

NOVEMBER 6, 2014

237001

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20423

ENTERED
Office of Proceedings
November 6, 2014
Part of
Public Record

Re: **STB Finance Docket No. 35861, California High-Speed Rail Authority;
Opposition to Petition for Declaratory Order**

Dear Ms. Brown:

I hereby register my opposition to Petitioner California High-Speed Rail Authority's Petition for Declaratory Order, submitted for filing on October 9, 2014. I am a resident of California, a registered voter in the State of California, and a stakeholder in the California High Speed Rail Project.

Jacqueline Ayer
2010 West Avenue K, #701
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California Resident and Registered Voter

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35861
CALIFORNIA HIGH-SPEED RAIL AUTHORITY

OPPOSITION TO PETITION FOR DECLARATORY ORDER

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OPPOSITION TO PETITION FOR DECLARATORY ORDER

As a California resident and stakeholder in the California High Speed Rail project, I offer these comments in reply to the California High Speed Rail Authority's (CHSRA's) Petition for Declaratory Order ("Petition") submitted in the Surface Transportation Board's (The Board's) Finance Docket No. 35861. These comments have been submitted before the November 6 reply deadline established by the Board and are therefore deemed timely filed.

BACKGROUND

The CHSRA Petition submitted to the Board seeks to avoid compliance with the injunctive relief provisions of the California Environmental Quality Act "(CEQA)" by claiming that these CEQA provisions are preempted by 49 U.S.C. § 10501(b) of the ICC Termination Act ("ICCTA"). In prior decisions, the Board asserted authority over the 800-mile length of the California High Speed Rail Project ("HSR") [Docket No. FD No. 35724] and exempted the construction of the Fresno-to-Bakersfield segment of the HSR project from the prior approval requirements of 49 U.S.C. § 10901 [Docket No. FD 35724]. In the Decision issued in Docket No. FD 35724, the Board refers several times to the activities that were undertaken by the State of California and which gave rise to the HSR project itself. For instance, the Board states:

"The State of California determined that there is a need for a high-speed passenger rail system to improve the State's intercity transportation, which lacks sufficient capacity to accommodate current and expected future travel demand. In November 2008, California voters passed Proposition 1A, a statewide ballot measure that

provided a \$9.95 billion general obligation bond measure with \$9 billion going towards funding of the HST System. Pursuant to Proposition 1A, the Authority secured over \$2 billion in bond proceeds to be invested in the section of the HST System extending from north of Fresno to Bakersfield”. [See page 4]

and:

“With respect to the Line, funding decisions have been made by bodies empowered to make those decisions, including FRA and the voters of California, and we will not use our licensing process to revisit determinations already made by various Federal, state, and local government interests with a stake in the matter” [See Page 11].

It is clear from these statements that the Board acknowledges that the State of California in general and California voters in particular are stakeholders in the HSR project. The Board further acknowledges that voters supported construction of the HSR project based specifically on the statutory provisions contained in Proposition 1A.

These facts are crucial because Proposition 1A approved by California voters imposes specific requirements with which the CHSRA must fully comply, not the least of which is CEQA compliance, and it was on this basis that California voters approved Proposition 1A in the first place. The Board has previously acknowledged the fundamental relevance of Proposition 1A provisions to the HSR project, so it cannot now sweep aside such provisions, nor can it waive the CHSRA’s compliance obligations with respect to these provisions. What the CHSRA is requesting in its petition is outrageously untenable, because it asks the Board to set aside key provisions of the very ballot measure upon which Californian’s relied in approving the HSR project. For this reason, the Board must deny CHSRA’s petition outright. Anything less undermines the statutory provisions upon which California voters relied in approving the HSR Project under Proposition 1A, and it would certainly lay the groundwork for subsequent CHSRA petitions seeking federal preemption in order to avoid other pesky compliance provisions that are imposed by Proposition 1A and which delay or prevent HSR construction (such as the 2 hour and 40 minute time constraint for travel between San Francisco and Los Angeles).

