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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
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June 30, 2008

Mark Yachmetz
Associate Administrator of Railroad Development
Federal Railroad Administration
1120 Vermont Avenue, NW, MS 20
Washington, D.C. 20590

Subject: Bay Area to Central Valley California High Speed Train System Final
Programmatic Environmental Impact Report/Environmental Impact Statement
(CEQ# 20080211)

Dear Mr. Yachmetz:

The Environmental Protection Agency (EPA) has reviewed the Final Programmatic Environmental Impact Report/Environmental Impact Statement (Final PEIS) for the Bay Area to Central Valley California High Speed Train System. Our review is pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and Section 309 of the Clean Air Act. Our detailed comments on the Final PEIS are enclosed.

EPA requested to be a cooperating agency in this "Tier 1", or programmatic environmental review NEPA process and has been working with Federal Railroad Administration (FRA) and California High Speed Rail Authority (CHSRA) to address the potential environmental impacts of the project as outlined in a June 12, 2006 Interagency Memorandum of Understanding (MOU). The Tier 1 process is expected to eliminate broad corridor alternatives from further consideration. Future "Tier 2", or project-level analyses, will address site-specific environmental impacts of the high speed train system. The MOU outlines a process for integrating the requirements of NEPA and Clean Water Act (CWA) Section 404 in Tier 1 to streamline the environmental review and permitting process in Tier 2. A federal permit from the Army Corps of Engineers under CWA Section 404 will be required for this project at Tier 2 due to anticipated fill of waters of the United States. The MOU seeks to ensure that the alignments advanced to Tier 2 are most likely to contain the preliminary "least environmentally damaging practicable alternative," (LEDPA) a determination that is required for a CWA Section 404 permit.

EPA provided comments on the Draft PEIS on October 26, 2007 and provided concurrence on the route most likely to yield the preliminary LEPDA on April 30, 2008. Some of the issues identified in the Draft PEIS have been addressed. Specifically, we commend FRA and CHSRA for 1) removing from further consideration any alternative alignments that include *both* an Altamont and a Pacheco Pass crossing, and 2) compiling all proposed mitigation measures

into one stand-alone table. This will facilitate easier transfer of decisions and commitments rendered during the programmatic planning process to future project-level analyses in the Bay Area to Central Valley portion of the high speed train. We continue, however, to have concerns with potential indirect and growth-related impacts from the project that were not analyzed in the Final PEIS and have therefore rated this project as Environmental Concerns – Insufficient Information (EC-2) based on impacts to aquatic resources and the indirect and cumulative impacts analyses. A "*Summary of Rating Definitions*" for further details on EPA's rating system is enclosed.

While our agency has concurred that the Pacheco Pass route is most likely to yield the preliminary LEDPA per our NEPA/404 MOU coordination, we note that continued refinement of this alternative will be important for future CWA Section 404 permitting. We strongly encourage regulatory and resource agency coordination during the Tier-2 project level analysis to inform design choices that are most protective of the natural environment.

The enclosure further describes the remaining environmental concerns that EPA identified following our review of the Final PEIS. We appreciate the opportunity to review the Final PEIS and believe that a well-planned high speed train system can offer great economic and environmental benefits for California's future. We look forward to continuing our coordination with FRA and CHSRA and are available to discuss the issues addressed in this letter during upcoming interagency meetings. If you have any questions, please feel free to contact Connell Dunning (415-947-4161; dunning.connell@epa.gov) or Eric Raffini (415-972-3544; raffini.eric@epa.gov), the lead reviewers for this project.

Sincerely,

/s/ Connell Dunning for

Nova Blazej, Manager
Environmental Review Office

Enclosures: EPA's Detailed Comments
Summary of Rating Definitions

cc: Mehdi Morshed, California High Speed Rail Authority
Jane Hicks, Army Corps of Engineers
Mark Littlefield, U.S. Fish and Wildlife Service

Integration of Clean Water Act and National Environmental Policy Act Requirements

Federal Railroad Administration (FRA), California High Speed Rail Authority (CHSRA), Army Corps of Engineers (Corps), and U.S. EPA Region IX agreed to follow a National Environmental Policy Act/Clean Water Act Section 404 Integration Process Memorandum of Understanding (NEPA/404 MOU) for Tier 1 decision making as the framework to guide the environmental review of the programmatic, Tier 1 project. The goal of the modified NEPA/404 MOU process is to ensure that Tier 1 decisions reflect careful consideration of the CWA Section 404 Guidelines. The Guidelines should be addressed as early as possible in the Tier 1 NEPA evaluation to eliminate the need to revisit decisions at the Tier 2 project-level that might otherwise conflict with CWA Section 404 permit requirements.

EPA has agreed with the first four checkpoints in the NEPA/404 MOU process – the purpose and need, criteria for selecting the range of alternatives, the range of alternatives, and the corridor most likely to contain the Least Environmentally Damaging Practicable Alternative (LEDPA). We are available to discuss the last checkpoint (mitigation framework for the project).

Corridor(s) most likely to contain the LEDPA

Pacheco Pass

We note that the Pacheco Pass alignment may result in substantial impacts to wetlands and other waters and may result in substantial impacts to jurisdictional waters. The significant loss of aquatic resources associated with Pacheco Pass alignments, as well as the impacts to wildlife corridors and habitat fragmentation are important to address in order CWA Section 404 permitting from the U.S. Army Corps of Engineers (Corps) during the Tier 2 project-level planning process in the future.

Recommendations:

Because additional feasible design modifications to reduce impacts to waters along Pacheco Pass alignment may exist, the project-level Tier 2 analyses should focus on a more accurate estimates of potential impacts opportunities for reducing impacts to waters from the project. An integral part of this focus at the project-level should include interagency coordination among resource and regulatory agencies.

