3 UNION PACIFIC RAILROAD'S STATEMENTS REFUSING TO ALLOW USE OF ITS RIGHTS-OF-WAY AND THE POTENTIAL FOR NEEDING ADDITIONAL PROPERTY FOR THE HST ALIGNMENT ALTERNATIVES

The Authority circulated the Draft Bay Area to Central Valley HST Program EIR (Draft Program EIR) between July 16, 2007, and October 26, 2007. Subsequent to public circulation of the Draft Program EIR, and shortly before issuance of the 2008 Final Program EIR, the Authority received a May 13, 2008, letter from UPRR (Union Pacific Railroad 2008a). The Authority received an additional letter from UPRR on July 7, 2008 (Union Pacific Railroad 2008b).

This chapter describes UPRR's statements in its 2008 letters regarding use of its right-of-way and subsequent UPRR comments to the Authority submitted as part of the project EIR scoping process. (UPRR's letters to the Authority are included as Appendix C.) This chapter also provides a new discussion of the impact of UPRR's statements about use of its right-of-way on the potential need for more property than originally anticipated for the HST alignment alternatives and on land use compatibility.

3.1 Union Pacific Railroad's Statements on Use of Its Right-of-Way for the HST

UPRR's May 13, 2008, letter states:

> Union Pacific has carefully evaluated CHSA's project and for the variety of reasons we discussed during our meeting, does not feel it is Union Pacific's best interest to have any proposed alignment located on Union Pacific rights-of-way. Therefore, as your project moves forward with its final design, it is our request you do so in such a way as to not require the use of Union Pacific operating rights-of-way or interfere with Union Pacific operations.

UPRR's July 7, 2008, letter indicated its support for high-speed rail but reiterated the point of its May 13, 2008, letter:

> Our concern is that the project should not be designed to utilize or occupy any of our rights of way.

The July letter identified that UPRR's concerns pertain to its narrow rail right-of-way between San Jose and Gilroy, to its Central Valley rail line right-of-way, and to its freight easement on Caltrain's rail tracks between San Francisco and San Jose. With respect to the Central Valley rail line, UPRR noted that it serves industries on both sides of its rail tracks, and location of the HST system on one or both sides would disrupt existing rail-served businesses and prevent new rail-served industries from locating on one or both sides of its current rail line.

Subsequent to its 2008 letters, UPRR provided the Authority with scoping comments for the San Francisco to San Jose (Union Pacific Railroad 2009a), San Jose to Merced (Union Pacific Railroad 2009b), Merced to Sacramento (Union Pacific Railroad 2010), and Merced to Bakersfield (Union Pacific Railroad 2009c) project-level EIRs. UPRR has also provided scoping comments on the separate Altamont Corridor project (Union Pacific Railroad 2009d). These letters reiterate UPRR's 2008 comments quoted above and provide additional information about UPRR's ownership interests and operations in these areas.

The Authority is continuing an ongoing dialogue with UPRR in an effort to ensure the HST system is developed in a manner that is compatible with UPRR's freight operations. The result of those discussions could lead to cooperation between the Authority and UPRR for certain areas of the HST system. The Authority's options for avoiding impacts on UPRR freight operations are discussed further in Chapter 4 of this document.

3.2 Effect of Union Pacific Railroad's Refusal to Allow Use of Its Rights-of-Way for the HST System and the Potential for Needing Additional Property for the HST Alignment Alternatives and on Land Use Compatibility

Chapter 3.7 of the 2008 Final Program EIR concluded that land use compatibility and property impacts were significant for purposes of CEQA. Each alignment alternative was given a ranking of low/medium/high for land use compatibility and property impacts, but the final conclusion was that these impacts must be considered significant at the program level. The following discussion and analysis discloses additional information and changes in the degree of land use compatibility and property impacts for certain alignment alternatives if the Authority cannot reach an agreement with UPRR to use any portion of its rights-of-way in the Bay Area to Central Valley study area. The first section clarifies the relationship of the HST alignment alternatives to UPRR across the study area. The second section provides new material discussing the land use and property effects that would result from being outside of the UPRR mainline right-of-way. The conclusion of the 2008 Final Program EIR remains the same, however, that land use compatibility and property impacts are significant for CEQA purposes. The focus of this section is on the degree of magnitude of change in these significant impacts based on UPRR's position denying use of its rights-of-way.

