



California High-Speed Rail **BRIEFING: May 20, 2021, Board Meeting Agenda Item #2**

TO: Board Chair Richards and Board Members

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

DATE: May 20, 2021

RE: **Revised** 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 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 of Directors (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 Federal Railroad Administration (FRA) and the State of California executed a Memorandum of Understanding setting out the terms allowing the State (through the California State Transportation Agency and the Authority) to assume federal responsibilities under the National Environmental Policy Act (NEPA), and other Federal environmental laws, and to conduct environmental reviews and approvals otherwise performed by FRA (NEPA Assignment MOU or MOU).

The scope identified in 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 project in Los Angeles, as well as the ACE Forward project in the Altamont Corridor/Stockton Diamond Grade Separation Project (Local Sponsor Projects or Local Sponsor). 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.

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 performing this assigned role, the Authority has identified additional changes to the DOA to accommodate NEPA assignment and improve the program's flexibility and efficiency.

At the April 22, 2021 Board Meeting, the Board approved changes to the DOA that (1) reflected NEPA Assignment from FRA, and (2) clarified responsibilities of the CEO regarding environmental review of Authority environmental documents. The Board considered changes to the delegation language related to Local Sponsor Projects, but deferred a decision in this area and asked Authority staff to return with changes to the language to reflect clear public outreach related to Local Sponsor Projects while accommodating NEPA assignment and improving 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.

In April 2021, via Resolution #HSRA 21-04, the Authority Board amended the CEO delegation to update the language to reflect NEPA Assignment and authorized the CEO to identify a preferred alternative and approve a project through a FONSI (Finding of no Significant Impact) or mitigated FONSI without prior Board concurrence, and to approve projects through a Categorical Exclusion (CE) without prior Board concurrence.

Note: the proposed amendments to the accompanying draft DOA are in tracked changes and coded as follows for easy comparison:

- Amendments approved at the April 2021 Board meeting are tracked in **black and boldface type**
- Proposed amendments relating to the Local Sponsor Projects recommended herein are tracked in **blue and boldface type**

Discussion

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 CEO must also seek Board approval to sign a decision document for Local Sponsor Projects, impeding the opportunity to leverage the efficiencies provided by the FAST Act to issue a combined FEIS/ROD (Final Environmental Impact Statement/Record of Decision).

The 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 the release of draft and final environmental documents, and (2) approve an alternative in the Locally Sponsored Project's environmental decision document (including CE, FONSI, FEIS/ROD). For the draft and final EIS, the proposed amendments would require that a project presentation be given to the Board before the draft EIS is published.

The public outreach involved in these Locally Sponsored Projects for both CEQA and NEPA is the responsibility of the project sponsor. The State of California, standing in the shoes of the FRA, has a responsibility to ensure that all required public outreach has been completed by the Local Sponsor. For that reason, the language proposed to the Board today for DOA regarding draft and final EIS approvals, and signature on the ROD, includes a requirement that the Board receive a project summary by the CEO and the Local Sponsor at a public Board meeting prior to the public release of the draft EIS by the Local Sponsor. The project summary presented at the public Authority Board meeting will include an explanation of the public outreach already completed on the project, and that to be completed on the project going forward, and will allow the Board the opportunity to ask any questions about the outreach at that time. The presentation will

include information on how the Authority will assist with public outreach, including how the Authority website will feature links and contact information to the Local Sponsor Projects.

The language proposed also requires the CEO to give the Board advance notice before signing a ROD approving a project, but does not provide for another presentation at this point in the process in order to meet the flexibility and efficiency goals set by the FAST Act.

This approach is proposed to both meet the goal of the Board ensuring sufficient project public outreach is done on projects over which the Authority has NEPA Assignment, and avoid situations where the Authority is at odds with a Local Project Sponsor over decision-making or timing.

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:

Empower the CEO to make decisions regarding the selected alternative and NEPA compliance of Local Sponsor Projects after a project summary presentation to the Board setting out the project details and public outreach efforts.

Attachments

- (1) Resolution #HSRA 21-04
- (2) HSRA Policy 11-001, as amended