CEQA COMPLIANCE IS A CORNERSTONE OF THE CALIFORNIA HSR PROJECT

The California High Speed Rail statute was approved by the voters of California as Proposition 1A, and it was (and is) subject to certain approval conditions that are clearly and explicitly enumerated in the statute. Among other things, these conditions include compliance with CEQA, which was (and is) a foundational element upon which authorization of the entire HSR project is based. For example, Article 2 of Proposition 1A states (with emphasis added):

Article 2. High-Speed Passenger Train Financing Program
2704.04. (a) ***It is the intent of the Legislature*** by enacting this chapter and of the people of California by approving the bond measure pursuant to this chapter to initiate the construction of a high-speed train system that connects the San Francisco Transbay Terminal to Los Angeles Union Station and Anaheim, and links the state's major population centers, including Sacramento, the San Francisco Bay Area, the Central Valley, Los Angeles, the Inland Empire, Orange County, and San Diego ***consistent with the authority's certified environmental impact reports of November 2005 and July 9, 2008.***

Article 2 of the HSR statute further states (with emphasis added):

2704.06. *The net proceeds received from the sale of nine billion dollars (\$9,000,000,000) principal amount of bonds authorized pursuant to this chapter, upon appropriation by the Legislature in the annual Budget Act, shall be available, and subject to those conditions and criteria that the Legislature may provide by statute, for (a) planning the high-speed train system and (b) capital costs set forth in subdivision (c) of Section 2704.04, ***consistent with the authority's certified environmental impact reports of November 2005 and July 9, 2008,*** as subsequently modified pursuant to environmental studies conducted by the authority.*

These statutory provisions clarify that the HSR project must be constructed in accordance with the Programmatic Environmental Impact Reports ("EIR's") that were certified by the CHSRA in 2005 and 2008. Both of these Programmatic EIRs state, quite clearly, that the HSR Project is subject to CEQA compliance, which (as CHSRA admits on page 10 of the

Petition), include injunctive relief and other legal remedies that are available to stakeholders after an EIR is certified:

Page 1-2 of the certified EIR issued by CHSRA in November 2005 states¹:

"The proposed HST system is subject to environmental review under CEQA, and the Authority is both the project sponsor and the lead agency for CEQA compliance".

Page 1-2 of the certified Programmatic EIR certified July 9, 2008 states²:

"The proposed HST system in the Bay Area to Central Valley corridor is subject to environmental review under CEQA, and the Authority is both the project sponsor and the lead agency for CEQA compliance."

These provisions of the Proposition 1A HSR statute clearly contemplate full compliance with CEQA regulations. More to the point, there is certainly nothing in the Proposition 1A HSR statute which indicates (or even suggests) that the CHSRA is obviated from its CEQA compliance obligation, nor does the statute clarify that the HSR CEQA Process is complete with the certification of an EIR. CHSRA's assertions that it need not comply with CEQA and that CEQA compliance is completed with the certification of an EIR are wholly unsupported by the Proposition 1A HSR statute, and are contrary to the rules of statutory construction.

The matter is of substantial importance to all Californians who live and work in the path of the HSR project, because CHSRA has already established a pattern of developing mitigation measures that do not comply with CEQA provisions³. Specifically, CEQA requires the adoption of mitigation measures if doing so successfully reduces significant impacts while

¹ Section 1 of the CHSRA 2005 PEIR is found here:
[HTTP://WWW.HSR.CA.GOV/DOCS/PROGRAMS/EIR-EIS/STATEWIDE_FINAL_EIR_VOL1CH1.PDF](http://www.hsr.ca.gov/docs/programs/eir-eis/statewide_final_eir_vol1ch1.pdf)

² Section 1 of the CHSRA 2008 PEIR is found here:
[HTTP://WWW.HSR.CA.GOV/DOCS/PROGRAMS/BAY_AREA_EIR/BAYCVALLEY_EIR2008_VOL1CH1_PURPOSE.PDF](http://www.hsr.ca.gov/docs/programs/bay_area_eir/baycvalley_eir2008_vol1ch1_purpose.pdf)

³ These deficiencies have been noted in scoping comments submitted to the CHSRA and the Federal Railway Administration for the Palmdale-Burbank segment, and are included in this submittal as Attachment 1.

still achieving most project objectives. The only exception to this is when it is conclusively demonstrated (by substantial evidence provided in the record) that the cost to implement these alternatives or mitigation measures will make the entire project financially infeasible. CHSRA has failed to comply with these CEQA provisions; for instance, sound barrier mitigation was not implemented in numerous areas along several HSR segments because they were declared to be “not cost effective” without supporting evidence and despite the fact that noise impacts in these areas were deemed “significant”. Under such circumstances, CEQA compliance is not achieved by the certified EIR, and the only way it can be achieved is for stakeholders to pursue the injunctive remedies provided by the CEQA statute.

