

Transportation Solutions Defense and Education Fund

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April 19, 2012
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Dan Richard, Chair
California High-Speed Rail Authority
770 L Street, Suite 800
Sacramento, CA 95814

Re: Bay Area to Central Valley HST Partially Revised Final Program EIR Comments

Dear Mr. Richard:

The following comments are offered on behalf of the Transportation Solutions Defense and Education Fund (“TRANSDEF”), the Planning and Conservation League, and the California Rail Foundation (collectively, “Commenters”). The Partially Revised Final Program EIR (“PRFPEIR”) for the Bay Area to Central Valley High-Speed Train failed to adequately respond to our comment letter on the PRDPEIR, dated February 21, 2012.

Blended Approach

In particular, the refusal to study the alternatives we proposed constitute a violation of CEQA. The Technical Memorandum on Alternatives Suggested in Comments on Partially Revised Draft Program EIR, prepared by Parsons Brinckerhoff (“PB Memo”) rejects our proposal, stating that “... both the Draft and Revised 2012 Business Plans characterize the blended approach as an implementation strategy..” (PB Memo at 5.) While the Authority is entitled to see its project that way, CEQA requires it to consider input from the public. CEQA invites the public to propose alternatives with fewer environmental impacts. The PRFPEIR must analyze “whether [the] proposed alternative would avoid or substantially lessen significant environmental impacts or offer a substantial environmental advantage.” (PB Memo at 2.)

The PB Memo concedes that a host of environmental impacts are lessened, concluding that: “The blended approach between San Francisco and San Jose would have fewer impacts than a full-build approach.” (PB Memo at 8.) Thus, the threshold test for a citizen-proposed project alternative has been met. (We assert that the project’s purported environmental benefits are overstated, because we challenge the ridership

projections, and because most of the purported noise benefits could be achieved by quiet zones--at a much lower cost.)

We contend that the concluding statement "As discussed above, the blended approach is an implementation plan and not a specific proposal or "alternative" and does not represent a stand-alone solution" (PB Memo at 12) is a mere unsubstantiated assertion with no basis in fact or argument. It is an explicit rejection of the CEQA requirement to study a citizen-proposed project alternative that meets the threshold test of "avoiding or substantially lessening any significant effects of the project." (CEQA Guidelines 15126.6(b).)

Furthermore, CEQA does not give a project sponsor discretion to adopt a project with significant impacts, when a less-impactful alternative is feasible. "Otherwise, the agency must prepare or obtain, and consider, an EIR that assesses the potential environmental impacts of the project as proposed, sets forth any feasible, less harmful alternatives to the project, and identifies any feasible mitigation measures. (§§ 21000 et seq., 21151 et seq.) The agency may not thereafter approve the project as proposed if there are feasible alternatives or mitigation measures that would avoid or substantially lessen the adverse environmental effects. (Public Resources Code § 21002.)" *Stockton Citizens for Sensible Planning v. City of Stockton* (2010) 48 Cal.4th 481, 494.

The Business Plan's reliance on the blended approach is the Authority's admission of its feasibility. This admission of feasibility means that the draft Statement of Overriding Considerations cannot be lawfully adopted. The Authority's refusal to study a blended approach alternative is what allowed it to assert that no feasible alternatives were found. That is an impermissible defense, akin to the patricide's "take pity on me, your Honor, for I am an orphan."

What is the ultimate project?

The reason the blended approach cannot be dismissed as a mere implementation strategy is that it involves liberalizing the HST Performance Criteria, including "Fully grade-separated guideway, Fully access-controlled guideway with intrusion monitoring systems, and Fully dual track mainline with off-line station stopping tracks." (PB Memo at 4.) This results in a different Project Description, with lower cumulative environmental impacts. This is distinct and different from a phased implementation that ends in a full-build project in the distant future. A blended approach alternative would not result in an ultimate four-track system--it would downscope the Authority's ultimate project.

That blended Project Description can then be compared against the Project Description in the PRFPEIR, and found to result in an environmentally superior project. Because the Project is now seeking funding for its first phase from the Legislature, a stable ultimate project description, with associated costs and impacts, is needed so that a determination can be made as to whether the Project is in the long-term interests of the State.

Because this is a programmatic document, the issue here is not the need for a detailed description of the blended system. Nonetheless, enough study is needed to enable the PRFPEIR to provide an analysis of whether a blended approach can meet the statutory project requirements of Proposition 1A. If it can't meet those requirements, it can't be funded with Bond money, and therefore, can't be built under the terms of the current Business Plan. We surmise that the Authority was either unwilling to take the time to determine whether the blended approach is consistent with the Bond Act, or that it already suspected an inconsistency.

Altamont Corridor Rail Project/SF

The PB Memo cites two basic reasons to refuse to study the Commenters' proposal of a route based on the Altamont Corridor Rail Project ("ACRP") which is extended from San Jose to San Francisco using the Blended approach. It asserts that the ACRP is inadequate for High-Speed operations, and that the SF-LA travel time would not meet the statutory requirement of 2:40.

ACRP Design Criteria

"The purpose of the Altamont Corridor Rail Project is to develop a joint-use regional rail corridor for intercity and commuter passenger service, not to support statewide high-speed travel." (PB Memo at 13.) This statement attempts to assert that the same rail line cannot be optimized to support both services. In the absence of any supporting evidence, this assertion cannot be accepted as fact.

"As proposed, the ACRP alignments would be designed to accommodate HST vehicles but not HST operations..." (PB Memo at 13.) By referring to only the project as it is currently proposed, this statement deliberately ignores our comments, which call for identifying why an ACRP-based route can't be made faster than the current design: "There is no evidence in previous FPEIRs that there are any speed-limiting factors specific to the Altamont Corridor. ... Because of the alternatives' potential to greatly reduce the project's environmental impacts, careful study of the potential to increase operational speeds is needed." (TRANSDEF PRDPEIR comment letter p. 6.) No attempt was made by EIR preparers to respond to this request. Instead, the Response to Comments was to continually argue that the ACRP, **as currently designed**, is inferior to HST routes studied in 2008. No evidence is offered to substantiate the presumption that the route cannot be made faster.

Travel Time

The PB Memo calculates a minimum LA-SF travel time for the proposed ACRP/SF alternative of 3:37, based on 2008 FPEIR Figure 7.2-9. (at 16.) A careful compilation of the travel times in that EIR discloses bizarre SF-SJ travel times for Figures 7.2-9 and 7.2-20. (See attached Table.) These travel times are double the time for the same trip via one of the Pacheco alternatives. The PB Memo states that the 2008 FPEIR had assumed a twenty minute stop in San Jose to change direction of the train. (at 16.) Because that is so far beyond figures seen in contemporary railroad operations, it could not have been based on evidence. The formatting of the reporting for individual alternatives prevented the big picture view necessary to identify outlying data points.

In addition, even this preposterous dwell time does not explain the full difference between SF-SJ trips via a Pacheco alternative and Figure 7.2-9. These travel times are clearly in error, and cannot be used as a basis for environmental evaluation. The travel time for an optimized ACRP has not been calculated. It is prejudicial to the evaluation of the proposed alternative to use the ACRP travel times without the speed enhancement requested by Commenters.

A further issue is that the Authority has not yet published a detailed justification for the claim that a blended alternative can produce an LA-SF travel time of 2:40. Because of that, no level playing field exists for evaluating the travel time for the Commenters' Altamont Corridor Rail Project/SF alternative. With the Authority expressing its intention to proceed with the blended approach, it is only fair that Commenters' alternative be compared to a fully vetted alternative. The refusal to study a blended alternative in this EIR prejudices the evaluation of Commenters' alternative.

If, even after optimizing Commenters' Altamont Corridor Rail Project/SF alternative for speed, and including a wye at Santa Clara, the SF-LA travel time still exceeds the statutory limit, there are still other route alternatives available for the rest of the system that would dramatically lower travel times and in concert meet the requirement: the I-5 Corridor connecting to LA via the Grapevine would be much faster and have lower impacts than routes now being pursued.

PB Memo Fabrications

When truth was inadequate to the task of supporting the DEIR, the PB Memo resorted to outright fabrication, manufacturing bogus claims and controversies. The PB Memo creates a straw man by asserting "It is unreasonable to assume that the ACRP will have no environmental impacts relative to the high-speed Altamont alternative evaluated in the EIR." (at 16.) Commenters never made any statement to which the assertion above would be appropriate. What we did state was that the alternative we proposed would avoid the most significant impacts previously identified. More egregiously, the PB Memo actually put words in Commenters' mouths: "... the claim in the TRANSDEF letter that it would have no impacts is clearly incorrect." (at 17.) There was no such claim.

The PB Memo is unprofessional in stating that "The UPRR has not shown a willingness to share its current operating right-of-way with the high-speed train anywhere in California..." as if that were an obstacle to the ACRP. Commenters' letter had recited that the very first goal of the ACRP is to move to a dedicated right-of-way independent of the UP. (2011 ACRP Preliminary Alternatives Analysis at 2-1.)

Conclusion

We urge the Authority to revise and recirculate this environmental document. It is not legally adequate for certification.

Sincerely,

David Schonbrunn, President
Transportation Solutions Defense and Education Fund

Bruce Reznik, Executive Director
Planning and Conservation League

Richard Tolmach, President
California Rail Foundation

cc: Stuart Flashman, Esq.