



California High-Speed Rail BRIEFING: September 17, 2019 AND BOARD AGENDA ITEM #5

TO: Chair Mendonca and Board Members

FROM: Mark McLoughlin, Environmental Services Director
James Andrew, Attorney

DATE: September 17, 2019

RE: Proposed Revision to CEO Delegation – Preferred Alternatives (related to NEPA Assignment)

Summary

Staff requests amending the CEO delegation to allow the following actions:

- Identify a preferred alternative alignment for NEPA purposes if it is the approximate equivalent to an alignment the Board previously identified for CEQA purposes;
- Make non-major revisions to a preferred alternative previously identified by the Board; and
- Approve for implementation under NEPA any preferred alternative that the Board previously approved for implementation as state lead agency under CEQA prior to NEPA assignment.

Background

There are generally four steps in environmental project development under CEQA and NEPA:

- (1) **Alternatives screening** to set range of alternatives going into a draft EIR/EIS. In addition, the Authority has also typically identified in the draft EIR/EIS a “preferred alternative” (aka CEQA proposed project) that appears preliminarily to best balance environmental, community and cost/performance goals. Identification of a preferred alternative at this step is *not* project approval or decision.
- (2) **Issuance of a draft EIR/EIS** for public and agency comment that contains environmental analysis of the range of alternatives, including the preferred alternative.
- (3) **Issuance of a final EIR/EIS** containing written responses to all comments received on the draft EIR/EIS and any updated or revised analysis as compared to the draft.
- (4) **Agency decision** to certify the final EIR/EIS and approve one of the alternatives evaluated, informed by the draft and final EIR/EIS, for project implementation (e.g., ROW acquisition, final design, construction).

For various reasons, the Board took several CEQA-only/CEQA-first actions in late 2018. These actions included:

- Identification of preferred alternatives for the four southern California project sections to include in forthcoming draft EIR/EIS documents (part of step 1 above).
- Certification of the CEQA Supplemental Final EIR for the Fresno to Bakersfield project section Locally Generated Alternative (LGA), and approval for implementation of the LGA under CEQA as state lead agency (step 4 above).

This request is to streamline Board consideration of actions under NEPA which are substantially equivalent to previous actions already taken by the Board under CEQA, and to allow the environmental process to proceed without additional delay.

Prior Relevant Board Action

In August 2018, via Resolution #HSRA 18-15, with the then-expectation that NEPA assignment was imminent, the Authority Board amended the CEO delegation to authorize the CEO generally to take actions under NEPA that the CEO already had delegated authority to take under CEQA.

Discussion

The current CEO delegation related to NEPA was written in August 2018 when NEPA assignment was considered imminent. At that time, all anticipated future Board actions as to environmental matters (e.g., preferred alternative identification, and document certification and project approval) were anticipated to occur at the same meeting under both CEQA and NEPA. NEPA assignment did not occur when anticipated, and the Authority proceeded with a CEQA-first strategy for the actions listed above.

The existing CEO delegation does not allow the CEO to identify (step 1 above) in a draft environmental document a NEPA federal preferred alternative alignment even if the Board identified already a state preferred alternative for CEQA purposes. The Board previously identified a state preferred alternative alignment for CEQA purposes for each of the four southern HSR sections; those preferred alternative alignments also need identification under NEPA. The proposed revised CEO delegation would allow the CEO to make such identification.

The existing CEO delegation does not allow the CEO to approve for implementation (step 4 above) under NEPA as federal lead agency an alignment alternative even if the Board already approved it under CEQA as state lead agency. The LGA alignment the Board already approved as state lead agency under CEQA in late 2018 needs approval by the Authority as federal lead agency (by assignment) under NEPA. The proposed revised CEO delegation would allow the CEO to make such approval.

The existing CEO delegation does not allow the CEO, under CEQA or NEPA, to modify a preferred alternative alignment previously identified (step 1 above) by the Board for inclusion in a draft environmental document. Staff anticipates that some alignments previously identified by the Board may require revision – e.g., moving farther away from the Caesar Chavez National Monument near Bakersfield to reduce potential impacts. The proposed refinements to the CEO delegation would allow the CEO to make non-major changes to preferred alternatives previously identified by the Board. The proposed delegation would define “major” as a revision that potentially would significantly negatively affect large populations substantially different from the potential effects of the previously-identified alternative.

Legal Approval

The Office of Chief Counsel confirms that there is no legal impediment to the Board revising the delegation as proposed.

Budget and Fiscal Impact

Budget review here

REVIEWER INFORMATION	SIGNATURE
Reviewer Name and Title: Thomas Fellenz Chief Legal Counsel	Signature verifying budget analysis: Original Signed by Thomas Fellenz September 9, 2019
Reviewer Name and Title: Brian Annis Chief Financial Officer	Signature verifying legal analysis: Original Signed by Brian Annis September 9, 2019

Recommendation

Staff recommends that the Board amend the CEO Delegation to allow modification as outlined above and identified in track changes to the Board Policy attached, to allow the CEO to:

- Identify a preferred alternative alignment for NEPA purposes if it is the approximate equivalent to an alignment the Board previously identified for CEQA purposes;
- Make non-major revisions to a preferred alternative previously identified by the Board; and
- Approve for implementation under NEPA any preferred alternative that the Board previously approved for implementation as state lead agency under CEQA prior to NEPA assignment.

Attachments

Resolution #HSRA 19-09

HSRA Policy 11-001, as amended