There is no doubt that the enabling statute from which the HSR project springs which was developed by the California legislature and approved by California voters is based on the presumption that the HSR project would fully comply with California’s CEQA regulations. Nowhere does this enabling legislation carve out any CEQA provisions that can be avoided by the CHSRA, and it certainly does not eliminate any legal remedies that can be sought by stakeholders pursuant to CEQA, including injunctive relief.

DECISIONS AND CASES CITED IN THE PETITION FAIL TO SUPPORT CHSRA’S PREEMPTION CLAIM

In support of its argument regarding CEQA preemption, CHSRA relies on several Board decisions and court decisions which affirm that the ICCTA preempts state environmental regulations (such as CEQA) with respect to the construction of privately- and publicly-funded rail lines subject to Board jurisdiction. However, none of these decisions address the primary issue that is relevant to the instant proceeding;, namely, that the HSR project itself was founded by the legislature and authorized by the voters on the basis of full compliance with CEQA. To be clear, none of the projects cited by the CHSRA petition in which the ICCTA preempts state environmental regulations actually address voter-approved initiatives which explicitly require compliance with such state environmental regulations. There is simply nothing in the Board decisions or the case law cited in the

Petition which supports CHSRA's claim that CEQA is preempted for the HSR project, therefore CHSRA's argument on this issue fails.

THE CEQA PROCESS IS NOT COMPLETED

The CHSRA Petition is based largely on the false precept that CHSRA completed the CEQA process for the Fresno-Bakersfield segment of the HSR project when it certified the EIR. The Petition itself contradicts this statement when it affirms [on page 10] that CEQA specifically provides injunctive relieve to stakeholders after certification of an EIR. Such remedies are necessary to ensure that the CEQA regulations themselves are properly implemented, and the CEQA process is not ever completed until such remedies (if sought) are exhausted.

CHSRA's assertion that "the CEQA process is complete" for the Fresno-Bakersfield segment is based on CHSRA's declaration that it "elected to complete the CEQA process even after the Board determined that it had jurisdiction over the Project." This absurdly circular argument that the CEQA process is complete whenever CHSRA deems it to be complete presupposes that the Board's jurisdiction over the HSR project automatically renders CEQA compliance optional (which it certainly does not). As discussed above, CEQA compliance was (and is) a foundational element upon which authorization of the entire HSR project is based. Without CEQA compliance, there is no Proposition 1A, and by extension, there is no HSR project, and there is no CHSRA. CHSRA's argument that the Fresno-Bakersfield HSR segment CEQA review is complete based on federal preemption fails and should be accorded no weight by the Board.

THE CHSRA PETITION SEEKS TO SIDESTEP CHSRA'S STATUTORY COMPLIANCE OBLIGATIONS.

According to CHSRA, the controversy for which it seeks a declaratory order is whether CEQA injunctive remedies are available to stakeholders who perceive that CHSRA has violated CEQA provisions. As CHSRA points out (Petition Page 10), injunctive relief is part and parcel of the CEQA regulations. However, stakeholders can only seek injunctive relief

when CEQA violations are perceived, therefore it is only with the intention of ensuring CEQA compliance that such remedies are pursued in the first place. The declaratory order sought by the petition is intended to enable CHSRA to avoid the very remedies which are secured firmly by the HSR statute itself. CHSRA's request is utterly nonsensical. To be clear:

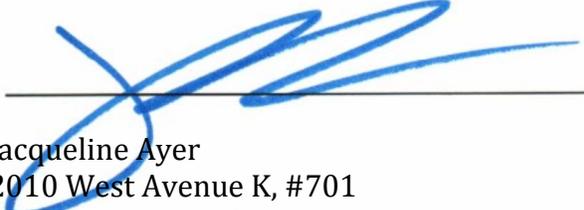
- CHSRA exists because of the Proposition 1A statute adopted by California voters.
- The Proposition 1A statute requires CEQA compliance.
- CEQA injunctive remedies ensure CEQA compliance.
- A Declaratory Order eliminating CEQA injunctive remedies for the HSR project would utterly contradict the fundamental intent of the underlying HSR statute as laid out by the California legislature and approved by California voters.

