

EXHIBIT 5

Attached is an excerpt of the full Environmental Impact Report.

“The complete Final Environmental Impact Report can be found at:

[http://www.caltrain.com/projectsplans/CaltrainModernization/Modernization/PeninsulaCorridor
ElectrificationProject/PCEP_FEIR_2014.html](http://www.caltrain.com/projectsplans/CaltrainModernization/Modernization/PeninsulaCorridorElectrificationProject/PCEP_FEIR_2014.html)

1 Caltrain electrification also has independent utility from HSR. Caltrain electrification is planned to
 2 be in operation starting in 2020, which can then immediately start to provide project benefits in
 3 terms of improved service, lower fuel costs, improved air quality, lower greenhouse gases, and
 4 lower operational subsidy for Caltrain compared to that of a diesel system. Current plans for HSR in
 5 the 2014 Business Plan envision the earliest date for HSR service on the Caltrain Corridor would be
 6 2027, thus the PCEP would provide project benefits for a minimum of 8 years before HSR service
 7 occurs on the corridor. More critically, HSR is designed to provide intercity rail services between
 8 Northern California, the Central Valley, and Southern California with only a few stops on the Caltrain
 9 corridor -in San Jose, Millbrae (and possibly Redwood City) and San Francisco whereas the PCEP is
 10 intended to provide electrified commuter rail services between San Jose and San Francisco with
 11 stops at numerous locations along the statewide route. In order for Caltrain to start providing
 12 electrified service in 2020, it is necessary to complete the environmental process now to allow for
 13 the approximately four years it will take to complete the PCEP final design, construct the system,
 14 and complete testing and commission by 2020. Since it will take a number of years of a planning
 15 process to figure out a specific design for the blended system, as well as the time to complete
 16 environmental analysis of the blended system, delaying the environmental process for both the
 17 PCEP and the HSR together would delay the ability to derive project benefits from the PCEP as soon
 18 as possible.

19 Thus, it is completely appropriate and fully in compliance with CEQA requirements and precedent to
 20 analyze the PCEP in the current EIR, disclosing the potential future cumulative impacts with high-
 21 speed rail in the cumulative section of the current EIR based on the current conceptual
 22 understanding of that future project, and completing separate environmental review of high-speed
 23 rail service in a separate future document.

24 **1.5.1.3 Pre-Emption of CEQA by Federal Law**

25 The IPB is a federally-regulated rail carrier, pursuant to proceedings before the Interstate
 26 Commerce Commission (predecessor to the Surface Transportation Board) related to the acquisition
 27 of the Peninsula rail corridor in 1991. A number of court and regulatory decisions have held that the
 28 construction, improvement and operation of federally-regulated railroads are exempt from state
 29 environmental regulatory laws, including CEQA. (See *Friends of the Eel River v. North Coast Railroad*
 30 *Authority*, (October 17, 2014, A139222) Cal.App.4th; *City of Auburn v. U.S. Government* (9th Cir.
 31 1998) 154 F.3d 1025, 1027-1031); the City of Encinitas, CA ((North San Diego County Transit
 32 Development Board Petition for Declaratory Order, No. FD 34111, 2002 WL 1924265 (August 19,
 33 2002); and *City of Encinitas v. North San Diego County Transit Development Board* (2002 US Dist.
 34 LEXIS 28531, 2002 WL 34681621). These decisions have all held that state and local environmental
 35 regulation of railroad construction and operations are pre-empted by federal law.

36 Despite the absence of a legal obligation on the part of the IPB to prepare and certify an EIR for the
 37 Peninsula Corridor Electrification Project, the IPB has decided to complete this document and make
 38 the findings that CEQA otherwise would require when applicable. By taking this action, the IPB
 39 desires to fulfill the fundamental policies and objectives of CEQA in terms of providing the public
 40 and decision makers with detailed information about the potential effects that the project is likely to
 41 have upon the environment. By having voluntarily adhered to the strictures of CEQA, however, the
 42 IPB does not intend to waive its ability to assert that CEQA is preempted by federal law. In short, the
 43 IPB expressly preserves its ability to assert preemption if legal challenges to the EIR are initiated.
 44 Notwithstanding any position the IPB may take regarding the preemption of CEQA, the IPB will

1 remain fully committed to implementing the mitigation measures that will be adopted as conditions
2 for any approval of the project.

3 **1.5.2 Purpose of this EIR**

4 The purpose of the EIR is to provide the information necessary for the JPB to make an informed
5 decision about the Proposed Project, and to supply the information necessary to support related
6 permit applications and review processes.

7 This Draft EIR has been prepared in compliance with CEQA to achieve the following goals.

- 8 • Identify potential direct, indirect, and cumulative environmental impacts associated with the
9 Proposed Project.
- 10 • Describe feasible mitigation measures intended to avoid or reduce potentially significant
11 impacts to a less-than-significant level.
- 12 • Disclose the environmental analysis, including the potential project impacts and proposed
13 mitigation measures, for public and agency review and comment.
- 14 • Discuss potential alternatives to the Proposed Project that meet the purpose and need, are
15 feasible, and would avoid or reduce identified significant project impacts.

16 One of the purposes of CEQA is to establish opportunities for the public and relevant agencies to
17 review and comment on projects that might affect the environment. Scoping activities are discussed
18 below. The JPB will provide a public review period for this Draft EIR of 60 days from release of the
19 Draft EIR for comment. The JPB will also conduct public meetings to receive comment during the
20 comment period. Once the public review period is complete, the JPB will prepare a Final EIR that
21 includes all the comments received on the Draft EIR, responses to all comments, and any necessary
22 revisions to the Draft EIR. CEQA requires the JPB decision-making body, the Board, to review and
23 consider the information in the EIR before making a decision on the Proposed Project.

24 **1.5.3 Scope and Content of the EIR**

25 Scoping refers to the process used to assist the lead agency (for the Proposed Project, the JPB) in
26 determining the focus and content of an EIR. Scoping solicits input on the potential topics to be
27 addressed in an EIR, the range of project alternatives, and possible mitigation measures. Scoping is
28 also helpful in establishing methods of assessment and in selecting the environmental effects to be
29 considered in detail.

30 **1.5.3.1 Notice of Preparation and Scoping Meeting**

31 The scoping process for this EIR was formally initiated on January 31, 2013, when the JPB submitted
32 the Notice of Preparation (NOP) to the California State Clearinghouse for distribution to state
33 agencies and to the San Francisco, San Mateo, and Santa Clara County Clerks for public posting.
34 The purpose of the NOP is to solicit participation from relevant agencies and from the public in
35 determining the scope of an EIR. The scoping period ended on March 18, 2013.

36 Public scoping meetings were held on February 27, 2013 at the Caltrain Office, February 28, 2013, at
37 Palo Alto City Hall, March 5, 2013 at VTA Headquarters, and March 7, 2013 at San Francisco City Hall
38 to provide an opportunity for attendees to comment on environmental issues of concern.