

Submission 703 (Jean Prijatel, EPA, July 21, 2020)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

July 21, 2020

Mark McLoughlin
Director of Environmental Services
California High-Speed Rail Authority
770 L Street, Suite 800
Sacramento, California 95814

Subject: Draft Environmental Impact Statement for the California High-Speed Rail: Burbank to Los Angeles Project Section (CEQ# 20200111)

Dear Mr. McLoughlin:

Thank you for the opportunity to review the Draft Environmental Impact Statement for the California High-Speed Rail: Burbank to Los Angeles Project Section. Our review was completed pursuant to the National Environmental Policy Act, Council on Environmental Quality regulations (40 CFR Parts 1500-1508), Section 309 of the Clean Air Act, and Section 404 of the Clean Water Act.

Throughout development of the DEIS, the EPA has appreciated the commitment of the California High Speed Rail Authority to work closely with state and federal resource and regulatory agencies to address concerns early and avoid and minimize impacts to environmental resources. Through a collaborative approach of monthly agency meetings and iterative reviews, the EPA has had the opportunity to provide feedback and have our comments addressed through multiple revisions to the environmental document. We appreciate the concerns that have been addressed as a result of our comments. Please consider the following recommendations for additional minimization of impacts and improvements to the project.

703-828

Los Angeles River Revitalization Master Plan Coordination

The DEIS states that the HSR Build Alternative would neither preclude nor conflict with the restoration activities proposed under the Los Angeles River Revitalization Master Plan. The EPA encourages the Authority to continue to coordinate with agencies implementing the Plan and seek opportunities to include impact avoidance and minimization features and mitigation measures that support the goals of the Plan. Include any specific commitments and measures to facilitate successful implementation of the Plan in the FEIS.

703-829

Wildlife Movement

According to the DEIS (Page 3.7-37), due to the highly urbanized environment, high volumes of traffic, and existing barriers that restrict most wildlife movement, wildlife crossing opportunities in the project area are limited to drainage channels, culverts, and roadway under/overcrossings. The EPA encourages the Authority to continue to work with wildlife agencies to identify any opportunities to improve or provide wildlife movement corridors and crossings. Include any additional planned improvements or wildlife crossing considerations in the FEIS.

703-830

Noise Impacts

Page 3.4-36 of the DEIS states that without mitigation, 210 residences would experience severe noise impacts and one nursing home and 712 residences would experience moderate noise impacts. The EPA appreciates that the document discusses the Noise Mitigation Guidelines developed for the statewide HSR system and we encourage the Authority to commit to all feasible mitigation, as discussed in the DEIS, in order to minimize impacts to sensitive receptors to the maximum extent possible.

703-831

Relocation Mitigation

The DEIS states that a relocation mitigation plan will be developed to minimize economic disruption related to relocation. The document further notes that potential impacts to community cohesion will occur in the Lincoln Heights neighborhood and other areas along the proposed alignment. The EPA recommends that the relocation mitigation plan include coordination with groups that represent affected communities in order to facilitate successful relocation of businesses to locations that could continue to support the communities and provide community gathering spaces.

703-832

We look forward to continued collaboration with your agency as the project design progresses to identify further avoidance and minimization measures. When the FEIS for this project section is available for review, please provide an electronic copy to Carolyn Mulvihill, the lead reviewer for this project, at the same time the FEIS is formally filed online. Ms. Mulvihill can be reached by phone at 415-947-3554 or by email at mulvihill.carolyn@epa.gov.

Sincerely,

For Jean Prijatel
Manager, Environmental Review Branch

cc via email:
Dan McKell, California High Speed Rail Authority
Susan Meyer Gayagas, U.S. Army Corps of Engineers

Response to Submission 703 (Jean Prijatel, EPA, July 21, 2020)

703-828

The Authority will continue to coordinate its efforts on the Burbank to Los Angeles Project Section with agencies implementing the Los Angeles River Revitalization Master Plan to ensure the HSR project would neither preclude nor conflict with the restoration activities proposed under the Master Plan.

As described in Appendix 3.1-B, Regional and Local Policy Consistency Analysis, the HSR project would be compatible with the Los Angeles River Revitalization Master Plan. Also, as discussed in Section 3.19.8.8 of the Draft EIR/EIS and this Final EIR/EIS, the HSR Build Alternative would not impede habitat or ecosystem restoration of the river.

Additionally, as described in Section 9.6.4, stakeholder meetings included a Los Angeles River/Natural Resources Defense Council Working Group Stakeholder Organization Meeting, a Los Angeles River Cooperation Committee stakeholder organization meeting, a Small Business Workshop—Los Angeles River/Glendale Agency Staff Meeting, and a Stakeholder Working Group—Downtown Los Angeles/Los Angeles River to coordinate with stakeholders on the Los Angeles River.

As explained in Section 3.8.3, the Burbank to Los Angeles Project section includes impact avoidance and minimization features to reduce pollutants of concern from being discharged into the Los Angeles River, which supports the goals of the Master Plan.

703-829

The commenter summarizes findings related to wildlife movement and encourages the Authority to continue to work with wildlife agencies regarding opportunities for improving/providing wildlife movement corridors, as well as to include any additional planned improvements with regard to wildlife crossings in this Final EIR/EIS. The Authority has continued to work with involved wildlife agencies and, as discussed in Section 3.7.6.3 of this Final EIR/EIS, the HSR project would not result in any significant permanent impacts on wildlife movement corridors or habitat connectivity in the Burbank to Los Angeles Project Section. No revisions to this Final EIR/EIS have been made in response to this comment.

703-830

The Authority is committed to the implementation of the mitigation measures presented in Section 3.4.7 of this Final EIR/EIS to reduce noise impacts to the extent feasible. No changes have been made to the Final EIR/EIS in response to this comment.

703-831

The commenter recommends that the relocation mitigation plan include coordination with groups that represent affected communities in order to facilitate successful relocation of businesses to locations that could continue to support the communities and provide community gathering spaces. This recommendation has been taken into consideration.