3.2.1 Clarification of How the 2008 Final Program EIR Identified the Location of HST Alignments as They Relate to Union Pacific Railroad Rights-of-Way

In the 2008 Final Program EIR (and also for the Statewide HST Program EIR/EIS), the Authority's proposed HST alignment alternatives were generally configured along or adjacent to existing rail and transportation corridors. This approach of locating HST alignment alternatives along existing rail and transportation corridors is one method the Authority has used in its planning to minimize environmental impacts. Accordingly, many of the alignment alternatives analyzed in the program EIR are along or adjacent to UPRR rights-of-way, major freeway or highway rights-of-way, or other railroad rights-of-way. Some alignments, however, are new alignments that do not travel along an existing rail or transportation corridor. Figure 2.5-4 of the 2008 Final Program EIR provided a graphic presentation of those alignment alternatives that were in or adjacent to an existing transportation right-of-way (rail or highway) and those that would be new alignments. Figure 3-1 (previous Figure 2.5-4 in the 2008 Final Program EIR) is reproduced without change to illustrate the distinction between alignment alternatives that would be along an existing corridor versus creation of an entirely new corridor.

In some instances, the 2008 Final Program EIR identified that an HST alignment alternative could be fully or partially in UPRR's rights-of-way as a method of reducing environmental impacts and minimizing the need for property acquisition. Figure 3-2 provides a graphic representation of those alignment alternatives that the 2008 Final Program EIR identified as having the potential to be located fully or partially in UPRR's rights-of-way. In general, where existing UPRR rights-of-way are narrow, the 2008 Final Program EIR analyzed the HST alignment alternatives as being adjacent to the rail right-of-way, rather than in it (depicted in light blue on Figure 3-2.) In those instances where existing UPRR rights-of-way are comparatively wide, the 2008 Final Program EIR analyzed the HST alignment alternatives as potentially being accommodated fully or partially within those rights-of-way, consistent with its efforts to minimize the environmental impacts of constructing entirely new rail corridors (depicted in red on Figure 3-2). Some alignment alternatives, or portions of alignment alternatives, are not near UPRR rights-of-

way (depicted in orange on Figure 3-2). Figure 3-2 also includes notations, such as "3-2a" through "3-2o", which provide a reference to subsequent Figures 3-2a through 3-2o in this chapter.

For the alignment alternative between San Jose and Gilroy, a main focus of the *Town of Atherton* court ruling, the 2008 Final Program EIR did not assume that the alignment would be located in UPRR mainline right-of-way. Chapter 2 of this Revised Draft Program EIR Material clarifies that this alignment alternative between San Jose and Gilroy is intended to be adjacent to the UPRR mainline right-of-way between Lick and Gilroy.

3.2.2 Effect of Having No Access to Union Pacific Railroad Rights-of-Way on Land Use and the Need for Additional Property for HST Alignment Alternatives

Chapter 3.7 of the 2008 Final Program EIR described the environmental impacts in the area of land use compatibility and property impacts based on the assumptions discussed above about the potential for minimizing impacts along certain alignment alternatives based on the use of UPRR rights-of-way. The discussion on pages 3.7-19 to 3.7-41 remains valid, except as modified in Chapter 2 of this Revised Draft Program EIR Material. The following discussion is added to disclose the difference in land use and property effects that may occur if, in fact, the Authority is unable to use UPRR right-of-way across any portion of the Bay Area to Central Valley study area. By maintaining the original analysis and adding further discussion, the Revised Draft EIR Material is intended to provide the reader with the fullest possible disclosure of potential environmental effects under either scenario - if UPRR rights-of-way can be used or if they cannot. In this section, Figures 3-2a to 3-2o present photographs of typical current conditions (December 2009) along the UPRR right-of-way supplemented by the 2008 Final Program EIR cross sections and an annotated aerial image (acquired December 2009) from Google Earth.

<u>San Francisco to San Jose Corridor</u>

The San Francisco to San Jose corridor for HST is unique, as the rail right-of-way is public land owned by PCJPB, or Caltrain, rather than UPRR. In the 2008 Final Program EIR, four tracks including two tracks that would be used predominantly by the HST are assumed to be configured in a mix of at-grade, elevated, and below grade vertical profiles, predominately in the PCJPB right-of-way. As part of the follow-on preliminary engineering and environmental document, design variations may be applied to reduce some of the property acquisitions at the project level.

