 200 miles away from the LMF site.

b. The Final EIR/EIS presents contradictory information regarding the size of the LMF sites. The Final EIR/EIS, states, “The LMF would occupy a site adjacent to the mainline tracks with an estimated length of about 7,500 feet and footprint of approximately 100 to 110 acres.” However, the Final EIR/EIS identifies that development of the East LMF and West LMF would permanently convert 121.0 acres and 120.9 acres, respectively, which is not included in the description of the Project.

c. The Final EIR/EIS presents an inconsistent and confusing project description of the Authority’s new plan for staging of construction for relocating the existing Tunnel Avenue bridge and Brisbane fire station.

d. The EIR/EIS inconsistently describes the number of trains expected to be serviced at the Brisbane LMF on a daily basis. The EIR/EIS discloses that 22 trains will operate between

San Francisco and the Brisbane LMF on a daily basis in 2040. However, the footnote to Table 2-19 indicates that the number of non-revenue trips, such as test runs or trains entering or leaving a maintenance facility for service, were not accounted for in Table 2-19. The Final EIR/EIS states, "[t]he HSR operations schedule of train movements into and out of the LMF identified 29 planned HSR train movements during the daytime and 7 movements during the nighttime." The number of trains anticipated to be serviced must be included in the description of the Project to fully understand the scope of Project impacts.

e. The Final EIR/EIS discloses the number of daytime and nighttime train movements into and out of the Brisbane LMF but does not disclose the relative amount of daytime and nighttime maintenance activities or when the majority of maintenance activities would occur.

f. The realignment of Sunnydale Avenue through the Schlage Lock property is misleading and inhibits an accurate project description.

53. The EIR does not include a section entitled "Project Description" but rather discusses the "two project alternatives" in the EIR/EIS, Chapter 2, *Alternatives*. The EIR/EIS should have clearly identified either Alternative A or Alternative B as the proposed Project.

54. CEQA forbids the piecemealing of one large project into multiple small projects for the purpose of evading environmental review of the entire project. The EIR/EIS understates Project impacts by selectively presenting impacts caused by individual Project components rather than revealing the total Project impact. The EIR/EIS inadequately analyzes combined, cumulative impacts of individual Project components for noise and biological resources, which hides the true magnitude of the Project's total construction and operational impacts on sensitive receptors and resources.

55. The project description omits key information needed, which precludes adequate impact analyses. The EIR/EIS does not include an adequate level of detail about the Brisbane LMF facility, including details necessary to understand its construction. A large portion of the East LMF is located within the former Brisbane landfill. The project description fails to disclose that construction of the East LMF requiring removal of a large portion of the former landfill must

also complete Title 27 landfill closure procedures. Construction of the East LMF would require excavation and offsite hauling of over 2.2 million cubic yards of materials but the EIR/EIS does not discuss whether or how construction would leave sufficient soil for a landfill cover over the remaining portions of the landfill or provide sufficient cover material for use in remediation of two sites within the Baylands: Operable Unit San Mateo ("UPC-OU-SM") and Operable Unit 2 ("UPC-OU-2"). Information regarding site remediation for UPC-OU-SM and UPC-OU-2 as well as Title 27 landfill closure must be incorporated into the project description.

56. The EIR/EIS states that the project description is subject to substantial change, which precludes a stable description of the Project. The EIR/EIS states the Project is "designed to a preliminary level of engineering," which the Authority inappropriately says is "sufficient to identify and analyze potential environmental impacts." On page 2-4, the EIR/EIS states that "[w]hile the alternative descriptions have been developed based on planning assumptions and preliminary engineering conducted by the Authority for the purpose of environmental analysis, *the ultimate implementation of the project (both physical infrastructure and service operations)*…would be subject to further joint blended system planning and agreement…." (Emphasis added.)

57. The EIR/EIS lacks sufficient information about the design and construction methods of the Project's foundations, stations, and aerial structure. These are critical components of the project description. By omitting the design details necessary to undertake geotechnical investigations, the Authority deprives the public of information about whether the proposed design is feasible, the extent to which adverse geotechnical conditions would be encountered at specific locations, and such conditions' severity. It is impossible to ascertain what would need to be done to create a stable platform within the East LMF.

58. The project description's discussion of train station locations is unstable. The EIR/EIS states "HSR trains would stop at the existing 4th and King Street, Millbrae, and San José Diridon Stations, requiring dedicated HSR platforms and associated passenger services at these stations." The EIR/EIS states that "[s]tation design is developed at a conceptual level" and provides examples of other existing stations, acknowledging that actual station design would be

developed later. This conceptual project description is insufficient for project-level review and falls within the type of description found to violate CEQA in *Stopthemilleniumhollywood.com*. The description of parking around these stations is also insufficient for project-level review.

59. The Draft EIR/EIS project description fails to disclose information located only in the EIR/EIS appendices regarding how the Brisbane LMF would function in conjunction with an LMF proposed in Gilroy, approximately 20 miles south of the San José Diridon Station, as part of the Merced to San José Section. This information is identified in the appendices of the Draft EIR/EIS, which prevents the public from fully understanding the relationship between the Brisbane LMF and the entirety of the Project segment. An appendix reveals that the LMFs at Brisbane and Gilroy are "envisioned to work together" and that "[m]aximum maintenance level at Brisbane could be lowered to Level I if the facility in Gilroy is built with the Level III capability." This information must be included in the project description, as it is essential to the discussion of the Project's objectives as well as alternatives.

60. The Draft EIR/EIS failed to describe emergency access associated with the reconfiguration of the Tunnel Avenue bridge and Tunnel Avenue during LMF construction, which is a significant Project component that must be discussed in the Project description.

B. <u>The EIR/EIS Utilizes Inadequate Baselines that Violate CEQA</u>

61. An EIR must describe the environmental setting for the project, which is made up of "the physical environmental conditions in the vicinity of the project" viewed from "a local and regional perspective." (Guidelines, § 15125 subds. (a), (c).) An adequate EIR analysis requires an environmental baseline that accurately represents pre-project conditions.

62. The purpose of an existing conditions baseline is to give the public and decision makers "the most accurate and understandable picture practically possible" of the project's likely near-term and long-term impacts. (Guidelines, § 15125; *Neighbors for Smart Rail v. Exposition Metro Line Const. Auth.* (2013) 57 Cal.4th 439, 449 ("*Neighbors for Smart Rail*").) The inaccurate existing conditions baseline skews environmental analysis, causes the EIR/EIS to understate the Project's actual impacts, and precludes informed decision making.

63. The EIR/EIS uses inaccurate and/or outdated baselines and excludes an existing conditions baseline for operational impacts thereby precluding an adequate analysis of resource impacts. Baseline noise and vibration levels are incomplete and outdated. Many locations' noise measurements were taken in 2009, 2010, and 2013. Noise levels have increased since then due to new development, increased traffic, and increased Caltrain operations. The EIR/EIS also monitored an insufficient number of locations to determine localized impacts. Only three locations in Brisbane were observed, one of which was monitored in 2009, approximately 13 years before Project approval.

64. The EIR/EIS inappropriately analyzes train noise by only using future baselines and provides no explanation as to why an existing conditions baseline would be misleading or uninformative. Use of an existing conditions baseline would have resulted in greater train noise impacts than a future "No Project" baseline, and the EIR/EIS should have analyzed this.

65. The EIR/EIS's future 2029 and 2040 baselines in the EIR/EIS are inaccurate, not supported by substantial evidence, and exclude the reasonably foreseeable Baylands development. The Draft EIR/EIS provides no explanation as to why using an existing conditions baseline for operational impacts, would be "misleading or without informative value", in violation of *Neighbors for Smart Rail, supra*, 57 Cal.4th 439, 445 and Guidelines, § 15125, subd. (a)(2). Future noise, air quality, and transportation baselines should have included reasonably foreseeable 2029 and 2040 development in Baylands to expressly identify: noise impacts on foreseeable specific future sensitive receptors; air quality impacts on specific future sensitive receptors (the EIR/EIS's air quality appendix concludes there are no existing sensitive receptors within 1,000 feet of the potential LMF locations without providing factual support); and transportation impacts associated with the Baylands, which would demonstrate an increase in the 2029 and 2040 traffic levels, congestion, and Vehicle Miles Traveled ("VMT").

66. Operational VMT analysis should have used an existing conditions baseline in addition to future baselines, which would result in additional significant impacts.

67. The EIR/EIS omits a project-specific hazardous materials baseline along the Project segment by deferring an Phase 1 and Phase 2 environmental site assessment ("ESA") analyses of

the Project site until the right-of-way acquisition phase and fails to provide site-specific testing of soils or waste characterization on either LMF site.

68. CEQA states "[k]nowledge of the regional setting is critical to the assessment of environmental impacts" and "[s]pecial emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project." (Guidelines, § 15125, subd. (c).) The EIR/EIS fails to consider the unique regional setting of the City and the Project's potential impacts on the unique resources of the Brisbane Lagoon, Visitacion Creek, and San Francisco Bay.

69. The EIR/EIS fails to use updated information for the existing conditions of the City's unique regional setting baselines for all biological resources, resulting in an inaccurate impact analysis. The EIR/EIS incorporates habitat modeling to project where Project construction and operations impacts would affect special status species "based on desktop analyses or unpublished field surveys conducted in 2009 and 2010" and that "no presence-absence surveys for special-status wildlife species in the habitat study area" were conducted. The California Department of Fish and Wildlife's ("CDFW") May 31, 2016 scoping comments recommended that the EIR/EIS include results of surveys for special status wildlife and plant species using CDFW protocols. This was not done. While some additional site visits were conducted, they were conducted for the limited purposes relating to the Clean Water Act, for verifying information related to delineations of federally regulated waters or wetlands. These studies are insufficient for CEQA analysis because they were conducted only in a limited number of locations and do not encompass all wetland resources.

C. <u>The EIR/EIS Fails to Adequately Analyze Environmental Impacts</u>

70. An EIR must disclose all of a proposed project's direct and indirect impacts. (Guidelines, § 15126.2 subd. (a).) When reviewing an EIR's adequacy, courts look for adequacy, completeness, and a good faith effort at full disclosure. (Guidelines, § 15151.) However, many of the EIR/EIS impact analyses do not comply with CEQA by omitting the proposed Project's impacts altogether or downplaying their significance.

71. The impact analyses are overgeneralized, vague, and missing site-specific analyses, in violation of CEQA. An EIR must present specific data when it is required for a meaningful analysis of a significant impact and it is reasonably feasible to provide the specific data. (*Friant Ranch, supra,* 6 Cal.5th at p. 519.) The air quality and noise impact analyses do not disclose location-specific impacts of the Project in each city along the Project alignment. Site-specific impacts must be disclosed in the EIR/EIS, as well as site-specific mitigation measures for those significant impacts. The EIR/EIS did not "use best efforts to find out and disclose all that it reasonably can." (Guidelines, § 15144.) The EIR/EIS fails to adequately survey for and disclose important sensitive biological and cultural resources in Brisbane known by the City that would likely be damaged by the Project.

Transportation Impacts Are Not Adequately Analyzed.

72. The EIR/EIS's VMT analysis omits substantial information regarding VMT from construction vehicles, despite knowing the number of cubic yards that would be required to be excavated and transported for hazardous and non-hazardous waste disposal associated with construction of the Brisbane LMF. Lack of essential information precludes the opportunity to propose the addition of mitigation measures to reduce construction VMT, such as promoting construction employee ridesharing and reducing the number and length of truck haul trips. Construction vehicle VMT has been calculated because it is an input for the EIR/EIS's air quality and GHG modeling, and the EIR/EIS should have included it as a transportation impact as well, especially after the Final EIR/EIS identifies the number of cubic yards required to be excavated and transported for construction.

73. The EIR/EIS transportation analysis fails for two significant reasons. First, the EIR/EIS did not disclose the nature of the fill that would be required to cap the former Brisbane landfill or the amount of truck trips that would be required to haul the excavated hazardous materials and construction waste. Second, the EIR/EIS did not analyze VMT associated with these truck trips. This information would result in substantial changes not only to the traffic analysis, but also to the noise, air quality, and greenhouse gas analyses that rely on estimated construction VMT by vehicle type. The EIR/EIS construction traffic impact analysis does not quantify the number of

truck trips based on the volume of excavated materials to be hauled or analyze their impacts on intersection impacts and traffic delays. The EIR/EIS does not, but must, describe the duration of the hauling of material, the number of trucks per day, planned truck routes, and time periods during the day when hauling trucks are allowed.

74. The construction impact analysis is inadequate. Both Impacts TR#2 and TR#3 fail to provide a quantitative or qualitative analysis or other substantial evidence to support impact conclusions. The EIR/EIS understates the severity of the Project's construction traffic impacts by segregating analysis of Impacts TR#2 and TR#3.

75. Impact TR#4 fails to analyze the adequacy or long-term safety effects of moving the primary access from the U.S. 101 freeway to Brisbane and its downtown area. The EIR/EIS fails to analyze the adequacy or safety of these proposed roadway realignments. Therefore, the Draft EIR/EIS does not provide substantial evidence to support a significance conclusion for Impact TR#4 because the EIR/EIS fails to present specific analysis of traffic and required turning movements along Bayshore Boulevard at Valley Drive.

76. The EIR/EIS's conclusion that the Project would not conflict with transportation programs, plans, ordinances, and policies is unsupported by substantial evidence. The EIR/EIS includes the following significance thresholds: (1) Transit: Conflict with a program, plan, ordinance, or policy regarding public transit, or otherwise materially decrease the performance of such facilities or services; and (2) Nonmotorized transportation: Conflict with a program, plan, ordinance, or policy regarding bicycle or pedestrian facilities, or otherwise materially decrease the performance of such facilities. The EIR/EIS's conclusion that no conflicts would exist are based on assumptions and are not supported by substantial evidence analyzing conflicts with particular agency plans, policies, and regulations.

77. The EIR/EIS transportation impact analysis does not provide evidence supporting conclusions about conflicts with policies for transit, nonmotorized transportation, and vehicular circulation (other than conflicts with level of service ("LOS") policies that are not CEQA impacts), to judge impact significance for both construction and operation impacts. Individual

conflicts with each jurisdiction's general plan or local circulation element should be used to assess impact significance.

78. The EIR/EIS conflicts with the City's Circulation Element Policy C.1, Policy C.4, and Policy C.18 regarding extension of Geneva Avenue and construction of a new interchange for Geneva Avenue at U.S. 101 to replace the current U.S. 101 on- and off- ramp interchange with a more efficient configuration known as the Candlestick Interchange. The EIR/EIS fails to disclose that the design of the Brisbane LMF would preclude the long-planned Geneva Avenue overcrossing of the Caltrain right-of-way, an important east-west linkage to the U.S. 101 freeway. The Geneva Avenue extension is also proposed as part of the multi-jurisdictional San Francisco-San Mateo Bi-County Transportation Study approved in 2013. The EIR/EIS focuses almost exclusively on LOS impacts, which are no longer CEQA impacts. (See Draft EIR/EIS, Section 3.2.3 ([which mentions only LOS conflicts] and Appendix 2-J, Table 1 [which mentions almost entirely LOS conflicts].) The EIR/EIS must recognize the Project's conflicts with each of the applicable circulation element policies.

79. The Final EIR/EIS did not address or cure the Draft EIR/EIS's deficiencies regarding transportation impacts. Impact TR#3 fails to address traffic safety issues, which are a significant impact under CEQA. The EIR/EIS states construction of the East LMF would "generate 690 daily truck trips to the off-site waste facilities and 140 daily employee trips using personal vehicles during the excavation stage of construction… a total of about 35 inbound truck trips and 35 outbound truck trips would occur during a PM peak hour…" The EIR/EIS does not provide analysis regarding whether the addition of 35 inbound trucks per hour would cause traffic on freeway offramps back onto the freeway mainline. The EIR/EIS should have prepared a queueing analysis at the interchange serving the East LMF to determine whether adding 35 inbound trucks per hour during LMF construction would cause a safety impact on the U.S. 101 freeway when merging onto the freeway's southbound lanes. The conclusion that Impact TR#3 would be less than significant is not supported by substantial evidence related to traffic safety impacts.

80. Final EIR/EIS states, "[d]uring the first stage of construction, a relocated Tunnel Avenue would be built north of the existing Brisbane Fire Station with a new temporary signalized intersection at Bayshore Boulevard several hundred feet north of the existing Brisbane Fire Station access at the Bayshore Boulevard/Valley Drive intersection." The Final EIR/EIS transportation analysis is incomplete because it does not evaluate any of the transportation impacts associated with this roadway relocation.

81. Impact TR#4 fails to address traffic safety issues, which are a significant impact under CEQA. The Final EIR/EIS proposes to construct a substandard turn radius on the approach of Lagoon Road to Bayshore Boulevard, which includes tight curve radius that do not meet City roadway design standards. Further, the Authority's proposed realignment of Lagoon Road east of the Caltrain right-of-way includes substandard curve radii and a poorly designed uncontrolled intersection. This results in traffic safety hazards that are not evaluated in the Final EIR/EIS. The EIR/EIS's conclusion that Impact TR#4 would be less than significant is not supported by substantial evidence.

Air Quality and Greenhouse Gases Impacts Are Not Adequately Analyzed.

82. The EIR/EIS states that EMFAC 2017 was used for mobile source air pollutant and GHG emission calculations, but the required off-model adjustments required by the California Air Resources Board ("CARB") were not made to the EMFAC modeling, resulting in inaccurate and underestimated emission calculations, such as construction worker commute vehicle emissions.

83. Analysis of Impact AQ#3 does not fully disclose impacts on particular receptors. Rather, the EIR/EIS discloses the Project's "maximum impact" during construction along five subsections of the Project alignment. Such a "worst case" analysis does not sufficiently disclose "how frequently and for what length of time" sensitive receptors near an industrial project would be exposed to particulate concentrations exceeding standards. Particular receptors along the HSR alignment, such as Brisbane residents, are uninformed as to the duration of the Project's exceedance of air pollution concentrations or how great the exceedances would be during each year of construction. Impact AQ#3 analysis must disclose how frequently and for what length of

time air pollutant concentration thresholds are exceeded and the locations of sensitive receptors experiencing these exceedances.

84. The EIR/EIS does not adequately disclose specific human health risks to existing and future Baylands residents and employees from LMF operations and should have included a site-specific Health Risk Assessment. The EIR/EIS does not disclose potentially significance health risks associated with large increases in toxic air contaminants ("TACs") and $PM_{2.5}$ caused by LMF operations. The EIR/EIS should have analyzed the significance of its project-level and cumulative TAC and $PM_{2.5}$ impacts using standard Bay Area Air Quality Management District ("BAAQMD") methodologies.

85. The EIR/EIS's inadequate analysis of TAC and $PM_{2.5}$ do not disclose LMF health risk impacts on Brisbane receptors: Impact AQ#10 uses Federal Highway Administration ("FHWA") screening criteria, rather than more appropriate BAAQM methodologies, to conclude that localized emissions of mobile source air toxics would not be significant; Impact AQ#11 uses generic U.S. Environmental Protection Agency ("U.S. EPA") guidance to conclude that local $PM_{2.5}$ concentration increases would not be significant; and Impact AQ#12 inappropriately limits its scope to impacts of shifting tracks carrying freight trains to accommodate higher speeds for existing and new passenger rail.

Noise and Vibration Impacts Are Not Adequately Analyzed.

86. The EIR/EIS does not properly define Project noise impacts because the noise analysis does not follow the requisite FTA and FRA guidance but instead, mistakenly relies on noise thresholds from the FRA and FHWA guidelines. (See EIR/EIS, Section 3.4.3, *Consistency with Plans and Laws*.) The EIR/EIS lacks sufficient detail and does not quantify noise levels for all noise sources.

87. The EIR/EIS fails to analyze the Project-generated construction and operational noise following standard CEQA practice, which is to use thresholds derived from local noise elements or ordinances. (See Guidelines, Appendix G, Question XIII(a).) These local noise elements or ordinances are typically based on the State's Land Use Compatibility Guidelines. The EIR/EIS should have analyzed the Project's noise impacts with general plan noise standards or

noise ordinances of local agencies, including the City's Noise Ordinance. (City of Brisbane Municipal Code, Chapter 8.28, *Noise Control*.)

88. Instead, the EIR/EIS utilizes noise thresholds from the FRA and FHWA guidelines, which are much higher than accepted CEQA practice and do not assure noise impacts would be less than significant.

89. Inconsistently, however, the EIR/EIS uses the City's General Plan and Code of Ordinances policies and requirements as well as the State's Land Use Compatibility Guidelines to analyze noise, light, and glare impacts in Section 3.13, *Station Planning, Land Use, and Development*: "The Authority used the guidance from the General Plan policies to assess the potential impact of HSR project noise on future planned land uses at the Brisbane Baylands site." The EIR/EIS states "[t]he impacts on planned land use patterns from increased noise associated with operation of [the Project] would be significant under CEQA because increased train service would result in noise levels that exceed the conditionally acceptable noise limits established in the Brisbane General Plan…." This inconsistency finding with the City's noise policies is not just a land use impact but is also a physical noise impact and to the extent this threshold is exceeded, noise mitigation measures must be proposed to attain consistency with local standards along the entire Project alignment. The EIR/EIS should consistently analyze Project-generated construction and operational noise with State of California Land Use Compatibility Guidelines and general plan noise standards or noise ordinances of local agencies, which should be used as noise significance thresholds.

