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July 6, 2008

Board of Directors
California High-Speed Rail Authority
925 L Street, Suite 1425.
Sacramento, CA 95814

RE: Final Programmatic EIR/EIS for Bay Area to Central Valley High Speed Train Project

Dear Chairperson Kopp and Board Members,

I am writing on behalf of the Planning and Conservation League, the California Rail Foundation, and the Transportation Solutions Legal Defense and Education Fund to comment on the Final Programmatic Environmental Impact Report/Environmental Impact Study ("FPEIR/S") for the Bay Area to Central Valley High Speed Train Project ("Project"). This letter follows up on my earlier letter of June 2, 2008 regarding the Union Pacific Railroad's ("UP") determination to oppose the High Speed Rail Authority's ("HSRA") use of UP right-of-way or any actions by the HSRA that might interfere with UP's operations.

In subsequent interviews, and testimony before the Senate Transportation and Housing Committee, Chairperson Kopp has stated that the Project FPEIR/S does not propose that the Project use any portion of the UP right-of-way, and that the HSRA sees nothing inconsistent with UP's position and the HSRA's plans for its high speed rail project, either along the Pacheco Pass alignment or elsewhere in the proposed system. A review of the FPEIR/S and other available information appears to contradict Chairperson Kopp's statements.

In Appendix 2-E to the FPEIR/S, there are a series of figures showing the proposed cross-sections for the Project at various points along the route. A number of these cross sections show the high speed rail alignment running either within or directly adjoining the UP right-of-way. Specifically, for the San Francisco to San Jose "Caltrain Corridor", Figures CC-1, CC-2, CC-3, CC-4, CC-6, and CC-8 all show the high speed rail line running within the shared Caltrain/UP right-of-way, and Figure CC-10 shows the high speed rail line running within ninety feet of the UP right-of-way¹.

Similarly, in the Niles Subdivision to I-880 segment, Figure NS-20 shows the HSR right-of-way directly adjoining the UP right-of-way while Figure NS-S4 shows one of the HSR line tracks sharing the existing shared UP/Capitol Corridor right-of-way.

Again, in the San Jose to Central Valley ("Pacheco Alignment") segment, Figure PP-6 shows the HSR line sharing the existing right-of-way with Caltrain and the directly-adjointing UP tracks. Figure PP-12 and PP-14 show the HSR tracks sharing the existing UP right-of-way, with only a crash wall separating the two sets of tracks. Figures PP-7 shows the HSR tracks directly adjoining the UP Mainline right-of-way, while Figures PP-8 and PP-9 show the HSR right-of-way closely adjoining the UP right-of-way, again with no barrier between the two, and Figures HM-2 and GEA-5 show the HSR right-of-way squeezed between the existing UP right-of-way and the existing highway right-of-way, again with no indication of a crash barrier.

Chairperson Kopp has asserted in an interview that, "There's plenty of room there [in the corridor]" without encroaching on the UP right-of-way or interfering with UP operations. The above-referenced cross-sections, particularly Figures HM-2 and GEA-

¹ The diagram does not even show any crash wall separating the different tracks. Some figures (e.g., Figures NS-7, NS-12) do indicate presence of a "crash wall", but its characteristics are left undefined.

5, appear to indicate otherwise. As further evidence on this point, attached are Google Earth aerial photographs of the proposed HSR route in the area south of San Jose. As can be seen here as well, there is little room available to move the HSR right-of-way away from the UP right-of-way without requiring the taking and demolition of large numbers of homes and businesses. (See also, e.g., FPEIR/S, Appendix 2-D Plans and Profiles, Pages 2-D-26 thru 2-D-29.) If such large-scale takings are envisaged in the PEIR/S, their impacts should have been identified, analyzed, and discussed. Just because this is a programmatic EIR does not allow significant impacts such as these that are predictable at the programmatic level to be ignored or put off for later consideration. (See, e.g., *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 282 [118 Cal.Rptr. 249; 529 P.2d 1017] [environmental consequences should be considered at the earliest possible stage].) Further, the analysis of Section 4(f) and 6(f) resources close to the proposed HSR alignment limits itself to those within 150 feet of the UP right-of-way (FPEIR/S page 23-56 to 23-57, response to comment O007-26.) Either the location of the alignment must be limited accordingly, or the analysis of Section 4(f) and 6(f) resources is flawed and invalid. (See also, FPEIR/S page 23-58, response to comment O007-35.)

The FPEIR/S's analysis of land use impacts also specifically took into account, "... whether the alignment alternatives would be within or outside an existing right-of-way in the study area." (FPEIR/S at 23-78.) Presumably, the analysis of land use compatibility found little or no impact where the FPEIR/S showed the HSR alignment to be within the existing UP right-of-way. If, as Chairperson Kopp now asserts, this is not true, the land use compatibility and land use impacts assessments need to be revisited.