Given that the four tracks would be predominately within the PCJPB right-of-way, the high land use compatibility conclusion in the 2008 Final Program EIR is unchanged. UPRR has retained permanent and exclusive operating rights for the operation of freight trains and for the delivery of common carrier rail service over the entire line between San Francisco and San Jose, subject to certain conditions outlined in the trackage rights agreement between the PCJPB and the UPRR (Peninsula Corridor Joint Powers Board and Southern Pacific Transportation Company 1991, 1992). Accordingly, UPRR's statements in its 2008 letters to the Authority that it will not allow use of its "rights-of-way" for the placement of HST alignments does not affect this corridor in the same manner as other corridors where UPRR owns the rail right-of-way outright.

In some locations, this right-of-way is not sufficiently wide enough to accommodate all four tracks and in some location would result in the acquisition of property. The 2008 Final Program EIR ranked property impacts along the San Francisco to San Jose Corridor as low based on the fact that the alignment would be built mostly within the existing publicly owned right-of-way. The information now available indicates a need for limited property acquisition along the right-of-way in narrow areas to allow for a four-track alignment that will accommodate UPRR freight operations. Accordingly, property impacts in this corridor are now ranked between low and medium, rather than low.

Oakland to San Jose Corridor

In the East Bay, from Oakland to San Jose, the HST Niles/I-880 alignment alternative is assumed to be within a portion of the UPRR right-of-way from 19th Avenue in Oakland to the Centerville Line in Fremont and between Paseo Padre Parkway in Niles and Mission Boulevard in Warm Springs. The rail corridors are densely developed for most of their length, bordered by a mix of residential, commercial and industrial uses that are built in most cases right to the edge of the UPRR right-of-way.

Figure 3-2a shows a typical condition along the Oakland to San Jose corridor. The figure depicts the conditions (November 2009) at the Hayward Amtrak Station. To the left of the photo, the soundwall of a new residential development is visible, while older commercial buildings abut the east (right) side of the right-of-way just past the overcrossing. The 2008 Final Program EIR showed the HST alignment to the east of the UPRR tracks and Amtrak platform, partially in the UPRR right-of-way and partially out of the right-of-way. North of the station (past the overpass) this configuration would require the acquisition of the commercial properties on the east side of the UPRR for a short distance, until the HST could curve gently back into the UPRR right-of-way.

Figure 3-2b shows a common condition in residential areas along the Oakland to San Jose corridor, in this case, in the City of Union City. Looking north from the H Street grade crossing, there is residential development built to the right-of-way on the east (right) side and a roadway lined with homes on the west side. In this location, both the HST and UPRR are assumed to be located at grade within the UPRR right-of-way.

Based on the assumed availability of UPRR right-of-way for placement of the Niles/I-880 alignment alternative, the 2008 Final Program EIR ranked land use compatibility in this corridor as high and the potential for property impacts as low.

Effect of UPRR Denial of Use of Right-of-Way for the Oakland to San Jose Corridor

In each case presented above, if no portion of the UPRR right-of-way is available for placement of the HST tracks, it would be necessary to move the track alignment to be located outside of, and adjacent to, UPRR's right-of-way. The properties abutting the UPRR right-of-way would need to be acquired for the HST and/or the HST would need to be constructed on an aerial structure above public or private property. In the Hayward example, it is likely that HST would be built at grade, adjacent to the UPRR right-of-way, resulting in the need to acquire the property on one side or other of the UPRR, of a width capable of accommodating two HST tracks. In the Union City example, it is likely that the HST could be built on an aerial structure just outside the UPRR right-of-way. In other locations, it is likely that an aerial structure could be used where industrial uses abut the UPRR, with the columns placed in the industrial property. This would alleviate any possible interference with spur tracks from the UPRR into the industrial properties.

Assuming UPRR right-of-way is not available in this corridor, the impact ranking for land use compatibility and property impacts would change. The Niles/I-880 alignment alternative would have medium land use compatibility, rather than high land use compatibility. Property impacts would be ranked medium, rather than low, based on the need to acquire new right-of-way.