90. The EIR/EIS's operational noise impact analysis is inadequate because it fails to disclose quantitative noise levels in decibels of each of the locations experiencing significant noise impacts. Impact NV#2's analysis must disclose the magnitude of significant noise impacts at each of the affected locations, actual noise levels that sensitive receptors at those locations would experience, and how frequently and for what length of time the Project would exceed noise thresholds at those locations. This disclosure is required by *City of Long Beach v. City of Los Angeles* (2018) 19 Cal.App.5th 465, 487 [to be adequate, air quality analysis must disclose "how

frequently and for what length of time" sensitive receptors near an industrial project would be exposed to particulate concentrations exceeding thresholds.].

91. The operational noise impact analysis does not analyze cumulative operational noise impacts from the simultaneous operation of multiple Project components. The EIR/EIS fails to disclose the combined noise impacts of the Project as a whole, opting instead for separate piecemealed noise analyses are presented for train noise (Impact NV#2), passenger station parking (Impact NV#3), the LMF (Impact NV#4), and vehicular traffic noise (Impact NV#6). The EIR/EIS fails to disclose the combined noise impacts of all these components together.

92. Impact NV#4 fails to disclose and analyze significant noise impacts of the LMF on Brisbane sensitive receptors. The EIR/EIS compares LMF noise impacts on Brisbane sensitive receptors to HSR operational noise impacts and concludes that because LMF noise levels are lower, "the additional noise from either LMF would not contribute to or cause noise impacts at nearby sensitive receptors." This approach fails to combine all operational noise levels of the continuously operating Brisbane LMF into a Project-wide impact.

93. The construction and operational noise analysis understates the impacts of Project-generated noise from HSR trains and LMF operations on the community of Brisbane by failing to account for the unique topographical setting of Brisbane and its relation to noise impacts. Noise generated within the Brisbane LMF will propagate through the community and be more intrusive for Brisbane residents, particularly at night, than would typically occur in other, more urban communities along the San Francisco to San José Project segment.

94. The EIR/EIS omits required discussion of human health impacts of exceeding noise and vibration thresholds. EIR/EIS Section 3.4, *Noise and Vibration*, does not once mention "human health" and fails to disclose and analyze human health consequences of the Project's significant noise and vibration impacts. An EIR is required to disclose the "relevant specifics of … health and safety problems caused by the physical changes" caused by a project. (Guidelines, § 15126.2, subd. (a).) The noise analysis is inadequate because it: 1) fails to disclose generalized health effects associated with excessive noise and vibration levels; 2) fails to disclose the actual

increased noise levels the Project will cause; and 3) fails to connect or correlate these two pieces of information.

95. The EIR/EIS reports lower average daily noise levels than the levels that would actually occur in a typical work week. Table 3.4-5, Detailed Assessment Criteria for Construction Noise, includes 8-hour Leq and 30-day average Ldn standards. Unless the Authority proposes maintaining a 7 day/week construction schedule, averaging daily noise generated by construction activities during a typical 5-day work week (22/days per month) over a 30-day period would result in levels less than those analyzed in the EIR/EIS. In addition, the 30-day Ldn noise levels cited in Table 3.4-5 as "detailed assessment criteria for construction noise" are unacceptable for noise in residential areas and noise impacts are more severe than disclosed in the Final EIR/EIS.

96. The Final EIR/EIS states that "for construction of stations and the Brisbane LMF, the residential nighttime 8-hour Leq criterion of 70 dBA could be exceeded up to 354 feet from the superstructure, building shell, and landscaping construction activity and as far away as 706 feet from the pile-driving activity during the foundation work, or 446 feet from non-pile-driving activity during foundation work." The 8-hour Leq is an averaged noise level that will be consistently exceeded many times throughout an 8-hour period and nighttime LMF construction activities would cause sleep disturbance at distances greater than the distances at which the 8-hour average would be exceeded, particularly given Brisbane's geography, which facilitates noise from the Baylands to the City's hillside residential areas. Noise impacts are more severe than disclosed in the Final EIR/EIS.

Public Utilities and Energy Impacts Are Not Adequately Analyzed.

97. The EIR/EIS incorrectly estimates water supply availability, resulting in a legally inadequate impact analysis. A legally adequate analysis must show that future water supplies are reasonably likely to actually be available to the Project, and if future water supplies cannot confidently be determined to be available, the EIR/EIS must evaluate possible replacement sources and the impacts of using those sources. (*Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412.)

98. The EIR/EIS uses incorrect water supply calculations and overestimates the water supply available for Project operations. Impact PUE#8 analyzes the Project's need for operational water supply but does not address the contractual allotment of water among the various retail water agencies within San Mateo County, including the City. The EIR/EIS fails to disclose that the City's contracted water supply is 0.96 mgd, which is inadequate for LMF operation and could be reduced during water shortages, emergencies, or maintenance of the system.

99. A Water Supply Assessment prepared for the Baylands as part of the 2013 Brisbane Baylands Program EIR concluded that the City did not have adequate water supplies for future uses and implementation of water savings programs would be necessary even in the absence of Baylands development. The EIR/EIS states there will be a permanent increase in water use during operation but improperly concludes the impact would be less than significant.

100. Because water supplies available to serve the Project are insufficient, the EIR/EIS must analyze whether other water sources exist and describe environmental consequences of tapping such resources if there is a realistic possibility that water supplies will have to be obtained from a source other than Brisbane. (See *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 372-373.)

101. The analysis for Impact PUE#4 is inadequate because it fails to provide evidence to substantiate the conclusion that impacts of construction electrical infrastructure would be less than significant. Impact PUE#4 analysis states that network upgrades would be implemented pursuant to the California Public Utilities Commission ("CPUC") General Order 131-D, which regulates the planning and construction of electric generation. However, the EIR/EIS fails to analyze whether compliance with CPUC General Order 131-D would be sufficient to guarantee impacts would be less than significant.

102. Analysis of Impact PUE#4 is inadequate because it does not discuss Project impacts associated with water, wastewater, or other utility infrastructure necessary to serve the LMF.

103. Impact PUE#5 fails to document construction water use estimates and fails to explain how construction water demand was actually calculated. The EIR/EIS fails to consider the

actual amount of excavation and grading required for the LMFs and number of water tanker truck trips required, as well as any special conditions associated with construction on the former Brisbane landfill.

104. The EIR/EIS's analysis of Impact PUE#10 concludes that impacts on stormwater drainage facilities would be less than significant because the Project would not require or result in the relocation or construction of new or expanded stormwater drainage facilities. This conclusion contradicts another section of the EIR/EIS, which states the Project will "cause permanent changes in drainage patterns from the excavation and placement of fill, widening of existing embankments, and new impervious surfaces." The EIR/EIS states "[t]hese changes would affect stormwater runoff during rain events, including changes in runoff volume and rates and increased pollutant loading, compared to existing conditions."

105. Impact PUE#12 fails to analyze whether the Project conflicts with or obstructs a state or local plan for renewable energy or energy efficiency. Impact PUE#12 underestimates the amount of energy that would be consumed during construction of the East LMF by ignoring the need to haul solid hazardous and non-hazardous waste excavated from the former Brisbane landfill to an appropriate facilities in Kern and San Mateo counties for disposal.

106. A 2017 analysis of the Corinda Los Trancos Landfill, which is the proposed location for disposal of non-hazardous wastes excavated from the former Brisbane landfill, states that "based upon current waste disposal rates, average density of the waste, and daily cover usage at the facility, the estimated closure date for the landfill is 2034." (Republic Services and SWT Engineering, Ox Mountain Landfill Environmental Impact Report Technical Addendum – Clarification of Landfill Capacity, March 2017, p. 2.) San Mateo County's 2017 Solid Waste Facility Permit for the landfill identifies a closure date of 2034. As stated in a report by the 2018-2019 San Mateo County Civil Grand Jury, "between 2012 and 2018, the amount of MSW (municipal solid waste) disposed each year at…Corinda Los Trancos Landfill…has increased by about 20 percent. Other factors staying constant, continued ***increases in waste disposal will shorten the landfill's life***." (Emphasis added.) Thus, the EIR/EIS fails to disclose the tenuous nature of the facility's anticipated lifespan.

107. The Authority's plan to excavate 2,129,570 cubic yards of municipal waste from the former Brisbane landfill for removal to the Corinda Los Trancos Landfill was not known at the time the Corinda Los Trancos permit was approved. Thus, municipal waste from the former Brisbane landfill was not accounted for in projected closing data for Corinda Los Trancos. The Authority's plan to excavate over 2.0 million cubic yards of solid waste and soil in Brisbane for transport to Half Moon Bay would adversely affect the expected lifespan of the Corinda Los Trancos facility and be inconsistent with the San Mateo County Countywide Integrated Waste Management Plan ("CIWMP"). The EIR/EIS solid waste impact analysis is inadequate and fails to disclose the Project's inconsistency with the state's recycling goals and CIWMP.

108. The Final EIR/EIS discloses that the hazardous waste generated by construction of the East LMF (Alternative A) represents approximately 2 percent of the total remaining hazardous waste landfill disposal capacity in California. Excavations within the former Brisbane landfill for LMF construction would generate nearly three-fourths of Alternative A's hazardous waste, representing 1.4 percent of the State's entire hazardous waste landfill disposal capacity.

109. The Final EIR/EIS states the "Authority's Sustainability Policy minimizes the amount of solid waste generated during construction by requiring construction waste practices that divert at least 75 percent from a landfill." The Final EIR/EIS demonstrates no attempt to reduce the amount of hazardous and non-hazardous solid waste proposed to be extracted from the former Brisbane landfill or to divert any of that waste from being transported for disposal at Corinda Los Trancos and Kettleman Hills landfills.

110. The Final EIR/EIS discloses that eight major utility fuel lines owned by Kinder Morgan cross the alignment for Alternative A in Brisbane and six fuel lines cross the alignment for Alternative B. The Final EIR/EIS is inadequate because it fails to disclose and analyze hazards associated with an existing high-pressure liquid gas line conveying jet fuel from the Kinder Morgan Tank Farm to the San Francisco Airport ("SFO") that runs parallel to the Brisbane Lagoon adjacent to the existing Lagoon Road. Kinder Morgan's buried pipes along the northern shoreline of the lagoon adjacent to Lagoon Road currently require construction associated with the

realignment of Lagoon Road and removal of existing pavement to be conducted with low impact methods to avoid disruption to the flow of jet fuel to SFO and related water quality hazards.

111. The Final EIR/EIS fails to disclose whether excavations within waste matrix of the former Brisbane landfill or the proposed realignment of Lagoon Road north from its current alignment adjacent to Brisbane Lagoon could disrupt or require relocation of an existing Kinder Morgan jet fuel line, which is known to be located in the vicinity of existing Lagoon Road.

112. The EIR/EIS fails to analyze these hazards and require appropriate mitigation for the serious hazards which could result from an accident during the realignment of Lagoon Road and removal of existing pavement.

Biological and Aquatic Resources Impacts Are Not Adequately Analyzed.

113. The EIR/EIS does not assess the effects of climate change and sea level rise on increasing the vulnerability of special status species and habitats to project impacts. Elevations within the resource study area ("RSA") for biological and aquatic resources "range from approximately 1 foot below sea level at the northern end of the RSA to 74 feet above sea level near the southern end," yet the biological impact analysis fails to address whether structural modifications or relocations of elements of the Project would be required to maintain structures and operations, which may have further impacts on near-shore habitats. The analysis fails to specify how projected sea level rise would be taken into account in selecting mitigation sites for wetland or waters resources that would be affected by the Project.

114. The EIR/EIS does not disclose or analyze the potential effects of fugitive dust and landfill pollutants created by Project construction and operation on plant and wildlife species. Dust deposition is known to affect plant communities by diminishing light and "fugitive dust" may affect the pH of streams and waterbodies, change the nutrient balance in coastal waters, deplete soil nutrients, and other ecosystem functions. The Project proposes to construct the East LMF on the former Brisbane landfill that overlies contaminated groundwater. Excavation, extensive over a long period of time, would be required to prepare the site for construction of the LMF, which could mobilize the various pollutants in these areas as dust, contaminated water runoff, and contaminated groundwater. The EIR/EIS states contaminants that could be disturbed by

excavation in the former Brisbane landfill under Alternative A include heavy metals, VOCs (including methane), semi-VOCs, petroleum hydrocarbons, PCBs, pesticides, and asbestos products.

115. Exposure of the underlying layers of the former Brisbane landfill site would also likely attract more birds and small mammals, as well as rats and other vermin, the health effects of which were not analyzed in the EIR/EIS. The EIR/EIS did not consider potential effects related to bird mortality, invasive species, and increased mobility of landfill pollutants related to the activities of birds and small mammals at an exposed landfill site.

116. The EIR/EIS does not specify the extent of federally protected wetlands and waters that would be affected by the Project, or the methods used to identify them. The EIR/EIS's wetland delineation efforts are based on limited surveys in some wetland and adjacent upland, but the EIR/EIS does not identify the locations of the nine sampling locations for "potential LMF" sites within the aquatic RSA. The EIR/EIS does not explain how or why the EIR/EIS utilized different delineation methods, how the two methods differ in data collection, and how the data collected using these different guidance documents is integrated.

117. The EIR/EIS's estimates of jurisdictional waters and wetlands affected by the Project in Brisbane are inaccurate, misleading, and do not capture wetlands at Icehouse Hill or near the proposed relocated fire station and understates the wetland areas north of Icehouse Hill. Impacts to the drainage caused by the Tunnel Avenue bridge and roadway relocation as well as relocation of Visitacion Creek are not addressed. The EIR/EIS presents different amounts of acreage impacted than what is presented in the associated technical report, confusing readers.

118. The impact analysis of aquatic resources impermissibly limits its evaluation to state or federally protected wetlands when quantifying the acreage and fails to identify the locations for these acreages.

119. The EIR/EIS fails to address the substantial impacts associated with relocation of Visitacion Creek. Impact BIO#20 states that "construction of either alternative would result in the conversion and degradation of aquatic resources by relocating a portion of Visitacion Creek and

filling several wetlands" but fails to describe where or how the creek would be relocated, or address any impacts of creek relocation.

120. Impacts on migratory birds are significant. Impact BIO#15 contains an inadequate analysis because it fails to consider whether removal or destruction of migratory bird nests, which are ubiquitous throughout areas affected by the Project, would result in significant impacts.

121. Impacts on special status plants are insufficiently disclosed. Impact BIO#17 lists impacts solely in terms of acreage. Affected acreage, in turn, is based on the desktop analyses, modeling incorporating outdated survey information, and only limited surveys.

122. The Draft EIR/EIS deficiencies with regard to biological and aquatic resource impacts were not cured in the Final EIR/EIS. The Draft EIR/EIS contains discrepancies between LMF-related impact acreages presented in the Final EIR/EIS and the technical studies upon which it is based. The Final EIR/EIS biological impact analysis relies on 103 acres of permanent land conversion rather than the correct number of 121 acres, resulting in an inaccurate impact analysis.

Hydrology and Water Resource Impacts Are Not Adequately Analyzed.

123. The analysis of Impact HYD#2 fails to adequately consider the extent of construction proposed on the Bayland site, which includes grading and earthwork, filling "most of the Brisbane wetlands" and a portion of the Visitation Creek wetlands and scrub/shrub wetlands, as well as placing Visitacion Creek Tributary and Wetland into a culvert. The EIR/EIS also fails to recognize Title 27 landfill closure requirements requiring a minimum of 3% slope or to provide an underground drainage system meeting specific criteria.

124. The extensive grading and construction of impervious surfaces would substantially alter the existing drainage pattern of the area, and is a significant impact under CEQA. Project construction would require "substantial quantities of grading and earthwork" for the Tunnel Avenue overpass and construction of the Brisbane LMF under both alternatives, resulting in "permanent, direct, localized impacts on existing drainage patterns." "Larger quantities of grading would result in larger changes in topography, which would translate into a larger impact on drainage patterns."

125. The EIR/EIS estimates that construction of the Brisbane LMF requires millions cubic yards of earthwork, including minor and major grading and creation of flat areas for structures and rail storage areas. Based on the Draft EIR/EIS, over half of Icehouse Hill would be graded to construct the West LMF. On the east side, over 2.0 million cubic yards of hazardous and non-hazardous municipal waste would be excavated and transported to landfills in Kern and San Mateo counties for reburial. LMF grading plans ignore Title 27 requirements for minimum slope or installation of an extensive underground drainage system. The hydrology and water impacts of this extensive grading are not fully analyzed and should include a detailed, accurate assessment of the Project's impacts on drainage patterns and runoff volumes.

126. The Draft EIR/EIS states that LMF construction includes new impervious surfaces in wetland and undeveloped areas and construction of new onsite and offsite drainage systems and the modification of existing drainage systems but the EIR/EIS fails to address the impacts of new drainage facilities developed for the Project. The combined environmental impact of construction of new impervious surface areas on undeveloped land would substantially alter drainage patterns and increase the rate and amount of surface runoff. Instead, the EIR/EIS states, without support, that impact avoidance and minimization measures ("IAMFs"), along with planned drainage systems, would minimize these impacts. Because drainage studies were not prepared, the EIR/EIS does not analyze how the undisclosed amounts of grading, the filling of significant portions of wetlands, redirecting of channels, and acres of new impervious area would have a substantial impact on the rate and amount of surface runoff.

127. Impact HYD#2 should have included and analyzed: (1) a drainage study to quantify increased flows from the Project's impervious surfaces, (2) analysis of the capacity of downstream drainage facilities to accept those flows, (3) a description of the on- and off-site facilities needed to convey runoff from Project facilities, (4) analysis of the impacts that would result from construction of on-and off-site drainage improvements, and (5) mitigation measures for any significant impacts that might result from Project-induced changes to drainage patterns and stormwater runoff.

128. Impact HYD#4 fails to fully address impacts associated with construction of the LMF related to excavations into the former Brisbane landfill and its buried waste (East LMF) or into contaminated soils within remediation Operable Units UPC-OU-SM and OU-2 (West LMF). No analysis is conducted related to water quality hazards associated with excavations into the former Brisbane landfill and its buried wastes that, for the first time, the Final EIR/EIS characterizes as requiring excavation of 208,300 cubic yards of hazardous waste and 1,874,500 cubic yards of non-hazardous waste. Impact HYD#4 does not, but is required to, analyze water quality impacts of the 432,000 cubic yards of contaminated soils that are proposed to be excavated, loaded on trucks, and hauled offsite during construction of the West LMF. In the absence of such analysis and substantial evidence that the Best Management Practices ("BMPs") designed for non-hazardous soils would avoid significant impacts during excavations of contaminated soils and uncharacterized solid wastes, the EIR/EIS cannot support its conclusion that Impact HYD#4 would be less than significant.

129. Impact HYD#4 provides no discussion of construction water quality impacts that would be associated with Visitacion Creek's relocation. Impact HYD#4 must analyze and disclose the water quality impacts associated with filling a large portion of Visitacion Creek and relocating the creek to flow into the Brisbane Lagoon rather that into the San Francisco Bay.

130. Impact HYD#7 does not adequately analyze the Project's operational impacts on surface water quality because it does not consider the Baylands' unique soil composition. The EIR/EIS states that during Project operations, pollutants such as brake dust, metals and polycyclic aromatic hydrocarbons would be discharged into aquatic resources, deposited on nearby impervious surfaces and possibly into a storm drain inlet and then, into aquatic resources, which could affect water quality. The EIR/EIS incorrectly concludes that the continuous impacts on surface water at the LMF sites would be less than significant. The LMF sites are located in an area of wetlands and tidally influenced zones, and the soil is a mix of native soils, marine sediment, and layered with trash. This unique soil composition must be analyzed in conjunction with the release of pollutants during Project operations because tidally influenced areas will likely make it easier for pollutants to reach waterways. Both proposed LMF sites are already highly

contaminated with waste and hazardous materials and must be fully remediated before construction and operation to ensure the Project would not provide additions to the pollution load.

131. Impact HYD#8 defers site-specific analysis of soil and groundwater contamination risks to during construction activities. Impact HYD#8 states that "[r]esolutions may involve conducting a site investigation, implementing remediation activities, and properly disposing of contaminated materials…" if undocumented contamination is detected *during* construction activities. Site investigations and remediation plans must be conducted prior to construction in order to properly disclose impacts and mitigate them. Contamination is already known to exist within the West LMF. The EIR/EIS erroneously concludes that the impact is less than significant and provides no substantial evidence to support this conclusion.

132. Impact HYD#13 fails to analyze construction of the West LMF, which would create a significant environmental impact on floodplain hydraulics. The EIR/EIS relies on the implementation of future flood protection plans (described in HYD-IAMF#2) and coordination with local floodplain managers to "avoid substantial permanent impacts on floodplains"; however, HYD-IAMF#2 is improperly deferred mitigation with no performance standards. The EIR/EIS should have disclosed pre-mitigation floodplain hydraulics impacts at the LMF sites in the absence of IAMF#2 and judged them as significant. A more effective, non-deferred operational water quality mitigation measure should have been formulated that identified specific measures to be implemented at the LMF sites, given their unique environmental setting.

