



**CALIFORNIA
HIGH-SPEED RAIL
AUTHORITY**

**BOARD MEETING MINUTES
November 3, 2011
Sacramento City Hall
915 I Street – City Hall Chambers
Sacramento, CA
DRAFT**

The public meeting of the California High-Speed Rail Authority Board was called to order on November 3, 2011 at 10:01 am at Sacramento City Hall, Sacramento, CA.

Members Present: Thomas Umberg, Chairman
 Lynn Schenk, Vice-Chair
 Tom Richards, Vice-Chair
 Jim Hartnett
 Dan Richard
 Michael Rossi

Members Absent: Bob Balgenorth
 Matt Toledo
 Russell Burns

Pledge of allegiance was administered by Vice-Chair Richards.

Minutes prepared in the order items were presented during the meeting.

Agenda Item #1 Public Comment

An opportunity was made for public comment. There were quite a number of speakers that voiced opposition to the project with concern over fiscal matters, unease with power and electricity usage, and prime farmland being disrupted. Supporters of the project were also heard.

Agenda Item # 2 – Approval of Meeting Minutes

Vice-Chair Richards moved to approve minutes from the August 25, 2011 meeting; seconded by Mr. Hartnett. Motion passes unanimously. (6-0)

Agenda Item # 3 – Board Policy Amendment-Article I-Section B. Compensation & Reimbursement

CEO van Ark discussed that the Board's current Policies and Procedures allow for the compensation and reimbursement of members for attendance at regular, special and committee meetings of the Authority Board and for attendance at other public meetings called by the Authority. As the project evolves, Board Members more frequently are requested to undertake activities and attend meetings on behalf of the Authority. It was requested that the current Board Policy and Procedures as amended August 5, 2010, Article 1 B, be further amended to allow for compensation and reimbursement for additional activities by Board Members on behalf of the Authority. Compensation will still be limited to the same number of \$500 per month and \$100 per diem.

Staff recommends that the Board approve resolution # HSRA 11-24. After examining the resolution, it was agreed to strike the words "Chief Executive Officer" and insert the words "Chairman of the High Speed Rail Authority".

Motion was made by Mr. Richard to approve resolution # HSRA 11-24 with the amendment; seconded by Vice-Chair Schenk. Motion carried unanimously. (6-0)

Agenda Item # 7 – Business Plan Update

CEO van Ark provided an informational update and the tenets of the Business Plan. The Business Plan will be available for public comment for 60 days, starting November 1, 2011. The public is welcome to submit comments in writing directly to the Authority or through the access that has been made available through the Authority's website.

Mr. van Ark stated that some verbal requests had been received to extend the comment period an additional 15 days. Member Hartnett confirmed that he heard from members of the public as well as legislative staff and spoke to Senator Simitian on this topic. Chairman Umberg requested that an extension of the public comment period until January 15, 2012, be agendaized for the next meeting.

Agenda Item # 4 – Usable Segment / Funding Plan – Prop 1A

CEO van Ark provided a presentation on the usable segment funding plan and Kurt Ramey presented the funding plan. Staff recommended that the Authority adopt resolution # HSR 11-22 stating the following: Pursuant to Streets and Highway Code section 2704.08, subdivision (f), the Authority hereby selects for construction each of the following segments:

- The portion of the Phase 1 corridor (described in Streets and Highways code 2704.04, subdivision (b)(2) between and including a San Jose station and a Bakersfield station; and
- The portion of the Phase 1 corridor between and including a Merced station and San Fernando Valley station.

Mr. Rossi made a motion to adopt resolution # HSR 11-22; seconded by Vice-Chair Richards. Motion carried unanimously. (6-0)

Staff also recommended that the Authority adopt resolution # HSR 11-23 stating the following:

The Authority hereby approves the funding plan presented at this meeting and relating to each Usable Segment. The Authority hereby authorizes and directs the Executive Director to submit the funding plan to the recipients set forth in Streets and Highways Code section 2704.08, subdivision (c).

Vice-Chair Schenk made a motion to adopt resolution # HSR 11-23; seconded by Vice-Chair Richards. Motion carried unanimously. (6-0)

Agenda Item # 6 – CHSRA 2012 Proposed Board Meeting Dates

Chairman Umberg discussed the 2012 Board Meeting Calendar. It was decided that the June 7, 2012 meeting listed will need to have an alternative date due to schedule conflicts. This alternative meeting date will be decided later. Vice-Chair Schenk moved to adopt the 2012 Board Meeting Calendar as amended; seconded by Member Hartnett. Motion carried unanimously. (6-0)

Agenda Item # 8 – Members' Report

Vice-Chair Richards made a comment to add his full support to work that has been done for the Business Plan. He stated that it is not only important to the Authority Board, the Authority itself, and the Legislature but, equally important to the public that the information provided is the most realistic information based upon the data available from experts around the world. It is the information that has been requested and this clearly provides it. He continued by complimenting CEO van Ark, KPMG, and all the Board Members who worked so hard to make this a reality.

Chairman Umberg noted that there was a hole punch over item number 5 on his agenda copy and requested that the meeting continue to address agenda item 5, the Small Business Policy and Draft Small Business Program Plan.

