



BRIEFING: SEPTEMBER 16, 2014, BOARD MEETING AGENDA ITEM # 8

TO: Chairman Richard and Authority Board Members

FROM: Thomas Fellenz, Chief Counsel

DATE: September 16, 2014

RE: Consider Adopting Findings Required by Government Code section 51292 for parcels under Williamson Act contracts in Fresno County (CP 1C and part of CP 2-3)

Summary of Requested Action

In this item, staff requests the Board to take the same action the Board took at the August 2014 Board meeting, but this time as to a different group of parcels. Specifically, at the August Board meeting under the Williamson Act, the Board made required legal findings regarding certain agricultural parcels located in the Construction Package (CP) 1A/1B area in Madera County. In this September Board item, staff requests the Board make the required legal findings regarding parcels in the CP 1C and CP 2-3 area of Fresno County.

The Williamson Act requires¹ that, prior to acquiring land for a public improvement that is subject to a Williamson Act contract, the public agency implementing the improvement make certain findings. The findings are: (a) the land is not being selected because of its lower property value given it is burdened by a Williamson Act contract; and, (b) there are no reasonably feasible alternative locations for the improvement.

Staff will recommend that the Board make these required findings for the 71 parcels in Fresno County in CP 1C and part of CP 2/3 (see attached Exhibit 1) that the Authority proposes to acquire for the project that presently are subject to Williamson Act contracts. The Board would make these findings by adopting draft Resolution #HSRA 14-26, attached hereto.

Discussion and Background

Williamson Act

Generally speaking, the Williamson Act (Government Code section 51200 et seq.) allows an owner of certain farmlands to enter into a contract with the local County that requires the owner to keep the property in agricultural use/production for a period of time, usually 10 years. In return, the County agrees to tax the property at a valuation based on agricultural use rather than

¹ The basic background information in this memorandum about the Williamson Act and its requirements is the same as in the August Board memorandum, but is repeated here for completeness.

some higher value based on a speculative non-agricultural use of the property – particularly important for agricultural property located near urban areas that could be subject to development pressures. Seventy-one parcels in Fresno County that are in the CP 1C and CP 2/3 alignment area are subject to Williamson Act contracts.

Steps in Williamson Act Compliance

In carrying out the high-speed rail project, the Authority must comply with the requirements of the Williamson Act, Government Code sections 51291 and 51292. The Williamson Act requires three specific steps.

In the first step, the Authority must provide notification to the Department of Conservation and the local land use authority whenever it appears that land subject to a Williamson Act contract may be required for a public use. (Gov. Code, § 51291(b).) The notification must include, among other things, an explanation of the Authority’s preliminary consideration of the findings required pursuant to Government Code section 51292, which states:

“No public agency or person shall locate a public improvement within an agricultural preserve² unless the following findings are made:

- (a) The location is not based primarily on a consideration of the lower cost of acquiring land in an agricultural preserve.*
- (b) If the land is agricultural land covered under a contract pursuant to this chapter for any public improvement, that there is no other land within or outside the preserve on which it is reasonably feasible to locate the public improvement.”*

The Authority has accomplished this notification step through staff-level communications to Department of Conservation and Fresno County in 2011, 2012, and 2014 for the 71 parcels that are the subject of this agenda item.

In the second step, the Williamson Act also requires the Authority Board to make the findings under Government Code section 51292 prior to acquiring land that is subject to Williamson Act contracts. This step is the subject of this agenda item and is discussed further below.

In the third step, the Authority must provide notice to the Department of Conservation after acquiring land that is subject to a Williamson Act contract.

For parcels subject to Williamson Act contracts, like the 71 that are the subject of this agenda item, the Authority intends to negotiate the purchase with willing sellers. However, where the Authority is unable to do so, the ROW staff will work with the Public Works Board to acquire the properties pursuant to eminent domain. When acquired either under eminent domain, or in

² All properties that have a Williamson Act contract (like the 71 that are the subject of this Board item) are in locally-designated “agricultural preserves.” The steps described in this memorandum apply to all properties in an agricultural preserve.

lieu of eminent domain, the contract will terminate as to the land acquired at the time of acquisition.

