



**\*\*July 12, 2011 Updated/Amended**

## **Agenda Item 5 / Attachment 1**

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### **Background**

In November 2010, the Authority, the Federal Railroad Administration (FRA), the US Environmental Protection Agency (USEPA) and the US Army Corps of Engineers (USACE) entered into a Memorandum of Understanding (MOU) on integrating the high-speed train project's compliance with the National Environmental Policy Act (NEPA), the Clean Water Act section 404 (§ 404), and the Rivers and Harbors Act section 14 (§ 408).

The MOU continues and expands on the Authority's and FRA's prior cooperative relationship with USEPA and USACE for the Tier 1 EIR/Ss, and specifically addresses the Tier 2 EIR/Ss for implementing the high-speed train project. Through the MOU, the agencies agree to informal coordination to be followed by a series of checkpoints in which USEPA and USACE will provide feedback on and concurrence/non-concurrence in the project purpose and need (Checkpoint A), identification of the range of alternatives under NEPA (Checkpoint B), and preliminary determination of the Least Environmentally Damaging Practicable Alternative (LEDPA) and Section 408 Draft Response (Checkpoint C). Through the MOU, the agencies intend that there be a single EIS to cover the FRA's obligations under NEPA and the USACE's obligations under Clean Water Act section 404.

“The goal of this MOU is for each Tier 2 EIS/EIS to support timely and informed decision-making, including but not limited to: issuance of the necessary Records of Decision (RODs), Section 404 permit decisions, real estate permissions or instruments (as applicable), and Section 408 permit decisions (as applicable) for project construction, operation, and maintenance.” (MOU, § I.)

The USACE has also agreed to be a NEPA cooperating agency and has assisted the FRA and Authority in development of the Merced-Fresno and Fresno-Bakersfield Draft EIR/EISs. The Draft EIR/EISs for both sections are being finalized and are expected to circulate in early August, 2011, for a 45-day public comment period.

## **Discussion**

While the Authority and FRA have been developing the Merced-Fresno and Fresno-Bakersfield Draft EIR/EISs, the agencies have been following the checkpoint process described in the MOU. Earlier this year, USEPA and USACE concurred in the purpose and need description for Merced-Fresno and Fresno-Bakersfield, completing Checkpoint A. Within the last month, USEPA and USACE have generally concurred in the range of alternatives for Merced-Fresno and Fresno-Bakersfield as well, but have raised several issues that require additional effort. The Checkpoint B letters are attached to this memorandum.

### **USEPA and USACE Recommendations for Merced-Fresno**

- *Detailed study of SR 152 East/West Alignment and Wye –*  
Both agencies recommend that the Authority and FRA carry forward for detailed study a SR 152 East/West alignment and Wye due to anticipated lower impacts to aquatic and biological resources. The agencies are cognizant of the time constraints for the Merced-Fresno Draft EIR/EIS, and have proposed that the SR 152 could be studied in detail in the San Jose-Merced EIR/EIS, along with the Avenue 21 and Avenue 24, and that the decision about the Wye and east/west connection could be made at the conclusion of the San Jose/Merced EIR/EIS process.
- *Detailed study of Western Madera (prior A3 alignment)*  
Both agencies recommend that the Western Madera alignment be studied in detail in the Draft EIR/EIS. The USACE states, “Although the Western Madera alternative is reported to have more impacts to agricultural lands due to the divergence from transportation corridors, the data provided shows that this alternative only severs 4.5% more acres than the Hybrid alternative. This alternative impacts 52% (73 acres) more Prime farmland, but impacts 52% (111 acres) less Unique farmland. The agricultural impacts appear to be similar to other alternatives while resulting in fewer community impacts and impacts to the aquatic ecosystem and vernal pool critical habitat.”

### **USEPA and USACE Recommendations for Fresno-Bakersfield**

- *Detailed study of West of Hanford Bypass Alignment*  
Both agencies recommend that the West of Hanford Bypass alternative be studied in detail in the Draft EIR/EIS.