133. The EIR/EIS must analyze sea level rise as a CEQA impact because the Project would alter drainage patterns, which would exacerbate inundation impacts. Sea level rise analysis under CEQA is warranted when a proposed project may exacerbate an environmental hazard. (*California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 388.) It is also required when sea level rise will create a flood hazard causing a proposed project to release pollutants due to inundation. (See, e.g., Guidelines, Appendix G, Question X(d).) The EIR/EIS does not include a CEQA-compliant sea level rise analysis, and instead incorrectly states that such analysis is not required by CEQA. Numerous changes to the drainage system will result from the construction of the Brisbane LMF due to the required grading of the sites to a flat

surface, including the substantial grading of Icehouse Hill, as well as the construction of additional impervious surface area for the LMF on wetlands that must be filled to create the LMF sites. Other locations along the Project alignment would require additional impervious surfaces that would increase runoff.

134. The EIR/EIS identifies the Brisbane Lagoon and portions of the LMF as a location most susceptible to sea level rise but does not analyze how the Project's drainage impacts would exacerbate local sea level rise impacts in Brisbane and other site-specific locations along the Project alignment.

135. The EIR/EIS must analyze sea level rise as a CEQA impact because the LMF and other Project facilities will be located in flood hazard areas, risking release of pollutants due to inundation. These pollutants are catalogued in Impact HYD#5, but the ER/EIS does not analyze how inundation due to sea level rise would worsen water quality impacts due to release of the pollutants. To fully analyze sea level rise impacts, the EIR/EIS must analyze the Project's compliance with the San Francisco Bay Conservation and Development Commission's ("BCDC's") policies addressing the impacts of climate change in the San Francisco Bay.

Geology, Soils, Seismicity, and Paleontological Resource Impacts Are Not Adequately Analyzed.

136. The EIR/EIS insufficiently analyzes the extent of aggregate impacts associated with extensive excavation, grading, and construction on soft, unstable soil that is also contaminated with landfill waste or hazardous material. The GEO Technical Report discusses how the San Francisco Bay is comprised of soft, compressible clayey silt to silty clay, known as Young Bay Mud, which underlies much of the artificial fill on which construction of both Brisbane LMF sites are anticipated. Young Bay Mud is a sensitive soil with "low strength" that may not support new construction loads and results in bearing capacity and ground failures. The Technical Report, notes that Young Bay Mud "is not always visible or mapped at the ground surface" but is susceptible to large consolidation settlement and its presence has a potential for significant settlement under new construction loads. The Technical Report further states that the former Brisbane landfill "sits directly on Young Bay Mud deposits" ranging in thickness from approximately 35 to 40 feet. The

EIR/EIS also states that structures built on Young Bay Mud "are susceptible to potentially large consolidation settlement and must be able to accommodate or avoid such deformation." Subsidence along Lagoon Road is a frequent occurrence because it sits upon municipal wastes. The EIR/EIS does not discuss how the Brisbane LMF would "accommodate or avoid" soil settlement.

137. Despite acknowledging that construction on a landfill has the potential to release flammable gases, Impact GEO#1 does not adequately analyze how impacts from construction, such as excavation of the soft soil under both possible Brisbane LMF sites, could be heightened because both sites contain hazardous waste materials. Impact GEO#2, Impact GEO#3, Impact GEO#4, and Impact GEO#5 fail to analyze how construction of the Brisbane LMF on both locations and the relocation of Bayshore Station and Tunnel Avenue overpass are located on or very near sites containing hazardous waste and materials. The EIR/EIS must analyze the susceptibility of construction on expansive soils, corrosive soils, soil erosion, and shallow bedrock and groundwater in conjunction with the fact that the soils contain hazardous waste and a geotechnical evaluation is needed to address the surrounding slopes of the landfill.

138. The analysis of Impact GEO#6 does not sufficiently analyze soils and geological hazards associated with the construction of the proposed LMFs on the former Brisbane landfill or the site west of the Caltrain corridor, which has a long history of use as an unclassified landfill and contaminated railyard.

139. Despite recognizing that construction of the East LMF "would require significant earthwork cut and fill", Impact GEO#6 does not analyze the effects of that extensive excavation within the landfill site, despite admitting that landfills "pose hazards for construction associated with the release of flammable gases (e.g., methane) and the potential for ground settlement due to the compressibility of refuse and decomposition of organic materials." The former Brisbane landfill was in operation from 1932 to 1967 and consists of approximately 364 acres containing refuse as deep as 40 feet. Because of decades of use as an unclassified landfill, the large size and depth of the landfill, and the extent of construction, the EIR/EIS must undertake adequate analysis

of geologic and geotechnical hazards impacts associated with LMF construction to provide substantial evidence to support the significant impact conclusion.

140. In the same regard, the EIR/EIS concludes construction of the West LMF on the contaminated former Brisbane Rail Yard "would not expose people or structures to risks associated with construction on landfills" despite being only 450 feet west of the former Brisbane landfill. The EIR/EIS must analyze whether significant amounts of excavation and grading on a site adjacent to a former landfill may result in soils and geologic hazards, yet Impact GEO#6 fails to analyze the approval of landfill closure and post-closure plans, remediation standards, and requirements for the use of specific technologies for landfill closure in its geologic and soils impact analysis. Lack of coordination with the lead regulatory agencies for oversight of soil and groundwater cleanup requirements could exacerbate geologic and soils impacts.

141. The EIR/EIS discloses the LMF will be subject to certain hazards but does not evaluate the extent of public health and safety hazards related to construction of the LMF in an area subject to the following hazards:

a. **Construction Below the Groundwater Table.** Table 3.9-11 discloses that foundations and below-grade structures and modifications to the Bayshore Caltrain Station could involve excavations and construction below the area's groundwater level;

b. **Construction to be Affected by Soft Soils.** Table 3.9-12 discloses that the East LMF and associated track and right-of-way modifications, modifications to the Bayshore Caltrain Station, and relocation of the Tunnel Avenue bridge could be adversely affected by soft soil conditions;

c. **Construction of Structures in Areas with Expansive Soils.** Table 3.9-13 discloses that the East LMF and associated track and right-of-way modifications, modifications to the Bayshore Caltrain Station, and relocation of the Tunnel Avenue bridge would be constructed in areas with expansive soils;

d. **Construction Involving Concrete or Steel in Contact with Potentially Corrosive Soils.** Table 3.9-14 discloses that the East LMF and associated track and right-of-way

modifications, modifications to the Bayshore Caltrain Station, and relocation of the Tunnel Avenue bridge would place steel and/or concrete in contact with potentially corrosive soils;

e. **Potential for Construction to Result in Erosion.** Table 3.9-15 discloses that the East LMF and associated track and right-of-way modifications, modifications to the Bayshore Caltrain Station, and relocation of the Tunnel Avenue bridge would have the potential for causing soil erosion;

f. **Potential for Liquefaction.** Table 3.9-16 discloses that the East LMF and associated track and right-of-way modifications, modifications to the Bayshore Caltrain Station, and relocation of the Tunnel Avenue bridge would all be subject to liquefaction; and

g. **Potential for Construction on Soils Subject to Lateral Spreading.** Table 3.9-17 discloses that the East LMF and associated track and right-of-way modifications, and relocation of the Tunnel Avenue bridge would be hazards associated with construction on soils subject to lateral spreading.

142. The Final EIR/EIS does not evaluate the extent of public health and safety hazards related to construction of the LMF in an area subject to all of these hazards but rather indicates that geotechnical conditions will not be evaluated to determine the extent of hazards that LMF construction might cause until sometime after Project approval "prior to construction." The Final EIR/EIS fails to provide the public with an understanding of the extent to which geotechnical hazards associated with the Brisbane LMF could impact public health and safety. Without geotechnical studies of the area proposed for the Brisbane LMF or any other portion of the San Francisco to San José segment, the Final EIR/EIS incorrectly determines the Project would not result in any "significant impacts on geology, soils, seismicity."

Hazardous Materials and Wastes Impacts Are Not Adequately Analyzed.

143. The former Brisbane landfill and Remediation Operable Units UPC-OU-SM and UPC-OU-2 contain dangerous hazardous materials and waste and the level of contamination on the former Brisbane Rail Yard and former Brisbane landfill is significant. The former Brisbane landfill was in operation from 1932 to 1967, during which it received waste streams of domestic, industrial and shipyard waste, sewage, and rubble. The former Brisbane landfill site contains

groundwater contamination with aviation fuel, diesel, gasoline, benzene and fuel oxygenates and contains heavy metals, VOCs (including methane), semi-VOCs, petroleum hydrocarbons, PCBs, pesticides, and asbestos products. The EIR/EIS notes that the West LMF site has groundwater contaminated with halogenated organic solvents, the soil is contaminated with metals such as chromium, copper, zinc, lead, arsenic as well as petroleum hydrocarbons and VOCs.

144. The EIR/EIS does not adequately discuss the direct environmental impacts caused by the construction of the Brisbane LMF on either the former Brisbane landfill or remediation operable units UPC-OU-SM and UPC-OU-2 and the potential for hazardous materials exposure. The EIR/EIS hazardous waste impact analysis, IAMFs, and Mitigation Measure HMW-MM#1 do not take into consideration the necessity and extent of preparing and securing regulatory approval for such plans, as well as the need for remediating the site before construction and the timing of the plans in conjunction with the construction of the Project. The EIR/EIS does not meaningfully analyze the extent and significance of the Project's hazardous waste impacts, pre- and post-mitigation.

145. The Draft EIR/EIS and Hazardous Materials and Wastes Technical Report ("HMW Technical Report") recognizes potential impacts in a qualitative manner and lists contaminants "that could be disturbed by excavation." the EIR/EIS briefly lists possible hazards but does not provide any analysis as to the potential health risks and public health and safety impacts and their severity associated with construction of the Brisbane LMF.

146. The EIR/EIS provides no mitigation measures for these impacts.

147. The EIR/EIS must include site-specific soils testing and waste characterization and then, quantitatively disclose and sufficiently analyze hazards related to construction on the proposed Brisbane LMF sites to adequately assess likely impacts and whether those impacts can be reduced to a less than significant level through the incorporation of mitigation measures. These impacts would be significant because they would "create a significant hazard to the public and environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials, which is one of the EIR/EIS significance thresholds.

148. Constructing the Brisbane LMF on either site requires extensive construction earthwork cut and fill into contaminated soils or hazardous waste. The EIR/EIS does not provide information identifying the quantity or quality of the type of material the Authority plans to use to cap the landfill in compliance with Title 27. The EIR/EIS does not provide information on the nature, quantity or quality of the replacement soil to be imported for the required landfill cap, nor do any of the EIR/EIS technical analyses account for import of non-permeable soils required to cap the landfill. Construction of the East LMF requires construction close to the grade of the existing Caltrain line and would require construction of a large, manufactured, westerly facing slope. The EIR/EIS does not address the slope's design requirements, how slope stability would be ensured during landfill excavations, the necessary additional remedial work, and whether the slope would be located on the Authority's property or adjacent property to the east of the East LMF site.

149. The EIR/EIS improperly characterizes construction Impacts HMW#2 and HMW#10 as temporary and does not consider that construction on the site west of the Caltrain right-of-way or landfill would have long-term effects, especially since remedial action plans and landfill closure plans are required, which address long-term protection of human health and environment.

150. Table 2-25 of the EIR/EIS assumes that construction of the West Brisbane LMF will reuse approximately 79% of excavated materials from the West LMF without analyzing the site's required remediation. The EIR/EIS fails to discuss that the West LMF is within an active remediation site for which regulatory approval and implementation of remedial action plans and remedial development implementation plans are a prerequisite to site development.

151. The Authority should approve and develop a Brisbane LMF site only after regulatory agency final approvals to minimize the Project's hazardous waste impacts. The Draft EIR/EIS does not discuss the construction timing of either the East or West LMF in relation to the necessary hazardous waste remediation requirements, even though such information is available and must be considered to adequately analyze the significance of hazardous materials and waste impacts. The EIR/EIS does not sufficiently discuss and analyze regulatory compliance for remediating significantly contaminated soil despite the fact that the EIR/EIS recognizing a

potential LMF site is a former landfill requiring Title 27 landfill closure compliance and Remedial Action Plans that have been approved. The Authority should have sought more information about planned remediation activities located on the East and West LMF sites and considered that information in the EIR/EIS's hazardous waste impact analysis.

152. The West LMF is planned to be constructed on a site west of the Caltrain alignment, which is comprised of two operable units for remediation regulatory purposes: UPC-OU-SM and UPC-OU-2. Remedial action plans for both of these sites have been approved. The EIR/EIS does not discuss these RAPs or consider its necessary implementation in conjunction with the Project, which is feasible to obtain.

153. The EIR/EIS hazardous waste impact analysis, IAMFs, and Mitigation Measure HMW-MM#1 do not consider the necessity and extent of preparing and securing regulatory approval for landfill closure before construction and the timing of the plans in conjunction with the construction of the Project. The EIR/EIS does not meaningfully analyze the extent and significance of the Project's hazardous waste impacts, pre- and post-mitigation.

154. The Final EIR/EIS fails to cure these impact analysis deficiencies and instead, provides new information regarding the excavation of hazardous materials from the former Brisbane landfill, which provides an increase in significant impacts and triggers recirculation of the environmental document for further public review and comment. The Final EIR/EIS identifies (1) that construction of the East LMF would require excavation into the municipal waste matrix of the former Brisbane landfill and (2) a portion of waste materials excavated from the former Brisbane landfill could be hazardous and require transport to a Class I landfill as hazardous materials.

Safety and Security Impacts Are Not Adequately Analyzed.

155. Impact S&S#1 is inadequately analyzed because it does not describe the nature and magnitude of temporary road closures, relocations of services, and construction-related modifications that would result in emergency vehicle access delays and increases in response times. While the EIR/EIS states there would be a significant impact due to the realignment of Lagoon Road, and realignment of Tunnel Avenue for construction of the East LMF, the EIR/EIS

fails to analyze how construction would specifically identify emergency access routes or analyze impacts of emergency vehicle access delays and increases in response times despite the feasibility of presenting this analysis.

156. Impact S&S#10 (Permanent Exposure to Traffic Hazards) does not, but must, consider and implement Caltrans Interim Safety Guidance to determine the significance of the Project's potential safety and security impacts under CEQA. Instead, the Draft EIR/EIS only identifies surface transportation safety issues related to grade crossing and railroad hazards. The EIR/EIS does not provide an inventory of applicable local safety-related plans as recommended by Caltrans, address such plans' applicability to the Project, or identify or address any of the safety review topics mentioned in the Guidance. To adequately determine whether the Project will result in a significant safety and security impact, Impact S&S#10 should apply the Caltrans Interim Safety Guidelines.

157. Eight major utility fuel lines owned by Kinder Morgan cross the alignment for Alternative A in Brisbane and six fuel lines cross the alignment for Alternative B. The Final EIR/EIS fails to disclose and analyze hazards associated with the existing high-pressure liquid gas line conveying jet fuel from the Kinder Morgan Tank Farm to SFO that runs parallel to the Brisbane Lagoon adjacent to the existing Lagoon Road. Kinder Morgan's buried pipes along the northern shoreline of the Brisbane Lagoon require construction associated with the realignment of Lagoon Road and removal of existing pavement, conducted with low impact methods to avoid disruption to the flow of jet fuel to SFO and related public safety and water quality hazards. The Final EIR/EIS fails to disclose whether excavations within the waste matrix of the former Brisbane landfill or the proposed realignment of Lagoon Road north from its current alignment adjacent to Brisbane Lagoon could disrupt or require relocation of an existing Kinder Morgan jet fuel line, which is known to be located in the vicinity of existing Lagoon Road.

Socioeconomics and Communities Impacts Are Not Adequately Analyzed.

158. The EIR/EIS impact analysis did not address additional displacement, relocation, and acquisition impacts. The EIR/EIS provides definitions of "displacements and relocation" that omits consideration of an essential government facility and a definition of "acquisition" that

excludes temporary construction easements. The EIR/EIS's definition of "acquisition" results in the failure to properly analyze impacts associated with obtaining a temporary construction easement for the corporation yard and Kinder Morgan Brisbane Terminal for construction of the LMF.

159. Impact analyses of SOCIO#1 does not sufficiently recognize the specific community disruption and division impacts from the Project's disruptive construction activities in Brisbane, which would result in temporary road closures and construction activities that would physically divide Brisbane, which is a significant impact. (See Guidelines, Appendix G, § XI(a).)

160. The EIR/EIS concludes that "[c]onstruction activities would temporarily disrupt communities and neighborhoods along the alignment through changes in circulation and access" However, the EIR/EIS does not adequately analyze the effects of the 4.5-year long construction of the LMF, requiring the formation of physical fencing and barricades.

161. The physical division of communities is considered a significant impact under CEQA. (See Guidelines, Appendix G, § XI(a).) Impacts SOCIO#2 , SOCIO#3 and SOCIO#5) do not recognize the impacts from the Project's disruptive construction activities from construction fencing, road alignments, and increased train frequency that would permanently physically divide Brisbane and would be a significant impact and operations that would result in an increase in train arrival/departure frequency in Brisbane.

162. Impact SOCIO#2 does not consider how the realignment of the Tunnel Avenue overpass, extension of Lagoon Road, and new southern connection of Tunnel Avenue to the intersection of Bayshore Boulevard and Valley Drive would physically divide or disrupt communities within the City. Plans to construct the LMF require relocation of the fire station and to reach destinations south of the fire station, "[f]ire trucks exiting the relocated fire station would only be able to turn northbound onto Bayshore Boulevard" and "make a U-turn at the signalized Bayshore Boulevard/Valley Drive intersection." The Project's required fire station relocation causes a physical divide between sites north and sites south of the fire station in need of emergency services. Relocating the fire station to a site allowing only northerly exits would disrupt established community interaction patterns to the detriment of residents south of the fire

station, which is where most of the City's population resides, since fire trucks' response times will be severely extended.

163. Impact SOCIO#2's analysis fails to thoroughly analyze business displacements within the City and fails to consider the Baylands' plans for residential and commercial development of the area, which the EIR/EIS erroneously describes as "partially vacant."

164. The EIR/EIS section 3.12 and the Community Impact Technical Report states the Project would "require three business displacements," but does not provide a sufficient explanation of which businesses would be dislocated or how it came to its significant impact conclusion.

165. The EIR/EIS relies on the existing vacancy around the Project site to determine the Project will not create "a new barrier or division of Brisbane. . . preventing any loss of community character, function, or cohesion" despite the City's plans to develop the Project site with much-needed housing. The EIR/EIS must discuss why the placement of a 121-acre LMF near the center of a planned community would not affect the cohesiveness of the Baylands development.

166. Specifically, Impact SOCIO#3 fails to analyze how the increased train frequency projected by the Project will present obstacles to community members traveling across the rail tracks, thereby weakening community cohesion. The EIR/EIS points to how the Project would provide bike and pedestrian facilities, assuming without evidence that people would utilize those facilities and they would provide a sufficient alternative to accomplish transportation goals. The EIR/EIS must analyze community disruption impacts of the increase in train frequency anticipated by the Project in comparison with the frequency of use of the existing Caltrain corridor.

167. The EIR/EIS inadequately analyzes the potential for urban decay impacts. If a project's economic effects cause changes to the physical environment, this is an indirect effect that must be analyzed in an EIR if significant. (Guidelines, §§ 15064 subd. (e); 15131, subd. (a).) Urban decay, or the extensive and widespread physical deterioration of properties or structures in an area caused by business closures and multiple long-term vacancies, is an example of such an indirect impact recognized under CEQA. (See *Joshua Tree Downtown Business Alliance v. County of San Bernardino* (2016) 1 Cal.App.5th 677, 685.) Impact SOCIO#8 incorrectly

concludes that "[n]o CEQA significance conclusions are required related to this specific impact." When evidence suggests that urban decay could result from the Project, the lead agency must assess that impact, rather than "summarily dismissing the possibility" of urban decay as a social or economic effect that is outside the scope of CEQA. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1207.)

168. Construction of the LMF at either location and realignment of the Tunnel Avenue overpass would occur over a period of multiple years, and construction impacts would last for several years. The relocation of the existing Tunnel Avenue bridge would modify Brisbane's historical entrance from the freeway and bypass the City's only existing shopping center. The EIR concludes that such construction would result in business displacements in Brisbane but fails to address relocation of the community's historical entry. Thus, the EIR/EIS does not analyze the potential for urban decay in Brisbane despite anticipating the Project would displace as many as 202 commercial and industrial businesses solely along the San Francisco to San José Project section. The EIR/EIS should have analyzed the potential for urban decay within the Project section.

Station Planning, Land Use, and Development Impacts Are Not Adequately Analyzed.

