



**BRIEFING: NOVEMBER 15, 2017 BOARD MEETING AGENDA ITEM #5**

**TO:** Chairman Richard and Board Members

**FROM:** Brian C. Annis, Undersecretary, California State Transportation Agency  
Mark McLoughlin, Deputy Director of Environmental Services

**DATE:** November 15, 2017

**RE:** Update on Application for National Environmental Policy Act (NEPA)  
Assignment

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**Background**

On November 9, 2017, the California High-Speed Rail Authority (Authority), in partnership with the California State Transportation Agency (CalSTA), made available for public review and comments a draft application to the Federal Railroad Administration (FRA) to assume federal responsibility under the National Environmental Policy Act (NEPA) and other federal environmental laws. The State of California is seeking federal environmental responsibilities to enable more efficient review and approval of the environmental documents required to advance the high-speed rail program and related rail projects.

Through this process, the State of California would assume federal environmental responsibilities on all project sections comprising the Phase 1 system of the high-speed rail program connecting San Francisco to Los Angeles/Anaheim and projects extending service to Sacramento and San Diego as part of the Phase 2 system. Additionally, the State is applying to include the ACEforward project on the Altamont Corridor Express System, and projects that will directly connect to stations on the high-speed rail system such as Link Union Station (Link US) and West Santa Branch Ana Extension projects in Southern California.

The NEPA Assignment process for high-speed rail was initiated in February 2017, when Governor Edmund G. Brown Jr. submitted a list of priority infrastructure projects, including high-speed rail, to the Trump Administration for consideration of expedited environmental review. In June 2017, CalSTA Secretary Brian Kelly sent a letter to the US Department of Transportation (USDOT) formally requesting that the FRA assign its environmental review responsibilities to the State, working through CalSTA and the Authority. Since then, the Authority has hosted a series of meetings and workshops with our federal partners to move the process forward towards the application submission.

### *Prior Legislative Action*

Under NEPA Assignment since 2007, Caltrans has performed the Federal Highway Administration's (FHWA) responsibilities for environmental review required by NEPA and other federal environmental laws. In assuming FHWA's responsibilities as the NEPA lead agency for highway projects in California, Caltrans has saved a significant amount of time in approving environmental documents. In developing its own program, the Authority will rely on Caltrans' long and successful track record with NEPA Assignment. The Authority will look to Caltrans for training and additional support and guidance, as needed.

Through California Assembly Bill 135 signed on September 16, 2017, the State assumes all legal risk for challenges to environmental decisions and documents by waiving its sovereign immunity. The Authority will be subject to the same regulatory requirements that now govern FRA actions. Other than FRA authority, the NEPA Assignment program does not preempt or interfere with any power, jurisdiction, responsibility or authority of a federal or state agency, under applicable laws and regulations.

### **Discussion**

NEPA Assignment refers to the legal process for a state agency to take on federal responsibilities for environmental review and approvals for certain types of transportation projects. Under NEPA Assignment, the Authority will manage both NEPA and California Environmental Quality Act (CEQA) document preparation and approval. NEPA Assignment would transfer the FRA's responsibilities to the Authority, eliminating FRA's reviews and saving time in the overall review process. This is in keeping with the President's intent to streamline the approvals of major infrastructure projects throughout the nation.

The Governor, CalSTA, and the Authority are committed to delivering the high-speed rail program as quickly as possible while protecting the environment. Where possible, the Authority will continue to identify process improvements to complete approval processes expeditiously while maintaining environmental protections and providing meaningful opportunities for the public to participate in the program.

FRA will retain its responsibilities for:

- Project-level air quality conformity determinations
- Government-to-government tribal consultations
- USDOT responsibilities for statewide and metropolitan planning
- Safety and security
- Engineering
- Certain 4(f) determinations (park and recreational lands, wildlife and waterfowl refuges, and historic sites) with national policy implications
- Projects that cross state lines

The Authority remains committed to maintaining excellent relationships with all of its federal partners and will continue to coordinate regularly with federal permitting and regulatory agencies if NEPA Assignment is approved.

The Authority proposes to establish a new dedicated “NEPA Assignment Team” based in Sacramento. The team will work directly with project staff and federal partners to inform project decision-making and provide ongoing oversight related to NEPA and applicable federal environmental laws.

A state employee will lead the NEPA Assignment Team, supported by state and contractor personnel, ensuring the inherently governmental functions are conducted by the state. Cooperating agencies will continue to have a conduit, through the NEPA Assignment Team, to voice concerns or highlight issues with project elements. The NEPA Assignment Team will review all environmental documentation for compliance with federal law, regulation and policy.

### *Next Steps*

Formal NEPA Assignment will occur once the Governor and the FRA execute a Memorandum of Understanding (MOU). Before signing the MOU, the Authority is seeking public comment on its draft application. A notice for a 30-day public comment period on the draft application was posted on the Authority’s website on November 9. Comment opportunities include verbal and/or written comments at this Board meeting as well as via other written options:

- Online a web comment form
- Via email at [NEPA@hsr.ca.gov](mailto:NEPA@hsr.ca.gov)
- Mail comment to:
  - Attn: NEPA Assignment  
California High-Speed Rail Authority  
770 L Street, Suite 620 MS-1  
Sacramento, CA 95814

Verbal and written comments received during the public comment period will be reviewed and incorporated prior to the FRA’s review and comment process. The State anticipates the completion of the NEPA Assignment in spring 2018.

### **Attachments**

- Letter from Governor Brown (May 2017)
- Letter of Request (June 2017)
- Draft Application