Growth-related Impacts Analysis

Our comments on the Draft PEIS highlighted the need for, at the programmatic analysis level, a better understanding of the potential growth-related impacts associated with station locations. EPA continues to recommend that the programmatic Tier 1 analysis is the appropriate venue to analyze the potential impacts associated with different station locations proposed for the high speed train system. With an analysis of county level impacts only, there is a missed opportunity to identify the potential land-use/urbanization and associated environmental impacts associated with potential station locations, which would inform decision-makers about the need to 1) focus Tier 1 analyses; 2) avoid placing stations where potential impacts are greatest; and 3) highlight potential mitigation measures that should be pursued in Tier 2 analyses.

Chapter 5, Economic Growth, supports the above concern by stating that “adding, dropping, or changing station locations will lead to changes in potential secondary impacts at the station in question as well as in the HST system as a whole”. Because impacts to the entire system may be expected, it is most appropriate to examine system-wide differences at this programmatic, Tier 1 level. As stated in our comments on the Draft PEIS, Chapter 5 further goes on to state the following example:

In Stanislaus County, the Amtrak Briggsmore station could lead to the urbanization of 1,000 more acres in the county than the SP Downtown site, leading to additional indirect impacts; this difference between station sites accounts for about 35% of the difference in urbanized area size between the Altamont and Pacheco Network alternatives noted in Table 5.3-6 for Stanislaus County.

However, Page 20-27 in the Final PEIS Response to Comments states that “it is not possible to associate specific levels of population growth, urbanization, and indirect impacts with individual stations” and “it is not possible to state that any given station leads to a specific amount of growth”. This is confusing given the estimate of 1,000 acres of urbanization projected for the specific SP Downtown Site provided in Chapter 5 and referenced above. If it is possible to estimate station location impacts, these estimates should be considered at the Tier 1 level.

EPA continues to believe that the information regarding potential induced growth impacts due to specific station sites is informative for decision-makers and should be highlighted to better inform ultimate choice of station locations. In addition, because urbanization estimates attributed to some station sites has such a large impact on the projected urbanization values (35% of all impacts in the above scenario), we had recommended that the Final PEIS present a range of potential impacts, by resource, to each county, identifying low- and high-end estimates of potential urbanization.

Recommendations:

We continue to recommend that these actions be completed during the Tier 1 analysis. In the Record of Decision:

- Include a table of all proposed station sites with estimates of acres of induced growth/urbanization impacts associated with each location.
- Include a map of all proposed station sites showing the estimated area of induced growth/urbanization impacts associated with each location.
- Clearly delineate on the table what station sites would have the least projected acreage of induced urbanization and which station sites would have the greatest projected urbanization.
- Revise all values of impacts in tables in Chapter 5 to provide range of potential acreage/mileage impacts, including an “upper” and “lower” value. For example, for urbanization impacts to Stanislaus County, the acreage of urbanization should clearly reflect that, depending upon the choice of station, the impacts vary by 1,000 acres.

We note that in our previous comments on the Draft PEIS, we commented that Chapter 5 concludes that Merced and Madera counties are likely to experience the greatest magnitude of secondary impacts. Our comments recommended identification of specific mitigation measures to address and offset high growth-inducing impacts to Merced and Madera counties, and other counties that will be most affected by potential growth-inducement from high speed train. Specifically, we asked that the Final PEIS include a Growth Mitigation Plan. We do not agree with the following statements in the response to comments: “The growth analysis...does not identify any significant impacts from the indirect effects of growth inducement at the program level of analysis. Therefore, it is not necessary to analyze or adopt specific mitigation measures strategies for indirect effects of growth inducement for Merced County, Madera County, or any other county.” (Standard Response 4, Page 19-11). Council on Environmental Quality addressed this issue in 40 Most Asked Questions Concerning CEQ’s NEPA Regulations:

The mitigation measures discussed in an EIS must cover the range of impacts of the proposal. The measures must include such things as design alternatives that would decrease pollution emissions, construction impacts, esthetic intrusion, as well as relocation assistance, possible land use controls that could be enacted, and other possible efforts. Mitigation measures must be considered even for impacts that by themselves would not be considered "significant." Once the proposal itself is considered as a whole to have significant effects, all of its specific effects on the environment (whether or not "significant") must be considered, and mitigation measures must be developed where it is feasible to do so. Sections 1502.14(f), 1502.16(h), 1508.14. (Question 19a, Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 Fed. Reg. 18026 (March 23, 1981))

Recommendation:

We continue to recommend that these actions be completed during Tier 1 analyses:

- In the Record of Decision, include specific mitigation measures to address and offset high growth-inducing impacts to Merced and Madera counties, and other counties that will be most affected by potential growth-inducement from high speed train.
- In addition, include a Growth Mitigation Plan to create a strategy for addressing, planning for, and mitigating growth-related impacts in counties that will be most affected. The Plan should include:
 - an outlined process for coordination with agencies that have land-use planning authority in the affected counties and location near the high speed train
 - a list of growth limiting and management measures, including changes in the General Plan designations, zoning, conservation easements, purchase of land
 - a suggested timeframe for coordinating with land-use planners, including who will initiate discussions, how the public will be involved, etc.
 - references to the transit-oriented principles that FRA and CHSRA have developed for the high speed train system.

Design, Mitigation, and Coordination Measures Deferred to Future Project-Level Analyses

EPA is highly supportive of the multiple measures that CHSRA and FRA have identified as important for future project-level analyses. We appreciate the compilation of all measures into one location. The Response to Comments (page 20-29) states that all measures will be included in a Mitigation Monitoring and Reporting Plan.

Recommendation: Include in the ROD the Mitigation Monitoring and Reporting Plan along with timeframes and responsible parties.