169. The Brisbane LMF is fundamentally inconsistent with the Brisbane General Plan and Plan Bay Area 2050, the Bay Area's sustainable communities strategy, which designated the Baylands as a priority development area due to its potential for transit-oriented development. The EIR/EIS acknowledges that building an LMF on the Baylands is inconsistent with this transit-oriented development designation, but fails to fully and properly analyze these inconsistencies. Among other impacts, building the massive industrial LMF nearly adjacent to already voter-approved housing will negatively impact air quality, safety, traffic, housing affordability, quality of life, and is inconsistent with the state's policy to address environmental justice issues and not create new environmental justice issues, as the LMF will do.

170. Impact LU#5 and Impact LU#6 understate conflicts with the adopted Brisbane General Plan. The EIR/EIS acknowledges that construction of the Brisbane LMF would reduce the amount of land available for development by approximately 16.2% for the East Brisbane LMF and

18.9% under the West Brisbane LMF and that construction of both the East LMF and West LMF "would be considered a permanent alteration of a planned land use pattern." The EIR/EIS inconsistently claims that the permanent acquisition of land planned for commercial development in the Baylands "would not necessarily impede the planned development envisioned in the Brisbane 2018 General Plan Amendment" and asserts that "this development could still occur in the areas not affected by the project." There is no evidence for this conclusion. The LMF's footprint would take away 16-19% of the land currently designated for planned development and convert it to an incompatible industrial use would have an enormous impact on the ability to develop essential residential and related uses in the Baylands. Taking away 16-19% of the land currently designated for planned development and converting it to an incompatible industrial use—the LMF—will have a significant impact on the viability of the Baylands development.

171. The analysis mischaracterizes how the Project would interfere with Brisbane's ability to meet its regional housing needs assessment ("RHNA") numbers. The City's RHNA for the current cycle was finalized on December 16, 2021, when the Association of Bay Area Governments ("ABAG") adopted the Final RHNA Plan: San Francisco Bay Area, 2023-2031. The EIR/EIS, however, looks backward to use a RHNA number for the City that is outdated and in doing so, materially understates the City's allocation, stating:

> The project's acquisition of lands in Brisbane, where residential development is planned and permitted, could affect the City of Brisbane's ability to meet its required Housing Element and Regional Housing Need Allocation (RHNA). The 2015–2022 Housing Element for the City of Brisbane General Plan identifies the City of Brisbane required RHNA as 293 housing units (City of Brisbane 2015b). In addition, as of April 2019, the California Legislature is in the process of considering an increase in the City of Brisbane's required RHNA, per SB 672. Alternative B would have a greater impact on the City of Brisbane's ability to meet its RHNA than Alternative A because Alternative B would require the acquisition of more lands where residential development is permitted than Alternative A.

172. The EIR/EIS fails to acknowledge the extent of noise impacts on planned development from the LMF in Brisbane that would "exceed both the normally acceptable and conditional [sic] acceptable noise levels for residential and commercial uses per the Brisbane General Plan." The EIR/EIS does not adequately analyze this potential impact. The EIR/EIS must acknowledge that planned development, especially residential development, is incompatible with a 17-track LMF facility that would operate on a 24/7 basis just steps away. The EIR/EIS must also analyze the environmental impacts of the changes in land use patterns and displaced development its Project would induce.

173. The EIR/EIS fails to adequately address the cumulative impacts of increased noise, light, and glare on the existing and planned uses in Brisbane. Analyzing these impacts individually fails to disclose the combined, permanent land use impacts of the Project on the Baylands. Appendix 3.13-A incorrectly identifies the Brisbane Baylands as designated for exclusively commercial development and consequently misled the public and decisionmakers. The Brisbane General Plan designates the entire area as Planned Development and designates it as "Baylands Planned Development," permitting up to thousands of homes.

Parks, Recreation, and Open Space Impacts Are Not Adequately Analyzed.

174. Impact PK#5 and Impact PK#7 fail to recognize impacts to Lagoon Fisherman's Park, including site-specific visual, noise, and vibration impacts. The EIR/EIS concludes without any evidence that "[a]lthough the Brisbane LMF, [and other structures] would be visually intrusive in some locations, the user experience would not be altered to the extent that an actual or perceived barrier to the use of parks, recreational facilities, or open-space resources would result from project operations." Analysis in Impact PK#5 states that "the West Brisbane LMF would also be visible from some resources west of the alignment," but does not analyze the impacts to the Lagoon, a resource to the *south* of the alignment. The Lagoon would be either 1,040 or 1,485 feet from the LMF depending on the Alternative selected, well within the RSA. The EIR/EIS failed to address the visual impacts from the East LMF to users of the Lagoon.

175. Impact PK#7 does not analyze the impact of noise and vibration caused by LMF operation on the Brisbane Lagoon, despite its location within the RSA and despite

acknowledgement that "[p]ermanent noise and vibration impacts could result from . . . operations at the Brisbane LMF."

176. Impact PK#6 (Permanent Acquisition of Parks, Recreation, and Open-Space Resources) addresses park land that must be acquired to construct the Project but does not discuss the Baylands development. The EIR/EIS fails to recognize open space and parks impacts from the Project, which includes a) the removal of Icehouse Hill for West LMF construction and b) the filling of a large portion of Visitacion Creek that precludes habitat restoration and creation of a creek-side park, and otherwise reduces the land available for parks and open space and would preclude some of the most desirable potential open space and park areas within the Baylands.

Aesthetics and Visual Quality Impacts Are Not Adequately Analyzed.

177. The EIR/EIS does not analyze the visual impacts of the LMF on reasonably foreseeable future Brisbane residents and recreational users at the Brisbane Lagoon, who would have a much higher sensitivity to aesthetics than travelers or industrial workers.

178. The EIR/EIS fails to account for the effect of higher elevations when concluding that Brisbane residents would have a "moderate viewer sensitivity due to their distance from the railway." Higher-elevation residents will be far more affected by the aesthetic impacts of the LMF than a similar group of residents at the same distance but at a level elevation. The EIR/EIS concludes that the distance of one mile would limit their exposure and result in moderate viewer sensitivity, but does not consider how elevation affects impacts on the sensitivity of residential viewers, nor does the EIR/EIS acknowledge that the LMF would sit in the foreground of scenic vistas of San Francisco Bay and the Oakland Hills. The EIR/EIS conclusion only references the distance of residential viewers from the "railway" and not the LMF.

179. Impact AVQ#4 does not recognize the significant visual impact associated with removing Icehouse Hill, the most prominent natural feature within the Baylands, to accommodate the West LMF. The EIR/EIS incorrectly concludes that this impact is less than significant.

180. The analysis of aesthetic impacts states without supporting evidence, "[t]he LMF would be integrated into the surrounding commercial and industrial visual environment to the extent feasible. The Authority would solicit input from local jurisdictions and incorporate local

aesthetic preferences into final design and construction of the LMF with regard to vegetative screening, the design of the realigned Tunnel Avenue overpass, and modifications to the Bayshore Station (AVQ-IAMF#1, AVQ-IAMF#2)." There is no current proposal for what the LMF will actually look like, making analysis of specific resource area impacts impossible. The aesthetics analysis fails to address the loss of Icehouse Hill that would occur with construction of the West LMF. The aesthetics analysis does not address impacts of night lighting for an over 121-acre operation proposed to operate 24 hours a day, seven days a week in an area that is currently largely devoid of light. AVQ-IAMF#1 does not present standards or guidelines related to light trespass or dark night sky.

181. The EIR/EIS improperly equates the impacts of nighttime light pollution emanating from the LMF, which will only be one mile from residential viewers, with that from downtown San Francisco, which is eight miles to the north, not in the direct line-of-site from peoples' homes, whose views are largely shielded by the slopes of the San Bruno Mountain. The EIR/EIS states the current area of the LMF "is currently undeveloped and therefore unlit." The EIR/EIS does not analyze the effect of the introduction of a large new structure that is permanently lit all night on the current views of downtown San Francisco. The EIR/EIS improperly assumes the LMF would have no effect on this view because the LMF would just be another "nighttime source[]" of light. The distant views of the San Francisco Bay would be impacted by new, permanent sources of light in the foreground. That both are sources of "nighttime light" does not mean that the LMF would not interfere with existing views of downtown San Francisco from San Bruno Mountain.

Cultural Resources Impacts Are Not Adequately Analyzed.

182. The EIR/EIS's cultural resources analysis does not consider known cultural resources and fails to provide facts necessary to allow the Authority and the public to make informed decisions about the Project. Despite admitting that "most of the project [area of potential effect ("APE")] has not been subject to archaeological field inventories" and that "field surveys are a necessary component of the archaeological resource identification and evaluation effort", the EIR/EIS did not include an investigation of the potential to encounter unrecorded cultural

resources during Project construction, and the analysis failed to consider already known archaeological sites that could be classified as historical resources.

183. The San Francisco to San José Project section spans a length of approximately 49 miles, yet the EIR/EIS identifies only 27 historic built properties within the APE that are National Register of Historic Places ("NRHP")-listed or NRHP-eligible properties and 26 archaeological resources that are listed in the NRHP or assumed eligible for listing in the NRHP and "determined also to be historical resources for CEQA." However, in June 2020, Page & Turnbull prepared a technical memorandum for development of the Baylands that evaluates archaeological monitoring of geotechnical coring taken at 146 locations for the Baylands Specific Plan hazardous waste characterization studies, which monitored a total of 712 core locations. Twenty-three (23) of those core locations identified prehistoric archaeological deposits of intact shell midden and redeposited or displaced shell midden material, which are both considered highly sensitive for the discovery of Native American human remains. The Project proposes extensive construction on the *same sites* described in the memorandum, yet the EIR/EIS fails to acknowledge these archaeological deposits. The EIR/EIS must evaluate *all* core locations containing prehistoric artifacts that could potentially qualify as a historical resource under CEQA. The EIR/EIS should have evaluated these resources' eligibility for listing in the California Register of Historical Resources or a local register. If eligible for listing, the EIR/EIS should have determined whether the Project would have substantial adverse effects on these eligible resources, and if so, should have developed site-specific mitigation measures to reduce their impacts to a less than significant level. The Page & Turnbull memorandum recommended additional "intensive subsurface testing with more closely spaced cores dug consistently to the top of the Bay Mud" to provide "greater clarity on the nature and extent of subsurface archaeological" sites within areas subject to soil remediation and grading in preparation for development.

184. The EIR/EIS does not analyze whether the Project may have a significant impact on tribal cultural resources, failing to identify any tribal cultural resources to determine whether impacts to them would be significant. A lead agency has an affirmative obligation to do this even if tribes, as in this case, have not identified tribal cultural resources during AB 52 consultation.

185. Due to the presence of known and potential archaeological sites, it is highly likely that many tribal cultural resources exist within the APE and that the Project has the potential to significantly impact them, given extensive grading and excavation. The EIR/EIS Section 3.16.7 must disclose whether the Project may have a significant impact on tribal cultural resources, and must analyze feasible alternatives or mitigation measures to lessen the impacts.

Environmental Justice Impacts Are Not Adequately Analyzed.

186. The EIR/EIS did not, but should have, utilized the U.S. EPA's best practices document discussing guiding principles and specific steps agencies should take when assessing a project's environmental justice impacts. Instead, the EIR/EIS utilizes deficient methodology to identify environmental justice communities, relying on a baseline characterization of the affected environment from outdated and inaccurate sources. The EIR/EIS's environmental justice analysis is inadequate because it is based on the EIR/EIS's insufficient resource impacts analysis that omits project and site-specific details, preventing full disclosure of significant impacts and mitigation measures. As a result, the EIR/EIS does not sufficiently identify and describe the human health and socioeconomic vulnerabilities resulting from disruptions to community mobility, emergency access, and hazardous materials transport resulting from the Project. The EIR/EIS fails to analyze how Brisbane LMF is inconsistent with the voter-approved and planned housing and would have significant negative impacts on housing affordability, air quality, noise, safety, transportation, and quality of life. The Project would create new environmental justice issues that are not addressed in the EIR/EIS and are inconsistent with the state's environmental justice policies.

D. <u>The EIR/EIS Provides Inadequate Mitigation Measures</u>

187. An EIR is required to describe feasible mitigation measures that could minimize significant adverse impacts. (Pub. Resources Code, § 21002.1, subd. (a); Guidelines, § 15126.4, subd. (a)(1).) An EIR's mitigation measures must be capable of avoiding or substantially reducing a project's significant impacts and must be fully enforceable through permit conditions, agreements, or other legally binding instruments. (Guidelines, § 15126.4, subd. (a)(2).) The formulation of mitigation measures may not be not be improperly deferred until some future time. (Guidelines, § 15126.4, subd. (a)(1)(B).) Many of the EIR/EIS mitigation measures are invalid

because they are not fully enforceable, vague, improperly deferred, or otherwise unenforceable. The following mitigation measures constitute such inadequate mitigation and cannot be used as a basis for reducing impacts to less than significant:

a) Mitigation Measure NV-MM#3 does not commit to specific locations where one of three mitigation options (noise barriers, building sound isolation, or noise easements) would be implemented. Mitigation Measure NV-MM#3 states mitigation "will be designed" but does not provide any objective standards governing which of these options would be selected or effective at a particular location.

b) Mitigation Measure NV-MM#8 provides a general list of potential vibration mitigation measures but does not commit the Authority to any particular action.

c) Mitigation Measures TR-MM#2, TR-MM#4, and TR-MM#5 require approvals and actions by local governments, San Francisco Municipal Transportation Agency, and other agencies that have not committed to implement these measures. The EIR/EIS may not rely upon these types of unenforceable measures to conclude that significant impacts would be less than significant post mitigation without adequate substantial evidence based on project-specific analysis of impacts and the effect of regulatory compliance. (*Californians for Alternatives to Toxics v. Dept. of Food & Agric.* (2005) 136 Cal.App.4th 1.)

d) Mitigation Measure NV-MM#1 calls for the contractor to prepare a construction noise monitoring program after Project approval. It is also unenforceable because noise control mitigation measures would be implemented "as necessary, and as feasible within the constraints of working in an active rail corridor" but omits objective standards to govern when noise control mitigation measures will be considered "necessary" and "feasible."

e) Mitigation Measure NV-MM#2 calls for the contractor to prepare a vibration technical memorandum documenting how pile driving criteria would be met after Project approval.

f) Mitigation Measure NV-MM#6 calls for the contractor to prepare an operational noise technical report to address rail gaps at crossovers and turnouts after Project approval.

g) Mitigation Measures TR-MM#3 and TR-MM#5 are improperly deferred because they call for the contractor to prepare mitigation plans that would identify specific mitigation

measures after Project approval. The EIR/EIS does not provide objective performance measures to guide selection of specific mitigation measures and there is no assurance that the mitigation measures would be effective in reducing impacts to less than significant.

h) The EIR/EIS's biology mitigation measures include pre-construction surveys to "document" pre-construction conditions. More typically, pre-construction surveys are used to document the current locations of *previously identified* sensitive resources to ensure that avoidance and minimization procedures are properly implemented. Instead, in the absence of adequate baseline information in the EIR/EIS, these "pre-construction" surveys are de facto baseline studies improperly undertaken after Project approval.

i) Mitigation measures BIO-MM#1 and BIO-MM#8 call for preparation of a mitigation plan after Project approval without identifying objective performance standards and specific mitigation activities for each affected habitat/species. Mitigation Measures BIO-MM#1, BIO-MM#6, and BIO-MM#10 also defer identification of existing conditions.

j) BIO-MM#1 fails to specify any performance standards for either terrestrial or aquatic habitat restoration (e.g., percent cover of affected plant species), remedial actions if those standards are not met, or how long monitoring should continue to ensure the habitat has been successfully established. Mitigation Measure BIO-MM#1 does not address whether the conditions of adjacent habitat areas that could affect restoration efforts should be included in monitoring, and potentially in remedial efforts (e.g., spread of invasive weed species).

k) Mitigation Measure BIO-MM#1 does not set a performance standard that ensures temporary disturbance of areas that potentially support special-status species, wetlands, or other aquatic resources would be mitigated such that the net loss of habitat acreage or values would be less than significant and does not identify the actions that could feasibly achieve that performance standard.

l) BIO-MM#6 requires the Project biologist to conduct presence/absence botanical surveys for special status plans and special-status plant communities, but these site-specific surveys should have previously been conducted for upland species and habitat and presented in the

baseline. Survey areas are also inappropriately limited to work areas but rather should be expansive enough to encompass adjacent or nearby resources that would be affected by impact mechanisms such as fugitive dust or hydrologic modifications. Mitigation Measure BIO-MM#6, requiring pre-construction presence/absence surveys for special status plants, fails to require appropriate seasonal timing to ensure all such plant species could be detected.

m) Mitigation Measure BIO-MM#8 calls for future preparation of a "Compensatory Mitigation Plan for Species and Habitat"; however, the CMP does not set a valid performance standard for each biological impact or describe potential mitigation locations for each of the Project's biological resources impacts. By not providing an enforceable performance standard for each Project-related biological and aquatic resources impact and demonstrating that adequate, comparable land for mitigation would actually be available to mitigate impacts, BIO-MM#8 constitutes impermissible deferred mitigation and cannot be used as the basis for determining impacts would be avoided or reduced to less than significant.

n) Mitigation Measure BIO-MM#8 establishes a 1:1 ratio intended to offset all direct impacts to federally-listed plant species under the Federal Endangered Species Act and a 1:1 ratio intended to offset all direct impacts to state-listed plant species under the California Endangered Species Act. The Final EIR/EIS presents no evidence that a 1:1 acre mitigation ratio would adequately mitigate the Project's impacts on each listed species. Because of this lack of evidence, the Final EIR/EIS lacks substantial evidence to support its conclusion that BIO-MM#10 would avoid or reduce significant impacts on listed plant species to less than significant.

o) Mitigation Measure BIO-MM#10 is intended to provide "compensatory mitigation for direct impacts on federally and state-listed plant species based on the number of acres of plant habitat directly affected." The measure establishes a "one size fits all" mitigation ratio intended to apply to each project-related impact to each federally and state-listed plant species from San Francisco to San José. The EIR/EIS presents no evidence that a

single mitigation ratio would adequately mitigate each of the Project's impacts on listed plant species.

p) Mitigation Measure BIO-MM#37 calls for future preparation of a "Compensatory Mitigation Plan for Impacts on Aquatic Species" and establishes "one size fits all" mitigation ratios for impacts on other types of aquatic resources. This does not account for variable habitat quality of both the impacted sites and proposed mitigation sites, which provides no assurance that impacts to high-quality aquatic resources would be reduced to less than significant levels. Many other biological resources mitigation measures, BIO-MM#2, BIO-MM#7, BIO-MM#10, BIO-MM#14, BIO-MM#15, BIO-MM#16, BIO-MM#31, BIO-MM#36, and BIO-MM#37, share the same inadequacies relating to improper deferral, lack of performance standards, and failure to identify specific, effective mitigation measures to be implemented at specific locations, including Brisbane.

q) The EIR/EIS does not articulate the Authority's plans to address long-term sea level rise and defers the preparation of a long-term vulnerability assessment and adaptation plan until a later, unspecified time, which results in an inadequate assessment of how the Project will exacerbate sea level rise impacts. The EIR/EIS is inadequate because it recognizes the vulnerability of both Brisbane LMF sites and defers consideration of how best to protect the LMF until some unknown time in the future after the Project is approved and the LMF is constructed. The EIR/EIS does not explain why a long-term sea level rise vulnerability assessment and adaption plan cannot be prepared now.

r) The EIR/EIS hydrology impact analysis is inadequate because it fails to commit to specific short-term (2050) adaptation measures for the LMF. The EIR/EIS states that the "Authority would incorporate adaptation features into both project alternatives for the LMF to avoid inundation associated with sea level rise and associated pollutant discharges….Adaptation features, such as floodwalls, pump stations, and berms would address effects from sea level rise over the near term with design modifications that would avoid or minimize potential effects in the year 2050." Because the EIR/EIS does not discuss which specific adaptation measures would be implemented and does not evaluate

their effectiveness, the EIR/EIS provides no assurance that flooding and inundation impacts associated with the LMF would be less than significant.

s) The EIR/EIS claims the Project's construction GHG emissions from 2021-2026 would be "offset" by reductions by one to seven months of operations. The EIR/EIS should have separately considered the significance of increased construction GHG emissions (unamortized) and GHG reductions from Project operations. These impacts should have been mitigated because every year of delay in reducing GHG emissions worsens the climate crisis and the Authority's Sustainability Policy requires the Project to achieve net-zero construction GHG emissions.

t) Mitigation Measure AQ-MM#2 is too vague to be effective because the EIR/EIS does not specify the amount of the mitigation fee, the timing of payment, and the offset projects to which it would be applied. Specific mitigation projects are not presented, and no evidence is presented that mitigation will actually result. (See *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1122 [traffic impact fee rejected when no specific fee amount was specified and the fee was not tied to specific mitigations projects.].) This is an improperly deferred mitigation fee, applied without first proposing that all feasible on-site mitigation measures be implemented. On-site mitigation measures specified in BAAQMD's lists of "basic" and "additional" construction mitigation measures are commonly used as CEQA construction mitigation measures in Bay Area projects. BAAQMD mitigation measures are certain and enforceable and the EIR/EIS fails to adopt them.

u) The EIR/EIS states that the Authority's approach includes continued implementation of its Sustainability Policy, including a commitment to "net-zero GHG and criteria pollutant emissions in construction." This commitment is not guaranteed by any mitigation measure within Section 3.3, *Air Quality and Greenhouse Gases*, and the EIR/EIS does not demonstrate compliance with the Authority's Sustainability Policy.

