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CALIFORNIA HIGH-SPEED RAIL AUTHORITY

September 17, 2009

The Honorable Nathaniel P. Ford, Sr.
Chair
Transbay Joint Powers Authority
201 Mission Street, Suite 2100
San Francisco, California 94105

Dear Chairman Ford:

Recently, the Transbay Joint Powers Authority has stated its opinion that the High-Speed Rail Authority is acting in a "legally improper" manner in studying station alternatives in San Francisco.

The Authority has been very careful in all of its work to, to the best of its ability, meet both the letter and the intent of state and federal laws and regulations that govern its work. To that end, the Authority has sought and continues to seek legal advice from the state Attorney General's Office.

The attached letter from the Authority's legal counsel briefly states the legal rationale for the Authority's actions regarding the Transbay Terminal. We hope this letter sheds some light on a number of misstatements regarding the Authority's work.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Morshed".

Mehdi Morshed
Executive Director



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September 17, 2009

Mehdi Morshed
Executive Director, California High Speed Rail Authority
925 L Street, Suite 1425
Sacramento, CA 95814

RE: Transbay JPA Attorneys August 21, 2009, Letter to DAGs Sproul and Spanos regarding the Authority's consideration of alternatives for the project EIR/EIS on the San Francisco to San Jose section of the High Speed Train System

Dear Mr. Morshed:

As previously advised, this office received a letter dated August 21, 2009, from attorneys Ellen Garber and Andrew Schwartz of the Shute, Mihaly and Weinberger law firm, representing the Transbay Joint Powers Authority (JPA). That letter asserts that it is legally improper for the California High Speed Rail Authority (the Authority) and the Federal Railroad Administration (FRA) to analyze any alternatives to the JPA-approved Transbay Transit Center, or the Transbay Terminal, as the San Francisco terminus for the California high-speed train (HST) system. It further asserts that the Authority and FRA should simply rely on the JPA's Final EIR and approval of the Transbay Transit Center, as well as the Federal Transit Administration's approval of the document and the project. I have provided to you a copy of the August 21, 2009, letter.

Our summary response to the points in the August 21, 2009 letter follows, indicating that the Authority, and its federal partner the Federal Railroad Administration (FRA), are properly following the requirements of state and federal environmental laws, including the required consideration of alternatives.

Use of Transbay JPA EIR documents and decisions

The Transbay attorneys suggest that it is legally improper for the Authority and the FRA to analyze any alternative to the Transbay Terminal as approved by the JPA, arguing that the Authority and the FRA must rely on the JPA's documents and decisions. The Authority can properly consider the JPA's extensive studies and decision documents on the Transbay Terminal to the fullest possible extent to inform its review of environmental impacts in the San Francisco to San Jose HST project EIR/EIS, including environmental impacts associated with the Transbay Terminal. However, the JPA's previous decisions cannot substitute for the decisions that must be made in the future by the Authority in compliance with CEQA, and by the FRA in compliance with NEPA. The JPA certified a final EIR in 2004 and made a decision on a different project with different components, than that to be considered by the Authority and FRA. In fact, the

August 21, 2009, letter explicitly recognizes the discretion to be exercised by the Authority and FRA on the HST project, and notes the ultimate design and operational details of the Transbay Transit Center will continue to evolve. The JPA asserts exclusive authority over the Transbay Terminal it has approved, and the Authority exercises exclusive authority over the development and implementation of California's high speed train system. Appropriately, the Authority and the JPA have executed a Memorandum of Understanding (MOU) memorializing their intention to work together regarding the Transbay Terminal, and the Authority should continue working with the JPA to the greatest extent possible.

The Authority has previously identified Transbay Terminal as Preferred

Based on the 2005 Final Program EIR/EIS and the 2008 Final Program EIR/EIS, both the Authority and the FRA have selected the Transbay Terminal station as the preferred northern terminus station for the San Francisco to San Jose section of the HST system, subject to further study in a project EIR/EIS and future final decisions on the placement and components of the HST system. The Authority must comply with CEQA and the FRA must comply with NEPA in preparing the project EIR/EIS, including considering a reasonable range of feasible alternatives to the proposed project. The Transbay Terminal continues to be the preferred San Francisco terminus station for the HST project for purposes of preparing the draft project EIR/EIS, after which a final EIR/EIS will be prepared and considered by the Authority and the FRA in making final decisions on the HST project. The Notice of Preparation (NOP) of the Environmental Impact Report indicates this section of the HST project runs from San Jose to San Francisco along the Caltrain corridor of the San Francisco Peninsula. Improperly constraining the project alternatives to be considered, or constraining them prematurely, would increase risk of future legal challenge to the Authority's process. The Authority is in the process of documenting the identification and preliminary consideration of alternatives for the project EIR/EIS.

As a result of Scoping for the Project EIR/EIS for the San Francisco to San Jose Section of the HST system alternatives were suggested for consideration.