The Checkpoint B process has been very helpful to the Authority and FRA, and we are pleased to have achieved concurrence from USACE and USEPA for the vast majority of the range of alternatives for the Merced-Fresno and Fresno-Bakersfield Draft EIR/EISs. For the alignments that these agencies recommend be added for detailed study, staff offers the following observations:

- **The Western Madera Alternative is not a Reasonable Alternative for the Merced-Fresno Draft EIR/EIS** – Authority staff do not agree that the Western Madera alternative is a reasonable alternative that merits detailed study in the Draft EIR/EIS. This alternative has been examined as part of the Authority’s alternatives analysis process and it was deemed to have very high impacts to farmlands due to its departure from an existing transportation corridor and due to the orientation of the farmland at an angle from where the high-speed train alignment would be located. The greenfield alignment was also identified as potentially fostering undesirable development patterns in the area. Staff believe that additional documentation is needed to better demonstrate to USACE and USEPA why Western Madera is not a reasonable alternative.
- **The West of Hanford Alternative is not a Reasonable Alternative for the Fresno-Bakersfield Draft EIR/EIS** – Authority staff do not agree that the West of Hanford alternative is a reasonable alternative that merits detailed study in the Draft EIR/EIS. An HST alignment west of Hanford would not only forego the opportunity to provide a station for the Hanford/Visalia/Tulare region, it is also not consistent with local land use planning, and would result in greater environmental impacts than an alignment east of Hanford. A good portion of the residential growth in the incorporated cities of Hanford and Lemoore and the unincorporated “Community District” of Armona would be split by an HST alignment alternative west of Hanford making it inconsistent with local land use planning. Moreover, the environmental analysis suggests that an HST alignment west of Hanford would impact twice the area of seasonal wetlands, waters of the U.S., and riparian habitat as the Hanford East Alternative. An alternative west of Hanford would also impact substantially more habitat for threatened or endangered animals, and would impact more prime farmland than the Hanford East Alternative. Staff believe that additional documentation is needed to better demonstrate to USACE and USEPA why West of Hanford is not a reasonable alternative.
- **There Appears to be a Reasonable SR 152 East/West Option and Wye(s) That Merits Detailed Study** – Authority staff do agree with USACOE and USEPA that an SR 152 east/west alignment with corresponding Wyes merits study. An SR 152 alternative has been developed over the last month and are the subject of agenda item # 6.
- **The Merced-Fresno EIR/EIS Process Can Be Used to Make A Decision on the North/South Alignment, and The San Jose-Merced EIR/EIS Process Can Be Used to Make A Decision on the East/West Alignment and Wyes** - Based on the timing for the Merced-Fresno Draft EIR/EIS, it is not possible to fully develop and analyze an SR 152 alternative at a level of detail similar to the Avenue 21 and 24 east/west alignments and Wyes and incorporate it into the document. A proposed solution to address the need to proceed with the Merced-Fresno Draft EIR/EIS, while also allowing for complete study of an SR 152 east/west alternative and Wyes, is to adjust the decision making framework for so that the Board will use the Merced-Fresno Draft EIR/EIS for making the

north/south alignment decision only, and will maintain all east/west alignments and Wyes for detailed study and eventual decision at the conclusion of the San Jose-Merced EIR/EIS process.

As illustrated in the attached Figure 1, the Merced-Fresno Draft EIR/EIS will provide the environmental analysis and information necessary for the Board to select an overall north/south alignment for the high-speed train between Merced and Fresno (BNSF, UPRR, Hybrid). The Merced-Fresno Draft EIR/EIS will contain detailed analysis and information on certain east/west alignments and Wyes (Ave. 21, Ave. 24)), and preliminary analysis and information on the SR 152 and Wyes, that can be considered in conjunction with the Board's north/south alignment decision. All of the east/west alignments and Wyes will then be carried forward for further study in the San Jose-Merced EIR/EIS with a decision to be made at the conclusion of that EIR/EIS process.

The portion of the north/south alignment within the yellow box shown on Figure 1 would be part of the east/west & Wyes decision to ensure that all east/west and Wye options remain available for study and selection at the conclusion of the San Jose-Merced EIR/EIS process. For the area within the yellow box, a wide variety of options would remain for a future decision east/west and Wye decision. All of the north/south alignments will work with all of the east/west alignments/Wyes, so the decision on the north/south alignment will not pre-determination the east/west alignment/Wyes. All east/west options will be available for eventual selection at the end of the San Jose-Merced EIR/EIS process.