Agenda Item # 5 – Small Business Policy and Draft Small Business Program Plan

Chief Deputy Director Chris Ryan provided a presentation on the updated Small Business (SB) Policy. The Authority heard from the business community and the FRA that the SB Policy should include the best practices of 49 Code of Federal Regulation Part 26, which pertains to the Disadvantaged Business Enterprise (DBE) Program. The Authority

presented a preliminary draft copy of a revised SB Policy to the FRA which incorporated the best practices of 49 CFR Part 26 in addition to Executive Order S-02-06 – Governor’s Executive Order on the involvement of Small, Disabled Veteran and Micro-Businesses. On October 21, 2011 the FRA approved the Authority’s SB Policy.

Ms. Pat Padilla continued the presentation by offering a background on the grant/cooperative agreement conditions between the FRA and the Authority. The FRA directed the Authority to develop and implement a SP Program Plan to address how the Authority and its Design-Builders will ensure that small businesses, including DBEs, have an opportunity to bid on the rail contracts and participate in the project construction.

Staff recommends the approval of Resolution # HSR 11-25 stating the following:

The Board Authorizes the Chief Executive Officer to sign and appropriately disseminate the High Speed Rail Authority’s Small Business Policy.

Mr. Hartnett moves to adopt Resolution # HSR 11-25; seconded by Mr. Rossi. Motion carried unanimously. (6-0)

Staff also recommends that the approval of Resolution # HSR 11-26 stating the following:

The Board authorizes the Chief Executive Officer to appropriately disseminate and circulate the draft Small Business Program Plan for a 45 day public comment period and to conduct three (3) public community forums, inviting members of the business community to verbally share their comments. The three (3) public community forums are to be scheduled in the Central Valley, the San Francisco Bay Area and Southern California.

Chairman Umberg stated that the motion is to approve the plan for the 45 day comment period and his suggestion is that the period of extending the comment time be agendaized for the next meeting. This would be with the understanding that the Authority could potentially extend the comment period however this is a question that needs to be clarified with the FRA. Motion carried unanimously. (6-0)

Agenda Item # 9 – Chief Executive Officer’s Report

CEO van Ark began his report by discussing staffing at the Authority. Thomas Fellenz has joined as Chief Council and is a great asset to Mr. van Ark and to the Authority. Lance Simmens has also joined as the Director of Communications and Outreach. Karen Greene-Ross is Director of Legislative Affairs, John Mason has been hired as Senior Transportation Planner, Thomas Carter in the budget office and Robert Rosas as a Senior Right of Way Agent. There has not been much success in the hiring of other senior positions such as Chief Program Manager, Chief Financial Officer, Regional Director Central Valley, Regional Director Bay Area, Risk Manager, and after the departure of Tim Buresh, there is a need to replace the Regional Director in Southern California. Mr. van Ark also advised the Board that Tim Einer, the Board Secretary would be leaving the Authority. The total employees at the Authority are 27 with the fiscal year providing a total of 54 employees.

The communications and outreach RFP had to unfortunately be withdrawn and a new RFP was released and closed on November 2, 2011. There were eight bidders and the Authority is now in the evaluation process. Ogilvy has been retained until the end of November to support this transition period.

The Authority needed to submit a report according to Budget Act AB 115 in June 2011. There were five items that were mandatory for the Authority to comment to the Joint Legislative Budget Committee before October 14, 2011, with a 60 day review period thereafter. Tied to this was a large portion of the Authority’s budget. All five reports have been submitted and they are now in the review period.

The next item discussed was the status of the draft EIR/EIS in the sections of Merced-Fresno and Fresno-Bakersfield. The Merced-Fresno comment period closed on October 13, 2011. The Authority and the FRA received approximately 750 letters, emails, internet submissions and public hearings where public comments were accepted too. On the draft EIR/EIR, staff and consultants are evaluating and reviewing these comments and delivering responses. The public comment is being considered as the preferred alignment recommendation. The

meeting for the preferred alignment will take place in early December at a location most likely in Merced. It is expected that the final EIR/EIS is to be released late in January – early February 2012. This will lead to the ROD/NOD, which is the final approval that is needed before moving into the future of the project. For Fresno-Bakersfield, the comment period closed on October 13, 2011 as well. There were 1,080 letters or communications received and these are being looked into.

It was decided to add another alternative “West of the Hanford alignment alternative” into the future draft EIR/EIS documents. It will include a Kings/Tulare station in that western alignment as well. Staff is meeting with stakeholders to gather necessary information for this supplemental alternative analysis report and which will focus on the west of Hanford alternative for Board approval to be presented in December. If the Board adopts the alignment, it would go back into the draft EIR/EIS process. While the comment period closed on October 13, 2011, the documents still remain available for review.

CEO van Ark also wanted to make note of a letter to the Authority from the US EPA and the FRA related to the draft EIR/EIS document. The letter confirms that the Authority should move towards preparing and submitting a final EIR/EIS document and the letter also contains many constructive comments that still will be addressing in the final EIR/EIS. The EPA in particular has expressed a concern that the EIR/EIS should include more detailed mitigation measures and an effort is underway to ensure that this particular item is addressed.