v) Mitigation Measure AQ-MM-MM#3 does not follow through with the Authority's net-zero commitment for criteria pollutant emissions during construction. It requires that for

emissions not exceeding federal conformity de minimis thresholds, offsets are required only to stay below BAAQMD CEQA significance thresholds.

w) The EIR/EIS does not propose any effective emissions offsets related to construction GHG emissions, inconsistent with the Authority's Sustainability Policy. The EIR/EIS states the Project's considerable construction emissions would be "fully offset" by GHG emissions reductions during Project operations, but this approach does not comply with the Sustainability Policy principle to achieve net-zero GHG emissions "in" (not "after") construction. This policy means that the Project's construction GHG emissions should be considered a significant impact since they conflict with the Authority's own "policy… adopted for the purpose of reducing the emissions of GHGs," a GHG significance threshold. The EIR/EIS fails to include a construction GHG emissions mitigation measure that effectively achieves the net-zero target that incorporates best management practices to reduce construction GHG emissions recommended by BAAQMD.

x) Mitigation Measure HYD-MM#1 is deferred because it seeks to identify design improvements in a conceptual fashion after Project approval. HYD-MM#1 offers a range of vague mitigation options, details of which are deferred to the future. HYD-MM#1 is unenforceable because the measures it proffers "*may*" be implemented but does not identify who retains discretion to decide what measures would be implemented, if they are implemented at all.

y) The hazardous waste impact analysis, IAMFs, and Mitigation Measure HMW-MM#1 do not take into consideration the necessity and extent of preparing and securing regulatory approval for remediation plans, as well as the need for remediating the site before construction and the timing of the plans in conjunction with the construction of the Project. The EIR/EIS does not meaningfully analyze the extent and significance of the Project's hazardous waste impacts pre-mitigation or post-mitigation.

z) An accurate characterization of the environment setting is the critical starting point for a legally adequate impact analysis. (Guidelines, § 15125). HMW-IAMF#1 improperly defers Phase 1 and Phase 2 ESAs along the entire segment until the right-of-way acquisition

phase, which would occur after Project approval. Soils testing and waste characterization results should have been disclosed in the EIR/EIS. Without this information, the baseline conditions have not been accurately described and it is impossible to properly determine the significance of the Project's hazardous materials and waste impacts.

aa) S&S#1 concludes impacts will be significant and unavoidable yet proposes no mitigation measures, despite the availability of additional feasible mitigation measures, such as a mitigation measure requiring the maintenance of emergency access at all times, with no additional delay, to Golden State Lumber Yard, the Kinder Morgan Brisbane Terminal, and all other uses that will be isolated when the Tunnel Avenue bridge is realigned and when Lagoon Road is extended. Impact S&S#1 must consider and be consistent with Caltrans Interim Safety Guidance.

bb) Mitigation Measures SS-MM#2 and SS-MM#3 are improperly deferred as well as unenforceable because they require local agency approval for implementation. The Authority does not know whether these local agencies will approve such measures and the EIR/EIS cannot rely on them to reduce impacts to less than significant levels.

cc) Mitigation Measure SS-MM#2 requires the Project contractor to develop a modified driveway access control plan for the Brisbane fire station before construction, requiring the installation of a new mid-block signalized intersection and median modifications. There is no guarantee that the North County Fire Authority will approve the Authority's proposed relocation of the Brisbane fire station. The North County Fire Authority stated the proposed sites for relocation of the fire station unacceptable because both proposals would place the fire station's apparatus bays in an inefficient manner that would increase response time.

dd) Mitigation Measure SS-MM#3 requires the contractor to develop an emergency vehicle priority plan and install emergency vehicle priority treatments and new traffic control devices subject to approval from the City and County of San Francisco. There is no guarantee that the City and County of San Francisco will approve the construction of the new traffic control devices.

ee) Mitigation Measure SS-MM#4 is improperly deferred mitigation because it does not provide any performance standards or commit the Authority to implement any specific measure. SS-MM#4 is insufficient to mitigate fire station and first responder emergency access impacts. SS-MM#4 defers monitoring of travel time for at-grade crossings and the creation of an "emergency vehicle priority treatment plan in conjunction with local agencies" until after Project approval. Data should have been collected prior to the release of the Draft EIR/EIS to determine the "baseline travel time" so that the safety and security impact analysis would determine whether the emergency vehicle priority treatment plan would sufficiently reduce impacts.

ff) Mitigation Measure SS-MM#4 is inadequate to mitigate the impacts from closing the only fire station in Brisbane and constructing a replacement fire station at another location because it fails to clearly describe staging of fire station access and construction or how fire station temporary and permanent access and facility construction fit within the Project construction schedule.

gg) Mitigation Measure SS-MM#4 discusses the Authority's payment of capital funds to local agencies for Project implementation without specifying any further standards to ensure its implementation.

hh) Mitigation Measure LU-MM#1 is improperly deferred because it fails to show the specific locations where noise mitigation is required and there is no evidence that the listed mitigation options are feasible or capable of meeting the noise performance standards.

ii) Realignment of Lagoon Road as a result of Mitigation Measure LU-MM#2 would have additional impacts beyond the impacts on aquatic resources disclosed in the EIR/EIS. The EIR/EIS states Mitigation Measure LU-MM#2 would relocate Lagoon Road north to avoid the priority use area within the BCDC's jurisdiction. The EIR/EIS acknowledges that implementing LU-MM#2 would result in secondary impacts on aquatic resources that would be greater in magnitude than the proposed project alternatives, due to temporary and permanent impacts on two constructed water basins adjacent to the realigned Lagoon Road. Without explanation or citation to any evidentiary support, the EIR/EIS concludes

that "[t]hese secondary impacts on aquatic resources would be mitigated to a less than significant level under CEQA through application of BIO-MM#36…." The EIR/EIS does not describe or analyze the unspecified secondary impacts that would be caused by the relocation of Lagoon Road, and Mitigation Measure BIO-MM#36 is inadequate to mitigate such impacts.

jj) Mitigation Measures PK-MM#1, PK-MM#2, and PK-MM#4 are improperly deferred because they call for the contractor to prepare technical memoranda after Project approval that describe specific mitigation measures, but no objective performance standards are presented to guide the selection of mitigation measures to demonstrate that impacts would be successfully mitigated.

kk) The EIR/EIS does not describe performance standards for vegetative screening, design, or modifications. Impact AVQ#4 must specifically address visual impacts on Baylands residential uses designated by the General Plan.

ll) Mitigation Measure AVQ-MM#3 improperly defers mitigation of aesthetic impacts until after Project approval, just prior to construction. The measure includes no performance standards by which to judge how aesthetic impacts will be mitigated to less than significant levels or whether the Project's construction complies with the mitigation measure.

mm) Mitigation Measures AVQ-MM#1, AVQ-MM#2, and AVQ-MM#3 are also improperly deferred with no objective performance standards.

nn) The EIR/EIS improperly defers the formulation of mitigation measures until after the National Historic Preservation Act section 106 consultation process begins and then, the consulting parties and the Authority will "negotiate" mitigation measures for implementation. The EIR/EIS fails to commit the Authority to specific performance standards that would be used to develop specific mitigation options once the consultation process is completed and does not guarantee whether impacts would be mitigated to less than significant levels.

oo) Mitigation Measures CUL-MM#1, CUL-MM#2, and CUL-MM#3 do not present performance standards and are improperly deferred because it does not commit the

Authority to specific historical resources mitigation standards included in the CEQA Guidelines. (Guidelines, § 15126.4, subd. (b).)

188. Many of the EIR/EIS IAMFs that are purportedly part of the Project description are not Project design features but are inadequate mitigation measures that call for preparation of future studies and plans. An EIR must identify mitigation measures as such and must not include them in the project description unless they are so clearly part of the project itself that it "would be nonsensical" to analyze impacts without them. (*Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 656, fn. 7.) Improperly using IAMFs to minimize impacts makes it impossible to understand the nature of the Project's description and its site-specific impacts, whether they are significant pre-mitigation, whether the IAMFs recast as mitigation measures would be effective, and whether there other more effective measures exist. (See *Id.* at 656.)

189. Many of the IAMFs that are disguised mitigation measures do not meet CEQA's minimum standards for adequate mitigation, as they call for vague future plans or memoranda to provide mitigation details without performance standards. These measures are improperly deferred, unenforceable, and/or ineffective. For each deferred measure, the EIR/EIS fails to explain why it is "impractical or infeasible" to include mitigation details in the EIR/EIS. (Guidelines, § 15126.4, subd. (a)(1)(B).) The following identifies the IAMFs that are disguised mitigation measures that do not meet CEQA's standards for adequate mitigation:

a. TR-IAMF #3, TR-IAMF#11, and TR-IAMF #12 are improperly deferred mitigation measures with no performance standards. TR-IAMF #3 improperly defers preparation of the construction transportation plan until after Project approval and includes no achievable performance standards.

b. TR-IAMF#12 improperly defers preparation of a technical memorandum after Project approval that would show how pedestrian and bicycle safety would be achieved across the HSR corridor, but does not include any performance standards or future design features.

c. Revised text on page 3.2-82 states: "In accordance with a specific construction management plan (CMP) (TR-IAMF#11) and CTP (TR-IAMF#2), the contractor will ***attempt to provide*** temporary bus stops, parking areas, and access with the same features

and amenities of the relocated facility…." (Emphasis added.) The EIR/EIS further states: "The contractor will ***attempt to minimize*** disruption or shorten the length of time that transit facilities are inoperable…." (Emphasis added.) Having a contractor "attempt to provide" or "attempt to minimize" does not adequately commit the Authority to mitigating impacts and does not support the EIR/EIS's determination that impacts would be less than significant.

d. TR-IAMF#2 calls for the deferred preparation of construction transportation and safety management plans to reduce Impact SOCIO#1. However, TR-IAMF#2 does not contain performance standards and does not provide substantial evidence to support its conclusions that IAMFs reduce Impact SOCIO#1 to a less than significant level.

e. Electromagnetic field/electromagnetic interference ("EMF/EMI") EMF/EMI-IAMF#1 is an improperly deferred mitigation measure because it seeks to identify, avoid, and minimize potential EMF/EMI interference impacts. The EIR/EIS should have discussed EMF/EMI-IAMF#1 as a mitigation measure and impacts should have been assessed pre-mitigation.

f. EMF/EMI-IAMF#1 requires the contractor to work with engineering departments of railroads that operate parallel to the Project "to apply standard design practices to prevent interference with the electronic equipment operated by these railroads." The EIR/EIS should have specifically described the "design practices" and "design provisions" for an adequate analysis of potential EMF/EMI impacts to determine a significance conclusion. The EIR/EIS defers identification of these design standards by stating the Project will conform to the California High-Speed Train Project Design Criteria ("HSR Design Criteria Manual") without discussing whether conformance and implementation of those design criteria would be adequate to avoid EMF/EMI impacts.

g. PUE-IAMF#4 is a deferred mitigation measure with no performance standards because it seeks to identify, avoid, and minimize interruptions of utility service through a technical memorandum prepared after Project approval. PUE-IAMF#4 does not provide details

regarding performance standards despite its requirement to document "how construction activities would be coordinated with service providers to minimize or avoid interruptions."

h. BIO-IAMF#5 directs preparation of a biological resources management plan ("BRMP"), which would include "a compilation of the biological resources avoidance and minimization measures," and "project environmental plans" such as restoration and revegetation plans and weed control plans. BIO-IAMF#5 is an improperly deferred mitigation measure because it calls for BRMP preparation after Project approval and fails to establish mitigation performance standards.

i. HYD-IAMF#1 and HYD-IAMF#2 are deferred mitigation measures that contain no performance standards and defer impact analysis. HYD-IAMF#1 would not be effective at mitigating impacts on a unique site like the Baylands, which contains soil composition of a mixture of different soils, marine sediment, and trash. HYD-IAMF#1 does not adequately analyze these constraints on storm drainage facilities and would not be effective in the Baylands tidally-influenced areas, such as the Brisbane Lagoon. HYD-IAMF#1 improperly defers identifying the location and analysis of potential stormwater capture devices and contains no performance standards to determine whether the measures would be effective at reducing significant impacts. HYD-IAMF#2 similarly defers analysis of flood prevention measures until after Project approval and does not identify performance standards to ensure adequate mitigation.

j. BIO-IAMF#12 is ineffective in reducing impacts to birds because it does not specify minimum design standards to ensure impacts would be less than significant.

k. HYD-IAMF#1 and HYD-IAMF#2 are improperly deferred because they require the Project's contractor to prepare future management plans articulating the required management measures and design standards to minimize potential impacts from stormwater management and treatment as well as flood protection. HYD-IAMF#1 requires, after Project approval but before construction, the preparation of on-site stormwater management measures and facilities as well as low-impact development techniques. This defers analysis of the impacts to the current stormwater system's capacity

from the Project's production of additional runoff to the system and attempts to minimize and rectify the impact by purporting to restore the area to regular conditions.

l. HYD-IAMF#1 and HYD-IAMF#2 are improperly deferred mitigation measures that do not identify appropriate performance standards to ensure significant impact reductions to a less than significant level. HYD-IAMF#1 improperly delays the identification of the kind of stormwater capture devices, at which specific sites those devices will be utilized, and how reductions will reduce impacts. HYD-IAMF#2 has a vague performance criterion, to "minimize increases in 100-year or 200-year flood elevations, as applicable to locale." It is impossible to determine whether these measures will be effective in reducing impacts to less than significant levels absent specific performance standards.

m. The EIR/EIS impact analysis includes implementation of HYD-IAMF#1, which improperly defers mitigation and includes no performance standards. The EIR/EIS should have disclosed pre-mitigation operational water quality impacts at the LMF sites in the absence of IAMF#1 and judged them as significant. A more effective, non-deferred operational water quality mitigation measure should have been formulated that identified specific measures to be implemented in Brisbane given unique historical uses, makeup of soil materials, and tidally influenced wetland areas.

n. GEO-IAMF#1, GEO-IAMF#3, GEO-IAMF#5, GEO-IAMF#10, and GEO-IAMF#13 are mitigation measures that insufficiently describe performance standards to avoid or reduce potential geological and geotechnical impacts.

o. GEO-IAMF#1 requires preparation of a construction management plan to identify ways the contractor "would address geologic constraints and minimize or avoid impacts to geologic hazards during construction." The construction management plan would be created *after* Project approval and include "design measures" and "safety procedures and guidelines" and would, "at a minimum," address six listed geological and geotechnical constraints and resources. The construction management plan should have been prepared and included in the EIR/EIS with specificity, including the details of design measures or

safety procedures to adequately determine whether impacts would be reduced to less than significant levels.

p. GEO-IAMF#1's insufficient description of the construction management contains unenforceable, voluntary terminology and does not identify the parameters of how, when, or why the decision to remove or treat the soil will be made.

q. GEO-IAMF#3, GEO-IAMF#5, GEO-IAMF#10, and GEO-IAMF#13 are improperly deferred mitigation measures that require, after Project approval, the development of surveys, best management practices, plans, and procedures for minimizing potential geological and geotechnical impacts. GEO-IAMF#3 proposes an insufficient gas monitoring measure because it is designed for worker protection and active construction work and fails to address exposure to the nearby community, including future LMF workers and long-term requirements for landfill gas monitoring needed at the East LMF.

r. The Final EIR/EIS concludes that the Project would not result in any "significant impacts on geology, soils, seismicity" on the bases of IAMFs that call for the Authority's contractor to prepare a construction management plan. While GEO-IAMF#1 and GEO-IAMF#10 refer to "underlying standards set forth in guidance and other manuals" listed in GEO-IAMF#10, neither measure defines specific performance standards for each of the hazards identified above, addresses what specific standard would be met in the event of any discrepancy between the eight (8) documents listed in GEO-IAMF#10, including potential discrepancies between the most recent California Building Code in effect at the time of construction and the other listed documents.

s. HMW-IAMF#4, HMW-IAMF#5, and HMW-IAMF#6 should be properly characterized and evaluated as EIR/EIS mitigation measures. These IAMFs offer only concepts and generalities and defer the critical components of the measures themselves.

t. HMW-IAMF#4 requires the contractor to prepare a construction management plan specifying how "the contractor would work closely with local agencies to resolve any such encounters and address necessary clean-up or disposal." HMW-IAMF#4 does not discuss which agencies the contractor will consult, how the contractor will work with them, what

working "closely" entails, what steps are necessary upon encountering hazardous materials, or the parameters required for addressing necessary clean-up. This measure is insufficient for mitigating impacts of the Brisbane LMF sites, where contamination is already documented.

u. HMW-IAMF#5 requires the contractor to prepare demolition plans for the "safe dismantling and removal of building components and debris" including a plan for the abatement of lead and asbestos. No further information regarding this demolition plan is provided to illuminate the parameters of "safe dismantling," where such debris will be removed, or how abatement procedures of these hazardous materials would follow to ensure the impact reduction to a less than significant level.

v. HMW-IAMF#6 describes a construction management plan for spill prevention prescribing best management practices to prevent hazardous materials releases and address hazardous materials clean-up. However, it fails to include best management practices to properly inform decision makers as to whether such practices would sufficiently reduce impacts to a less than significant level.

w. HMW-IAMF#9 is an improperly deferred mitigation measure that does not state what the process for evaluating hazardous sites would entail, how the Authority would "replace hazardous substances with nonhazardous materials," or present objective feasibility standards to determine the effectiveness of the process to ensure a less than significant impact determination. HMW-IAMF#9 is not fully enforceable in part because, the Authority retains discretion, without objective standards guiding that discretion, to determine whether use of the Environmental Management System is "feasible."

x. SS-IAMF#1, SS-IAMF#2, SS-IAMF#3, and TR-IAMF#2 are rather mitigation measures because they are not clearly part of the Project and insufficiently describe measures to avoid or reduce potential safety and security impacts. All four of these measures are improperly deferred because they call for the formulation of future plans to reduce safety and security impacts, and fail to include performance standards or list specific mitigation

options to meet the standards. None of these plans would ensure impact reductions to a less than significant level.

y. SS-IAMF#3 refers to the Authority's "hazard management program" which includes identifying hazards, risk assessment, and the "application of control measures (mitigation) to reduce the risk to an acceptable level." SS-IAMF#3 would include "a preliminary hazard analysis ("PHS") and a threat and vulnerability assessment ("TVA")." The EIR/EIS defers the creation of essential environmental hazards studies of the PHS and TVA, to the future, which, in turn, defers the impact analysis. SS-IAMF#3 does not discuss its hazards analysis program in relation to the construction of the Brisbane LMF on sites that require the remediation and/or closure of the former Brisbane landfill and Brisbane Rail Yard. Such remediation considerations should be discussed in SS-IAMF#3 because they are indispensable to determining safety and security significance impacts.

z. SOCIO-IAMF#1 calls for the contractor to prepare a Construction Management Plan after Project approval to minimize impacts on low-income households and minority populations and includes no performance standards that must be achieved to effectively show reduction in impacts.

aa. The EIR/EIS relies, without analysis, on IAMFs to reduce aesthetic impacts to less than significant, thus, failing to properly recognize the aesthetic impacts of the LMF. The IAMFs should be discussed as mitigation measures, not as impact avoidance and minimization features. The IAMFs incorporate no performance standards but state they will be guided, at least in part, by "local aesthetic preferences." The EIR/EIS does not describe the *types* of aesthetic impacts these IAMFs would try to avoid, and whether they derive from the Project's lighting, glare, or massing. AVQ-IAMF#1 and AVQ-IAMF#2 are improperly deferred mitigation measures with no performance standards to assure the impacts would be less than significant. Both AVQ-IAMF#1 and AVQ-IAMF#2 state that the contractor will, prior to construction, issue technical memoranda and document the procedures used to comply with local agency's aesthetic guidelines for non-station structures, *Aesthetic Options for Non-Station Structures*. AVQ-IAMF#1 relies on design

standards set forth in the guidelines, which contains no mention of directing light downward, minimizing light spillover, or limiting the radiance of nighttime lighting. The EIR/EIS conclusions regarding the impacts of nighttime lighting on residential viewers from San Bruno Mountain are unsupported by substantial evidence and the EIR/EIS does not analyze how AVQ-IAMF#1 would reduce impacts to less than significant.

bb. The EIR/EIS states that "[n]ew sources of nighttime lighting would be generated at the Brisbane LMF sites, increasing lighting in the immediate area that would also be visible from residences on San Bruno Mountain" and that the "maintenance building and other facilities would be lit through the night, contributing to increases in nighttime light levels." The EIR/EIS relies on AVQ-IAMF#1, which states that the LMF would be "designed to direct light downward, minimizing light spillover"; however, AVQ-IAMF#1 does not include actual requirements to direct light downward, minimize light spillover, or limit the radiance of LMF nighttime lighting and does not offer any performance standards in relation to light trespass, impacts on dark night sky, or radiance of nighttime lighting.

cc. CUL-IAMF#1, CUL-IAMF#3, CUL-IAMF#4, CUL-IAMF#5, CUL-IAMF#6, CUL-IAMF#7, and CUL-IAMF#8 are improperly included as part of the project description, and should be evaluated as EIR/EIS mitigation measures.

dd. CUL-IAMF#1 and CUL-IAMF#3 require the employment of cultural resource specialists to create a geospatial data layer to identify locations of cultural resources as well as archaeologists to conduct pre-construction cultural resource surveys. These surveys should have been completed and included in the EIR/EIS and not deferred to post Project approval. IAMF#5 requires the contractor's archaeologist to prepare a monitoring plan based on the results of the surveys but does not include performance standards.

ee. CUL-IAMF#4 limits the relocation of construction sites to "when possible," and does not define objective standards or factors to determine when it would be possible to do so. Because there are no objective standards to inform the parameters of "when possible," this measure is illusory.

ff. CUL-IAMF#7 requires the contractor to prepare a built environment monitoring plan but does not identify appropriate performance standards to ensure significant impacts are reduced to a less than significant level. CUL-IAMF#7 does not provide monitoring methods or process requirements to ensure that impacts would be less than significant.