The Relocation Mitigation Plan, as required by SOCIO-IAMF#3: Relocation Mitigation Plan, would be developed in consultation with affected cities and counties and property owners. In addition to establishing a program to minimize the economic disruption related to relocation, the relocation mitigation plan would be written in a style that also enables it to be used as a public-information document. These Relocation Mitigation Plans could include coordination with groups that represent affected communities if these groups are identified during development of Relocation Mitigation Plans.

The Authority would also continue to conduct an extensive public and agency outreach program to provide opportunities for public involvement throughout the remainder of the EIR/EIS process, final design, property acquisition, and construction. As described in Section 9.6.4, ongoing outreach efforts following the close of the public comment period on August 31, 2020 included one-on-one briefings with impacted property owners, businesses, and organizations as well as city and public agency representatives throughout the Burbank to Los Angeles Project Section.

No revisions have been made to this Final EIR/EIS in response to this comment.

Response to Submission 703 (Jean Prijatel, EPA, July 21, 2020) - Continued

703-832

The commenter requested a copy of the Final EIR/EIS when it becomes available. This Final EIR/EIS will be made available electronically on the Authority's website. In addition, although the U.S. Environmental Protection Agency is already included on the EIR/EIS noticing distribution list in Chapter 10 of the EIR/EIS, Ms. Mulvihill has been added to the Authority's contact list and will be notified at that time. An electronic copy of this Final EIR/EIS will be provided to Ms. Mulvihill on USB drive, as requested. No revisions to this Final EIR/EIS have been made in response to this comment.

Submission 882 (Spencer D CIV USARMY CESPL (US) MacNeil, Los Angeles District, U.S. Army Corps of Engineers Regulatory Division, Ventura Field Office, September 1, 2020)

Burbank - Los Angeles - RECORD #882 DETAIL

Status : Action Pending
Record Date : 9/1/2020
Submission Date : 9/1/2020
Interest As : Federal Agency
First Name : Spencer D CIV USARMY CESPL (US)
Last Name : MacNeil
Attachments : CHST_Burbank_LA_DEIS_Corpscomments_esigned.pdf (201 kb)

Stakeholder Comments/Issues :

CLASSIFICATION: UNCLASSIFIED

Sorry, Mark/all - here is the electronically signed version - I had made a couple of clarifying edits later in the day yesterday - please use this version of the letter.

Thanks,

Spencer

Spencer D. MacNeil, D.Env.
Chief, Transportation and Special Projects Branch
Regulatory Division, Ventura Field Office
Ventura, CA
Los Angeles District, U.S. Army Corps of Engineers

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-----Original Message-----

From: Li, Veronica C CIV USARMY CESPL (USA)
Sent: Monday, August 31, 2020 6:49 PM

To: McLoughlin, Mark@HSR <Mark.McLoughlin@hsr.ca.gov>
Cc: Burbank_Los.Angeles@hsr.ca.gov; Dunning.Connell@epa.gov; Talukder, Rafiqul I CIV USARMY CESPL (USA) <Rafiqul.I.Talukder@usace.army.mil>; SPL, Permits 408 <spl.408permits@usace.army.mil>; Gayagas, Susan A CIV (USA) <Susan.A.Meyer@usace.army.mil>; MacNeil, Spencer D CIV USARMY CESPL (US) <Spencer.D.Macneil@usace.army.mil>
Subject: CA High Speed Train Burbank to Los Angeles Draft EIR/EIS Public Comment Period

Mark,

Please see the attached USACE comments on the Burbank to Los Angeles Section Draft EIR/EIS.

Thanks,

Veronica Li

Senior Project Manager, Transportation & Special Projects Branch Regulatory Division
915 Wilshire Boulevard, Suite 930, Los Angeles, CA 90017-3401 Los Angeles District, U.S. Army Corps of Engineers Veronica.C.Li@usace.army.mil

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DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT
915 WILSHIRE BOULEVARD, SUITE 930
LOS ANGELES, CALIFORNIA 90017-3489

August 31, 2020

Mark A. McLoughlin, Director of Environmental Services
California High-Speed Rail Authority
770 L Street, Suite 800
Sacramento, CA 95814

Dear Mr. McLoughlin:

Thank you for the opportunity to review the Draft Environmental Impact Statement (EIS) for the California High-Speed Rail Project: Burbank to Los Angeles Section Project. Our comments represent Regulatory Division and Engineering Division's interests in the project section associated with the proposed California High-Speed Rail System. In response to your public notice, the Los Angeles District of the U.S. Army Corps of Engineers ("Corps") offers these comments pursuant to our regulatory authority promulgated under section 404 of the Clean Water Act and section 408 of the Rivers and Harbors Act and in light of our National Environmental Policy Act (NEPA) role as a Federal cooperating agency, to aid the California High Speed Rail Authority ("Authority") in their transportation planning.

882-1641

Comment 1. In Chapter 1, 1.2.4.1, page 1-15: Please clarify what is meant by "information" in the sentence summarizing the employment sectors expected to grow ("Growth is expected to occur mostly in construction, information,..."). Is this supposed to be "information technology" or something similar?

882-1642

Comment 2. In Chapter 1, 1.2.4.4, page 1-31, last paragraph of this section: Please state or footnote what the expected source(s) will be for the electric-powered HSR system trains. I think the Authority intends to use all renewable sources - if so, that should be stated briefly here.

882-1643

Comment 3. In Chapter 2, 2.3.6.1, page 2-16; and 2.5.2.5, page 2-57: On page 2-16, the text states that three potential TPSS locations have been preliminarily identified - please include those preliminary locations, for full disclosure. On page 2-57, there is no mention of the three potential TPSS locations preliminarily identified - simply that a standalone TPSS would be required if the other project sections were not constructed - please include those preliminary locations for full disclosure.