San Jose to Central Valley Corridor

From San Jose to the junction with the north-south HST line near Chowchilla, the HST line follows the UPRR rail corridor from San Jose to south of Gilroy along the Pacheco alignment alternative. This alignment alternative starts as an elevated station above the existing Caltrain/Amtrak/ACE/Capitol Corridor platforms at Diridon Station. The Pacheco alignment alternative remains aerial until crossing the I-280 freeway, descending into the existing PCJPB owned right-of-way. North of Lick near where the railway meets Monterey Highway, the HST transitions to run on the east side of the existing railway right-of-way, as the ownership of the existing right-of-way changes from PCJPB (north of

Lick) to the UPRR (south of Lick). Here, HST is proposed to be placed within the right-of-way of Monterey Highway, which would need to be reconstructed generally within the existing highway right-of-way north of Bernal Road and with some right-of-way acquisition along the east side of the highway. The need for and advisability of a safety barrier between the UPRR and HST tracks will be evaluated during the project-level engineering and environmental review for that portion of the HST alignment along Monterey Highway between Lick and Coyote.

South of Coyote to Morgan Hill, the Pacheco alignment alternative would continue to run in the right-of-way of Monterey Highway, but because of the existing configuration of the highway and right-of-way width, Monterey Highway would be relocated and reconstructed approximately 50-60 feet to the east. Figure 3-2c presents an existing overcrossing along Monterey Highway. Where the railway corridor moves away from Monterey Highway, the HST tracks would remain adjacent to and east of the UPRR right-of-way. Approaching the Morgan Hill Caltrain Station, the HST would ascend to an aerial alignment to pass over local streets and an industrial spur that serves business on the east side of the UPRR.

South of Morgan Hill, the HST on the Pacheco alignment alternative would descend to run at-grade alongside the UPRR right-of-way until ascending to another aerial structure to pass through Gilroy. The Gilroy HST station would be elevated adjacent to the non-mainline UPRR right-of-way, near the existing Gilroy Caltrain station. This is shown in Figure 3-2d.

After passing over US 101 and an industrial spur to the east of the UPRR mainline right-of-way, the HST would descend to grade and turn away from the UPRR corridor to extend through Pacheco Pass and across the San Joaquin Valley to Chowchilla.

Effect of UPRR Denial of Use of Right-of-Way for the San Jose to Central Valley Corridor
UPPR's denial of use of its rights-of-way has relatively little effect in this corridor because the Pacheco alignment alternative is assumed to be located adjacent to UPRR mainline right-of-way. The Authority and the PCJPB have a memorandum of agreement providing for the placement of the HST tracks for that portion of the San Jose to Central Valley Corridor between San Jose and Lick (California High-Speed Rail Authority and Peninsula Corridor Joint Powers Board 2004, 2009). Between Lick and Gilroy, the HST would be adjacent to but outside the UPRR mainline right-of-way. The impact rankings discussed above in Chapter 2 for the area between San Jose and Gilroy on the Pacheco alignment alternative are therefore not affected. Land use compatibility would be ranked medium.

In Gilroy, the HST alignment and station is assumed to be aerial adjacent to UPRR's mainline right-of-way east of the existing Caltrain station without disrupting UPRR operations. In those cases where the HST alignment may cross UPRR non-mainline right-of-way including spur tracks, one of four actions would occur – (1) HST would go under UPRR property (trench or tunnel); (2) HST would fly over the UPRR property on an aerial alignment providing adequate vertical and horizontal clearances as required by California Public Utilities Commission General Order 26-D (1981) and consistent with UPRR standards and procedures (BNSF Railway–Union Pacific Railroad 2007); (3) spur tracks would be relocated maintaining UPRR spur track access; (4) property would be acquired through negotiations with UPRR (see Chapter 4). The potential need for additional property to locate an HST station in Gilroy to the east of the UPRR mainline right-of-way would increase the overall property impact from low to medium. Alternatives to the program alignment and a station to the south are also currently under consideration, including (1) a possible station in Morgan Hill rather than Gilroy, (2) an alignment between the Diridon Station and the Caltrain Tamien Station that would diverge from the PCJPB right-of-way and make use of the I-280/SR-87 highway rights-of-way near downtown San Jose, (3) a tunnel alternative in downtown San Jose between the Diridon Station and the Caltrain Tamien Station, and (4) an alternative near US 101 south of Coyote.