In July, 2014, the California Appellate Court addressed the issues raised in CHSRA's Petition and made it clear that the project is indeed subject to California's CEQA regulation by stating "it is the State that is constructing the rail line, financed by bonds which were approved by the State's electorate in Proposition 1A."

CONCLUSION

For the reasons provided above, I urge the Board to deny CHSRA's Petition, thereby preserving the integrity of California's initiative process and the Legislative intent that underlies the HSR Project itself.

Respectfully submitted;



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November 6, 2014

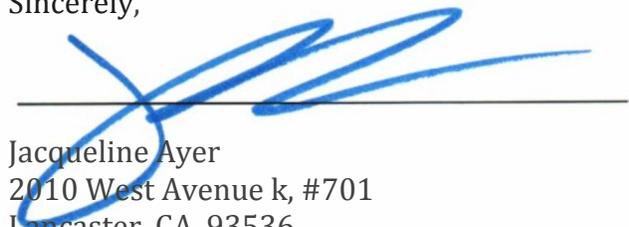
VERIFICATION

I declare under penalty of perjury that the factual statements made in the foregoing Opposition to Petition for Declaratory Order are true and correct.

Further, I certify that I am qualified and authorized to file this pleading.

Executed On: Nov 6, 2014

Sincerely,



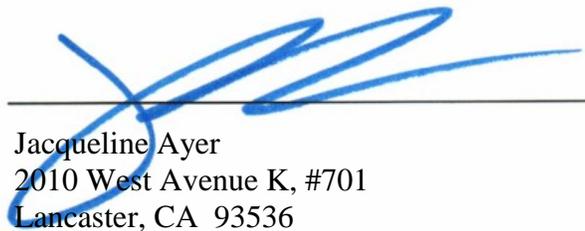
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I hereby certify that I have served all parties of record in this proceeding with this document by United States mail to the addresses as follows:

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Executed on November 6, 2014



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ATTACHMENT 1

**SCOPING COMMENTS SUBMITTED PURSUANT TO THE
PALMDALE-BURBANK SEGMENT OF THE HSR PROJECT**

COMMENTS ON THE FRA/CHSRA ENVIRONMENTAL REVIEW PROCEDURES THAT WILL BE IMPLEMENTED FOR THE PROPOSED PALMDALE-BURBANK HIGH SPEED RAIL PROJECT

In July, 2014, the Federal Railway Administration (“FRA”) issued a Notice of Intent (“NOI”) and the California High Speed Rail Authority (“HSRA”) issued a Notice of Preparation (“NOP”) for the proposed Palmdale-Burbank High Speed Rail (“HSR”) project. The HSR project is subject to several federal and state environmental regulations, including the National Environmental Policy Act (“NEPA”) and the California Environmental Quality Act (“CEQA”). The approach that has been adopted by FRA/CHSRA to comply with these regulations has raised a number of concerns, as described below.

1. CEQA APPLIES TO THE PALMDALE-BURBANK HSR PROJECT

Footnote 1 of the NOP issued by the HSRA states:

“The [CHSRA] Authority has prepared this Notice of Preparation voluntarily and is not waiving any rights it may have related to Surface Transportation Board jurisdiction and regulation of this proposed project under the Interstate Commission Termination Act of 1995, including that Act’s preemptive effect on CEQA’s application to this proposed project.”

From the language appearing in this footnote, the HSRA appears to have the mistaken impression that CEQA compliance is somehow “optional” because the high speed rail project falls under the preemptive jurisdiction of the Surface Transportation Board. The HSRA is misinformed. At a minimum, the Palmdale-Burbank HSR project is subject to Section 404 requirements of the Federal Clean Water Act and, by extension, Section 401 requirements of the Clean Water Act. Jurisdiction over Section 401 compliance lies with the California Water Resources Control Board, which will not approve any 401 certification unless and until the CHSRA has complied fully with CEQA. Because the Palmdale-Burbank HSR project straddles two regional water boards (Lahontan and Los Angeles), the State Water Resources Control Board will assume responsibility for the 401 compliance certification. Like FERC’s preemptive authority over dam licenses under the Federal Power Act, STB’s preemptive authority over high speed rail projects does not, and cannot, obviate any obligation to fully comply with CEQA.