Findings Required by Government Code Section 51292

The Authority intends to acquire a portion of 71 parcels of land within Fresno County that are subject to Williamson Act contracts. The acquisition area is part of CP 1C and part of CP 2/3, and is shown on the attached Exhibit 1. These parcels and their correlating Williamson Act contract numbers are listed on the attached Exhibit 2.

The findings required by Government Code section 51292 can be made for acquisition of these parcels for the following reasons:

The location of the high-speed rail alignment in the Fresno to Bakersfield section of the statewide system is not based primarily on a consideration of the lower cost of acquiring land in an agricultural preserve. As explained in the 2014 Fresno to Bakersfield Final EIR/EIS, the high-speed rail (HSR) system has been established as an approximately 800-mile train system with the purpose of providing a reliable high-speed electric train service that links the major metropolitan areas of the state and that delivers predictable and consistent travel times. (Final EIR/EIS, § 1.2.1.) The Fresno to Bakersfield section is an essential part of the statewide HSR system and connects the San Joaquin Valley with the rest of the system. (§ 1.2.2.) HSR service to stations in Fresno and Bakersfield were identified as part of the statewide system in 2005 through the program environmental review process. (Resolution #HSRA 05-01; Statewide Final EIR/EIS, ch. 6A; Fresno to Bakersfield Final EIR/EIS, § 2.1.2.) Corridors for the HSR system along the coastal corridor and I-5 corridor were eliminated from study at the program level because they were determined to not sufficiently meet the project purpose and need in terms of ridership potential, connectivity, and accessibility. (Statewide Final EIR/EIS, § 2.6.8.) The main “backbone” of the HSR system runs through the Central Valley, rather than avoiding it, specifically to provide transportation connectivity to the intermediate markets in Fresno and Bakersfield, as well as others.

The Authority based its selected location for the alignment between Fresno and Bakersfield project on a multiplicity of factors, as evidenced in the Final EIR/EIS, and not primarily on the lower cost of acquiring land in an agricultural preserve. (Resolution #HSRA 14-10.) Factors the Authority weighed in selecting the Preferred Alternative included natural resource impacts, community resources impacts including impacted agricultural lands, capital costs, constructability issues, and regulatory considerations. (Final EIR/EIS, chapter 7.) Importantly, the alternatives studied in the EIR/EIS presented a range of impacts on agricultural lands and a range of impacts on parcels subject to Williamson Act contracts. The route/alternative the Board selected in May 2014 (the Preferred Alternative) had fewer acreage and parcel impacts for Important Farmland and Williamson Act contracts than, for example, the BNSF alternative the Board did not select. (Final EIR/EIS, Table 7.2, “Community Resource Impacts in the Fresno to Bakersfield Section”.) In addition, the Corps of Engineers and the US Environmental Protection Agency concurred that the Preferred Alternative was the least environmentally damaging practicable alternative, allowing it to qualify for obtaining a Clean Water Act section 404 permit rather than the other alternatives studied in the EIR/EIS. (December 19, 2013, letter from M. Jewell, USACE, to Mark

McLoughlin, CHSRA and a December 19, 2013, letter from C. Dunning, US EPA, to David Valenstein, FRA, and Mark McLoughlin, CHSRA, re: Response to November 2013 Request for Agreement on “Checkpoint C” – Preliminary Least Environmentally Damaging Practicable Alternative and Draft Mitigation Plan for California High-Speed Rail Project Fresno to Bakersfield Section.) Lastly, project cost estimates contained in the Final EIR/EIS included property acquisition costs based on market land values assuming none of the properties had Williamson Act contracts or were within agricultural preserves.