East of Gilroy, the HST alignment alternative travels over the Pacheco Pass and across the San Joaquin Valley using the Henry Miller or GEA North alignment alternatives. The HST would fly over a branch line of the UPRR in the Volta area on an aerial structure.

East Bay to Central Valley Corridor

The East Bay to Central Valley corridor extends from Fremont to Manteca via Pleasanton, Livermore and Tracy through Niles Canyon and the Altamont Pass. From west to east, the HST UPRR alignment alternative would pass over the UPRR's Alviso line near Stevenson Boulevard. The HST UPRR alignment would be adjacent to a UPRR spur track along Stewart Avenue. In both cases, the UPRR alignment alternative would be on an aerial structure and would not interfere with UPRR operations. East of Fremont Central Park, the UPRR alignment alternative would be in a cut and cover tunnel beneath the former Western Pacific line, abandoned but owned by UPRR.

East of Niles Canyon, the UPRR alignment alternative would be on aerial structure within the UPRR right-of-way just west of I-680. This HST alignment would be elevated, with the support columns within the UPRR right-of-way but to one side. Figure 3-2e shows this condition, just east of Santa Rita Road. Further east, this HST alignment would return to grade and be within the UPRR right-of-way adjacent to Stanley Boulevard. Figure 3-2f shows this condition. The UPRR alignment alternative would continue partially in the UPRR right-of-way through Livermore, as shown in Figure 3-2g.

After passing over the Altamont Pass on a new alignment, the HST would cross the City of Tracy on one of two UPRR-owned right-of-ways. The Tracy ACE Station (UPRR Connection) alignment alternative would enter the UPRR right-of-way where the UPRR curves away from West Linne Road. This alignment alternative would run at grade adjacent to the UPRR right-of-way. This alignment alternative would remain adjacent to the UPRR right-of-way until the Paradise River, near the junction of I-205 and I-5. The Tracy Downtown (UPRR Connection) alignment alternative would enter the UPRR right-of-way near South Lammers Road and follow it towards the City of Manteca. This alignment is shown in Figure 3-2h.

Based on the assumed availability of UPRR right-of-way for placement of the UPRR alignment alternative, the 2008 Final Program EIR ranked land use compatibility in this corridor as medium-high and the potential for property impacts as medium. For the Tracy ACE Station (UPRR Connection) and Tracy Downtown (UPRR Connection) alignment alternatives, the 2008 Final Program EIR ranked land use compatibility in this corridor as medium and the potential for property impacts as medium.

Effect of UPRR Denial of Use of Right-of-Way for the East Bay to Central Valley Corridor
Should it be necessary to construct the HST along the same routes without using any UPRR right-of-way, it would be necessary to acquire adjacent properties next to UPRR or to use a different alignment alternative. If the UPRR right-of-way is not available for the HST in the Fremont area, the UPRR alignment alternative along Stewart Avenue would need to be moved into the electrical transmission line corridor adjacent to the UPRR right-of-way, with appropriate adjustments made to the transmission lines. East of Freemont Central Park, the cut and cover construction could be replaced by a bored tunnel under the abandoned UPRR line.

Through Pleasanton and Livermore, the HST could avoid use of UPRR right-of-way by using the I-680/580/UPRR alignment alternative. This would take the HST north along the I-680 freeway on an aerial structure which would continue above the median of I-580 until the Altamont Pass.

For the Tracy ACE Station (UPRR Connection) alignment alternative, it would require purchase of some recently-developed residential properties and agricultural land. In the case of the Downtown Tracy (UPRR Connection) alignment alternative, there would also be a number of residential properties that would need to be acquired, along with agricultural properties.

Assuming UPRR right-of-way is not available in this corridor, the impact ranking for land use compatibility and property impacts would change. The land use compatibility ranking for the UPRR alignment alternative in the Fremont area would remain unchanged as medium-high. Property impacts would be ranked medium-high, rather than medium, based on the need to acquire new right-of-way in an electrical transmission corridor. The ranking of land use compatibility (high) and property impacts (high) for the I-680/580/UPRR alignment alternative would be same as identified in the 2008 Final Program EIR. The land use compatibility ranking for the Tracy ACE Station (UPRR Connection) and Tracy Downtown (UPRR Connection) alignment alternatives would change from medium to low-medium and the property impacts ranking would change from medium to medium-high based on the need to acquire additional residential properties.