E. <u>The EIR/EIS Presents an Inadequate Range and Analysis of Alternatives</u>

190. CEQA requires an EIR to identify feasible alternatives that could avoid or substantially lessen a proposed project's significant environmental effects. (Pub. Resources Code, § 21002.) The discussion of alternatives is "core" to an EIR. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.) An EIR must include a "reasonable range" of alternatives to the proposed project, or to its location, that would feasibly attain most of the project's basic objectives while reducing or avoiding any of its significant effects. (Guidelines, § 15126.6, subd. (a).) The discussion of alternatives "shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project." (Guidelines, § 15126.6(d).)

191. An EIR must focus on alternatives that would avoid or substantially lessen a project's significant environmental effects. (Pub. Resources Code, § 21002; Guidelines, §§ 15126.6, subds. (a)-(b).) An EIR should not exclude an alternative from detailed consideration merely because it "would impede to some degree the attainment of the project objectives, or would be more costly." (Guidelines, § 15126.6, subd. (b).)

190. The EIR/EIS identifies two so-called "alternatives" for the San Francisco to San José Project Section – Alternative A and Alternative B – in addition to the No Project Alternative. Alternative A is, in reality, the proposed Project and by default, Alternative B is the only "build" alternative addressed in the EIR/EIS. For a project of this size and scope, it is unreasonable to analyze only one build alternative. In fact, Alternative A and Alternative B are actually one project with minor design variations and both follow the *exact same alignment* for all 49 miles of track. There are only three minor variations between these "alternatives":

a. Alternative B would locate the LMF just west of the Caltrain corridor within the Brisbane Baylands, while Alternative A would place it just east of the Caltrain corridor in the same general location in the Brisbane Baylands;

b. Alternative B would include six miles of additional passing tracks between the cities of San Mateo and Redwood City, while Alternative A would have no additional passing tracks; and

c. Alternative B includes viaduct options to Diridon Station, while Alternative A does not.

192. Other than these minor deviations, Alternatives A and B include the same three rail stations, the same alignment, and the same technology. The EIR/EIS states that Alternatives A and B are both "consistent with and built from the train technology, alignment corridor, and station locations selected… at the end of the Tier 1 EIR/EIS process for the HSR system" and that the "alternatives analysis primarily addressed the potential vertical configurations of the alignment alternatives within the Caltrain shared-use corridor".

193. There is no indication that any of the three minor variations between Alternatives A and B were developed to avoid, or are capable of avoiding, the environmental impacts of the proposed Project as required by CEQA. Alternative B would not reduce any of the proposed Project's significant and unavoidable impacts to traffic, air quality, noise and vibration, safety and security, land use, and cultural resources. Alternatives using two adjacent portions of the Baylands property does not constitute a reasonable range of alternatives under CEQA.

194. The Authority also failed to consider alternative locations for the LMF outside of the City, including potentially feasible alternatives proposed within the City's EIR/EIS comment letters. The EIR/EIS states other, proposed alternative LMF sites were rejected because they do not meet the Authority's design criteria for the LMF design; however, the Authority did not provide substantial evidence to show other alternatives are infeasible. In fact, the Authority's Supplemental Alternative Analysis dated August 2010 considered only two sites other than the Baylands for the LMF: the Port of San Francisco and San Francisco Airport. Both of these sites were determined to be operationally deficient for supporting the LMF based on facts that should have – and could have – been known before the site was considered for potential LMF use. The

Port of San Francisco and San Francisco Airport are "strawman alternatives" and the Authority gave realistic consideration to only the Baylands property as a site for the LMF in violation of CEQA.

195. The EIR/EIS failed to consider whether a functional LMF could be designed and constructed on a site that is less than 100 acres, depending on the specific location, dimensions, and setting of the site. The 2010 Supplemental Alternative Analysis identified criteria to meet the functional requirements of an LMF, including: a) site size that is large enough to accommodate storage and maintenance activities, which the Authority estimates as "approximately 100 acres"; b) a site that should be immediately adjacent to the mainline tracks; and c) a site that can support double-ended lead tracks (i.e., capable of dispatching and receiving trains from both ends of the facility). The design criterion does not require that the proposed LMF site be 100 acres to be considered; thus, the Authority should not have rejected sites less than 100 acres without specific design analysis as to whether a less than 100 acre site would still be large enough to accommodate LMF activities. In fact, Appendix 2-F shows that an area of 100 acres is not required to accommodate LMF activities. The Authority did not, but should have, analyzed whether sites with a less than optimal design could feasibly be constructed and how such sites would have reduced the impacts of the Brisbane LMF before rejecting all alternatives that relied on less than optimal designs.

196. In fact, the City presented potentially feasible alternative LMF sites to the Authority in previous comment letters that would sufficiently support LMF activities, including: the Bayview Industrial District in San Francisco; the Newhall Yard in San José; Coyote Valley in Santa Clara County; and the City of Gilroy. Construction on these potentially feasible alternative sites would result in less environmental impacts than the Project, as development of these alternatives would not require the excavation of over 2 million cubic yards of waste from the former Brisbane landfill, would not require similar hazardous waste disposal as the Project, and would not impact the future Baylands development and place constraints on housing production. The EIR/EIS fails to provide evidence supporting its conclusion that it would be infeasible to relocate the LMF to a location outside of Brisbane.

F. The EIR/EIS Cumulative Impact Analysis Does Not Comply with CEQA

197. The EIR/EIS fails to sufficiently analyze the combined, cumulative impacts of individual Project components for certain resources. CEQA forbids the chopping up (or "piecemealing") of one large project into multiple small projects for the purpose of evading environmental review of the entire project. Because a project is defined as "the whole of an action" (Guidelines, § 15378, subd. (a)), a lead agency may not segment a project into several pieces if the effect is to avoid full disclosure of environmental impact. (See *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1231.) The EIR/EIS understates Project impacts by presenting impacts caused by individual Project components and without combining them to reveal the total Project impact.

198. CEQA requires an EIR to discuss cumulative impacts when a project will make a "cumulatively considerable" incremental contribution to a significant cumulative effect. (Guidelines, § 15130, subd. (a).) Cumulatively considerable means that "the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probably future projects." (Guidelines, § 15065,subd. (a)(3).) When determining whether a project will have a cumulatively considerable contribution to a significant cumulative impact, an EIR must consider the collective effects of relevant projects and may not conclude that a relatively small project contribution is necessarily insignificant. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718-719 ("*Kings County*"); *Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1025 [EIR must consider project-related impacts in addition, not in comparison, to existing conditions].)

199. The EIR/EIS does not consider the cumulative impacts of increased noise, light, and glare on the existing and planned development uses in the Baylands. Analyzing these impacts individually fails to disclose the combined, permanent land use impacts of the Project. The EIR/EIS fails to provide and consider sufficient details about reasonably foreseeable development projects and does not meaningfully analyze existing and future cumulative conditions or the Project's contribution to those conditions.

200. An EIR cannot fail to include reasonably available data about cumulative impacts or data that can be reasonably produced by further study. (*Kings County*, *supra*, 221 Cal.App.3d at p. 729.) The EIR/EIS fails to explain which, if any, of the more than 338 future land use projects identified in the EIR/EIS Appendix 3.18-A were considered as part of the future cumulative scenario for each resource area.

201. The EIR/EIS fails to capture potential impacts from the Baylands development and does not analyze the cumulative impacts of increased noise, light, and glare on the existing and planned development uses in the Baylands. The EIR/EIS fails to provide and consider sufficient details about reasonably foreseeable development projects and does not meaningfully analyze existing and future cumulative conditions and the Project's contribution to those conditions, which fails to disclose the combined, permanent land use impacts of the Project.

202. The EIR/EIS Appendix 3.18-A provides information about non-transportation projects and plans with impacts that could combine with those of the Project to result in significant cumulative impacts. Appendix 3.18-B provides similar information about transportation projects considered in the cumulative impact analysis. The EIR/EIS fails because its cumulative impact analysis only considers the potential significant and unavoidable impacts of related projects, but despite no basis for assuming that only impacts deemed significant and unavoidable have the potential to combine with the Project's impacts to create cumulatively significant impacts. Less than significant impacts or significant but mitigable impacts of an individual project can nevertheless result in cumulatively significant impacts (pre-mitigation) when combined with the impacts of other projects. The Draft EIR/EIS failed to consider and analyze these types of impacts.

203. The EIR/EIS cumulative impact analysis fails to capture potential impacts from the Brisbane Baylands development, for which an NOP was issued before release of the EIR/EIS. The EIR/EIS fails to consider the Baylands NOP and its potential development contribution to cumulative impacts and fails to include the Baylands NOP from Appendix 3.18-A, Table 3, City of Brisbane Non-Transportation Plans and Projects List. The EIR/EIS's description of the Baylands Specific Plan relies on the outdated February 2011 version of the Specific Plan, which

preceded Measure JJ, revealing the Authority has ignored information critical to its analysis of cumulative impacts in Brisbane.

204. As a result of this error, the EIR/EIS's cumulative impact analysis specifically mentions the Baylands development for cumulative impacts to only a handful of resources, despite the Baylands NOP indicating that the Baylands development would have potentially significant impacts to more environmental resource areas. The EIR/EIS should have considered the Baylands development for cumulative impacts analysis, as alleged as follows:

a. Cumulative transportation impacts are inadequately analyzed because it is unclear which of the future land use projects listed in Appendix 3.18-A were included in the cumulative transportation impact analysis, despite noting that: "Traffic volumes on roadways in the cumulative [resource study area] would increase because of the cumulative projects, including the planned developments listed in Volume 2, Appendix 3.18-A." The 2040 analysis contained in the transportation section uses outdated ABAG Projections, painting an inaccurate picture of projected 2040 conditions that does not include Baylands development. The EIR/EIS cumulative transportation impact analysis for both construction and operations should clearly include impacts of all reasonably foreseeable development projects in Appendix 3.18-A or use updated ABAG projections, using the Plan Bay Area 2050 to ensure the analysis includes the reasonably foreseeable Baylands development. The cumulative impact analysis omits analysis of whether cumulative impacts would cause location-specific conflicts with plans, polices, and regulations for roadways (non-LOS), transit, and non-motorized transportation.

b. The cumulative air quality and greenhouse gases impact analysis regarding construction fails to include contributions from reasonably foreseeable future projects that would likely be constructed during the Project construction period and rather only includes emissions from past and present projects despite the ability to forecast future project construction emissions based on existing information and reasonable assumptions.

c. The EIR/EIS does not adequately analyze cumulative impacts regarding operational emissions because it is impossible to determine whether the analysis included emissions

from all the reasonably foreseeable future development and transportation projects in Appendices 3.18-A and 3.18-B. The EIR/EIS should have analyzed Alternative A's cumulative impacts with consideration of the Baylands development, which would place sensitive receptors near the Brisbane LMF, contradicting the EIR/EIS's conclusion that there would be no cumulative effect because "[n]o ambient sources were identified within 1,000 feet of the East Brisbane LMF and receptors under Alternative A."

d. The EIR/EIS cumulative impact noise and vibration analysis for both construction and operations fails to identify which of the future land use projects listed in Appendix 3.18-A were included in the cumulative analysis, despite noting that "[c]onstruction of some of the planned developments listed in Volume 2, Appendix 3.18-A could add localized noise increases from increased traffic and contribute to noise increases in the cumulative RSA."

e. The cumulative impact construction noise analysis inadequately assumes, without evidence, that construction of the Project and construction of cumulative projects would not occur simultaneously near sensitive receptors such that noise thresholds would be exceeded. This unsupported assumption does not constitute a CEQA-compliant analysis because the EIR/EIS should have quantified construction noise impacts from reasonably foreseeable future projects that would likely be constructed during the Project construction period, based on existing information in Appendices 3.18-A and 3.18-B, and by using reasonable assumptions. Other future projects' impacts should have been added to Project impacts to determine if noise thresholds would be exceeded during construction. The EIR/EIS cumulative operational noise analysis fails to disclose the magnitude of significant cumulative noise impacts at each affected location, how frequently and for what length of time cumulative noise levels would exceed noise thresholds at these locations, and whether mitigation measures for cumulative noise impacts would be effective at any particular affected location.

f. The cumulative parks, recreation, and open space impact analysis notes that the Baylands development includes 170 acres of "parks, plazas, linear parks, shared-use areas, and preservation of natural features . . . to meet the need created by that development." This

fails to account for the Project's impacts related to reducing the amount of land available for parks and open space areas in the new Baylands development. The cumulative impact of the Project will result in additional decreases of park and open space available on a per-person basis at the Baylands development.

g. The EIR/EIS's analysis of the Project's cumulative aesthetic impacts notes that "[n]ew and enhanced recreational facilities around the Brisbane Lagoon and throughout the planned Baylands development would bring new recreational viewers to the area, where they would experience views of the Brisbane LMF and the Caltrain right-of-way." However, the EIR/EIS concludes that the cumulative impacts will be less than significant because of AVQ-IAMF#1. IAMF#1 is an improperly deferred mitigation measure that lacks performance standards, and the EIR/EIS errs by relying on it to conclude that there will be no significant cumulative aesthetic impacts.

205. The EIR/EIS's analysis of cumulative impacts assumes that all of the projects listed in Appendices 3.18-A and -B would be required to implement project features and mitigation measures similar to those of the Project to avoid impacts. The EIR/EIS acknowledges that "[c]onstruction of cumulative projects throughout the cities in the [resource study area ('RSA')], such as the Geary BRT alternatives are most likely to cause cumulative impacts on children's health and safety in the cumulative RSA." The EIR/EIS dismisses this concern and includes no evidence to support its assumption that other projects will be required to implement impact-avoiding project features and mitigation measures. The EIR/EIS does not provide examples of what these measures might be or how they could be relied upon to reduce impacts, violating CEQA.

206. The EIR/EIS's cumulative impact analysis consistently fails to explain whether the Project's impacts are "cumulatively considerable and stops the cumulative impact analysis at the first step of the two-part cumulative impact inquiry. Thus, the EIR/EIS does not evaluate whether there is feasible mitigation that could reduce the Project's incremental contribution to cumulatively significant impacts.

207. The EIR/EIS's cumulative impact analyses should have used the same significance thresholds as it did for direct impacts, added the impacts of probable future projects, and concluded that cumulative impacts were also significant, with the Project's contributions being cumulatively considerable. (See Guidelines, § 15130.) The EIR/EIS fails to do this analysis required by CEQA in the following instances:

a. The cumulative biological resources cumulative impact analysis fails to recognize that the Project would have many significant impacts pre-mitigation related to Impacts BIO#1 through BIO#11, BIO#13, BIO#17, and BIO#19 through BIO#22. The magnitude of the Project's contributions to cumulative biological impacts would be much higher than disclosed in the EIR/EIS given the above inadequacies identified in the biology IAMFs, impact analyses, and mitigation measures.

b. Conclusions regarding the Project's contribution to cumulative impacts do not comply with CEQA requirements because the Project's contribution of construction-related criteria pollutant impacts must be analyzed pre-mitigation. Total cumulative cancer risks and $PM_{2.5}$ concentrations for combined construction and operations would be significant and the Project would have a cumulatively considerable contribution to this impact.

c. The cumulative air quality and greenhouse gases impacts analysis should have conducted a cumulative project-specific cancer risk and chronic health hazard assessment complying with BAAQMD requirements, which the EIR/EIS erroneously concludes is not required. The Project does not include this assumption, which would be impractical once the generators are in use.

d. The EIR/EIR should have considered an additional noise threshold based on incremental increases in noise levels for all construction and operation noise sources. Use of a cumulative noise level, whether from FRA criteria or even from local noise elements/ordinances, as the sole CEQA significance criterion for noise impacts violates CEQA unless substantial evidence presented in the EIR shows incremental noise increases are irrelevant. (See *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 894.)

e. The cumulative impact discussions for all biological and aquatic resources are inadequate because they rely on the same "cumulative RSA" but do not explain why the same RSA is appropriate for every type of affected biological or aquatic resource. Reliance on the same RSA for all resources distorts the analyses, as impacts to habitat assessed or quantified solely in terms of acreage would dilute the Project's contribution to a cumulative impact in both the quantitative terms, by making the Project's contribution appear smaller, and qualitatively, by ignoring other aspects of the lost acreage's value to species by virtue of its location or use as mating habitat, dispersal habitat, nesting habitat, or foraging habitat.

f. The hydrology and water resources cumulative impact analysis assumes that existing laws and regulations would prevent *any* cumulative impacts on surface water hydrology, surface water quality, groundwater, and floodplains from occurring and concludes there would be no cumulatively considerable Project contribution to such impacts. The EIR/EIS presents no evidence that *all* reasonably foreseeable future projects would comply with *all* applicable hydrology/water resources laws and regulations and it is unrealistic to expect they would.

g. The hydrology and water resources cumulative impact analysis fails to recognize that the Project would have several significant impacts pre-mitigation related to Impacts HYD#4, HYD#5, and HYD#13. Impacts HYD#2, HYD#7, and HYD#13 should have been significant pre-mitigation. The EIR/EIS concludes that, notwithstanding these significant direct hydrology/water resources impacts, the Project would have no cumulative impacts.

h. The EIR/EIS concludes, without evidence, that the are no significant cumulative land use impacts because cumulative projects are generally included in general plans and regional transportation plans and because future land use changes would be consistent with general plans. General plan consistency does not always preclude the possibility of land use impacts, e.g., land use conflicts, for a particular development project.

i. The EIR/EIS analysis minimizes the Project's incremental contributions to land use conflicts, which are significant and unavoidable. The EIR/EIS analysis of Project contributions misleadingly states that "[a]lthough the project alternatives would result in

some localized changes in land use patterns near the East or West Brisbane LMF and at the Millbrae Station, the project alternatives would not lead to incompatible uses on a broad scale that would result in the substantial alteration of land use patterns within the cumulative [resource study area] RSA." Land use impacts, such as conflicts with adjacent uses, are highly localized, and whether "broad scale" impacts are felt in the "cumulative RSA" is immaterial to such localized cumulative impacts. The Project's contribution to such localized cumulative impacts is cumulatively considerable.

j. The Project's direct impacts on water supply and stormwater drainage facilities are significant but the public utilities cumulative impact analysis in EIR/EIS Section 3.18.6.5 takes a broad-brush regional approach to conclude that no public utilities impacts are significant. These conclusions are based on assumptions, not evidence. The analysis should provide location-specific, evidence-based analyses for Brisbane and for other localities where public utilities are actually provided. The cumulative analysis should recognize that future development will place further demands on water supply and stormwater drainage facilities, creating significant cumulative impacts, and that the Project's contributions to these impacts are cumulatively considerable.

k. The archaeological cumulative impact analysis assumes that existing laws, regulations, and mitigation measures would prevent any cumulative impacts on archaeological resources from occurring so there would be no cumulatively considerable Project contribution to such impacts. The EIR/EIS presents no evidence that all reasonably foreseeable future projects would comply with all applicable archaeological resources laws and regulations, and it is unrealistic to expect they would.

l. The archaeological resources cumulative impact analysis fails to recognize that the Impacts CUL#1 and CUL#2 are significant impacts pre-mitigation. Impact CUL#2 is much greater in magnitude than indicated in the EIR/EIS. The cumulative impact analysis for these specific impacts should have used the same significance thresholds as for direct impacts, been added to the impacts of probable future projects, and concluded that cumulative impacts were also significant, with the Project's contributions being cumulatively

considerable. (See Guidelines, § 15130.) Instead, the EIR/EIS concludes that, notwithstanding these significant direct impacts, the Project would have no cumulative archaeological resources impacts at all.

m. The socioeconomics and communities cumulative impact analysis assumes that the Project would not result in temporary or permanent division of communities, which is incorrect for the City. The socioeconomics cumulative impact analysis fails to examine the extent to which other cumulative projects in Brisbane would add to this significant Project impact. The cumulative community division impact is significant, and the Project's contribution is cumulatively considerable.

n. The EIR/EIS fails to account for the cumulative impacts on parks and recreational users from the operation of the support facilities, especially the LMF. The analysis is limited to "sources of noise during operations from Caltrain and HSR trains passbys and train horn noise." The EIR/EIS fails to include analysis of the cumulative impacts of non-train, support activities, such as maintenance. Importantly, impacts for the LMF are included in some fashion in Section 3.14, but this EIR/EIS section fails to analyze the cumulative effect of these impacts.

