

Transportation Solutions Defense and Education Fund

P.O. Box 151439 San Rafael, CA 94915 415-331-1982

January 7, 2015
By E-Mail to
Board@Caltrain.com

Tom Nolan, Chair
Peninsula Corridor Joint Powers Board
1250 San Carlos Ave.
P .O. Box 3006
San Carlos, CA 94070-1306

Re: Peninsula Corridor Electrification Project & FEIR

Dear Chairman Nolan:

The Transportation Solutions Defense and Education Fund, TRANSDEF, is a Bay Area environmental non-profit advocating the regional planning of transportation, land use and air quality. We are transit advocates, and strongly support Caltrain and HSR. However, we have serious doubts about the soundness of Caltrain's current planning and are convinced that the current plans for HSR are economically infeasible and will not lead to a working system. We comment today on the legal insufficiency of the FEIR for the Peninsula Corridor Electrification Project (Project) and the CEQA Findings based thereon, on the legality of using Prop. 1A bond funds for the Project and on the tradeoffs inherent in the Project itself.

Final EIR

TRANSDEF appreciates the thoughtful and detailed responses to many of its DEIR comments, including the many revisions to the text that resulted. The issues have been framed for a policy debate, as CEQA intends. Please see the remaining comments for that debate. TRANSDEF incorporates by reference the entire comment set in the FEIR.

CEQA Findings--Compatibility

To deflect the claim of piecemealing, the FEIR goes to great lengths to establish the PCEP as a separate project, distinct from HSR. However, the draft Statements of Fact in Support of Overriding Considerations is not supported by the FEIR:

While the PCEP does not include high-speed rail service, the PCEP would include electrical infrastructure compatible with future high-speed rail service proposed to connect Southern California and Northern California via a route that includes the Caltrain Corridor. (Findings, p. 4-3.)

The FEIR and draft CEQA Findings attempt to blur the distinction between two kinds of compatibility: the compatibility between the PCEP and the type of electrical infrastructure needed for HSR (25 KV catenary), and a more generalized compatibility. That obfuscation fails, because the FEIR conclusively demonstrates that the physical location of the PCEP electrical infrastructure cannot be shown to be compatible with the needs of a blended system shared with HSR:

Fourth, in order to meet service goals for HSR, which envisions speeds faster than the current allowable speeds of 79 mph up to 110 mph on the Caltrain corridor, system improvements to be determined later would be necessary on the route to allow for an increase in top speed. (FEIR, p. 3-3.)

"Speeds greater than 79 mph and up to 110 mph would require additional system improvements that could include upgrade of tracks, track beds, ties, interlocking as well as possible curve realignments and other improvements." (FEIR, p. 3-257.)

Much of the work of raising top speeds involves straightening curves. If curves are straightened, that means that the catenary installed for the PCEP will be in the wrong location, so it will not work for HSR. Ergo, it is incompatible, thus defeating any claim that the Project meets its Purpose and Need: "providing electrical infrastructure compatible with future high-speed rail service." (DEIR, p. ES-2.) Compatibility with something that has not yet been designed is impossible:

Further, it is premature to analyze HSR service along the Caltrain corridor at this time given conceptual level of definition of HSR service and necessary physical improvements. There is no design for blended system improvements that could support a project level analysis and it will take a number of years of further planning and design in order to actually frame the blended system and the project details. (*Id.*)

Until a design is prepared and analyzed, the JPB is incapable of evaluating the scale of incompatibility. So, the Project Purpose and Need that drives half its funding--"providing electrical infrastructure compatible with future high-speed rail service"--cannot be achieved by the PCEP. Nor can the key finding on the subject be supported. TRANSDEF urges the JPB to withdraw the FEIR and rethink the environmental review.

CEQA Findings--Feasibility

The approach to the determination of feasibility (p. 3-56) taken in the draft CEQA Findings makes a mockery of CEQA. From its historic role as an independent evaluation, feasibility has been demoted to a mere merits judgment. Infeasibility has been redefined here to mean "It's not the Project we want to approve." Eliminating as

infeasible anything policymakers don't want eliminates one of the most important (and environmentally beneficial) aspects of CEQA: its prescriptive side. Unlike the draft CEQA Findings, the FEIR finds the non-electrification alternatives to be feasible:

The EIR finds the three action alternatives (DMU Alternative, Dual-Mode Alternative, and the Tier 4 Diesel Locomotive Alternative) to be feasible, although they will have different ridership in the long run and while avoiding the aesthetic and tree removal impacts of the OCS, they would have higher air quality emissions, GHG emissions and noise levels. (FEIR, p. 3-265.)