San Francisco Bay Crossings

Two sets of alignment alternatives were studied for a HST crossing of San Francisco Bay: between Downtown San Francisco and Alameda/Oakland on the Transbay alignment alternatives (Transbay Crossing-Transbay Transit center and Transbay Crossing-4th & King) and from the Peninsula to the East Bay on the Dumbarton alignment alternatives (high and low bridges and tube) and the Fremont Central Park alignment alternatives (high and low bridges). The HST crossing in the Transbay Corridor would be completely in tunnel, so no interaction with the UPRR would occur

The Dumbarton alignment alternatives crossing would begin in Redwood City where the corridor meets the Caltrain corridor. It uses the San Mateo County Transportation District owned right-of-way to approach San Francisco Bay. The existing right-of-way with the single track that is currently used for freight access by the UPRR would require two additional tracks for the HST service. The HST would cross the wetlands and open water of San Francisco Bay on a new, two-track bridge built parallel to the existing Dumbarton rail bridges and embankment.

Once across the bay, in the City of Newark, near Willow Street, the ownership of the right-of-way changes from PCJPB to UPRR. In this area, the alignment transitions from an at-grade configuration to an aerial alignment and continues aerial across Newark and Fremont, following the UPRR for most of the distance. Development along the UPPR consists mainly of residential with some pockets of commercial. Figure 3-2i shows the aerial configuration just east of the Centerville ACE/Amtrak station. The columns for the aerial HST structure would be placed at one edge or the other of the UPRR right-of-way.

Based on the assumed availability of UPRR right-of-way for placement of the Dumbarton alignment alternatives, the 2008 Final Program EIR ranked land use compatibility in this corridor as medium and the potential for property impacts as medium.

Effect of UPRR Denial of Use of Right-of-Way for the San Francisco Bay Crossings

If no portion of the UPRR right-of-way is available, there is no effect on the Transbay Crossing alignment alternatives because the HST would be below grade under the Bay. Accordingly, the 2008 Final Program EIR rankings of high land use compatibility and low property impacts would remain the same.

If no portion of the UPRR right-of-way through Fremont is available on the Dumbarton alignment alternatives for the HST, properties abutting the UPRR would need to be acquired for the HST and/or the HST would need to be constructed on an aerial structure with columns placed just outside the UPRR right-of-way in public street right-of-way, where available, or on the edge of acquired residential or commercial parcels. This area is densely developed along the UPRR right-of-way with homes and businesses. A shift in the location of the Dumbarton alignment alternatives to avoid the UPRR right-of-way would result in the land use compatibility ranking changing from medium to low, and the property impacts changing from medium to high.

Central Valley Corridor

The Central Valley alignment alternatives extend from Stockton to Merced. There were two primary sets of alignment alternatives studied, one generally following the Burlington Northern Santa Fe (BNSF) Railway line, which runs east of the downtowns of most cities, and the UPRR line, which parallels SR-99 and passes closer to the downtowns of the Central Valley cities.

The UPRR N/S alignment alternative starts at the Stockton HST station, located at the existing ACE station. The HST tracks would be elevated above the UPRR right-of-way. It would descend into the UPRR right-of-way south of SR-4. Running south towards Merced, the UPRR N/S alignment alternative would generally stay within the UPRR right-of-way, as shown in Figure 3-2j. Where the UPRR right-of-way narrows, right-of-way adjacent to the UPRR was assumed to have to be acquired for the HST tracks. This condition is shown in Figure 3-2k. Figure 3-2l shows a variation on this situation, the Modesto HST station, where most of the station tracks and facilities would be outside the existing UPRR right-of-way.

At many locations along the existing UPRR N/S alignment alternative, spur tracks leave the UPRR mainline to serve industries along the line. In these locations, the UPRR N/S alignment alternative would ascend to an aerial alignment to pass over the spur tracks, thereby maintaining access from the UPRR mainline to the industries. Figure 3-2m shows an example of this condition.

Where the UPRR passes through areas with many consecutive grade crossings, such as the downtown districts of towns along the line, the HST would ascend to an aerial structure. This would allow all cross streets to remain open, minimizing disruption to the connectivity across the HST alignment. A typical condition is shown in Figure 3-2n.