208. The EIR/EIS's cumulative impact analysis does not include any additional feasible mitigation measures for cumulatively considerable impacts and does not describe additional feasible mitigation measures to address the Project's cumulatively considerable contribution to a cumulative impact. Instead, the EIR/EIS asserts, without explanation or citation to evidence, that no further mitigation is available.

G. Procedural CEQA Violations

1. The Authority Prematurely Committed to Approving the Project

209. Before conducting CEQA review, agencies must not "make a decision to proceed with the use of a site for facilities which would require CEQA review" or "[o]therwise take any action which gives impetus to a planned or foreseeable project in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of the CEQA review of that public project." (Guidelines, § 15004, subd. (b)(2).)

210. In determining whether an agency has committed itself to a definite course of action, i.e., has "approved" a project, the California Supreme Court has recognized that an EIR should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design. EIRs must be prepared early enough so that the analysis can practically serve as an input into the decision-making process. (*Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 129 ("*Save Tara*") [citing Guidelines, § 15004, subd. (b)].) When the agency has effectively circumscribed or limited its discretion with respect to environmental review of a project or has committed significant resources to shaping the project, it has foreclosed any meaningful alternatives to going forward with the project. The agency's failure to conduct environmental review prior to these actions violates CEQA.

211. The Authority has prematurely committed itself to a definite course of action, in approving the Project. While the EIR/EIS purports to discuss a "proposal" to construct the HSR between San Francisco and San José and to evaluate "alternatives," it is clear from the record that the Authority had always intended to approve the Project along the one sole alignment, regardless of the conclusions in the EIR/EIS. The Authority began its Northern California LMF site selection process by reviewing only two alternatives to the Brisbane site, both of which were obviously undesirable for a rail maintenance yard.

212. The Authority's Supplemental Alternative Analysis (August 2010) considered only two sites other than Brisbane for the LMF: the Port of San Francisco (Piers 90-94) and San Francisco International Airport (SFO). These were both "straw man" alternatives. The Port of San Francisco site was found to be operationally deficient because of its size, distance from the mainline tracks, and need to be stub-ended (i.e., single access and egress), all of which should have been known before the site was considered for potential LMF use. The SFO site, although 100 acres in size, was determined to be operationally deficient because of (1) its distance from the mainline track and the need for a stub-end increased the cost to provide the lead tracks from SFO and (2) the fact that the existing lease to the site had been renewed with the current tenants. Both of these facts should have been known before the site was even considered for potential LMF use.

213. The Authority gave realistic consideration only to the Brisbane Baylands property as a site for the Northern California LMF, in violation of the Supreme Court's decision in *Save Tara, supra,* 45 Cal.4th 116. Only after the Authority's 2016 Business Plan called for the second segment of the high-speed rail system to extend west from the Bakersfield to Merced segment to the San José-Gilroy area ("Valley-to-Valley" approach) did the Authority consider other sites for a Northern California LMF. When the 2018 Business Plan changed the order of construction such that the San Francisco to San José segment would be built before the Valley-to-Valley segment, there was no need for an LMF between San José and Morgan Hill and the Authority dismissed consideration of any site other than Brisbane Baylands. This conclusion is demonstrated by Final EIS/EIR Response to Comments 1164-1409, 2016 Business Plan, EIR/EIS Appendix 2-F Section 2.3.1.1, EIR/EIS Appendix 2-F Table 2 and Response to Comment 1164-1409.

214. Almost a decade before release of the San Francisco to San José Project Section Draft EIR/EIS, the Authority had committed to the alignment it purports to analyze in the Draft EIR/EIS. In 2012, Caltrain and the Authority formally agreed to electrify the existing Caltrain corridor, share the tracks, and maintain the corridor as primarily a two-track railroad for use by both agencies. This is impermissible under CEQA. (See *Save Tara, supra,* 45 Cal.4th 116 [lead agency may not contract away its ability to respond to the results of later environmental review].)

215. The Authority has repeatedly advanced the same project towards the current Tier 2 review, never genuinely examined alternatives, including the No Project Alternative. The Authority has already made up its mind to put the LMF in what it considers the most "optimal" location, which contravenes CEQA's prohibition on taking actions that would preclude consideration of alternatives. (*Save Tara, supra,* 45 Cal.4th at pp. 138-139.)

2. The Final EIR/EIS Inadequately Responds to Comments

216. The Final EIR/EIS fails to respond to many comments submitted on the Draft EIR/EIS and contains legally deficient responses to numerous other comments. CEQA requires the lead agency to respond to each comment raising significant environmental issues received during the comment period. (Guidelines, § 15088, subd. (a).) One court provides that a lead agency's failure to respond to significant comments violates its duty under CEQA, the purpose of which "is

to inform both the public and the decision makers, *before the decision is made*, of any reasonable means of mitigating the environmental impact of a proposed project." (*The Flanders Foundation v. City of Carmel-by-the-Sea* (2012) 202 Cal.App.4th 603, 617, emphasis added.)

217. The Authority provided insufficient evidence to support its conclusions, in violation of CEQA Guidelines section 15088 subd. (c), which states, (emphasis added):

> The written response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections). In particular, the major environmental issues raised when the lead agency's position is at variance with recommendations and objections raised in the comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted. There must be good fair, reasoned analysis in response. *Conclusory statements unsupported by factual information will not suffice*.

218. The Final EIR/EIS responded to only selected comments on significant environmental issues by the City of Brisbane Department of Public Works. There were no responses to the following:

a. Specific comments on Geneva Avenue extension project options that would reduce impacts (See Final EIR/EIS comments 1165-2401; 1165-2269; 1165-2292 and Final EIR/EIS p. 20-474);
b. Specific comments on alternatives to reduce impacts to Golden State Lumber's lay down yard (See Final EIR/EIS comments 1164-1611; 1164-1727); and
c. Specific comments on alternative sites for the LMF that would reduce impacts (See Final EIR/EIS comments 1163-1131; 1164-1432; 1164-1433; 1164-1445; 1164-1475; and Final EIR/EIS p. 20-136).

219. In other cases, the Final EIR/EIS failed to respond to Draft EIR/EIS comments at all. The Final EIR/EIS fails to acknowledge or respond to any comments on the Draft EIR/EIS provided by Ten Over Studio, which was submitted to the Authority as Attachment E to the Metis Environmental Group comment letter. This fundamentally violates CEQA.

220. The Final EIR/EIS contains incomplete, inconsistent, and incorrect responses to comments that provided conclusory statements unsupported by factual information. The following responses to comments are legally deficient:

a. **Response to Comment 1164-1429.** The comment notes that "Alternative A" is the proposed Project, and there is only one "real" alternative analyzed: "Alternative B." The comment states that "[f]or a project of this size and scope, it is patently unreasonable to analyze only one build alternative." The response fails to address the point regarding lack of alternatives.

b. **Response to Comment 1164-1449.** The comment states that "none of the individual resource area sections of the Draft EIR/EIS identify whether impacts under the No Project scenario would be significant nor do they address the No Project Alternative in the summary of CEQA significance conclusions at the end of each section. This makes it impossible for the public and the decision makers to understand the impact of not approving the Project." The response does not address the lack of No Project analysis in each resource section, nor does it note any changes made to the Draft EIR/EIS in this respect.

c. **Response to Comment 1164-1451.** The does not directly address this statement by Authority CEO Brian Kelly on August 13, 2020, that the Authority had "settled" on Brisbane as a location for the LMF, as evidence of premature selection and commitment to the Project.

d. **Response to Comment 1164-1491.** The response does not address the central comment that the Draft EIR/EIS does not explain to the public what health effects there are from noise and vibration, and how the Project's additional noise and vibration will impact health.

e. **Response to Comment 1164-1549.** The response does not address the comment stating the analysis in GEO#6 fails to include details about the existence of a prior landfill on the East LMF site, specifically, that such a landfill was "unclassified" and filled prior to the distinction between hazardous and non-hazardous waste, the "unclassified" nature of this landfill, and the additional hazards it may pose, or the fact that the Draft EIR/EIS did not include any additional analysis of the impacts from construction on this site.

f. **Response to Comment 1164-1566.** The comment states that HMW-IAMF #9 contains no further details about how it will "replace hazardous substances with nonhazardous substances". The response does not explain why identification of a specific hazardous substance is necessary before explaining how a hazardous substance would be replaced with a non-hazardous substance. The Draft EIR/EIS was not revised to include an example of how this process would take place for a common hazardous substance likely to be located on the site.

g. **Response to Comment 1164-1643.** The response inappropriately responds, "[t]he Metis survey data is not publicly available and could not be obtained by the Authority, and so could not be incorporated into the Final EIR/EIS." The entire Metis survey was provided to the Authority by the City after it was requested but the Authority chose to ignore the findings of the survey because the mapping included in the report was not available in GIS format.

h. **Response to Comment 1164-1677.** This response does not provide evidence that drainage impacts of the LMF would be less than significant. The response states that runoff would continue to drain to Visitation Creek and San Francisco Bay, which does not preclude substantial changes to drainage patterns to upstream of these receiving waters. The response provides an illusory promise that the Authority will fix any drainage problems identified in future, deferred studies after Project approval.

i. **Response to Comment 1164-1683.** The response does not directly address the comment stating that the EIR/EIS is required to provide a water quality analysis to disclose the type of site remediation that will be required and adequately evaluate its effectiveness to support the EIR/EIS's conclusion that substantial evidence showing impacts associated with hazardous materials and wastes would be less than significant. The response merely states that it relies on future "testing and appropriately managing contamination" to assure impacts are less than significant and that "future evaluation of the level of contamination" may be required, as well as site remediation.

j. **Response to Comment 1164-1686.** The comment states: "The LMF sites are located in an area of wetlands and tidally influenced zones, and the soil is a mix of native soils, marine sediment, and layered with trash. This unique soil composition must be analyzed in conjunction with the release of pollutants during Project operations because tidally influenced areas will likely make it easier for pollutants to reach waterways." The responses does not address unique site-specific impacts associated with the unique soil types of the LMF sites.

k. **Response to Comments 1164-1696 and 1697.** The response does not address the issue raised in the comment regarding the delay of preparing a vulnerability assessment and adaptation plan until a later, unspecified time.

l. **Response to Comment 1164-1699.** The response does not address the legal requirement raised in the comment noting that determination of whether a project's contribution to a significant cumulative impact is cumulatively considerable must be made pre-mitigation.

m. **Response to Comments 1164-1700 and 1701.** The comment states the aesthetics IAMFs lack performance standards. The response does not address the lack of performance standards.

n. **Response to Comments 1164-1705.** The response does not remedy the comments' showing that the Authority improperly deferred mitigation measures.

o. **Response to Comments 1164-1715.** This response does not remedy the issue that there continues to be no site-specific analysis of the availability and adequacy of existing water, wastewater, natural gas, and telecommunications infrastructure to serve the Brisbane LMF.

p. **Response to Comment 1164-1727 and Comment 1165-2171.** These comments address issues related to the loss of the Golden State Lumber's existing lay-down area on the west side of Tunnel Avenue across from the existing Golden State Lumber facility and explain why the Draft EIR/EIS did not sufficiently analyze the economic and displacement impacts of removing the existing lay-down area for off-loading and storing lumber shipped by rail. The Authority's responses to these comments does not address the loss of Golden State Lumber's lay-down yard but rather states the "Authority would develop a relocation

mitigation plan prior to acquisition, in consultation with cities, counties, and property owners in the future."

q. **Response to Comment 1165-1895.** This response is misleading as the LMF sites were not selected to minimize land use impacts because: (1) the siting of the East and West LMF sites based on engineering design considerations to fit a 7,000+ foot linear area adjacent to the east and west sides of the existing Caltrain right-of-way as much as possible within the Baylands property; (2) no analysis of site contamination or solid waste characterization were undertaken by the Authority prior to preparation of the Draft EIR/EIS; and (3) modifications to the design of the Brisbane LMF completed by the Authority after public release of the Draft EIR/EIS increased, rather than decreased the amount of land needed to construct the East LMF.

r. **Response to Comment 1165-2016.** This comment points out inconsistencies in Draft EIR/EIS wetland impact calculations identified for the Brisbane LMF. The Authority's response does not explain the inconsistencies in impact calculations identified for the Brisbane LMF but only refers back to Response to Comment 1165-2104 which is irrelevant to the issues raised in this comment.

s. **Response to Comment 1164-1741.** The response fails to provide site-specific details on exactly how access to the Los Gatos Creek Trail would be maintained.

t. **Response to Comment 1164-1752.** This response focuses on the cumulative hazardous materials and waste analysis that was used as an example in the comment and ignores the comment's point: the Draft EIR/EIS fails to explain which, if any, of the more than 338 future land use projects identified in Appendix 3.18-A were considered as part of the future cumulative scenario for each resource area.

u. **Response to Comment 1164-1760.** The response fails to cite a specific EIR page number or section for the assertion that the EIR methodology did consider the likelihood that even if all of the cumulative projects result in individually insignificant impacts, the combined impact of these projects may be cumulatively significant.

v. **Response to Comment 1164-1767.** This response fails to state specific grounds for not recirculating the Draft EIR/EIS and does not have specific responses to the four specific grounds for recirculation included in the City's letter, but rather solely includes a reference to previous comment responses as the reason why recirculation is not required.

w. **Response 1164-1768.** This response does not respond to the specific comment that the Draft EIR/EIS must be rewritten to demonstrate that, to "the fullest extent possible," CEQA review has been integrated with all related review and consultation requirements, so that all these procedures, "to the maximum extent feasible," run concurrently rather than consecutively. The response does not demonstrate that the Draft EIR/EIS integrated related review and consultation requirements to the fullest extent possible and is not supported by any substantial evidence.

x. **Response to Comment 1164-1772.** This response addresses only the wetland definition portion of the State Waters Policy. The State Waters Policy includes other provisions, such as alternatives analysis and climate change analysis, that differ from federal wetlands permitting requirements and could affect Project state wetlands permitting.

y. **Response to Comment 1164-1776.** The response fails to demonstrate that the EIR/EIS mitigation measures would completely avoid the take of the two fully-protected species, the San Francisco garter snake and the white-tailed kite. Asserting that the take would be avoided is not sufficient and there is no evidence showing it would be feasible for the mitigation measures to completely avoid the take of these species.

z. **Response to Comment 1165-2245.** This response asserts that General Plan Policy 174 "is specific to requirements for a development project in an area designated for planned residential and commercial uses on Brisbane Baylands and would not apply to the HSR project." The purpose of Comment 1154-2245 is to note that the proposed Brisbane LMF is inconsistent with this policy, and that the Authority seeks to approve development of the East LMF without knowing the requirements of federal, state and local regulatory agencies with authority over the landfill. The Authority did not respond to the Project's inconsistency with Policy 174, but rather states it "is required to comply with all federal

and state laws and regulations and to secure all applicable federal and state permits prior to initiating construction on the selected alternative." The Authority did not provide any explanation of the rationale for designing the LMF and related facilities, specific requirements for siting the LMF within the former landfill, and whether the LMF, as currently designed, could actually meet those requirements.

aa. **Response to Comment 1165-2257.** This comment mentions removal of Icehouse Hill as a visual appearance impact related to General Plan Policy BL-11. The response to this comment fails to acknowledge that Alternative B proposes removal of the entirety of Icehouse Hill.

bb. **Response to Comment 1165-2268.** The comment asserts that construction of the Brisbane LMF would not preclude future development within the Baylands in the area "since development has and will continue to occur near train tracks and facilities due to the limited supply of land in the Bay Area." This response fails to specifically address residential development occurring adjacent to rail maintenance yards.

cc. **Response to Comment 1165-2348.** The comment asks whether the European Technical Specifications for Interoperability standard used in the Draft EIR/EIS is stricter or more lenient than the U.S. EPA noise standard. The response does not disclose whether the HSR is subject to or exempt from U.S. EPA noise standards and whether the European noise standard used to analyze noise is more strict or lenient than U.S. EPA noise standards. The Final EIR/EIS fails to respond directly to Comment 1165-2348 and fails to disclose to the public and Authority decisionmakers whether the noise levels assumed for HSR trains and used to analyze the Project's noise impacts would comply with current U.S. EPA noise standards that are designed to prevent significant noise impacts.

dd. **Responses to Comments Regarding Geneva Avenue Extension are inconsistent.** Some responses, such as Standard Response Gen-3 and Response to Comments 1165-2269, state that Geneva Avenue extension is included as a cumulative project but not as part of baseline. However, Response to Comment 1165-2213 states, "The Geneva Avenue Extension is funded only for planning and environmental analysis by 2040 in Plan Bay

Area 2040….Thus, there is no inadequacy in not including that project in the cumulative analysis."

ee. **Response to Comment 1160-2553.** The response does not address the central issue regarding the CPUC's recommendation that pedestrian crossings all be perpendicular to the railroad crossings, as this minimizes the time pedestrians spend crossing, and prevents wheelchairs from getting stuck.

3. The Final EIR/EIS Introduces Significant New Information that Requires Recirculation of the EIR/EIS

221. CEQA requires recirculation when "significant new information" is added to an EIR. (Pub. Resources Code, § 21092.1; Guidelines, § 15088.5.) The purpose of recirculation is to give the public and other agencies an opportunity to evaluate the new data and the validity of the conclusions drawn from it. (*Silverado Modjeska Recreation and Park Dist. v. County of Orange* (2011) 197 Cal.App.4th 282, 305.) The CEQA Guidelines provide four examples of "significant new information" requiring recirculation. (Guidelines, § 15088.5, subds. (a)(1)-(4).) These include a disclosure showing that:

a. A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.

b. A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.

c. A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it.

d. The Draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

222. The Final EIR/EIS introduces significant new information and impact analyses, as well as modifications to the Project design in and around the Brisbane LMF, which include facts that:

a. Over 2 million cubic yards of "materials" to be excavated from the former Brisbane landfill for construction of the East LMF would, in fact, consist of municipal solid waste, over 200,000 cubic yards of which are anticipated to be hazardous. The Draft EIR/EIS failed to disclose that municipal solid waste would be excavated and stated that no hazardous materials would be excavated for the East LMF.

b. The East LMF would actually result in conversion of approximately 121 acres of planned land use. Land use tables in the Draft EIR/EIS previously stated that only 103 acres of planned land use would be converted for development of the East LMF.

c. Substantial revisions to the staging of bridge construction for the East LMF and proposed relocation of the Brisbane fire station would cause significant public safety impacts that were neither disclosed in the Draft EIR/EIS nor fully evaluated in the Final EIR/EIS.

223. The Final EIR/EIS acknowledges, for the first time, that (1) construction of the East LMF would require excavation into the municipal waste matrix of the former Brisbane landfill and (2) a portion of waste materials excavated from the landfill could be hazardous and require transport to a Class I landfill as hazardous materials. The Final EIR/EIS discloses that 2.08 million cubic yards described as non-hazardous "materials" excavated for construction of the East LMF would consist of municipal solid waste rather than soil. The Final EIR/EIS revises Section 3.10, *Hazardous Materials and Wastes*, to state that construction of the East LMF (Alternative A) "would require significant earthwork cut and fill…on the site of the former Brisbane Landfill" and states "[a]n estimated 2.4 million cubic yards of excavation would be required, with depths of 60 feet below ground surface." The Final EIR/EIS states that construction for the West LMF (Alternative B) "would require similar construction activities, including 2.5 million cubic yards of excavation."

224. The Final EIR/EIS also, for the first time, estimates the 208,300 cubic yards of the solid waste excavated for the East LMF would require disposal at a Class I landfill as hazardous waste, which would represent a minimum of 13,000 truckloads of hazardous materials excavated from the former landfill, loaded onto trucks, and transported over 200 miles offsite, from San Mateo County to Kern County. The EIR/EIS states, "[t]he Authority has estimated that

approximately 208,000 cubic yards of the solid waste generated during earthwork activities *may require special disposal as hazardous waste* under Alternative A and that approximately 432,000 cubic yards of the solid waste generated during earthwork activities *may require special disposal as hazardous waste* under Alternative B. Both project alternatives are also anticipated to generate hazardous waste from building demolition activities…. This hazardous waste would likely be transported via truck to Kettleman Hills landfill for disposal." (Emphasis added.)

225. The Final EIR/EIS characterizes these revisions as "refined assumptions regarding the amount of solid waste, including the amount of hazardous solid waste" generated from construction of the Brisbane LMF and hauled to a Class I landfill. The new fact that 208,000 cubic yards of the solid waste would require disposal at a hazardous waste facility over 200 miles from the LMF site does not merely "refine assumptions", but rather presents significant new information that discloses new significant environmental impacts related to public health and safety would result from the Project. The Final EIR/EIS's initial disclosure of the amount of excavated materials associated with LMF construction reveals the EIR/EIS was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (Guidelines, § 15088.5.)

226. The Draft EIR/EIS's failure to disclose and evaluate the true nature of materials that need to be excavated from the former Brisbane landfill and transported offsite deprives the public and public agencies of the opportunity to meaningfully review and comment on the physical environmental effects of excavating and transporting 2.08 million cubic yards (130,175 truckloads) of solid waste, of which 208,300 cubic yards (13,000 truckloads) would consist of hazardous waste materials.