It is further pointed out that FRA’s own “Procedures For Considering Environmental Impacts” [64 FR 28549] clearly recognize the applicability of CEQA because these procedures compel CHSRA to serve as a joint lead agency with FRA to address actions that are subject to state requirements that are comparable to NEPA (as is the case with CEQA). FRA procedures (found in 64 FR 28549 Section 6 paragraph 2] state:

“Consistent with the requirements of CEQ 1506.2 and 1506.5 an applicant shall, to the fullest extent possible, serve as a joint lead agency if the applicant is a State agency or local agency, and the proposed action is subject to State or local requirements comparable to NEPA”.

To be clear, the Palmdale-Burbank HSR project is subject to all aspects of CEQA regulations, including those provisions that require HSRA to adopt mitigation measures and/or the “environmentally superior alternative” unless such measures or alternatives are shown (based on substantial evidence) to be infeasible.

2. THE SCOPE OF ROUTE ALTERNATIVES PROPOSED FOR THE PALMDALE-BURBANK HSR PROJECT IS TOO NARROWLY DEFINED

Both CEQA and NEPA require FRA/HSRA to consider a range of project alternatives that would substantially meet project objectives and protect environmental and community resources. The Palmdale-Burbank project described in the NOP and NOI issued by FRA/HSRA is too narrowly defined to meet these requirements. Specifically, the “Alternative Corridor Study Area” depicted in Figure 1 of the NOP is so limited that it precludes consideration of a route alternative that eliminates *all* impacts to virtually every community that lies between the cities of Palmdale and Burbank. To correct this *substantial* deficiency, the “Alternative Route Study Area” must be adjusted as depicted in Exhibit 1. This ensures that an alternative route will be considered which enters the Angeles National Forest (“ANF”) outside the Community of Acton (see Exhibit 2) and remains underground in Acton within a corridor that avoids residential areas. This alternative route achieves *all* of the community, natural environment, and wildlife corridor protection provisions that were specified in the High Speed Rail Passenger Train Bond Act (Proposition 1A) that was approved by California voters in 2008. The amount of tunneling required for this alternative route is certainly achievable, and is in fact only slightly more than the 20.2 miles of tunnel already proposed for other alternatives considered for this Palmdale-Burbank HSR project (see the SCN + SR14E/W Hybrid alternatives). Equally important is the fact that the tunnel length required for this alternative is substantially less than what has been achieved by other HSR projects around the world. A finding by FRA/HSRA that this route cannot technically be achieved is tantamount to declaring that American engineers are neither as smart nor as capable as European or Japanese engineers (which is hardly the case). Consistent with CEQA and NEPA requirements, the “Alternative Route Study Area” must be expanded to ensure that this “no impact” route option is included in the range of alternatives considered in the Palmdale-Burbank EIR/EIS

3. PREVIOUS ENVIRONMENTAL REVIEWS CONDUCTED BY FRA/HSRA ON OTHER HSR SEGMENTS HAVE NOT PROPERLY IMPLEMENTED CEQA’S MITIGATION AND “ENVIRONMENTALLY SUPERIOR” PROVISIONS

CEQA’s mitigation and environmental protection provision are much more stringent than NEPA regulations. For instance, under CEQA, HSRA is required to develop an “environmentally superior” alternative, and it requires HSRA to adopt mitigation measures and/or the environmentally superior project alternative if doing so successfully reduces significant impacts while still achieving most project objectives. The only exception to this is when it is conclusively demonstrated (by substantial evidence provided in the record) that the cost to implement these alternatives or mitigation measures will make the entire project financially infeasible. Because the Palmdale-Burbank HSR project is subject to CEQA, these more stringent mitigation and environmental protection requirements apply.

For some reason, HSRA has not complied with CEQA's stringent mitigation requirements in the previous environmental impact studies that it has performed. For instance, in the Merced-Fresno EIR/EIS, the noise impact section and associated Technical Report state quite clearly that mitigation in the form of noise barriers would only be implemented in those areas where it is deemed "cost effective" to do so (see EIR/EIS Section 3.4). It further clarifies that "severe" noise impacts would remain unmitigated in those areas where noise barriers are not deemed "cost effective". HSRA fails to provide any proof that deploying additional noise barriers in these severely impacted areas would render the entire Merced-Fresno project financially infeasible. Even if HSRA declared this to be the case, such a declaration is not supported by any evidence provided in the record that the additional cost of one more foot of noise barrier would fiscally "break" the project. The Merced-Fresno EIR/EIS noise impact study clearly violates CEQA's mitigation and environmental protection provisions.

To make matters worse, the Summary Section of the Merced-Fresno EIR/EIS gives the *impression* that noise impacts would be fully mitigated, even though the noise impact section of the EIR/EIS makes it quite clear that noise impacts will NOT be fully mitigated. The EIR/EIS states (on page S-15) "In some locations, operational noise impacts of substantial intensity under NEPA and significant under CEQA would occur, but when fully mitigated they would be of negligible intensity under NEPA and less than significant under CEQA". This disingenuous and deceitful statement belies the fact that CHSRA has no intention of "fully mitigating" operational noise impacts, and for those decisionmakers and stakeholders that only review the EIR/EIS Summary, it instills the false belief that operational noise impacts will be fully mitigated.

Such deceit **WILL NOT** be tolerated in the Palmdale-Burbank project, and the Community of Acton insists on strict compliance with CEQA mitigation to the fullest extent of the law. This includes the consideration and adoption of an "Environmentally Superior" alternative which eliminates all impacts to virtually every community between Palmdale and Burbank, namely the underground route through the ANF described in Section 2.

4. KEY FEDERAL AGENCIES HAVE BEEN OMITTED FROM THE SCOPING PROCESS
Neither the U.S. Forest Service ("USFS") nor its parent agency (the US Department of Agriculture) have been identified as Participating Agencies (or even Cooperating Agencies) in FRA's NOI issued for the Palmdale-Burbank HSR project. . This is particularly surprising, given that the USFS has jurisdiction over the Angeles National Forest ("ANF") which underlies the "Alternative Corridor Study Area", and is responsible for issuing the "Special Use Permit" or other relevant authorization that will be necessary to construct any route that affects the ANF. An HSR route through the ANF will eliminate adverse impacts on virtually every community between Palmdale and Burbank, and is therefore a matter of considerable interest to affected stakeholders. FRA's failure to include the USFS as a Participating Agency, and the USFS's failure to participate in the public scoping meetings has caused significant public unease, and has raised the public's perception that neither the FRA nor the HSRA are truly committed to developing a route that protects many tens of thousands of people from adverse impacts. This is particularly true in the Community of

Acton, which is traversed by (and will be substantially damaged by) every single HSR route proposed by FRA/HSRA. The Community of Acton expects FRA's failure to include the USFS as a Participating Agency will be rectified, and that the USFS will fully participate in the FRA/HSRA environmental review and public outreach efforts going forward.

5. INADEQUATE DEFINITION OF THE PALMDALE-BURBANK HSR PROJECT PRECLUDES MEANINGFUL PUBLIC COMMENT AT THIS TIME

The HSRA's proposed Palmdale-Burbank HSR project includes a "Route Alternative Study Area" which traverses the ANF. However, this alternative is so poorly defined and lacks locational information to such an extent that affected stakeholders are unable to provide meaningful scoping comments at this time. Regarding this HSR route alternative, it is expected that stakeholders will have future opportunities to provide scoping comments once this alternative is properly refined to a level which permits meaningful public comment. It is further expected that these comments will be accorded the same weight as any and all timely-submitted scoping comments that the FRA and CHSRA receive pursuant to the NOP and NOI issued July, 2014.

6. THE FRA/HSRA SCOPING PROGRAM ESTABLISHES INCONSISTENT DEADLINES

According to the comment cards and scoping flyer distributed jointly by the FRA and HSRA at the public scoping meetings that were held in August and noticed in the NOP and NOI, public scoping comments are due on or before August 31, 2014. However, the NOI issued by the FRA and published in the Federal Register establishes a public scoping deadline of August 25, 2014. The NOP issued by the HSRA was merely signed on July 24, 2014, and it does not specify any scoping comment deadline nor does it indicate a publication date. Despite these apparent inconsistencies and the clearly mixed message that the public has received from FRA/HSRA regarding when scoping comments are actually due, and in recognition of the fact that full and meaningful public participation is a fundamental objective of both CEQA and NEPA, it is expected that FRA and HSRA will deem all comments received on or before, or postmarked by, August 31 2014 to be timely submitted, and will accord them the same weight and due consideration given to all scoping comments submitted on or before August 25, 2014.

