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Gary A. Patton

March 31, 2010

Board of Directors
Peninsula Corridor Joint Powers Board
1250 San Carlos Avenue
San Carlos, CA 94070

RE: Proposal To Certify An EA/EIR For The Caltrain Electrification Program
Agenda, Item #11, April 1, 2010 Board Meeting Agenda

Dear Members of the Board:

This letter is written on behalf of the Planning and Conservation League (PCL), the Planning and Conservation League Foundation (PCLF), and the Community Coalition on High Speed Rail (CC-HSR). These organizations object to the proposed adoption, at your April 1, 2010 meeting, of a resolution that would certify a Final Environmental Impact Report for the proposed Caltrain Electrification Program, as is recommended in Agenda Item #11. Taking the action recommended to you by staff would violate the California Quality Act (CEQA). We urge the Board to comply with CEQA, and to revise and recirculate the EA/EIR for additional agency and public comment, before making a project decision.

CEQA requires public agencies to analyze and consider the possible environmental impacts of their proposed actions before they make a decision that might have adverse environmental impacts. The current, not past, environmental setting needs to be analyzed. CEQA does not permit governmental agencies to study the impacts of a project as those impacts might have been felt many years ago, and then to take action on the project today. The impacts need to be analyzed as of the time the agency proposes to undertake the project.

If the Peninsula Corridor Joint Powers Board were to take action today on an Environmental Impact Report prepared six years ago, it would be basing its decision on information that is demonstrably no longer current. In six years, things change! This is particularly true as to the possible impacts that the public and other governmental agencies might identify, and to which CEQA requires a response.

If the Board today certifies the out of date, 2004 EIR, the right of the public and other agencies to comment has been shortchanged, and this violates CEQA. CEQA simply does not permit the Board to avoid a contemporary examination of the possible environmental impacts of the proposed project, by saying that the agency looked into possible impacts six years ago. You can't, legally, feed people with dairy and other products when the product "shelf life" has

expired. Similarly, you cannot meet the legal requirements of CEQA by relying on an analysis (and agency and public comments) made six years ago.

The proposed electrification project could have many positive environmental impacts, but it could have negative impacts, too. Current impacts need to be examined, and CEQA provides both members of the public and other governmental agencies with the right to comment on those impacts in the context of the current situation, and to have you respond to those comments, before you act.

The need to revise and recirculate the EIR is specifically compelled by the fact that that the project has changed in significant ways since the 2004 analysis, and that there is thus “new information” that requires recirculation, Pub. Resources Code Section 21092.1; CEQA Guidelines Section 15088.5, *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal. 4th 1112 [26 Cal. Rptr. 2d 231]. The “Caltrain electrification” brochure, for instance, included in the Board’s agenda packet, notes at page three that the project weekday ridership in the 2004 Draft EA/EIR was anticipated to be 57,918 by the year 2020, but that the Final EA/EIR now concludes that weekday ridership will be 72,029 by the year 2035. These are quite different figures. The Final EA/EIR now projects an increase in weekday ridership that is about 25% more than the previous estimate (albeit this increase is now measured over a different time period). Increased weekday ridership will translate into increased automobile-related and other impacts within local communities, and will also probably be associated with an increase in the frequency of trains, and the associated noise and community impacts related to frequent train trips. What are those differences, precisely? What will the impacts actually be? The public and the various local government agencies that might be impacted by the different project have a right, under CEQA, to have this analysis fully spelled out, and then to comment on it.

Even more fundamentally, the Caltrain electrification project, in 2004, was not directly tied to the establishment of a High Speed Rail system, using the Caltrain right of way, in the same way it is today. The “Final” EA/EIR mentions major new plans that are in the works that will impact the proposed Caltrain electrification project. Discussion in Sections 1.25, 1.3, 1.3.1, and 1.34 of the “Final” EA/EIR tries to say that these new developments, all related to the proposed High Speed Rail system, are somehow “Other” projects, albeit the Final EA/EIR does admit that they are “related” projects. The public and other governmental agencies need to be able to comment on just how these various projects are *now* related, and to have the Final EA/EIR respond to those comments.