### **Proposed Next Steps for Merced-Fresno and Fresno-Bakersfield EIR/EIS Process**

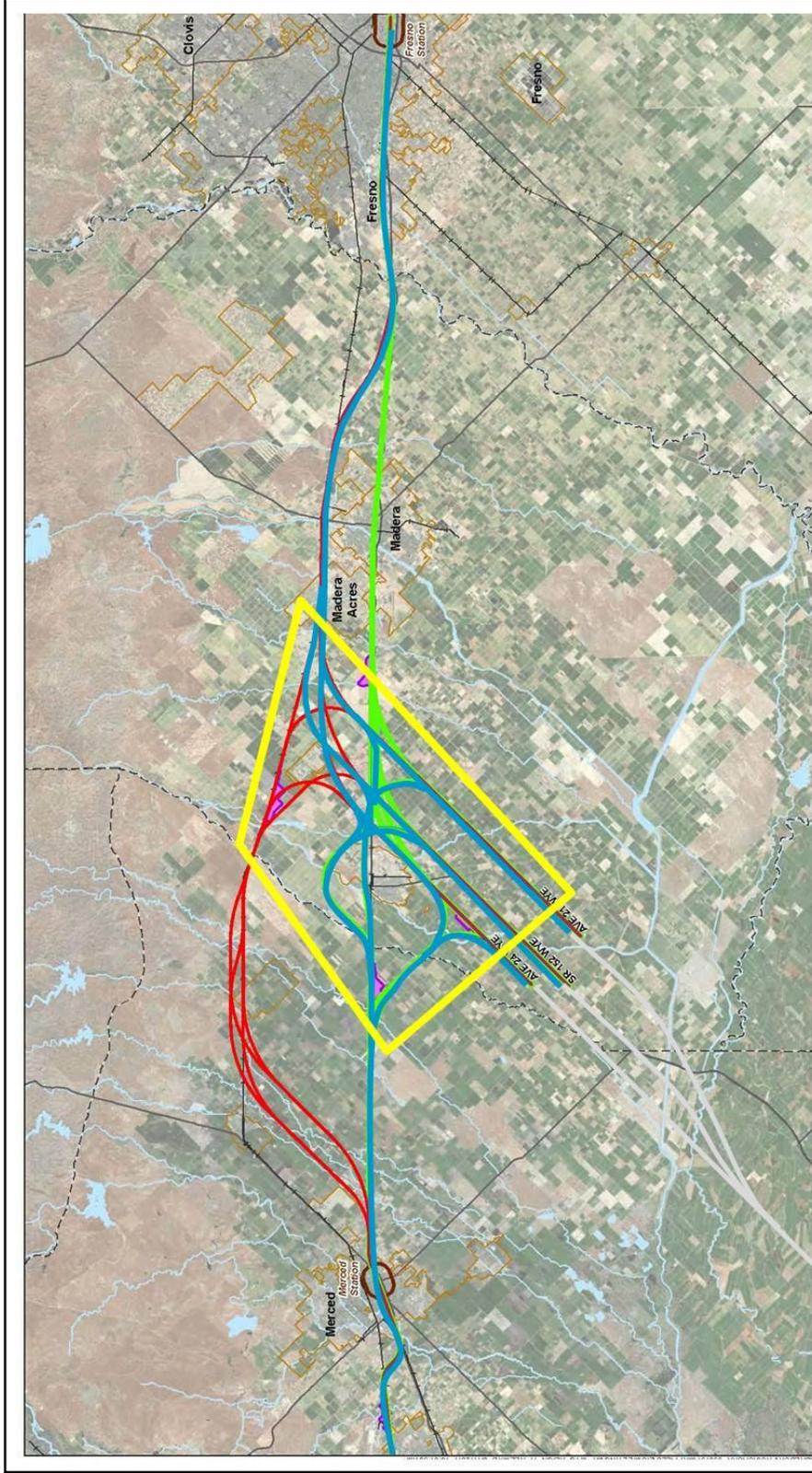
- Continue to work with USACE and USEPA to demonstrate why Western Madera and West of Hanford do not merit detailed study
- Incorporate preliminary information on SR 152 and Wyes into the Merced-Fresno Draft EIR/EIS
- Fully study SR 152 and Wyes in the San Jose-Merced Draft EIR/EIS (see agenda item # 6)
- Adjust the decision making structure so that the Merced-Fresno EIR/EIS will be used to make the north/south alignment determination for Merced-Fresno, and the San Jose-Merced EIR/EIS will be used to make the east/west and Wye determinations.

#### Attachments:

- June 14, 2011, Letter from Michael S. Jewell, USACE, to Dan Leavitt, CHSRA

- June 24, 2011, Letter from Connell Dunning, USEPA, to David Valenstein, FRA, and Dan Leavitt, CHSRA
- July 5, 2011, Letter from Michael Jewell, USACE, to Dan Leavitt, CHSRA
- Map Showing North/South Alternatives, East/West Alternatives and Wyes with Yellow Box (Figure 1)

Figure 1: North/South Alternatives, East/West Alternatives and Wyes



**BNSF (A1)  
Alternative**

**UPRR (A2)  
Alternative**

**Hybrid  
Alternative**