7. THE PALMDALE-LOS ANGELES HSR PROJECT HAS BEEN IMPROPERLY SEGMENTED INTO TWO SEPARATE PROJECTS IN VIOLATION OF CEQA & NEPA

The FRA/HSRA have taken a single project (the Palmdale-Los Angeles HSR project) and improperly split it up into two separate projects (the Palmdale-Burbank HSR and the Burbank-Los Angeles HSR Project) in violation of both CEQA and NEPA.

FRA claims that the Palmdale-Burbank project and the Burbank-Los Angeles project will have "independent utility", which means that these two projects are not "connected actions" (as that term is contemplated in NEPA) and will therefore function without need of, and independent from, each other. Such a statement is ridiculous *on its face*. A stand-alone high speed train connecting Burbank with Los Angeles is intrinsically non-viable

given the short distance it would cover (11 miles) and its “unnecessary” nature. FRA claims that the Burbank and Los Angeles terminals are “rational for transportation movements”, but does not provide any supporting evidence that any passenger would ever have need of such transportation. The reason for this lack of evidence is simple; it does not exist. Additional reasons offered by FRA to further justify this improper segmentation of the Palmdale-Los Angeles project are equally insubstantial: for example, FRA claims that segmenting these two projects will provide “more effective planning and public outreach in these highly populated areas”. Obviously this is untrue, as evidenced by the fact that FRA’s public scoping and outreach actions for the two projects were combined into a single scoping and outreach effort. Clearly, FRA is capable of achieving adequate public outreach and planning for a combined Palmdale-Los Angeles project.

Aside from FRA’s specious reasons for segmenting the Palmdale-Los Angeles project into two separate projects, there is the undeniable fact that approving the Burbank-Los Angeles portion of the project will influence the decision and force the Palmdale- Burbank project to proceed notwithstanding the environmental consequences. The Burbank-Los Angeles section serves as a necessary component of the Palmdale-Los Angeles HSR project and is therefore a connected action that is dependent on the Palmdale-Burbank Section. As the courts have determined, these are the hallmarks of distinguishing improper segmentation under NEPA and they clearly preclude FRA from splitting up the Palmdale-Los Angeles HSR project into two different projects.

Separating the Palmdale-Los Angeles HSR project into 2 different segments is also a violation of CEQA. Nonetheless, the NOP issued by HSRA asserts that splitting the Palmdale-Los Angeles HSR project into separate projects is necessary because a Supplemental Alternatives Analysis Report [“SAA”] issued in May 2014 says that “it would be beneficial to address the environmental effects of the HSR System from Palmdale to Burbank in one EIR/EIS and from Burbank to Los Angeles in a separate EIR/EIS.” Aside from the obvious fact that SAA statements do not obviate CEQA compliance requirements, HSRA’s action violates CEQA for other reasons. CEQA prohibits HSRA from breaking up the Palmdale-Los Angeles project into component parts for piecemeal consideration. The justifications for this action offered by HSRA in the NOP are the same justifications offered by the FRA in the NOI, and they fall apart for the same reasons.

8. FAILURE TO PROVIDE HSR NOISE LEVELS VIOLATES CEQA AND NEPA

In any action or project for which an EIS is prepared, NEPA requires consideration of “direct effects, which are caused by the action and occur at the same time and place” [40 C.F.R. § 1508.8(a)]. The “direct effects which are caused” by high speed rail operation include significant noise levels which “occur at the same time and place” in which the train passes by. Similarly, CEQA requires HSRA to disclose the “direct impacts” of a project to the public. ***There is no question*** that both NEPA and CEQA require public disclosure of the actual high speed train noise levels that are projected for the Palmdale-Burbank project.

Nonetheless, and despite these clearly stated requirements, FRA/HSRA have failed to consider (or even report) ANY actual high speed train noise levels in any of the

environmental assessments that have been conducted to date for the California High Speed Rail Program. Instead, FRA/HSRA only considered 24-hour “aggregate” noise values that were never published, and which were derived by reconciling existing noise data (averaged over 24 hours) with projected high speed train noise data (also averaged over 24 hours). While these “aggregate” values may perhaps be construed to represent some sort of indirect impact or perhaps a cumulative impact (both of which must be considered under CEQA), they do not, *by any stretch of the imagination*, represent “direct effects” of the high speed train which occur only at the time when, and in the place where, the high speed train passes by. The Community of Acton will not tolerate such CEQA and NEPA violations, and demands that *actual* noise level predictions resulting from HSR operation in Acton be provided in the Palmdale-Burbank EIR/EIS. This can best be achieved by providing noise contour maps for Acton that are plotted in 10 dBA increments and range from the maximum value to 60 dBA or less.