CEQA requires that the analysis undertaken on a proposed project consider the “whole” of the project. A so-called “piecemeal” analysis is strictly forbidden, *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal. 3d 376 [253 Cal. Rptr. 426]. Yet, such a “piecemeal” consideration of possible impacts is exactly what the Peninsula Corridor Joint Powers Board would be attempting to do, unless it revises and recirculates the EIR to take account of and to allow comment on the proposed High Speed Rail project as it is *currently* planned. The proposed High Speed Rail system now ties directly into the electrification project, in a way that it didn’t in 2004. In fact, a 2009 agreement between the California High Speed Rail Authority and the Peninsula Corridor Joint Powers Board (attached),

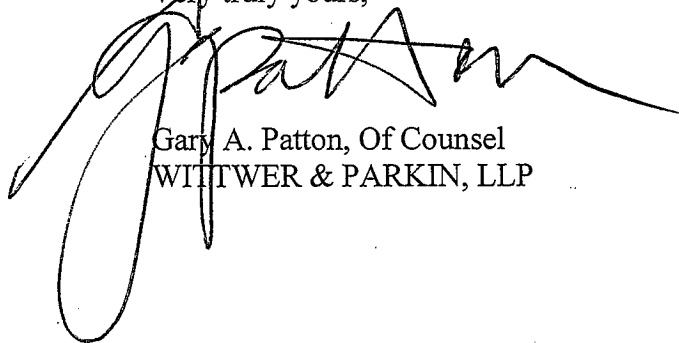
which was adopted in 2009, significantly after the 2004 EIR, makes clear that the Caltrain project is now clearly considered by both agencies to be essentially the "same" project. That 2009 Agreement states, for example, that the electrification project "creates an immediate opportunity for phased implementation of the high speed rail system...." In addition, as is made clear by Agenda Item #12 on the April 1, 2010 Agenda, the funding for the proposed Caltrain electrification project is now directly linked to High Speed Rail funding. Again, this demonstrates that the state's High Speed Rail project and the Caltrain electrification project is essentially the "same" project, and CEQA requires the environmental analysis to cover the actual impacts of the whole project that the government agency proposes to approve. Certainly, members of the public and other governmental agencies have the right to comment, and to have their comments responded to, prior to the Board's decision on the electrification project.

To comply with CEQA, the Board must revise and recirculate the EA/EIR on the proposed electrification project, and in doing so give members of the public and other governmental agencies the right to comment on the proposed Caltrain electrification project, which is now so clearly linked to High Speed Rail. Failure to follow the requirements of CEQA that the EA/EIR must be recirculated, and the public and other governmental agencies given a renewed opportunity to comment, will not lead to a quicker and more certain decision to move ahead with electrification. Instead, it will likely lead to litigation that will adversely impact both electrification, and the proposed High Speed Rail project.

PCL, PCLF, and the Community Coalition on High Speed Rail also believe that many of the CEQA findings in Exhibit A are inadequate or improper under CEQA, and register our objection without extensive argument, since it is clear that the Board must revise and recirculate the EA/EIR to allow contemporary comment on the contemporary and current impacts, with the result that specific objections to the Exhibit A findings can thus be made during the recirculation and comment period.

On behalf of PCL, PCLF, and the Community Coalition on High Speed Rail, I strongly urge the Board to follow the requirements of CEQA, and to revise and recirculate the EA/EIR on the proposed Caltrain electrification project, prior to taking action on the proposed project.

Very truly yours,

A handwritten signature in black ink, appearing to read "Gary A. Patton", is written over the typed name and firm name.

Gary A. Patton, Of Counsel
WITTWER & PARKIN, LLP

cc: PCL
PCLF
CC-HSR
Peninsula Cities

AGREEMENT

THIS AGREEMENT is by and between the California High Speed Rail Authority (hereinafter referred to as "CHSRA") and the Peninsula Corridor Joint Powers Board (hereinafter referred to as "PCJPB").

RECITALS

WHEREAS, in January, 2004, the California High Speed Rail Authority and the Peninsula Corridor Joint Powers Board entered into a Memorandum of Understanding, the purpose of which was to establish a framework for future cooperation between the agencies relative to the proposed development of a high speed train system for California that would share the rail corridor between the City of San Jose and the City and County of San Francisco owned by PCJPB (the "Caltrain Rail Corridor") to the mutual benefit of the parties; and

WHEREAS, that agreement provided that any future implementation of the shared corridor concept would require the preparation of a comprehensive agreement setting forth the roles and responsibilities of each party and addressing design, construction and operation issues; and

WHEREAS, since the execution of the Memorandum of Understanding in 2004, several actions have been taken and developments have transpired that have served to confirm the wisdom and propriety of establishing a long-term partnership between CHSRA and PCJPB to coordinate and harmonize the planning, design and implementation of their respective inter-city high speed and commuter rail programs in a manner that provides for shared use of the Caltrain Rail Corridor. More specifically, among the key planning decisions and actions undertaken by each agency are the following:

A. CHSRA has designated as preferred and selected the San Jose to San Francisco corridor along the Caltrain Rail Corridor as part of the route for the California High Speed Train System ("HST System") based on its Final Program Environmental Impact Report for the Bay Area to the Central Valley portion of the system, certified in July 2008; CHSRA issued an updated California High Speed Rail Business Plan in November, 2008 indicating that the system would share the existing rail corridor with the Caltrain commuter rail system between San Francisco and San Jose; the CHSRA endorsed a phasing plan to implement sections of the HST system in and around the Los Angeles basin and in the San Francisco Bay Area in order to provide immediate benefit to local commuter rail service; and Proposition 1A, as passed by the voters of California in November 2008, authorizes bond financing for Phase One of the HST System from San Francisco to Los Angeles/Anaheim.