882-1644

Comment 4. Air Quality (several comments regarding General Conformity): Per 40 CFR section 93.153(b) "...a general conformity determination is required for each pollutant where the total of direct and indirect emissions in a non-attainment or maintenance area caused by a Federal action **equal or** exceed any of the rates in paragraphs (b)(1) or (b)(2) of this section." The text in section 3.3.4.5 refers to

882-1644

exceeding an applicable rate, but simply equaling a rate is sufficient to trigger the need for a general conformity determination. This also should be corrected on page 3.3-4, in the second-to-last paragraph immediately above the National and State Ambient Air Quality Standards section; on page 3.3-29, in the paragraphs before and after Table 3.3-4; on page 3.3-49 in the last paragraph (should state "de minimis levels can be **met or exceeded**"); and in Table 3.3-16 (it should state "**Equals or** exceeds applicable de minimis levels?" for each year/row specified, and footnote 2 to this table should be corrected as well to include "**equal or exceed**"). The Corps requests, consistent with section § 93.154 (Federal agency conformity responsibility), that Table 3-3.16 provides estimates of the portions of the construction emissions that the Corps has continuing program responsibility over (i.e., the Corps usually does not have any continuing program responsibility over operational emissions), or that this information be provided to us later so that we may complete our permit processing/decision-making. While Tables 3.3-15 and 3.3-16 indicate that nitrogen oxide (NOx) emissions would exceed the applicable de minimis rates in particular construction years (and be subject to a general conformity determination), we need to evaluate whether or not these construction emissions would be subject to the Corps' continuing program responsibility; our preliminary expectation is that most of the construction emissions generated by this project action would not be subject to our continuing program responsibility. A simplistic means of estimating the emissions subject to the Corps' continuing program responsibility is to sum all the areas comprising waters of the U.S. and within 100 feet of those waters of the U.S. (i.e., upland areas on which staging and storage could occur to complete in/over/under-water activities) (although it could be a farther distance from such waters for section 408 permission; so input from the Corps' section 408 team would be important), and dividing that sum by the total area of the project corridor (approximately 14 miles X right-of-way width). The construction emissions subject to Corps' program responsibility could then be estimated by multiplying the total construction emissions (for each pollutant) by the fraction (of the total corridor area) within the Corps' continuing program responsibility during construction activities (for each year). This assumes the construction emissions are approximately equal over the entirety of the corridor (this is definitely a simplifying assumption as particular construction components, such as constructing new bridges, would generate more emissions, in general, than other aspects of project construction).

882-1645

The 2007 Ozone Plan text refers to the 1997 ozone SIP revisions and 1999 amendments - our understanding is there is a more current ozone SIP that has been approved by USEPA, including a 2016 AQMP (for the South Coast Air Basin [SCAB]) - please confirm and update if there is something more current with respect to the ozone SIP and AQMP for the SCAB (2016 South Coast Ozone SIP).

882-1646

In Chapter 3.3, section 3.3.6.3, page 3.3-54, in the paragraph immediately preceding CEQA Conclusion, please briefly clarify that FRA will need to prepare a general conformity determination (you could refer readers to section 3.3.8/NEPA Impact Summary for more specific information on this). While purchasing emissions offsets is a

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882-1646

means to demonstrate conformity (for ozone/NOx), the FRA will need to formally make and properly notice a draft and final general conformity determination (including, for example, using offsets to address the emissions) - that should be stated clearly here.

882-1647

Comment 5. Environmental Sustainability: It would be desirable for any vegetation planted to be appropriate for the region and native species, if possible. If not already done so, this should be an environmental commitment of the project or the project should demonstrate a concerted effort to coordinate any project-related landscape restoration with the Corps within waters of the U.S. or section 408 review areas to ensure appropriate vegetation is utilized. In temporarily disturbed areas, restoring areas with native planting or seed and removing non-native and invasive species during a specified amount of time after construction has ended would encourage native vegetation to grow. Inclusion of this request as an environmental commitment would contribute to environmental sustainability and would minimize the biological and aquatic resource impacts of the project.

Comment 6. Section 408 Coordination: The Corps' section 408 evaluation process is intended to ensure that any alterations or modifications to Corps civil works projects are not injurious to the public interest and do not affect the civil works project's ability to meet its authorized purposes. This authority is provided in section 14 of the Rivers and Harbors Act of 1899, as amended, and codified at 33 U.S.C. § 408 (also known as section 408). Section 408 permission is required at several channel crossings/alterations in this project section. Based on the number of existing Corps Civil Works projects located within the Los Angeles County Drainage Area, the section 408 permission process should not be discounted in terms of the environmental compliance required to support the Corps' section 408 permission decisions. The way in which the section 408 reviews and permissions are synchronized with the NEPA process and section 404 permitting will be paramount to achieving integrated decisions that avoid conflict and to ensuring consistency with current Corps section 408 policy as well as the Los Angeles District's section 408 standard operating procedures. It is possible that the Corps will need to adopt the Final EIS for purposes of NEPA compliance related to section 408 decision-making, even though the Corps does not anticipate needing to adopt the Final EIS for its section 404 permitting. In other words, the anticipated use of NWP 14 for the Burbank to LA section does not automatically obviate the need for the Corps to have a meaningful cooperating agency role with respect to its section 408 jurisdiction/authority. Towards this end, it would behoove the Authority to vet the NEPA preferred alternative with the Corps section 408 team at Checkpoint C or at least prior to the Final EIS and ROD.

882-1648

882-1649

The Draft EIS does not describe which flood control facilities are subject to section 408 review, nor does it describe the potential impacts. The Corps requires rigorous review of alterations and modifications to previously Corps-built facilities, to ensure that alterations do not impact the purpose or usefulness of the facilities. The channels that are subject to section 408 review should be identified and mapped. The potential

882-1649

impacts of most concern to these facilities due to the proposed alterations that are not addressed in other sections of the EIR/EIS would be engineering integrity, capacity, and safety (geotechnical, structural, hydraulics, and hydrology), and maintenance and operations of these facilities. Please address those in chapter 3; otherwise, the Corps probably would not be able to adopt the EIS.

882-1650

Comment 7. Section 404 Clean Water Act Impacts. Please identify and map estimated temporary impacts to waters of the U.S. Identification of both permanent and temporary impacts is important to understand the extent of the Corps' role and responsibility. It is also important to the summary of findings for the section 408 review.

882-1651

In Chapter 3.7, section 3.7.1.1, page 3.7-4, under Aquatic Resources, please clarify that the Navigable Waters Protection Rule became effective on June 22, 2020 and is applicable now.

882-1652

Also, in Chapter 3.7, section 3.7.5.7, page 3.7-35, under Wetlands, please insert "wetland" after "USACE" and before "waters of the U.S." (i.e., revise to "USACE wetland waters of the U.S.") in the second-to-last sentence before Table 3.7-6.

882-1653

Comment 8. In Chapter 3.7, section 3.7.6.2, page 3.7-38: In addition to adding a period to the end of the first sentence, please also insert "additional development and" before "climate change" (or insert something similar here). While hydrologic alteration is affected by climate, additional development/imperviousness alters hydrology (and habitat suitability) as well; development is obviously a key altering factor in most southern California watersheds. Please also make a similar insertion ("additional development and") before "climate change" in Chapter 3.7, section 3.7.8.1, page 3.7-75.

882-1654

Comment 9. In Chapter 3.7, section 3.7.6.3, Impact BIO #3, page 3.7-50: In the first paragraph on Permanent impacts, there is discussion of a freshwater emergent wetland (in Verdugo Wash). However, this habitat occurs on top of concrete lining. While this channel is waters of the U.S., it is not a Corps jurisdictional wetland. That point should be clarified here and wherever "wetland" on top of a concrete is discussed in this EIS.

882-1655

Comment 10. In Chapter 3.7, section 3.7.6.3, Impact BIO #4, page 3.7-54: In the first paragraph on Permanent impacts, because the impacts would be to concrete-lined channels, these impacts are considered by the Corps to be temporary - this needs to be corrected in the text and in Table 3.7-11. Similarly, the permanent indirect effects identified in the paragraph after Table 3.7-11 seem more like temporary indirect effects - please revise for clarity. While BIO-MM#47 is mentioned in the CEQA Conclusion at the bottom of this page, please note that because permanent impacts to waters of the U.S. are not anticipated, the Corps would not require BIO-MM#47.

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882-1656

Comment 11. Cultural Resources. Section 3.17.7.3 states, "In accordance with these IAMFs, the exact location of P-19-101229 would be determined through field surveys. The resource could be recorded and data recovery would commence if necessary to avoid effects". Data recovery is a mitigation measure, not an avoidance measure; this needs to be clarified. Also the text should provide a likelihood of the site being in the construction footprint. Please identify if the site is mapped in the conceptual construction footprint.

We look forward to continued dialogue and coordination with the Authority on this project section. If you have any Regulatory-related questions, please contact our Senior Project Manager for this Section, Veronica Li, at 213-452-3292 or via e-mail at Veronica.C.Li@usace.army.mil; and for any section 408-related questions, please contact Rafiqul Talukder at (213) 452-3745 or via e-mail at Rafiqul.I.Talukder@usace.army.mil. Please refer to this letter and Corps File Number SPL-2014-00758-VCL in your reply.

Sincerely,

Spencer D. MacNeil, D.Env.
Chief, Transportation & Special Projects Branch
Regulatory Division

CF via email:
Mark McLoughlin, California High Speed Rail Authority
Connell Dunning, Environmental Protection Agency
Burbank_Los.Angeles@hsr.ca.gov

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882-1641

The commenter requested clarification on the term “information”. This term is drawn from the SCAG 2016 RTP/SCS which relies on North American Information Classification System (NAICS) data. According to the NAICS, the “information sector” comprises establishments engaged in the following processes: (a) producing and distributing information and cultural products, (b) providing the means to transmit or distribute these products as well as data or communications, and (c) processing data. A footnote was added to Section 1.2.4.1 of this Final EIR/S to clarify this term.

882-1642

The commenter requested that a source be added regarding the Authority’s use of renewable resources to power the HSR trains. Section 1.2.4.4 of this Final EIR/S was revised to include a footnote describing the Authority’s Sustainability Policy, in which the Authority commits to using to using 100 percent renewable energy for HSR operations. Please note that for purposes of a conservative analysis of impacts in Section 3.3 Air Quality and Global Climate Change, that chapter does not assume 100 percent renewable energy for operations. Please refer to Section 3.3.7, AQ-MM#1 for a discussion of the analytical assumptions in this EIR/EIS regarding energy for operations.

882-1643

The commenter requested additional information on the potential TPSS sites. The three locations that the Authority has preliminarily identified in the event that the Burbank to Los Angeles Project Section were to be constructed as a standalone section include: 1) In the City of Burbank, west of the railroad right-of-way between Burbank Boulevard and Magnolia Boulevard; 2) In the City of Los Angeles, located west of the railroad right-of-way, south of SR-2; and 3) In the City of Los Angeles, located on the corner of Main Street and Wilhardt Street. South of the Main Street Bridge. These three options were developed to preliminarily verify that the Project Section could operate independently, in the event that the rest of the HSR system was not constructed. These sites are not proposed as a part of the design of the Burbank to Los Angeles Project Section. No revisions have been made to the Final EIR/S in response to this comment.

882-1644

The commenter is suggesting edits to tables in Section 3.3, Air Quality and Global Climate Change, of the Draft EIR/EIS. The Final EIR/EIS has been revised for clarification consistent with the suggested edits. These edits would not result in a change to the significance conclusions identified for the project. The commenter is also requesting that Table 3.3-16, High Speed Rail Build Alternative Programmatic Construction Emissions, be modified to include an estimate of the construction emission that the U.S. Army Corps of Engineers (USACE) would have program responsibility over. The Authority will provide this information at a later date during the Section 408 permitting process. For the USACE Action, a separate conformity applicability and determination analysis would be prepared that would include the estimation of construction emissions subject to the USACE’s continuing program responsibility for all areas within 100 feet of the Los Angeles River channel. The separate analysis will summarize the construction de minimis analysis of the construction emissions within 100 feet of the Los Angeles River channel and provide a determination analysis to demonstrate conformity with the State Implementation Plan (SIP).

882-1645

The commenter is referring to text in Section 3.3.5.3 of the Draft EIR/EIS that describes the 2007 Ozone Plan. Section 3.3.5.3 also describes the SCAQMD’s 2016 Air Quality Management Plan, which is the region’s Clean Air Plan and current SIP, which describes the air quality planning efforts to attain the National Ambient Air Quality Standards (NAAQS) and is the current plan. Information on previous plans developed by the SCAMQD was also provided in the Draft EIR/EIS, including the 2007 Ozone Plan. No revisions to this Final EIR/EIS have been made in response to this comment.

882-1646

The commenter is requesting clarifications to the Draft EIR/EIS. The Authority has modified section 3.3.6.3 in this Final EIR/EIS to clarify that the Federal Railroad Administration will need to prepare and properly notice a general conformity determination. These clarifications do not affect the findings of the Final EIR/EIS.

Response to Submission 882 (Spencer D CIV USARMY CESPL (US) MacNeil, Los Angeles District, U.S. Army Corps of Engineers Regulatory Division, Ventura Field Office, September 1, 2020) - Continued

882-1647

The commenter states that any vegetation planted as part of the HSR project, particularly with regard to temporary impact areas and areas subject to U.S. Army Corps of Engineers (USACE) jurisdiction, should be appropriate for the region and native species, if possible. The commenter states that this should be an environmental commitment to contribute to environmental sustainability. The comment does not dispute any impact conclusions made in the Draft EIR/EIS or dispute the effectiveness of mitigation measures included in the Draft EIR/EIS that address impacts on biological resources and wetlands. The Authority refers the commenter to the impact avoidance and minimization features defined in Appendix 2-B of this Final EIR/EIS, along with the mitigation measures described in Section 3.7.7 of this Final EIR/EIS, which include appropriate best management practices and measures to minimize and avoid the spread of invasive weeds during ground-disturbing activities during construction and operations and maintenance. It should also be noted that no sensitive natural communities or vegetated areas subject to USACE jurisdiction would be directly impacted or removed by the HSR project, as discussed in Impact BIO #3 in Section 3.7.6.3 of this Final EIR/EIS. Because the recommended measure would not increase or replace the effectiveness of mitigation already included, no revisions to this Final EIR/EIS have been made in response to this comment.

882-1648

The commenter states that the Authority should vet the National Environmental Policy Act-preferred alternative with the U.S. Army Corps of Engineers (USACE) Section 408 team prior to the Final EIS and Record of Determination. The Authority met with the USACE Section 408 team on October 20, 2020 to provide an overview of the preferred alternative and the proposed alternatives to USACE facilities, and provided additional materials for USACE review, including drawings from the PEPD and technical reports prepared for the Draft EIR/S. The Authority has continued to meet with USACE since publication of the Draft EIR/S which includes virtual meetings held on August 11 and August 26, 2021. Currently the design for the HSR Build Alternative is at 15%; therefore, the Authority will continue to coordinate with USACE on Section 408 requirements for the final design.

882-1649

This comment states that the Draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS) did not discuss flood control facilities subject to Section 408 review and permission. Flood control facilities subject to Section 408 review are discussed in Section 3.8, Hydrology and Water Quality, of this Final EIR/EIS. As discussed under Impacts #7 and #8 in Section 3.8.6.3 of this Final EIR/EIS, the High-Speed Rail (HSR) Build Alternative would require review and permission from the U.S. Army Corps of Engineers (USACE) under Section 408 where modifications or alterations are proposed to any federal flood control facility. During the design phase, the Authority would be required to coordinate with the LACFCD and U.S. Army Corps of Engineers (USACE) to obtain Section 408 review for the Los Angeles River near the Metrolink CMF, the Los Angeles River near the Metro Gold Line and Broadway, the Los Angeles River at the Downey Bridge, the Los Angeles River at the Main Street grade separation, the Los Angeles River at the Mission Tower bridge, Burbank Western Channel, and Verdugo Wash. Therefore, Impacts #7 and #8 in Section 3.8.6.3 of this Final EIR/EIS has been revised to state that review from the USACE under Section 408 will be requested during the project design phase for modifications to the Los Angeles River (locations noted above), Burbank Western Channel, and Verdugo Wash. So that USACE may be able to adopt the Final EIS for its use in approving the required Section 408 authorizations, text has been added to the discussion of the Los Angeles River, Burbank Western Channel, and Verdugo Wash in Section 3.8.6.3 to address engineering integrity, capacity, and safety (geotechnical, structural, hydraulics, and hydrology), and maintenance and operations of these facilities. Further, under the 2010 MOU between the USACE and the Authority, the Authority and USACE have been coordinating regarding the appropriate level of review and a preliminary recommendation regarding 408 permissions.

Response to Submission 882 (Spencer D CIV USARMY CESPL (US) MacNeil, Los Angeles District, U.S. Army Corps of Engineers Regulatory Division, Ventura Field Office, September 1, 2020) - Continued

882-1650

The commenter requests that estimated temporary impacts to waters of the United States are identified and mapped, particularly to help understand the extent of the United States Army Corps of Engineers' role and responsibilities. The comment does not dispute any impact conclusions made in the Draft EIR/EIS. The Authority refers the commenter to section 3.7.6.3 of this Final EIR/EIS for specific information regarding both temporary and permanent impacts to waters of the United States associated with the HSR project. Under the discussion of Impact BIO #4, all construction-related impacts to jurisdictional aquatic resources are identified and quantified in Tables 3.7-10 and 3.7-11. Additional mapping and project engineering details relevant to HSR project components affecting jurisdictional aquatic resources are contained in the Burbank to Los Angeles Project Section Aquatic Resources Impact Memorandum (October 2020; available upon request). All necessary details relevant to the United States Army Corps of Engineers' permitting authorities will be provided during the appropriate permitting processes. No revisions to this Final EIR/EIS have been made in response to this comment.

882-1651

The commenter requests that Section 3.7.1.1 of this Final EIR/EIS clarifies that the Navigable Waters Protection Rule became effective on June 22, 2020. A reference to the Navigable Waters Protection Rule has been added and is included in Section 3.7.1.1 of this Final EIR/EIS.

882-1652

The commenter requests a specific text edit within Section 3.7.5.7 of the Draft EIR/EIS to clarify one reference to "wetland" waters of the U.S. prior to Table 3.7-6. The word "wetland" has been inserted in Section 3.7.5.7 of this Final EIR/EIS, as requested, to revise the specific sentence to read: "The total acreage of USACE wetland waters of the U.S. within the Aquatic RSA is 12.14 acres, as shown in Table 3.7-6."

882-1653

The commenter requests specific text edits within Section 3.7.6.2 of the Draft EIR/EIS to clarify that "additional development" alters hydrology in addition to other factors listed under that section. The commenter requests a similar edit in section 3.7.8.1. Both of these text edits have been incorporated into these sections of this Final EIR/EIS.

882-1654

The commenter requests clarifying statements regarding the lack of federal Clean Water Act "wetland" jurisdiction over delineated freshwater emergent wetlands occurring on top of concrete channel lining. Several clarifying statements have been added to Section 3.7.5.7 of this Final EIR/EIS, including a new footnote under the Wetlands heading that reads: "Delineated wetlands occurring on the concrete channel lining are not considered to be jurisdictional wetland waters of the U.S. subject to CWA permitting purposes; however, these areas are covered under the Preliminary Jurisdictional Determination issued by the USACE Los Angeles District in July 2018 and are therefore included in Table 3.7-6." It is acknowledged that accumulated sediments and associated emergent vegetation may shift or be washed away, and additional text has been added to note that such areas are not considered to be jurisdictional wetland waters of the United States for Section 404 Clean Water Act permitting purposes. It should be noted that no direct impacts to these areas are associated with the HSR project, so no Section 404 permitting requirements are associated with these areas.

882-1655

The commenter clarifies that the United States Army Corps of Engineers considers all HSR project impacts to concrete-lined channels as temporary impacts for Section 404 Clean Water Act permitting purposes. The commenter requests clarifying statements in Section 3.7.6.3, and also confirms that the United States Army Corps of Engineers would not require compensatory actions outlined in mitigation measure BIO-MM#47. Clarifying statements have been added to Section 3.7.2.1 (footnote under the Clean Water Act heading), as well as within the text in Section 3.7.6.3 and in Table 3.7-11 of this Final EIR/EIS regarding the impact categorization for Section 404 permitting purposes. While the Authority acknowledges the United States Army Corps of Engineers' clarifying remarks regarding impact categorization for permitting purposes and mitigation requirements, the permanent fill associated with the proposed Main Street Grade Separation is still included in the permanent impact discussion pursuant to HSR project environmental impact assessment methodology and full disclosure of the maximum temporary and permanent physical impacts associated with the project. Likewise, the discussion of potential indirect permanent impacts under Impact BIO #4 has not been altered in this Final EIR/EIS.

Response to Submission 882 (Spencer D CIV USARMY CESPL (US) MacNeil, Los Angeles District, U.S. Army Corps of Engineers Regulatory Division, Ventura Field Office, September 1, 2020) - Continued

882-1656

The commenter states that the referenced IAMFs related to cultural resource site P-19-101229 are mitigation measures and not avoidance measures, and that the text should be clarified. However, the text regarding P-19-101229 continues past is the citation quoted by the commenter. The continued text in Section 3.17.7.3 of this Final EIR/EIS references CUL-MM #1 and states: “However, these IAMFs would not completely reduce potential impacts on P-19-101229 because there is a possibility that the resource would be within the disturbance area of the HSR Build Alternative. Therefore, implementation of CUL-MM#1 would be required. CUL-MM#1 requires compliance with the PA and MOA and mitigation of adverse effects on properties identified during phased identification”. The text in the EIR/EIS further states “The resource could be recorded and data recovery would commence if necessary to avoid effects”. This mitigation measure adequately addresses concerns regarding site P-19-101229 and the text in this Final EIR/EIS correctly identifies data recovery as a mitigation measure.

Further, the text states that “the track alignment may not be able to be altered to avoid this archaeological site by the time property access is granted and the exact location of this resource is determined.” According to the Archaeological Survey Report, site P-19-101229 is currently mapped within the APE, but outside of the construction footprint; however, the extent of the resource is unverified and there is a possibility that the resource boundary extends into the conceptual construction footprint. The additional survey to determine whether any portion of site P-19-101229 is within the construction footprint would be conducted in accordance with CUL-IAMF#3 which requires completion of cultural resources surveys prior to any ground-disturbing activities. As such, no revisions to the Final EIR/EIS have been made in response to this comment.

Submission 915 (Holly L Dixon, U.S. Department of Transportation: Federal Aviation Administration, September 24, 2020)



U.S. Department of Transportation
Federal Aviation Administration

Western-Pacific Region
Office of Airports
Los Angeles Airports District Office

Federal Aviation Administration
777 So. Aviation Blvd, Suite 150
El Segundo, CA 90245

If you have any questions about this matter, please call me at 602-792-1053, or email me at holly.l.dixon@faa.gov. Thank you for your consideration.