Respectfully submitted;

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August 29, 2014

Exhibit 1: Alternative Corridor Study Area Adjustment

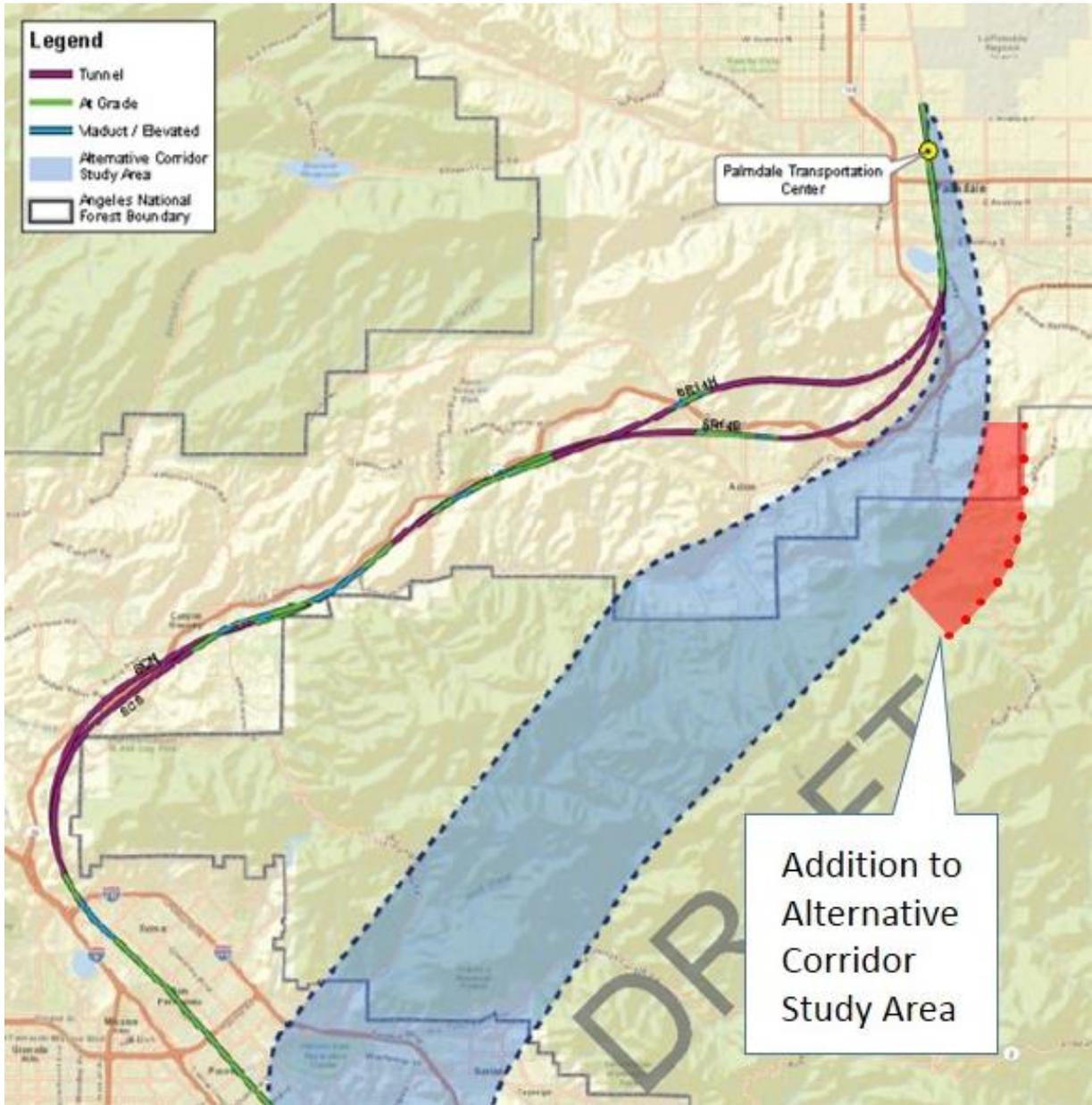


Exhibit 2. Location Where the HSR Should Enter the ANF to Avoid Acton Homes.