B. PCJPB has planned for and implemented various improvements which are consistent with accommodation of high speed rail in the Caltrain Rail Corridor, including implementation of its Baby Bullet program, environmental study and preliminary design of electrification program, formulation of Project 2015, pursuit of Federal Railroad Administration approval of mixed rail operations that will fully integrate Caltrain and high speed rail systems; and

WHEREAS, recent events have created an opportunity to establish a new and unprecedented level of cooperation and partnership between the PCJPB and the CHSRA predicated on the assumption of shared use of the existing Caltrain Rail Corridor for both Caltrain commuter rail rapid transit services and inter-city high speed train service; and

WHEREAS, the PCJPB's readiness to proceed to electrify the Caltrain Rail Corridor and to implement various other state-of-the-art improvements, including signal and control system improvements (CBOSS) and the acquisition of new state-of-the-art electric motorized unit rolling stock, creates an immediate opportunity for phased implementation of the high speed rail system utilizing the Caltrain Rail Corridor in keeping with CHSRA's decisions and adopted business plan; and

WHEREAS, the benefits associated with the partnership and the sharing of personnel resources as described herein include, but are not limited to, the promotion of efficiency and economy in the formulation and implementation of actions to achieve integrated high speed inter-city train service and Caltrain commuter rail rapid transit service, including enhanced signaling and train control equipment; the promotion of efficiency and economy in working with federal agencies to achieve such integrated rail service in the Caltrain Rail Corridor; and the promotion of early action steps for the HST system to the benefit of the Caltrain Corridor;

WHEREAS, based upon the foregoing, the parties desire to coordinate and to the extent appropriate to consolidate their separate organizations, to share resources and information, and otherwise to concentrate and to direct their joint efforts to effectuate as a joint project fully compatible inter-city high speed rail and commuter rail rapid transit systems utilizing the Caltrain Rail Corridor and to memorialize their joint objectives and understandings in a new Agreement.

NOW, THEREFORE, in consideration of the foregoing, the parties hereby agree as follows:

I. **PURPOSE OF AGREEMENT**

The purpose of this agreement is to establish an initial organizational framework whereby CHSRA and PCJPB engage as partners in the planning, design and construction of improvements in the Caltrain Rail Corridor that will accommodate and serve both the near-term and long-term needs of CHSRA inter-city high speed rail service and PCJPB commuter rail rapid transit service. As the parties embark upon this partnership and begin working together more closely, it is expected that their experience will illustrate ways in which this agreement should be amended or replaced in order better to address specific roles and responsibilities of the parties and other terms and conditions necessary to assure successful achievement of the goals of each party, that have motivated the parties to enter into this initial agreement.

II. **ORGANIZATIONAL STRUCTURE AND GOVERNANCE**

To enable CHSRA and PCJPB programs to be planned, designed and implemented to the extent possible as a joint project, it is the objective of the parties effectively to share, to coordinate, and/or jointly to direct their resources toward the implementation of a single joint program/project, including various personnel resources.

At the outset, the Executive Director of CHSRA and the Executive Director of the PCJPB (hereafter "Executive Officers") shall jointly designate an individual to serve as the Program Director. The Program Director shall report to each of the Executive Officers. Independent consultants engaged by CHSRA and PCJPB and the respective staffs of each of the parties, as designated by that party's Executive Officer, will report to the Program Director. The Executive Officers will also determine the manner in which the CHSRA's Program Manager will coordinate and oversee the work of the consultants.

The Executive Officers shall create one or more working groups to initiate work under this agreement on the tasks listed below in Section IV and elsewhere in this Agreement.

III. PARTNERSHIP PRINCIPLES

A. To enable CHSRA and PCJPB programs to be planned, designed and implemented to the extent possible as a joint project, it is the objective of the parties to incorporate high speed rail in the Caltrain Rail Corridor on a phased basis.

B. It is recognized that construction of the high speed rail system will have to take place while PCJPB rail service remains in regular operation. The customers of the PCJPB must continue to be served throughout the high speed rail construction program. In furtherance of this principle, the parties acknowledge that some alterations or improvements in the Caltrain corridor will be required before construction of many of the high speed rail components can occur.

C. High speed rail must be designed, constructed and operated in a manner fully consistent with the operational requirements of the Caltrain commuter rail rapid transit service and with consideration of the cities on the Peninsula through which the high speed rail system will be constructed and operated.