Sincerely,

Holly L Dixon
Acting Manager
Los Angeles Airports District Office
Federal Aviation Administration

September 24, 2020

Diane M. Ricard
Project Manager: Burbank to Los Angeles to Anaheim
California High-Speed Rail Program
355 S Grand Ave, Suite 2050, Los Angeles CA 90071

Dear Ms. Ricard:

California High Speed Rail Comments

I am writing to submit Federal Aviation Administration (FAA) comments on the Burbank to Los Angeles DEIR/DEIS after the public comment period, which began on May 29th and ended on August 31st. I appreciate your accepting our response at this time.

915-1879

We reviewed the text of California Assembly Bill 3034, which placed Proposition 1A on the ballot in November 2008. We can find no language in AB 3034, explicitly stating the California High Speed Rail Authority (HSR) can preempt the interests of any subunits of state government (e.g., cities, counties, joint powers authorities such as airport authorities, etc.). We understand that HSR believes it can pre-empt these interests because of an internal policy or stance of the HSR. Please explain the HSR's understanding of its local decision making authority under California Assembly Bill 3034.

915-1880

For the record, the FAA has concerns related to the HSR's preferred build alternative as it relates to direct construction on Bob Hope "Hollywood Burbank" Airport (BUR) but the same concern applies to all federally obligated public use airports within California should HSR wish to build on airport property. We point out that while BUR is owned by the Burbank, Glendale, Pasadena Airport Authority (BGPAA), most changes to either land or infrastructure associated with an airport must also be reviewed by FAA to ensure the proposed changes are compliant with the sponsor's federal obligations. Federally obligated airport owners must comply with FAA grant-in-aid assurances related to compatible land use and infrastructure. Likewise, federally obligated airport owners must retain all proprietary rights for decisions pertaining to land usage and operations for their airports. As the owner and operator of BUR, the BGPAA is the sole representative for the interests pertaining to land uses on BUR. Prior to considering a federal action, FAA will need the BGPAA, not HSR, to formally present a proposal to FAA for consideration.

cc:

Al Richardson, Assistant Manager, FAA Los Angeles Airports District Office
Joseph Manalili, FAA AGC
Arlene Draper, Manager, Planning and Programming, FAA Western Pacific Region
Brian Armstrong, Manager, Safety and Standards, FAA Western Pacific Region
Mark McClardy, Director, FAA Western Pacific Region

Response to Submission 915 (Holly L Dixon, U.S. Department of Transportation: Federal Aviation Administration, September 24, 2020)

915-1879

The EIR/EIS does not state that the Authority can preempt the interest of any subunits of state government. Rather, the text in the EIR/EIS under the heading “Consistency with Plans and Laws” states the Authority is not required to comply with local land use and zoning regulations. See, for example, section 3.2.3 at page 3.2-11 and section 3.3.3 at 3.3-17. The statement is based on the Authority’s enabling legislation and sovereign immunity from local land use regulation, not on an internal HSR policy or on provisions in Assembly Bill (AB) 3034. The Burbank to Los Angeles section of the statewide HSR system is being undertaken by the California High-Speed Rail Authority. Through the California High-Speed Rail Act (Pub. Utilities Code, §185000, et seq.), the Legislature established the Authority as a state agency and charged it with responsibility for directing the development and implementation of intercity HSR service that coordinates with the state’s existing transportation system. The California High-Speed Rail Act vests the Authority with the legal authority to take various steps needed to implement the HSR system. This legal authority includes acquisition of rights-of-way for the system, including through eminent domain, and authority to enter into cooperative or joint development agreements with local governments and private entities. AB 3034, approved by the voters in November 2008, is a funding statute that places certain requirements on the HSR system for the Authority’s use of the funds provided, but the California High-Speed Rail Act serves as the Authority’s enabling legislation and sets forth the agency’s foundational powers and duties. The Authority does not intend to exercise eminent domain action at the Hollywood Burbank Airport. The Authority will continue to coordinate with the FAA and the BGPAA as the design progresses .

The HSR system as a whole, and individual project sections like the Burbank to Los Angeles section, must conform to the policies and objectives of the statutes and regulations under which the Authority operates, including both state and federal laws. Since an agency of the State of California is the project proponent, however, the project is not subject to local government general plan policies or zoning regulations. The state’s immunity from local regulations is an extension of the concept of sovereign immunity. The Authority, as the proponent of a “sovereign activity of the State,” is not subject to local land use regulations (see, e.g., *Town of Atherton v. Superior Court* (1958) 159 Cal.App.2d 417, 428, citing to *Hall v. Taft* (1956) 47 Cal.2d 177, 183; *Lawler v. City of Redding* (1992) 7 Cal.App.4th 778, 784.) Unless the Legislature expressly waives this immunity in a statute, which it has not done here, the general rule is that a

915-1879

local agency cannot regulate State activities (See *Del Norte Disposal, Inc. v. Department of Corrections* (1994) 26 Cal.App.4th 1009, 1013). At a practical level, it would not be feasible for the State of California to develop a statewide high-speed rail system traversing hundreds of linear miles if the system was subject to local general plans and zoning across the dozens of individual local governments the system traverses.

However, as the Draft EIR/EIS articulates, the Authority recognizes that the HSR system can be most successful if designed in a manner that is as sensitive as possible to the local environment through which it must travel, while still meeting the unique design constraints of HSR service. (For example, Draft EIR/EIS, pp. 3.2-11, 3.3-17.) Through meetings with local agency staff and direct discussions with individual local government officials and staff, the Authority has endeavored to develop a project design that minimizes local impacts and is made as consistent with local plans as possible.

Consistent with CEQA and National Environmental Policy Act (NEPA) requirements, the project’s consistency with local general plans and zoning regulations is discussed in the EIR/EIS in Section 3.13, Station Planning, Land Use, and Development, and further in Appendix 3.1-B, Regional and Local Policy Consistency Analysis. Where the project is inconsistent with a local land use plan, Appendix 3.1-B also contains a discussion of the extent to which the Authority would reconcile the project with the plan as required by 40 C.F.R. 1506.2(d).