The draft Findings' approach to feasibility reaches its nadir in finding the No Project Alternative to be infeasible because it conflicts with JPB policy to build the PCEP (p. 3-57). This is the height of grinding a central element of CEQA into meaninglessness: it is a tautology. While policy considerations are permitted by the courts as an element of the determination of feasibility, these Findings go beyond the holding of *Cal. Native Plant Society v. City of Santa Cruz* (1982) 177 Cal.App.3d 401.

The elimination of all alternatives as infeasible exposes the Findings to challenge for legal inadequacy. The Findings did not weigh and rank the importance of the individual elements of the Project Purpose and Need, thereby vitiating the determination process required by Section 15091 of the State CEQA Guidelines, a key element of CEQA. The JPB should reject this cramped and distorted approach to environmental review.

Mandatory CEQA Findings

The commitment to share a non-renewable resource, the Peninsula Rail Corridor, with HSR by approving the construction of the PCEP will create the irreversible impact of eliminating Caltrain's ability to grow in the future. This creates both direct and indirect impacts, all of which require analysis and the identification of appropriate mitigations. See argument below on how capacity will be strained by 2040. A possible mitigation would be the inclusion of a clause in the agreement between JPB and CHSRA making additional schedule slots available, as needed by Caltrain. The draft Findings do not contain mandatory findings on growth impacts and on significant and irreversible environmental changes.

The Legality of Using Prop. 1A Funds for the PCEP

We agree with the FEIR's analysis (p. 3-11) that the question of the Project's eligibility for HSR bond funds is not itself a CEQA issue. Nonetheless, this is a vital strategic question for your Board, as it affects the Project's feasibility. Without bond funds, the PCEP as currently conceived cannot be completed, and Caltrain's modernization plan must fail. There are a number of independent rationales that are either in litigation or ripe for legal challenge:

1. It would be a waste of taxpayer money to spend bond funds to electrify Caltrain for the benefit of HSR when the CHSRA has not received the right to operate on

the Peninsula Corridor from the Union Pacific Railroad. (See Response O16-4, FEIR p. 3-243.)

2. The *Tos v. CHSRA* case is proceeding towards trial on whether the current HSR project is in compliance with the requirements of Proposition 1A. As a member of the *Tos* legal team, the undersigned can attest to the strength of the evidence supporting the allegations that 1). the current route and design cannot possibly comply with required trip times either between San Francisco and Los Angeles, or between San Francisco and San Jose; 2). the proposed system cannot possibly operate without a subsidy; and 3). the blended approach is not consistent with the 2005 and 2008 PEIRs. Because the PCEP is proposed to be funded by Proposition 1A construction funds and not connectivity funds, the requirements of the bond measure make the PCEP ineligible for funds.
3. The decision to provide funds for the PCEP was a contentious one for the CHSRA Board. Some Boardmembers could not support the PCEP's taking funding away from HSR.
4. Streets & Highways Section 2704.08(c) requires a funding plan be adopted by CHSRA for any construction expenditure of bond funding. The PCEP is not included in an adopted funding plan. It is thus ineligible for bond funding.

The FEIR states:

If for any reason, Proposition 1A funds were not available for the PCEP, the JPB would need to seek alternative sources of funding for electrical infrastructure. The PCEP would not change in any material way from the Proposed Project described in the EIR. (3-12.)

While we agree that HSR as a funding source is not itself an environmental issue, it clearly is central to the determination of whether the PCEP is a stand alone project. In that context, the statement immediately above is highly misleading. While the design for the PCEP might not change, the PCEP could never be implemented. The JPB's thirty years of fruitlessly searching for an alternative source of funding offers compelling proof that, without being tied to a joint project with the CHSRA, electrification simply is not happening.

Should any of the above challenges result in the blocking of bond funding, Caltrain will find itself totally alone, without a pathway forward. Consideration of feasible alternatives now is needed. As we discussed in our April 30, 2014 letter to you (attached), a prudent agency would have a fallback plan.

PCEP Trades-Off Caltrain's Future for its Present

Our April 30, 2014 letter to you explained how the PCJPB's construction of the PCEP would place a hard cap on Caltrain's future growth. The FEIR confirms this, stating: "Further, the ridership analysis shows that Caltrain trains will be approaching their capacity based on the 2040 numbers..." (3-17, emphasis added.) The capacity charts show how, in 2040, the trains are alarmingly packed to capacity, with standees for

nearly half the trip. (Figures 3-3 and 3-4, p. 3-23.) Given that, will the expenditure of \$1.5 billion produce an actual net improvement to the Caltrain system in the long-term?

TRANSDEF believes staff is suffering from tunnel vision, unwilling or unable to see the long-term impacts of the Proposed Project. The decision on whether to go forward with this project is substantively different from typical project decisions, which frequently are made in the knowledge of future constraints. The decision to proceed with this project locks in those constraints, making it impossible to provide more service in the future. As discussed above, the reasonably foreseeable indirect cumulative impacts have not been adequately addressed by the FEIR.

A parent buying a suit for a child knows the child will grow out of it, and will need to buy a larger size later. Here, the JPB would be purchasing an asset with a very long life (the Northeast Corridor OCS is over 100 years old!), yet will outgrow it after only 20 years or so, with no way to expand capacity. Not planning for how to address future constraints is short-sighted public policy.

Caltrain is an extremely important mobility asset for the age of climate change. To allow its capacity to be capped, when it could potentially serve many more riders in the more distant future, is public policymaking at its worst. We have offered in our attached letter what we believe to be a far more responsible, flexible and cost-effective approach to planning for the future.

Conclusion

For all the reasons discussed above, TRANSDEF believes that certification of the FEIR and approval of the PCEP would be highly imprudent. TRANSDEF hopes that these comments will assist the JPB in making wise decisions.

Sincerely,

/s/ DAVID SCHONBRUNN

David Schonbrunn,
President

Attachment

TRANSDEF 4/15/15 letter to JPB

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P.O. Box 151439 San Rafael, CA 94915 415-331-1982

April 30, 2014
By E-Mail to
electrification
@caltrain.com

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It is our understanding that Caltrain has sought to electrify its system for the past thirty years. Therefore, it is somewhat excusable that the agency jumped on the opportunity to partner with CHSRA to get its favorite project built. However, that decision to partner carried with it two inherent problems:

1. Caltrain has given up control over its destiny. Caltrain is now in limbo, waiting for the resolution of many issues beyond its control. It is unknowable whether CHSRA will be able to deliver the promised funds.
2. Caltrain would be giving up a significant and unknowable (within the scope of the current DEIR) amount of capacity for future growth.

It appears that thirty years of electrification expectations have so locked-in the thinking of management that the seriousness of these two problems was under-appreciated. Now that CHSRA is in trouble, however, the time has come for a re-appraisal.

TRANSDEF sincerely hopes the JPB will use the EIR process to comprehensively consider its options, rather than beat them down. The preparation of a fully costed and

ridership-modelled DEMU alternative (preferably including our proposed sub-alternative) would give the JPB a clear idea of what can be accomplished with the funds available, while seizing back control over its destiny.

The primary purpose of this letter is to convey TRANSDEF's thinking on the optimal HSR connection from the Central Valley to San Francisco, a matter which is outside the scope of the DEIR. We co-commissioned SETEC, a French HSR engineering consultancy, to design an Altamont Pass alignment to access the Bay Area. Their report is available at: http://transdef.org/HSR/Altamont_assets/Exhibit_C.pdf

Its points relevant here are:

- Good engineering practice is to mix HSR and other rail traffic to the minimum extent possible.
- Minimal mixing preserves flexibility, capacity and speed not only for HSR, but for the host rail property as well.
- Minimal mixing lowers the cost to maintain shared use tracks to HSR standards.
- The best way to accomplish minimal mixing is by accessing the West Bay via the Dumbarton Rail Bridge.
- The connection to San Francisco would share 30 miles less track, if HSR were connected to Caltrain at Redwood City.
- An even shorter shared track could be achieved if separate HSR tracks were built alongside Highway 101, connecting to Caltrain north of SFO.

Had JPB not been so eager to fulfill its thirty-year goal, these considerations might have been weighed in the decision to partner with CHSRA. Now that CHSRA is no longer the powerhouse it once was, it is time to look closely at these issues. We've properly put future growth and future capacity forward as issues for the EIR to address. An expression of interest by your Board would ensure that the study is actually done.

JPB might find that, as a result of the EIR, a DEMU alternative would deliver most of the Project benefits at a cost it can afford, while preserving Caltrain's independence, capacity to grow and support by its public. It would then be desirable to revisit JPB's support of the Pacheco HSR Alternative. Our appeal of CHSRA's refusal to study the SETEC alternative (see <http://transdef.org/HSR/Appeal.html>) will have oral argument next month, so the Pacheco/Altamont issue is by no means closed. TRANSDEF sincerely hopes that these comments will assist the JPB in making wise decisions.

Sincerely,

/s/ DAVID SCHONBRUNN

David Schonbrunn,
President