For the agricultural parcels under Williamson Act contracts that are planned for acquisition, there is no other land within or outside the agricultural preserve on which it is reasonably feasible to locate the high-speed rail project. As explained above, the fundamental purpose of the HSR system includes connecting the major metropolitan areas of the state, including the cities of Fresno and Bakersfield along with the north and the south parts of the state. Physically, it is not reasonably feasible to place a new linear transportation corridors connecting the Los Angeles and San Diego in the south with San Francisco and Sacramento in the north, and also serving Fresno and Bakersfield, without crossing any lands in an agricultural preserve.

Moreover, the HSR system has unique performance criteria that require, among other things, a fully grade-separated guideway with access control, specific track geometry for passenger comfort, capability of safe and efficient operations at speeds over 200 mph, a fully dual track mainline with off-line station stopping tracks, and capable of normal maintenance activities without disrupting operations. (Final EIR/EIS, Table 2-1.) These performance criteria, particularly the speed criteria, require a track alignment that has greater spiral and curve radii – meaning that for the track alignment to change elevation or to curve to avoid a particular feature requires the considerable distance of 1,800 feet. This factor in particular constrains the HSR design from incorporating refinements that could avoid parcels in agricultural preserves entirely on a parcel-by-parcel basis.

Similarly, the requirement for the HSR system to be fully grade separated requires that the system have no at-grade crossings between the HSR guideway and perpendicular roads. Roads will be grade separated, and the design of the roadway grade separations are best done in conformance with local design speed requirements. It is therefore not reasonably feasible to revise the design of road overcrossings and undercrossings to make them narrower or with sharper curves, because this would reduce the design speeds and be out of preferred conformance with local requirements. The overcrossings generally would not be owned and maintained by the Authority. They would be maintained by the respective county. Therefore, the overcrossings are designed pursuant to the respective County’s design criteria, which involves 4:1 slopes instead of 2:1 slope for maintenance and stability reasons. The gentler slope result in a larger amount of farmland incorporated into the project.

Finally, as disclosed in the Final EIR/EIS, the area along the BNSF and other alternative corridors between Fresno and Bakersfield (Hanford Bypass West, Corcoran Bypass, Allensworth Bypass, and the Wasco/Shafter Bypass) all contain acreage of prime farmland and parcels subject to Williamson Act contracts. (Figure 3.14-11 to 3.14-15, Table 3.14-6.) While the alternatives considered present a range of impacts to land within agricultural preserves, none of the alternatives avoid this land entirely.

Although the linear nature and location of the HSR alignment requires the acquisition of some parcels that are subject to Williamson Act contracts (*i.e.*, avoiding these parcels entirely is not feasible), the Authority has taken a number of steps to reduce adverse impacts to agricultural lands. Specifically, the Authority has entered into an agreement with the Department of Conservation Farmland Conservancy Program to fund the purchase of agricultural conservation easements on farmland from willing sellers in the Fresno to Bakersfield section. This program will preserve eligible farmland in an amount commensurate with the quantity and quality of the taken/converted farmlands, within the same agricultural regions as the impacts occur, at a replacement ratio of not less than 1:1 for lands that have been converted from agricultural use. In addition, the Authority will provide an additional increment of Important Farmland mitigation acreage, above the 1:1 minimum ratio, at a level consistent with the terms of a settlement agreement the Authority reached with agricultural interests in *County of Madera, et al. v. California High-Speed Rail Authority*.

Staff Recommendation

Staff recommends that the Board adopt the attached draft Resolution #HSRA 14-26 adopting the findings required by Government Code section 51292 for the 71 parcels shown in Exhibit 1 and listed in Exhibit 2.

Attachments

- Exhibit 1: Map Showing 71 Affected Parcels and Williamson Act Contracts in CP 1C and part of CP 2/3 (Fresno County)
- Exhibit 2: List of 71 Affected Parcels under Williamson Act Contracts in CP 1C and part of CP 2/3 (Fresno County)
- Draft Resolution #HSRA 14-26