Response to Submission 915 (Holly L Dixon, U.S. Department of Transportation: Federal Aviation Administration, September 24, 2020) - Continued

915-1880

Refer to Standard Response BLA-Response-GENERAL-01: Hollywood Burbank Airport.

The commenter expresses concerns regarding the HSR Build Alternative and its direct construction on the Hollywood Burbank Airport. The commenter further states that most changes to either land or infrastructure associated with an airport must be reviewed by the FAA to ensure the proposed changes are compliant with the sponsor's federal obligations. As discussed in Section 9.4.6 of this Final EIR/EIS, the Authority has been in coordination with airport staff and FAA since 2014 and will continue to work closely with the FAA and Burbank-Glendale-Pasadena Airport Authority (BGPAA) through final design and construction to avoid impacts to the airport and airport operations to the greatest extent practicable. Additionally, BLA-Response-GENERAL-01: Hollywood Burbank Airport discusses the procedures for coordinating with the FAA throughout the process.

Submission 889 (Bianca Handley, United States Environmental Protection Agency Region IX, August 31, 2020)

Burbank - Los Angeles - RECORD #889 DETAIL

Status : Action Pending
Record Date : 9/2/2020
Submission Date : 8/31/2020
Interest As : Federal Agency
First Name : Bianca
Last Name : Handley
Attachments : EPA_HSR_CommentLetter.pdf (281 kb)

Stakeholder Comments/Issues :

Good afternoon,

Please find EPA comments on the HSR Authority draft EIR/EIS attached. As discussed in the August 27, 2020, email from Andrew Bain, we look forward to establishing a working group with the HSR and other stakeholders to discuss the potential impacts from the HSR project on environmental clean-ups in the area.

Sincerely,

Bianca Handley
 Acting Section Manager, CA Sites II
 USEPA Region IX, Superfund
 Office: (415) 972-3023
 Cell: (415) 470-6036

889-1745



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

August 31, 2020

High Speed Rail Authority
 Attn: Burbank to Los Angeles Draft EIR/EIS Comment
 355 S Grand Avenue, Suite 2050
 Los Angeles, CA 90071

To whom it may concern:

The US Environmental Protection Agency (EPA) Region 9 Superfund Program has reviewed the draft EIR/EIS for the Burbank to Los Angeles Project Section of the California High-Speed Rail System and has the following comments:

The draft Environmental Impact Statement for the Burbank to Los Angeles Section of the California High-Speed Rail System (“Draft EIS”) does not include any analysis of the potential impacts that the high-speed rail (“HSR”) project may have on important Superfund cleanup actions in the San Fernando Valley. These Superfund cleanup actions, which have been operational in the San Fernando Valley for many years, are addressing threats to human health and the environment posed by contamination in aquifers used by the City of Los Angeles and other cities in the Greater Los Angeles Metropolitan Area as drinking water supply.

For example, the proposed construction along Vanowen Street in Burbank, specifically between North Hollywood Way and North Victory Place, is in close proximity to groundwater wells and infrastructure used in the control, capture, and treatment of contaminated groundwater pursuant to the remedy selected by EPA for the Burbank Operable Unit of the San Fernando Valley Area 1 Superfund Site. EPA is concerned that the HSR construction project, as proposed, may negatively impact the implementation of the remedy at this Superfund Site and could disrupt or damage important infrastructure.

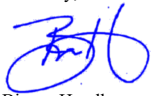
Interference with EPA’s Superfund remedies in the San Fernando Valley could expose the High-Speed Rail Authority (“HSRA”) to liability under the federal Superfund law. EPA strongly encourages the HSRA to coordinate future design and construction activities with EPA in order to minimize the potential for the HSR project to adversely impact EPA’s Superfund remedies.

Submission 889 (Bianca Handley, United States Environmental Protection Agency Region IX, August 31, 2020) - Continued

More information on the San Fernando Valley Superfund sites can be found at:

- Area 1 Site (North Hollywood and Burbank Operable Units)
 - <https://cumulis.epa.gov/supercpad/cursites/csitinfo.cfm?id=0902251>
- Area 2 Site
 - <https://cumulis.epa.gov/supercpad/CurSites/csitinfo.cfm?id=0902252&msspp=med>
- Area 4 Site
 - <https://cumulis.epa.gov/supercpad/CurSites/csitinfo.cfm?id=0902253&msspp=med>

Sincerely,



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United States Environmental Protection Agency
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75 Hawthorne St., SFD 7-2
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Response to Submission 889 (Bianca Handley, United States Environmental Protection Agency Region IX, August 31, 2020)

889-1745

Section 3.10.5.1 of this Final EIR/EIS has been revised to clarify that the project is within the San Fernando Groundwater Basin Superfund site. In addition, a reference to Appendix 3.10-A has been included in this section to direct the reader to additional detailed information provided in that appendix regarding the San Fernando Groundwater Basin Superfund site. Appendix 3.10-A in Volume 2 of the Draft EIR/EIS provided multiple references to the San Fernando Groundwater Basin Superfund site and those locations were identified in Table 3.10-6 of the Draft EIR/EIS under the discussion of Impact HMW #3, Hazards Due to Project Location on Potential Environmental Concern Sites or Cortese List Sites during Construction. The discussion under Impact HMW #3 in Section 3.10.6.3 has been revised to clarify the potential impacts of the HSR Build Alternative to the remedies for the San Fernando Groundwater Basin Superfund site. As design progresses, the Authority would coordinate with the USEPA to minimize the potential for the HSR Project to adversely impact the USEPA's Superfund remedies.

The EIR/EIS has been revised in 3.10, 3.8, and 3.6 to address the various facets of how the Burbank to Los Angeles project may impact the ongoing remediation efforts. The information provided by the commenter related to the Area 1, Area 2 and Area 4 sites has been received and reviewed in development of responses to comments and edits to the Final EIR/EIS analysis.