

BRUCE TICHININ, INC.
Bruce Tichinin
Attorney At Law
17150 Wedgewood Avenue
Los Gatos, California 95032
Telephone: (408) 429-8415
E-mail: tichinin@garlic.com
Web: www.brucetichininlaw.com

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VIA EMAIL ONLY: (lafebreh@samtrans.com)

Peninsula Corridor Joint Powers Board
Attn: Ms. Hilda Lafebre

SUBJECT: Comment on the Revised Draft of the Initial Study / Mitigated
Negative Declaration
Los Gatos Creek Bridge Replacement /
South Terminal Phase III Project

Dear Ms. Lafebre:

Kindly be advised that I am the attorney for **Save Our Trails: Connecting Santa Clara County Communities** (www.saveourtrails-scc.org), which is a California Not-for-Profit Corporation who mission is "*To promote trails in Santa Clara County for the benefit and enjoyment of all.*"

On behalf of **Save Our Trails**, I am writing to ask you and the JPB staff and engineers to consider a change to the location of the third rail line, the so-called "tail track".

In the current design, the expanded bridge with the tail track will be placed on the west side of the existing two-track bridge ("Western Alternative"). We request that the Peninsula Corridor Joint Powers Board ("Board" or "JPB") relocate the replacement bridge to the east of the existing bridge, on the side towards the Orchard Supply Hardware facility ("Eastern Alternative").

We recognize that many other individuals and organizations have already made this request, often citing the reduction of the impact on the riparian habitat and associated cost savings as reasons for locating the tail track to the east. However, the JPB Staff's response cited concerns about the

unavailability of the property as well as interference from the piers of the San Carlos Street Bridge as precluding this option.

In our reading of the documents, SAVE OUR TRAILS has not been persuaded by the counter-arguments, and requests that the Board reconsider the Staff response.

To the considerations of riparian habitat loss, SAVE OUR TRAILS would add, from our perspective, another set of reasons for placing the trail track to the east. Doing so will allow more space and clearance for the future Los Gatos Creek Trail through this area, a shorter ramp, better clearance under the bridge, and a better line-of-sight for making the turn under the bridge; in short, a much more satisfactory experience for trail users.

In addition, should the Board, in its wisdom, still desire to reject this Eastern Alternative that so many local agencies, organizations and individuals have requested, then it is respectfully requested that, before taking any further action to do so, the Board revise the Revised Draft Initial Study to conclude that the record of comments shows that the project as proposed (the Western Alternative) may have a significant effect on the environment, notwithstanding the proposed mitigation measures, and that therefore, (1) instead of a Negative Declaration, an Environmental Impact Report (“EIR”) is required as CEQA compliance for the project, in which (2) the Eastern Alternative is required to be treated as one of the reasonable range of alternatives to the project as proposed that the EIR includes.

Finally, comments submitted by the City of San Jose show that Western Alternative does not leave room for the Los Gatos Creek Trail to be constructed to the standards of the City of San Jose General Plan. Unless this legal defect is remedied, approval of the Western Alignment by the Board would be unlawful, for the following reasons:

*“Among other things, state planning law requires adoption of a general plan. (§ 65300.) In the universe of local land use enactments, the general plan is ‘at the top of the hierarchy of local government law regulating land use.’ ” (DeVita v. County of Napa (1995) 9 Cal.4th 763, 773, 38 Cal.Rptr.2d 699, 889 P.2d 1019 (DeVita).) **Our state’s high court has described “the function of a general plan as a ‘constitution,’ ” and has labeled it the “ ‘basic land use charter governing the direction of future land use’ ” in the locality. (Leshar Communications, Inc. v. City of Walnut Creek (1990) 52 Cal.3d 531, 540, 542, 277 Cal.Rptr. 1, 802 P.2d 317; see also, e.g., DeVita, supra, at p. 773, 38 Cal.Rptr.2d 699, 889 P.2d 1019.)***

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Local land use decisions must be consistent with the general plan. Thus, for example, zoning ordinances, which are subordinate to the general plan, are required to be consistent with it. (§ 65860, subd. (a); Leshar Communications, Inc. v. City of Walnut Creek, supra, 52 Cal.3d at p. 541, 277 Cal.Rptr. 1, 802 P.2d 317.) The same is true of other local activities affecting land use, such as tentative maps or development agreements. (Curtin, *California Land Use and Planning Law, supra, p. 10.*) ***“Under state law, the propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements.”*** (Resource Defense Fund v. County of Santa Cruz (1982) 133 Cal.App.3d 800, 806, 184 Cal.Rptr. 371.) ***“Since consistency with the general plan is required, absence of a valid general plan, or valid relevant elements or components thereof, precludes enactment of zoning ordinances and the like.”*** (Ibid.) ***“The general plan consists of a ‘statement of development policies ... setting forth objectives, principles, standards, and plan proposals.’*** (§ 65302.) The plan must include seven elements—land use, circulation, conservation, housing, noise, safety and open space—and address each of these elements in whatever level of detail local conditions require (*id.*, § 65301.)’ (DeVita, supra, 9 Cal.4th at p. 773, 38 Cal.Rptr.2d 699, 889 P.2d 1019.)”

Fonseca v. City of Gilroy (2007) 148 Cal.App.4th 1174, 1182, bolding added.

The fundamentality of this “consistency” requirement in California law cannot be overstated. As the Courts have aptly put it: ***“The consistency doctrine has been described as “the linchpin of California’s land use and development laws; it is the principle which infuse [s] the concept of planned growth with the force of law.”...’*** [Citation.]” (Families Unafraid to Uphold Rural etc. County v. Board of Supervisors (1998) 62 Cal.App.4th 1332, 1336, 74 Cal.Rptr.2d 1 ...quoting from Corona-Norco Unified School Dist. v. City of Corona (1993) 17 Cal.App.4th 985, 994, 21 Cal.Rptr.2d 803.)”

Napa Citizens for Honest Government v. Napa County Board of Supervisors (2001) 91 Cal.App.4th 342, 355, bolding added.

Respectfully yours,

BRUCE TICHININ