All of this evidence, as well as the descriptions of the alignment already alluded to in my previous letter, can only indicate one of two things: either Chairperson Kopp's assertions about not using the UP right-of-way or nearby areas are accurate, in which case the FPEIR/S's analysis of impacts is woefully deficient, needs to be drastically revised, and those revised sections then recirculated, or, contrary to Chairperson Kopp's statements, the FPEIR/S does indeed contemplate the high speed rail alignment being in close proximity to, and in some case even sharing, the UP right-of-way. If this is true, UP's strong objections to this kind of sharing or even to close proximity of the HSR right-of-way to its right-of-way raise serious questions about the feasibility of the alignment and associated cross-sections as shown in the FPEIR/S. These questions need to be resolved now, before the Authority certifies the EIR/S and makes an alignment decision. Otherwise, the Authority may well be heading down a blind alley that would require retracing its steps later, at enormous cost to California taxpayers. If high speed rail is worth doing, it's worth doing right, and doing it right means making the right choices the first time.

In addition to these problems, there are other serious problems with the FPEIR/S. Many, if not most, of the responses to comments (and specifically responses to comments made in my comment letter on the DPEIR/S) are clearly inadequate and fail to address the problems pointed out in the comment letters (e.g., the failure to adequately address not only whether train splitting is feasible but more importantly whether an Altamont alignment including train splitting would have significantly greater ridership than the Altamont alternative analyzed in the DPEIR/S). Such inadequate and conclusory responses to comments defeat a primary purpose of CEQA (and NEPA), demonstrating to an apprehensive citizenry that the agency has in fact analyzed and considered the ecological implications of its action. (See, *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 86; *Jones v. District of Columbia Redevelopment Land Agcy.* (D.C. Cir. 1974) 499 F.2d 502, 511.)

Even beyond these serious shortcomings in the FPEIR/S there are several other aspects of the FPEIR/S's analysis that have become open to question in the time since the DPEIR/S was circulated. Chief among these is the failure to adequately factor into the analysis future increases in the cost of petroleum-based fuels.

The FPEIR/S assumes that for short and medium-length trips, auto use will be preferred over high speed rail, in spite of high speed rail's much faster speed, because

HSR will be much more expensive. This may have been a sensible assumption at the time the DPEIR/S was circulated, however, the increase in petroleum and gasoline costs in just the past year have shown that automotive travel expenses cannot and should not be presumed cheaper than other alternatives. While the current high price of petroleum may be partly due to speculation, the phenomenon of “peak oil” – i.e., the expected sharp increase in cost when future increases in demand are considered along with the decreasing world petroleum supplies – indicates that gasoline prices can be expected to sharply escalate over the next two to three decades, to the point where automotive travel may become unaffordable for all but the shortest trips. In addition, efforts to reduce human impacts on global warming (e.g., in California, under AB 32) will further increase the cost of gasoline to consumers. Gasoline prices three times their current four dollar per gallon price are not only possible, but highly likely and indeed predictable. The consequent shift in travel mode has not been considered in the FPEIR/S, despite the fact that a similar transition is already happening in Europe, helping to explain the high popularity of high speed rail there. (See, e.g., *Transit Price Elasticities and Cross-Elasticities* by Todd Litman, J. Public Transportation (2004) 7 (2), 37-58; *High-speed rail in Europe: experience and issues for future development* by Roger Vickerman, Ann. Regional Science (1997) 31 (1) 21-38.)

While the increase in petroleum prices will affect all petroleum-based energy costs, the increasing use of renewable energy sources for electricity generation, particularly under the State’s AB 32 standards, means that electricity costs, and correspondingly the costs for HSR transportation, will rise far more slowly than those for auto use. In short, the FPEIR/S greatly underestimates the ability of HSR to compete in the future against the automobile, not only for long trips, but also for shorter trips such as those involved in commuting. As a result, the FPEIR/S’s ridership results are skewed against inclusion of commute trips. With the recent evidence that gas prices can and do greatly affect traveler mode choices, the ridership studies need to be redone, taking into account future long-term expected increases in gasoline and other petroleum product costs.

Finally, one further flaw in the FPEIR/S’s analysis is that while the FPEIR/S’s analysis attempts to include costs for the construction of the system, including right-of-way acquisition and improvements, it does not appear that the construction costs have taken into account the costs for creating grade separations along the route. These will be needed not only to accommodate intersecting roads and highways, but also to accommodate major animal migration corridors and to protect the connectivity of valuable wildlife habitat. These costs need to be factored into the analysis in comparing the Pacheco and Altamont alternatives.

CONCLUSION

The many comments on the DPEIR/S should have signaled to you that the DPEIR/S had serious problems that needed to be addressed. Instead, you chose to continue forward “full steam ahead” and released an equally flawed FPEIR/S. You have one last opportunity to reconsider whether this FPEIR/S is, “ready for prime time.” You should use that opportunity.

Most sincerely,

Stuart M. Flashman

cc: Federal Railway Administration
Sen. Lowenthal
Sen. Ashburn