D. Ultimate configuration of the Caltrain corridor will consist of a multiple track, grade separated high speed rail system, with mixed traffic from Caltrain commuter rail and the high speed train service capable of operation on all tracks to enable Caltrain to achieve service levels of no less than eight trains per hour in each direction. Track configuration analyses will consider both horizontal and vertical alignments in the Caltrain corridor.

E. The parties recognize the investments already made by PCJPB, including the intrinsic value of the rail corridor owned by PCJPB and expenditures made by PCJPB in pursuit of signal and control center, electrification and related projects. The parties further recognize that the existing right of way and existing improvements are solely owned by PCJPB.

IV. ACTIONS

It is the intention of the parties to incorporate high speed rail in the Caltrain Rail Corridor on a phased basis. At the outset, various PCJPB projects, sized and designed to facilitate eventual construction of high speed rail, will be undertaken. Accordingly, both initial and longer term action plans will be developed by one or more working groups established by the Executive Officers to implement the objectives of the parties. Study of both the initial actions and tasks and of the longer term actions and tasks will begin as soon as possible.

A. Initial Actions and Tasks

- Formulation of a detailed organizational structure for the joint program, including the designation or alteration of position titles, reporting relationships, and the manner in which decisions shall be made.
- Formulation of a plan for community outreach to the affected community, counties and governmental and regulatory agencies, and other operating entities in the corridor;

- Development of a systems engineering integration plan for the joint program;
- Determination of fundamental conceptual design of track alignments, elevations, station platform configuration and associated issues;
- Aggressively planning the implementation, in a manner consistent with the eventual shared use of the corridor, of various PCJPB projects currently under design or otherwise nearly ready for implementation, including but not limited to a new signal and control system, electrification of the Caltrain Rail Corridor, grade separations, and rolling stock acquisition, necessary to maximize system resilience during future high speed rail construction in the Caltrain corridor; including determinations as to the extent to which these projects will be pursued jointly or will be pursued separately by PCJPB. This planning will include determining which party is the appropriate lead agency for purposes of environmental review.
- Development of financial systems and a detailed financial plan for pursuit of the projects in the initial action plan.

B. Longer Term Actions and Tasks

- Development of a phased implementation plan which supports both Caltrain operations and HST operations;
- Determination of the proper means of pursuing environmental clearance for the various projects in the corridor based, to the extent feasible, on a comprehensive service assessment and conforming design requirements;
- Completion of designs based on the combined technical requirements for interoperability with all users and mixed traffic assurance other than freight;
- Determination of construction sequencing that equally represents the most efficient and cost effective execution of the work while making every effort to preserve and improve current levels of service.
- Development of financial systems, budget processes, and a detailed financial plan for pursuit of the projects in the longer term action plan.
- Assessment of liability risks and means to address those risks.

V. OWNERSHIP OF ASSETS

The Executive Officers shall establish a working group to examine issues surrounding potential rights and interests of the parties, including ownership interests, in the facilities in the corridor after the overall project is completed.

VI. DUMBARTON SERVICE

The parties also agree to the establishment by the Executive Officers of a working or technical group to share information concerning the possibility of Caltrain service over the Dumbarton Bridge and possible interconnections between such service and high-speed rail service on the east side of the San Francisco Bay.

VII. THIS AGREEMENT IS SUBJECT TO REVISION AS CONDITIONS WARRANT

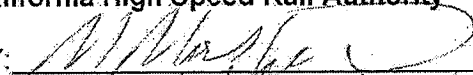
The parties agree that the structure of the relationship between the PCJPB and the CHSRA as described in this agreement is not intended to remain static, but that it will evolve as time goes on and as the parties confront various challenges. Consequently, it is understood that all or portions of this memorandum will be modified to accommodate the needs of the parties as planning work progresses, either through direct amendment of this memorandum or through supplemental memoranda, as suits the convenience of the parties.

VIII. EFFECTIVE DATE AND TERMINATION

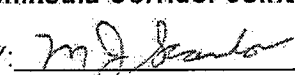
This agreement is effective upon execution by both parties' Executive Officers and shall continue in effect until and unless terminated by both parties through mutual agreement or upon 30 days' written notice delivered by the party seeking to terminate the agreement to the other party.

IN WITNESS WHEREOF, CHSRA and PCJPB have executed this Agreement.

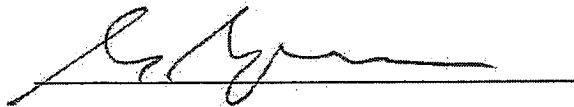
California High Speed Rail Authority

BY: 
Name: Mehdi Morshed
Title: Executive Director
Date: 4/7/09
Resolution No.: HSRA 09-004

Peninsula Corridor Joint Powers Board

BY: 
Name: Michael J. Scanlon
Title: Executive Director
Date: April 2, 2009
Resolution No.: 2009-14

Approved as to form:



Approved as to form:

