



California High-Speed Rail **BRIEFING: April 22, 2021, Board Meeting Agenda Item #2**

TO: Board Chair Richards and Board Members

FROM: Serge Stanich, Environmental Services Director
Alicia Fowler, Chief Counsel

DATE: April 22, 2021

RE: Proposed Revision to CEO Delegation (related to NEPA Assignment and environmental review)

Summary

Staff recommends amendments to the Chief Executive Officer (CEO) Delegation of Authority (DOA) to: (1) reflect NEPA Assignment from the Federal Railroad Administration (FRA), (2) clarify responsibilities of the CEO regarding environmental review of Authority environmental documents, and (3) authorize CEO action for local sponsor projects.

Background

Board policy HSRA11-001 DOA delegates certain authorities to the CEO related to many areas, including programmatic (Section H). Over time, the Board has amended the DOA several times to provide the CEO with the ability to carry out additional responsibilities without seeking Board approval.

In July 2019, the FRA and the State of California executed a Memorandum of Understanding (NEPA Assignment MOU) setting out the terms allowing the State (through the California State Transportation Agency and the Authority) to assume federal responsibilities under NEPA, and other Federal environmental laws, and to conduct environmental reviews and approvals otherwise performed by FRA.

The scope of the NEPA Assignment MOU includes both the entirety of the high-speed rail systems and also other specific local sponsor projects which includes Link Union Station and West Santa Ana Branch Transit corridor projects in Los Angeles, as well as the ACE Forward project in the Altamont Corridor/Stockton Diamond Grade Separation Project (local sponsor projects). The MOU also indicates that the FRA and the State could mutually agree to additional local sponsor projects that would be appropriate for assignment under the MOU.

Since the most recent revisions to the DOA pertaining to programmatic and environmental actions (outlined below), the Authority's NEPA Assignment Team has started to take action consistent with its obligations and powers under the NEPA Assignment MOU, including standing in the shoes of FRA with respect to local sponsor projects. In acting in this assigned role, the Authority has identified additional changes to the DOA to accommodate NEPA assignment and improve the program's flexibility and efficiency.

Prior Related Board Action

As it pertains to environmental reviews, the following amendments were previously made to the DOA:

In August 2018, via Resolution #HSRA 18-15, 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.

In September 2019, via Resolution #HSRA 19-09, the Authority Board amended the CEO delegation to authorize the CEO to make programmatic decisions regarding the Authority's preferred alternative.

Discussion

(1) Changes to the DOA to Recognize NEPA Assignment

Prior modifications to the DOA were framed conditionally "if" the FRA approved the Authority's application for NEPA Assignment. Since that time, FRA and the State of California executed the NEPA Assignment MOU assigning many of FRA's NEPA responsibilities to the Authority (effective July 23, 2019).

The first category of proposed amendments to the DOA merely update the language to reflect NEPA Assignment by deleting reference to coordination with the FRA for approvals and the conditional language regarding eventual FRA NEPA assignment.

(2) CEO Responsibility Regarding Environmental Reviews of Authority Documents

As currently written, the DOA does not distinguish between responsibilities of the CEO regarding less environmentally impactful environmental reviews of Authority documents (i.e. Environmental Assessments (EA) and Finding of No Significant Impact (FONSI) or Categorical Exclusion (CE)). The proposed amendments to the DOA would retain the existing language including Board concurrence for Environmental Impact Statements, but would empower the CEO to make decisions regarding less environmentally impactful projects. These are smaller, more routine actions that do not result in significant environmental impacts. Delegating authority for these reviews will allow the Authority to efficiently clear minor, less impactful project elements while retaining Board authority to approve the environmental documents for project sections. The reviews delegated under the proposed amendments are:

- Environmental Assessments – authorize CEO to identify preferred alternative and approve a project through a FONSI or mitigated FONSI without prior Board concurrence; and
- Categorical Exclusions – authorize CEO to approve projects through a CE without prior Board concurrence.

(3) CEO Action Relating to Local Sponsor Projects

Under the existing DOA language, the CEO must seek Board approval of the preferred alternative for local sponsor projects, such as the Los Angeles Metro Link Union Station project and potentially the San Joaquin Regional Rail Commission's Stockton Diamond Grade Separation project.

The remaining proposed amendments would create a distinction in the DOA between the Authority's Phase 1 and Phase 2 environmental reviews and reviews required under the NEPA Assignment MOU for local sponsor projects. The amendments would authorize the CEO to: (1) approve a locally preferred alternative as identified by the locally sponsored project for inclusion in that entity's draft environmental document, and (2) approve an alternative in the locally sponsored project's environmental decision document (including CE, EA/FONSI, EIS/ROD).

This amendment would allow the CEO to take all necessary actions for local sponsor project without seeking Board approval which will allow for a more streamlined process and avoid delays.

Of course, the CEO will continue to report to the Board on actions taken even where prior Board concurrence is not required.

Legal Approval

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

Budget and Fiscal Impact

The proposed change in delegation is not expected to result in a budget or fiscal impact.

| REVIEWER INFORMATION | SIGNATURE |
|--|--------------------------------------|
| Reviewer Name and Title: Brian Annis Chief Financial Officer | Signature verifying budget analysis: |
| Reviewer Name and Title: Alicia Fowler Chief Counsel | Signature verifying legal analysis: |

Recommendations

Staff recommends that the Board amend the CEO DOA to allow modifications, as outlined above and identified in the attached tracked changes to the Board Policy, to:

- (1) Make minor revisions to the DOA to recognize NEPA Assignment from the FRA;
- (2) Allow the CEO to take action on the Authority’s less impactful environmental reviews without prior Board concurrence; and
- (3) Empower the CEO to make decisions regarding the preferred alternative and NEPA compliance of local sponsor projects without prior Board concurrence.

Attachments

- (1) Resolution #HSRA 21-XX
- (2) HSRA Policy 11-001, as amended
- (3) FRA/Authority/CalSTA MOU for NEPA Assignment