In Merced, the UPRR N/S alignment alternative would be at grade, and outside the UPRR right-of-way as it approaches the Merced HST station. This is shown in Figure 3-2o. Cross streets would be grade separated from both the HST and UPRR in this area.

Based on the assumed availability of UPRR right-of-way for placement of the UPRR N/S alignment alternatives, the 2008 Final Program EIR ranked land use compatibility in this corridor as medium and the potential for property impacts as low.

Effect of UPRR Denial of Use of Right-of-Way for the Central Valley Corridor

If the HST could not use the UPRR right-of-way in this corridor, additional right-of-way acquisition would be necessary for the UPRR N/S alignment alternative to allow for the HST tracks to be adjacent to, but not within the UPRR right-of-way. This would involve acquisition of agricultural, commercial and residential properties along parts of the UPRR corridor between Ripon and Salida, in Modesto, in Ceres, Turlock, Atwater, and Merced. It would also require more extensive reconstruction/extensions of the existing overcrossings that cross SR-99 and the UPRR. The need for increased property acquisition to construct the HST tracks in some areas along the UPRR N/S line results in its property impact ranking changing from low to medium. The land use compatibility ranking in the 2008 Final Program EIR indicated that the UPRR N/S alignment was considered of medium compatibility for business/commercial, and industrial/agricultural uses, and low compatibility for residential uses. These rankings would remain the same if the alignment must shift to avoid UPRR rights-of-way.

An alternative is available that would avoid the impacts described above. The BNSF rail right-of-way in this corridor could be used as an alignment alternative that has no interface with UPRR right-of-way. This alignment alternative would, however, shift the location of the Modesto HST station from downtown Modesto to Briggsmore, where the existing Amtrak station is located.

3.3 Summary of How Lack of Any Union Pacific Railroad Right-Of-Way for HST Alignment Alternatives Affects the Significance Conclusions in the 2008 Final Program EIR

Chapter 3.7 of the 2008 Final Program EIR identified land use impacts, including both land use compatibility and property impacts, as significant for purposes of CEQA for all of the alignment alternatives. The analysis, however, identified differences in the level of impact that reflected the level of compatibility of an alignment with surrounding land uses. The text also identified mitigation strategies that were anticipated to reduce the impacts to less-than-significant at the project level.

The 2008 Final Program EIR's significance conclusion prior to application of mitigation strategies does not change based on UPRR's statements denying use of its rights-of-way for HST purposes; the land use impacts of the HST alignments remain significant under CEQA. If UPRR rail right-of-way is not available, however, the magnitude and nature of the significant land use impacts differs by corridor, as outlined above. Moreover, the ability of mitigation strategies to reduce the impacts to less than significant become less clear for certain of the alignment alternatives, including the Oakland to San Jose corridor from Fremont north and within the City of Santa Clara, the San Jose to Central Valley corridor through downtown Gilroy, the East Bay to Central Valley corridor through Pleasanton, Livermore and Tracy, the San Francisco Bay Crossing corridor through Fremont and portions of the Central Valley UPRR corridor. For this reason, and based on the uncertainty of ongoing discussions between the Authority and UPRR, land use impacts of the HST alignment alternatives overall would be considered significant, even with the application of mitigation strategies.

The lack of availability of UPRR right-of-way would also appear to make some alignments far more difficult to accomplish because of the magnitude of additional property acquisition that would be required, including Oakland to San Jose and East Bay to Central Valley through Pleasanton, Livermore and Tracy. The additional property needed for these alignments would greatly increase the cost beyond that originally anticipated, as well as result in additional time delays for acquiring the necessary right-of-way from numerous property owners rather than from UPRR as a single property owner.

Switching to a secondary alignment, such as the I-680/580/UPRR alignment alternative around Pleasanton and Livermore to avoid the UPRR would increase constructability issues (elevated in the median of I-580 above active BART line) and operational issues (restricted speed in vicinity of I-580/680 interchange). Using the south Tracy alignment (S UPRR alignment alternative) or BNSF alignment to avoid the UPRR would move HST stations from established downtowns in Tracy and Modesto to locations on the edges of the cities, impacting transit connections and opportunities to encourage development in downtown areas.