The NOP for the San Francisco to San Jose Project EIR/EIS was issued in January 2009 and was followed by scoping meetings and opportunities for agencies and the public to provide input on the matters to be studied in the EIR/EIS, including the alternatives to be considered. As a result of the scoping process, a so-called Beale Street alternative to the JPA-approved Transbay Terminal was suggested to the Authority, as described in a Duane Morris letter to Gensler, et al, that was provided to the Authority. This alternative would change the underground alignment of rail platforms and tracks connected to the Transbay Terminal site and facilities. The Authority referred the letter to its environmental and engineering team for review. The Authority and the FRA will determine the alternatives to be studied in detail in the project EIR/EIS, and will document the initial consideration of alternatives determined to be infeasible, or otherwise inappropriate, for study in the project EIR/EIS. The JPA documents and decisions, along with recent letters from JPA attorneys, are being considered in this process. The Authority intends to move forward with this process as quickly as possible.

The JPA attorneys misconstrue Proposition 1A in arguing that the JPA-approved Transbay Terminal is the only San Francisco station the Authority may consider.

The JPA attorneys' letter construes Proposition 1A as indicating that the JPA-approved Transbay Terminal is the only San Francisco HST station the Authority and the FRA may consider in the project EIR/EIS for the San Francisco to San Jose section of the HST system, and any alternative to the Transbay Terminal is legally infeasible. This JPA argument considers any variation on the configuration of, the footprint for, or the approaches to the Transbay Terminal, as approved by the JPA, to be legally infeasible for the Authority.

The Authority is charged with exclusive responsibility for developing and implementing a high speed train system for California, and in doing so it must determine the components needed to comprise and to serve a viable HST system, including the needed facilities at terminus points such as the Transbay Terminal. (Public Utilities Code, section 185030.) Proposition 1A, passed by the state's voters in November 2008, provides initial state bond financing for the California high speed train system, subject to various limitations and further environmental study. The Authority commenced the San Francisco to San Jose HST project EIR review process with an NOP noting that Transbay Transit Center is the preferred station in the City of San Francisco. The Authority received a number of suggestions on alternatives and will need to document the basis for considering suggested alternatives to be infeasible, including alternatives related to the Transbay Terminal, and will determine what are to be considered feasible alternatives for its project -- these will be studied in the project EIR/EIS. An alternative may consist of a variation on a proposed alignment or a variation on the configuration of a station and its amenities, or may suggest a different location altogether for an alignment section or a station.

Proposition 1A refers to the Transbay Terminal, which connotes a particular location in San Francisco, but this reference does not constrain the Authority's consideration to only that specific terminal project configuration approved by the JPA. (Streets & Highways Code, section 2704.04(a).) Other language in Proposition 1A indicates that the HST system is to be consistent with the 2005 and the 2008 final EIRs, "as subsequently modified pursuant to environmental studies" conducted by the Authority. (Streets & Highways Code, section 2704.06.) This latter provision reflects the Authority's continuing duty to comply with CEQA as it moves forward with its project EIRs and its ultimate decisions as to the placement and components of the HST system. This includes more refined HST design and engineering information, as well as HST operating plans, and environmental information. The Authority's duty under CEQA includes developing a complete record of its environmental review process for CEQA compliance, including substantial evidence to support its findings and conclusions as to significant impacts, mitigation and alternatives, and documented compliance with CEQA's procedural requirements in the preparation and consideration of the Final EIR/EIS.

Proposition 1A describes an HST system that links to the Transbay Terminal in San Francisco, but the proposition does not require that the Transbay Terminal have priority over other stations or greater access to funds. Proposition 1A also does not **exclude** the possibility of other additional stations in San Francisco, subject to the caveat that under Proposition 1A the

system is limited to an overall total of 24 stations. Nothing in Proposition 1A gives priority specifically to the Transbay Terminal station.

The JPA's application for Track 1 funds from the FRA

Based on its previous decisions selecting the Transbay Terminal as the preferred San Francisco terminus station and its ongoing project EIR work, the Authority has indicated support for the development of the Transbay Terminal as a multi-modal transit center. The JPA's attorneys speculate, however, that the Authority's ongoing environmental review process could somehow interfere with the JPA's application for Track 1 funding from FRA for the Transbay Terminal. On this point the following time line is relevant:

- in 2004, the JPA approved the EIR and the Transbay Terminal Project;
- in 2005 and July 2008, the Authority and FRA approved program EIR/EIS's and selected Transbay Terminal as preferred, subject to further study;
- in November 2008 the voters passed Proposition 1A;
- in January 2009, the NOP for the HST project EIR was issued;
- in June 2009, FRA published criteria for grants under Tracks 1, 2, and 3; and
- in August 2009, Transbay applied for Track 1 funds for Transbay Terminal.

The Authority is working diligently with the FRA toward timely completion of its project EIR/EIS work on the San Francisco to San Jose section of the HST system. The FRA is involved in that environmental process, and understands the progress being made. The Authority is planning to submit applications for federal stimulus funding from FRA for its HST system under Track 2. Certainly, the state will be seeking to maximize the federal high speed rail stimulus funding that can be made available to it. With regard to Track 1 funding applications, it is not up to the Authority to determine what is necessary to comply with FRA criteria for Track 1 funding; that is FRA's determination to make. The FRA will look to the JPA's application to satisfy its criteria, and the FRA will determine compliance with its criteria for providing such funds.

The Authority has executed a Memorandum of Understanding with the JPA, indicating its intent to work closely with the JPA. As the Authority moves forward in its environmental review processes, we expect it will be taking all necessary steps to comply with CEQA, as well as to comply with the provisions of Proposition 1A and other applicable laws.

Sincerely,



CHRISTINE SPROUL
Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General