The Authority now has a Conflict of Interest Policy. It is available on the website and is in accordance with the Public Utilities Code. The conflict of interest applies to sub-contractors as well as prime contractors and the policy intends to accomplish clarity for future bidders. CEO van Ark encouraged contractors and sub-contractors to please refer to this policy if there are any concerns about possible conflict of interest as they contract or intend to contract with the Authority.

The Request for Qualification (RFQ) for the construction of the Initial Construction Section (ICS), also referred to as Construction Package 1, is ready and could be released in the next few days. The purpose of the RFQ is for the Authority to establish a short list of the most highly qualified offerors to provide design build services for the first project section. The design builder(s) will be responsible for all work required to design and construct package number one of this project. The project begins north of the San Joaquin River and continues south approximately to American Way, through the city of Fresno. This would include 12 grade separations, two viaducts, a train station and major river crossings over the San Joaquin River. The estimated project cost is between \$1.5 billion and \$2 billion. CEO van Ark wanted to inform potential bidders that during the period beginning with the issuance of the RFQ to the final placement of the contract, contact with the Authority is restricted to contact through the nominated Authority representative only. This means that contact in particular with the Board Members is restricted as potential bidders could become disqualified.

The Agricultural Working Group has met five times since it started on July 29, 2011 to discuss technical issues outlined by the Ag community. The topics discussed include aspects of High Speed Rail on wind effects, dust pollination, pesticide applications, potential impacts on livestock, operation severance, noise, vibration and the impact on irrigation systems. These broad topics assigned to them are being prepared into initial draft reports. It was clarified that the Ag Working Group has been appointed from the outside and they are not Authority representatives. Mr. van Ark wished to thank the group for their efforts and willingness to assist the Authority with their technical expertise. Senator Cannella, Chairman of the Senate Ag Committee has requested that the Authority establish an Ag Leadership Working Group in addition to the existing Ag Working Group which concentrates more on technical issues. There has been contact with commissioners from Merced, Madera, Fresno, Tulare, Kings and Kern counties but unfortunately with budget and time limitations delegates have been unable to participate on this panel. The Authority will approach Senator Cannella to see if he is able to ensure that this is possible.

The DBE/SBE/DBVE Business policy and plan is moving forward. There have been many meetings with interested groups that have taken place. A meeting has also been arranged with Congressperson Barbara Lee and FRA officials in Oakland on November 7, 2011 to discuss similar topics.

The issue of litigation of the City of Palmdale vs. California High Speed Rail Authority was discussed next. On September 14, 2011, a Federal District Court Judge dismissed the lawsuit filed against the HSR by the City of Palmdale. In July of 2011 a suit was filed alleging the HSR misappropriated federal funds, ARRA funds and Prop 1A bond funds by using them to study an alternative route along Interstate 5 or as it is referred to, the Grapevine. The case was dismissed because the court lacked jurisdiction to hear this particular case.

The Authority continues to work on Right of Way acquisition advance services contracting. It has been requested through the Department of Finance that up to \$65 million of previously appropriated funds be made available for contracting services that would lead up to the Authority being ready to acquire Right of Way once the environmental clearances in the Central Valley sections are secured.

On request from the Joint Legislatures Budget Committee (JLBC), the Authority reduced their request to \$18 million being the funds that are needed only in fiscal year 2011/2012. The others were a three year request that the JLBC did not approve until the Legislature has the opportunity to receive and review the business plan and the reports submitted to fulfill AB 155. They furthermore stated and CEO read the quote, "The LAO advised that taking additional time to review the forthcoming project information from the HSRA will not compromise the ability of the project to spend all of the ARRA funds it has been awarded by September 2017." Mr. van Ark informed the Board that this is incorrect, and the longer it takes to make this funding possible, the higher the risk of delay of the program and the inability of the Authority to meet its commitment to deliver the ICS by September 2017.

The Governor signed AB 615, which provides \$4 million in funding for ongoing planning, outreach and preliminary engineering. Unfortunately the associated language giving the Authority the approval to undertake ROW acquisition in a more expedient manner was removed from the bill. This issue will need to be revisited as soon as possible in the next legislative session.

The Authority is working with the Southern California Association Governments (SCAG) to ensure Phase 1 is in the constrained portion of the Regional Transportation Plan (RTP). This is so that the Authority is able to fulfill elements of the project in the business plan in their area and when early investment opportunities may arise. CEO van Ark reminded the Board that the Grapevine is potentially one of various alignments to be considered to connect Bakersfield to the Los Angeles basin and it would be an alternative to the existing alignments. No decision has been made yet. Work continues to determine whether this alignment alternative is feasible and would be a viable alternative to the Antelope Valley alignment. It will be brought to the Board as these investigations or pre-investigations are completed for a final decision before it is taken back into any official EIR/EIS documentation.

Agenda Item # 10 – Closed Session

Chairman Umberg informed the Board that there was not a need for closed session today.

Chairman Umberg adjourned the meeting at 1:55 pm.