227. The Final EIR/EIS does not cure the deficiencies presented in the Draft EIR/EIS with regard to public utilities and energy impacts. For the first time, the Final EIR/EIS discloses that the 2,129,570 cubic yards of soil and solid waste to be disposed of at the Corinda Los Trancos Landfill represents 9.6 percent of that facility's remaining capacity as of 2018-2019 and concludes that adequate landfill capacity exists for construction of the East LMF. The Final EIR/EIS does

not disclose whether the Corinda Los Trancos Landfill is subject to any daily capacity limits that might restrict the Authority's ability to deliver up to 690 truckloads of solid waste daily.

228. The Final EIR/EIS discloses that the East LMF would be substantially larger than previously disclosed in the Draft EIR/EIS. The Final EIR/EIS states the East LMF would result in the permanent conversion of 121 acres of planned land uses, which is over a 16% increase from the 103 acres of permanent conversion reported in the Draft EIR/EIS. That the East LMF would actually encompass 121 acres is not disclosed in the CEQA project description.

229. The Final EIR/EIS presents a new, inconsistent, and infeasible plan for the staging of construction of the realignment of the Tunnel Avenue bridge and the temporary use of the existing Brisbane fire station during this construction. This is an essential component of the Project, yet the Draft EIR/EIS omits this information and it is presented for the first time in the Final EIR/EIS.

230. The Final EIR/EIS presented substantial revisions to the Project description including new construction staging for the Tunnel Avenue bridge relocation and a new plan for the relocation of the Brisbane Fire Station No. 81. This Project revision creates significant public safety impacts that were not disclosed in the Draft EIR/EIS and were not fully evaluated in the Final EIR/EIS, as well as a substantial increase in the severity of public safety impacts. The Final EIR/EIS presents an inconsistent and confusing description of the Authority's new plan for construction staging. The Final EIR/EIS's introduction of this new plan for construction staging renders the Project's CEQA analysis inadequate.

231. The Final EIR/EIS fails to evaluate the impacts the new plan for construction staging would have on emergency response times. The EIR/EIS does not disclose the following: the length of time that these interim construction circumstances are expected to last; the actual location of the temporary signalized intersection; various turning movements, added distance, and additional time required for emergency response vehicles to maneuver from the fire station to the temporary intersection; and the physical conditions along Bayshore Boulevard north of the existing 200-foot long median and the physical environmental effects of constructing this

temporary intersection in this heavily landscaped area which is 12-24 feet or more below the roadway.

232. The Final EIR/EIS revises the Draft EIR/EIS Project description to include significant new information regarding "relocating a portion of Visitacion Creek and filling several wetlands." This relocation represents a significant project element that should have been disclosed prior to its addition in the Final EIR/EIS's description of the Project.

SECOND CAUSE OF ACTION

(Violations of the California Endangered Species Act, Fish and Game Code § 2081)

233. Petitioner hereby realleges and incorporates the allegations set forth in each of the paragraphs above.

234. The Project would significantly impact two fully protected species located within the Project area such that impacts would result in a "take" under the California Endangered Species Act ("CESA"). (Fish and Game Code, §§ 86, 3511, 5050.) The EIR/EIS fails to provide sufficient detail for the proposed impacts to the white-tailed kite and the San Francisco garter snake and fails to identify appropriate compensatory mitigation for such impacts sufficient to justify issuance of authorization for the take of such species.

235. CESA is designed to conserve, protect, restore, and enhance endangered or threatened species and their habitat. "State agencies should not approve projects…which would jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat…if there are reasonable and prudent alternatives available consistent with conserving the species or its habitat which would prevent jeopardy." (Fish and Game Code, § 2053.)

236. CESA sets forth requirements regarding the taking of species listed as threatened or endangered and prohibits any person, including state agencies, from "taking" a threatened or endangered species. (Fish and Game Code, §§ 86, 2080.) An endangered species is in serious danger of becoming extinct and a threatened species is likely to become an endangered species in the foreseeable future absent protective intervention. (Fish and Game Code, §§ 2062, 2067.)

237. The California Department of Fish and Game is authorized to permit a take of "endangered species, threatened species, and candidate species" is permitted if the take is incidental to an otherwise lawful activity and the impacts of the take are minimized and fully mitigated. The conservation measure "shall be capable of successful implementation." (Fish and Game Code, § 2081(b).) Additionally, the permit applicant must ensure adequate funding to implement the required conservation measures, and for monitoring compliance with, and effectiveness of, those measures. (Fish and Game Code, § 2081(b).)

238. The Authority violated CESA, prejudicially abused their discretion, and failed to proceed in a manner required by law by approving the Project, which would have the potential to result in the illegal take of two protected species under CESA: the white-tailed kite and the San Francisco garter snake.

239. The EIR/EIS Impact BIO#9 fails to acknowledge that the white-tailed kite is a fully protected species under CESA and mitigation identified for impacts to this species is inadequate to prevent significant impacts to nesting white-tailed kites. Mitigation Measure BIO-MM#12 fails to meet the conservation measure standards required by Fish and Game Code section 2081(b) and does not adequately ensure impacts to this protected species are minimized and fully mitigated. There is no assurance that Mitigation Measure BIO-MM#12 is capable of successful implementation or that adequate funding exists to implement the measure.

240. Mitigation Measure BIO-MM#12 permits the Project biologist to halt work only within work areas and relocate white-tailed kite individuals, which would constitute a "take" under Fish and Game Code section 86. This measure is inadequate to prevent harm to all special status species, including nesting birds occurring outside of the work area, which would likely be affected by noise, dust, night-lighting, and human activities within the area.

241. Similarly, the EIR/EIS Impact BIO#5 and BIO#26 inadequately analyzes impacts to the fully protected species, the San Francisco garter snake, despite noting "the potential for physical harm and mortality of individuals would not be eliminated." This constitutes a "take" under Fish and Game Code section 86.

242. The EIR/EIS fails to acknowledge that impacts to these two fully protected species would constitute a "take" under CESA and would require appropriate permits from the California Department of Fish and Game.

THIRD CAUSE OF ACTION

(Violations of the California Fish & Game Code § 1602)

243. Petitioner hereby realleges and incorporates the allegations set forth in each of the paragraphs above.

244. California Fish and Game Code section 1602 prohibits entities from diverting or obstructing the natural flow of, or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake unless several requirements are met. The statute's requirement applies when "[t]he department determines that the activity may substantially adversely affect an existing fish or wildlife resource and issues a final agreement to the entity that includes reasonable measures necessary to protect the resource…." (Fish and Game Code, § 1602(a)(4)(B).) In order to lawfully conduct any activity related to such diversion, the acting entity must obtain a Lake and Streambed Alternation Agreement from the California Department of Fish and Wildlife, which is subject to compliance with CEQA.

245. The Draft EIR/EIS fails to recognize this regulatory scheme, fails to delineate aquatic resources potentially impacted by the Project, fails to provide sufficient detail to adequately analyze the proposed impacts to protected state aquatic resources within Visitacion Creek, and fails to identify appropriate compensatory mitigation for such impacts sufficient to justify issuance of a Lake and Streambed Alteration Agreement.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that the Court grant the following relief:

1. For a writ of mandate: (a) directing that the determination, findings, and decisions of Respondent be vacated and set aside with respect to Respondents' approval of the Project; (b) directing Respondent to suspend any and all activities pursuant to

the determinations, findings, or decisions that could result in an adverse change or alteration to the physical environment, until Respondent has taken any and all actions that may be necessary to bring the determinations, findings, or decisions into compliance with CEQA; and (c) directing Respondent to take specific actions as may be necessary to bring the determinations, findings, or decisions into compliance with CEQA;

2. For a stay, and preliminary and permanent injunctions restraining Respondents and its agents, employees, officers, and representatives from undertaking any activity to implement the Project in any way pending full compliance with the requirements of CEQA and the CEQA Guidelines;

3. For costs of suit;

4. For reasonable attorneys' fees as authorized by California Code of Civil Procedure section 1021.5 and other provisions of law; and

5. For such other relief as the Court may deem just and proper.

DATED: September 15, 2022

THE SOHAGI LAW GROUP, PLC

By: Margaret Sohagi

MARGARET M. SOHAGI
Attorneys for Petitioner
CITY OF BRISBANE

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EXHIBIT A

MARGARET MOORE SOHAGI
NICOLE HOEKSMA GORDON
R. TYSON SOHAGI

MARK J.G. DESROSIERS
MATTHEW P. WANG
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Sacramento Office
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Sacramento, California 95831

310.475.5700 **T**
msohagi@sohagi.com **E**

September 2, 2022

VIA ELECTRONIC AND PRIORITY U.S. MAIL TO
info@hsr.ca.gov
Mr. Thomas Richards, Board Chair and Members of the California High Speed Rail Authority
CALIFORNIA HIGH SPEED RAIL AUTHORITY
770 L. Street, Suite 620
Sacramento, CA 95814

Re: Notice of Commencement of Action
Under the California Environmental Quality Act

Dear Chair Richards and Board Members:

Please take notice that, pursuant to Public Resources Code section 21167.5, the City of Brisbane intends to file a Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief ("Petition") under the provisions of the California Environmental Quality Act ("CEQA," Pub. Resources Code, § 21000 *et seq.*) against respondent and defendant California High Speed Rail Authority ("HSRA") challenging the HSRA's August 18, 2022 approval of the San Francisco to San José Project Section ("Project") of the California High Speed Rail Project and its certification of an Environmental Impact Report/Environmental Impact Statement ("EIR/EIS") for the Project.

The petition will seek a peremptory writ of mandate directing the HSRA to: (1) vacate and set aside the August 18, 2022 approval of the Project and certification of the EIR/EIS, and all related approvals; (2) suspend all activity under the Project approval that could result in any change or alteration in the physical environment until the HSRA has taken all actions necessary to bring the approval into compliance with CEQA; and (3) prepare, circulate, and consider a legally adequate EIR/EIS prior to any subsequent action taken to approve the Project. The petition will also seek: a temporary restraining order and preliminary injunction restraining Respondents from taking action to carry out the Project pending a hearing on the merits; statutory costs of suit; an award of attorneys' fees under Code of Civil Procedures section 1021.5; and such other and further relief as the Court may deem just and proper.

Very truly yours,

MARGARET MOORE SOHAGI
THE SOHAGI LAW GROUP, PLC

CC: Brisbane City Council
Clay Holstine, City Manager
Thomas McMorrow, City Attorney
John Swiecki, Community Development Director

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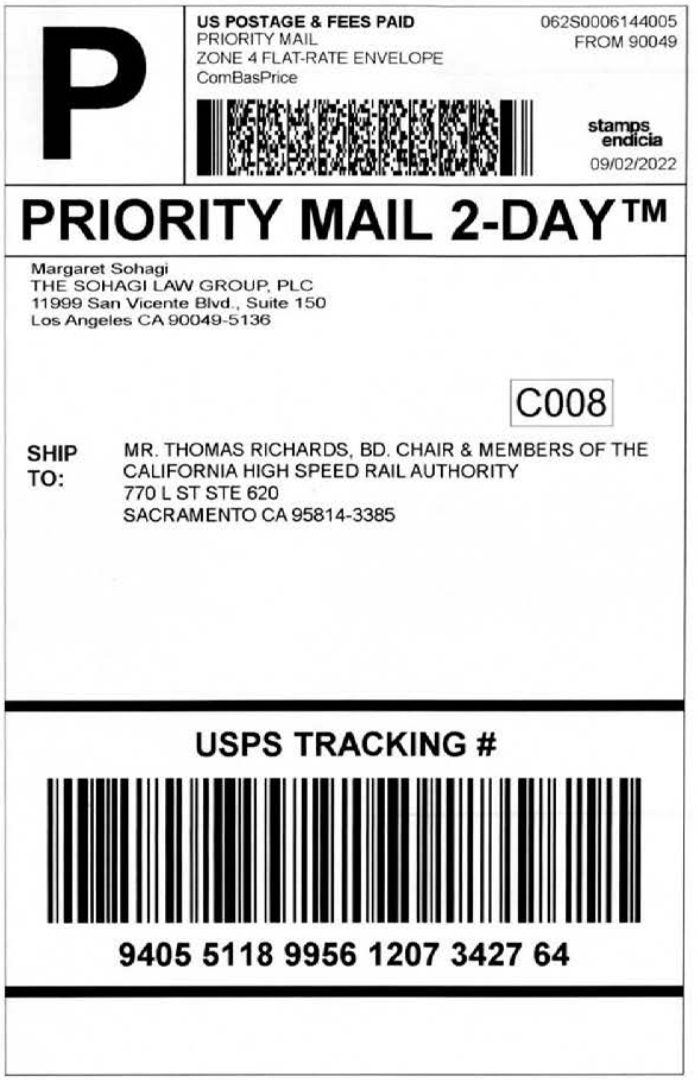

P

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Margaret Sohagi
THE SOHAGI LAW GROUP, PLC
11999 San Vicente Blvd., Suite 150
Los Angeles CA 90049-5136

C008

SHIP TO: MR. THOMAS RICHARDS, BD. CHAIR & MEMBERS OF THE
CALIFORNIA HIGH SPEED RAIL AUTHORITY
770 L ST STE 620
SACRAMENTO CA 95814-3385

USPS TRACKING #

9405 5118 9956 1207 3427 64

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Tracking Number:

9405 5118 9956 1207 3427 64

PRIORITY MAIL 2-DAY with Tracking *
Electronic Service Fee: $0.00
Total Postage and Fees: $7.75
Weight: 0 lbs 1 oz
Print Date: 09/02/2022 Mailing Date: 09/02/2022

From: Margaret Sohagi
THE SOHAGI LAW GROUP, PLC
11999 San Vicente Blvd., Suite 150
Los Angeles, CA 90049-5136

To: MR. THOMAS RICHARDS, BD. CHAIR & MEMBERS OF THE
CALIFORNIA HIGH SPEED RAIL AUTHORITY
770 L ST STE 620
SACRAMENTO CA 95814-3385

USPS Postmark Here

*Regular PRIORITY MAIL 2-DAY Service postage rates apply. There is no fee for Tracking service on PRIORITY MAIL 2-DAY services with use of this electronic shipping label. Postmark required if fee refund requested. Delivery information is not available by phone for the electronic option.

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3. This package may be deposited in any collection box, handed to your mail carrier, or presented to a clerk at your local Post Office.
4. Each confirmation number is unique and can be used only once - DO NOT PHOTOCOPY.
5. You must mail this package on the "mail date" that is specified on this label.

From: HSR info@HSR
To: Cheron McAleece
Subject: Automatic reply: San Francisco to San José Project Section of the California High Speed Rail Project
Date: Friday, September 2, 2022 2:51:54 PM

[Automatic Reply]
Thank you for your interest in the California High-Speed Rail Project. We've received your inquiry and will be in touch. This inbox is monitored during business hours on weekdays, and we hope to respond within 4 business days.

We have a lot of information in various places online that might help. Our website is hsr.ca.gov<https://hsr.ca.gov/>.
That website has:

- factsheets<https://hsr.ca.gov/communications-outreach/info-center/factsheets/>; newsletters<https://hsr.ca.gov/communications-outreach/info-center/regional-newsletters/>;
- project section details<https://hsr.ca.gov/high-speed-rail-in-california/project-sections/>;
- maps, both
    - interactive<https://hsr.ca.gov/high-speed-rail-in-california/project-sections-station-communities-interactive-map/>
    - static<https://hsr.ca.gov/communications-outreach/info-center/maps/>; and so much more.
- Find construction updates at buildhsr.com<https://www.buildhsr.com/>.

If you want to receive project updates, news releases, newsletters, or other communications directly to your email inbox, sign up on our Contact Us webpage<https://hsr.ca.gov/contact/#Form>. Fill in at least the required fields and select which alerts you'd like to receive in the "Sign Up for Email Alerts" drop down menu.

Sincerely,
The California High-Speed Rail Authority Team
info@hsr.ca.gov<mailto:info@hsr.ca.gov>

From: postmaster@calhsr.onmicrosoft.com
To: info@hsr.ca.gov
Subject: Delivered: San Francisco to San José Project Section of the California High Speed Rail Project
Date: Friday, September 2, 2022 2:52:59 PM
Attachments: San Francisco to San José Project Section of the California High Speed Rail Project.msg

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Your message has been delivered to the following recipients:
info@hsr.ca.gov (info@hsr.ca.gov)
Subject: San Francisco to San José Project Section of the California High Speed Rail Project

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Text & Email Updates ⌄

Tracking History ⌃

September 6, 2022, 2:31 pm
Delivered, In/At Mailbox
SACRAMENTO, CA 95814
Your item was delivered in or at the mailbox at 2:31 pm on September 6, 2022 in SACRAMENTO, CA 95814.

September 6, 2022, 6:10 am
Out for Delivery
SACRAMENTO, CA 95814

September 6, 2022, 2:06 am
Arrived at Post Office
SACRAMENTO, CA 95813

September 6, 2022, 1:18 am
Arrived at USPS Facility
EL DORADO HILLS, CA 95762

September 6, 2022, 12:33 am
Departed USPS Facility
ROSEVILLE, CA 95661

September 6, 2022, 12:10 am
Arrived at USPS Facility
ROSEVILLE, CA 95661

September 5, 2022, 11:38 pm
Departed USPS Regional Facility
SACRAMENTO CA DISTRIBUTION CENTER

September 3, 2022, 11:45 am
Arrived at USPS Regional Facility
SACRAMENTO CA DISTRIBUTION CENTER

September 3, 2022, 8:15 am
In Transit to Next Facility

September 3, 2022, 4:33 am
Departed USPS Regional Facility
SANTA CLARITA CA DISTRIBUTION CENTER

September 2, 2022, 9:09 pm
Arrived at USPS Regional Origin Facility
SANTA CLARITA CA DISTRIBUTION CENTER

September 2, 2022, 4:07 pm
USPS picked up item
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FAQs

EXHIBIT B

MARGARET MOORE SOHAGI
NICOLE HOEKSMA GORDON
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September 15, 2022

VIA U.S. MAIL

Office of the California Attorney General
300 South Spring Street, Ste. 1700
Los Angeles, CA 90013

Re: Challenge to the approval of the EIR/EIS for the San Francisco to San José Project Section of the California High-Speed Rail Project; ***City of Brisbane v. California High Speed Rail Authority***

Honorable Attorney General:

Please find enclosed a copy of the Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief filed to challenge the California High Speed Rail Authority's certification of an environmental impact report/environmental impact statement for the San Francisco to San José Project Section in violation of the California Environmental Quality Act.

This Petition is being provided pursuant to the notice provisions of Public Resources Code section 21167.7. Please contact me if you have any questions.

Sincerely,

MARGARET M. SOHAGI
THE SOHAGI LAW GROUP, PLC

Enclosure: Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief

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EXHIBIT C

[Exempt From Filing Fee
Government Code § 6103]

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Email: mmiric@sohagi.com

Attorneys for CITY OF BRISBANE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO, CENTRAL DISTRICT

CITY OF BRISBANE,

Petitioner and Plaintiff,

v.

CALIFORNIA HIGH-SPEED RAIL AUTHORITY; DOES 1 THROUGH 20,,

Respondents and Defendants.

Case No.

NOTICE OF ELECTION TO PREPARE THE ADMINISTRATIVE RECORD

[California Environmental Quality Act, Public Resources Code § 21000 et seq.; Code of Civil Procedure §§ 1085 and 1094.5; California Endangered Species Act, Fish and Game Code § 2081; Fish and Game Code § 1602]

PLEASE TAKE NOTICE:

Pursuant to Public Resources Code section 21167.6, Petitioner City of Brisbane hereby elects to prepare the administrative record in this matter.

DATE: September 15, 2022

THE SOHAGI LAW GROUP, PLC

By: Margaret Sohagi

MARGARET M. SOHAGI
Attorneys for CITY OF BRISBANE

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EXHIBIT D

[Exempt From Filing Fee
Government Code § 6103]

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Email: ngordon@sohagi.com
Email: mmiric@sohagi.com

Attorneys for CITY OF BRISBANE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO, CENTRAL DISTRICT

CITY OF BRISBANE, Petitioner and Plaintiff, v. CALIFORNIA HIGH-SPEED RAIL AUTHORITY; DOES 1 THROUGH 20,, Respondents and Defendants.	Case No. **PETITIONER'S REQUEST FOR HEARING** [California Environmental Quality Act, Public Resources Code § 21000 et seq.; Code of Civil Procedure §§ 1085 and 1094.5; California Endangered Species Act, Fish and Game Code § 2081; Fish and Game Code § 1602]

Pursuant to Public Resources Code section 21167.4 Petitioner and Plaintiff City of Brisbane (the "City") hereby requests that the Court set a date for hearing on the City's Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief for Violations of the California Environmental Quality Act and the California Endangered Species Act in the above-captioned matter.

DATE: September 15, 2022

THE SOHAGI LAW GROUP, PLC

By: Margaret Sohagi

MARGARET SOHAGI
Attorneys for CITY OF BRISBANE

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