



Board Agenda Item 6

DATE: August 20, 2019

TO: Board of Supervisors

SUBMITTED BY: Steven E. White, Director
Department of Public Works and Planning

SUBJECT: Coordination with the California High Speed Rail Authority

RECOMMENDED ACTION(S):

1. **Receive report from the Department of Public Works and Planning regarding coordination with the California High Speed Rail Authority addressing impacts on Fresno County owned and operated transportation facilities from construction of the new railway and associated facilities; and,**
2. **Direct the Department of Public Works and Planning staff to initiate amendment to Cooperative Agreement No. 13-767 between Fresno County and the California High Speed Rail Authority to provide greater detail and clarity relating to scope, schedule, cost, and coordination of work pertaining to specific County facilities, and return to your Board for final action.**

The California High Speed Rail Authority (HSRA) is in the process of designing and constructing its railway lines and associated facilities, and their work is having a significant impact on transportation facilities owned and operated by the County. This item pertains to locations in Districts 1, 3, and 4.

ALTERNATIVE ACTION(S):

Your Board may elect not to provide direction, in which case the Department of Public Works and Planning will continue to coordinate with the HSRA in the interest of ensuring the HSRA completes modifications to County facilities in a safe and expeditious manner and that inconvenience to the public is minimized to the extent practicable.

FISCAL IMPACT:

There is no increase in Net County Cost associated with the recommended action. Department Staff costs associated with oversight of HSRA and its contractors are paid for pursuant to Cooperative Agreement No. 13-767, a reimbursement agreement, associated task orders with the HSRA and its contractors, and through encroachment permit fees. Sufficient appropriations and estimated revenues are included in the Department's Org 4510 FY 2019-20 Recommended Budget.

DISCUSSION:

HSRA is planning to build a portion of the California HSR from Merced to Bakersfield. It is proposed to build and operate a portion of the larger State high-speed train system, intended to ultimately connect sections traveling west to San Francisco, south to Los Angeles, and north to Sacramento. The HSR is designed to

utilize steel-wheel-on-steel-railway technology, with its rail corridor completely grade separated from other modes of travel.

The HSR alignment significantly impacts the County's road network and properties adjacent to the alignment. In general, major County roads which intersect the HSR alignment will be grade separated to convey the roadway over the rail corridor. In the case of certain roads with low traffic volumes, it was previously determined by the Board that they were to be closed. A list of affected intersections and a description of the modifications to be performed at each impacted roadway is included as Exhibit A, and an accompanying map is included as Exhibit B.

The HSR project is divided into segments, or Construction Packages (CPs), two of which impact County facilities. These are CP 1 and CP 2-3, designed and constructed by Joint Ventures Tutor Perini/Zachry/Parsons and Dragados/Flatiron. The Department has been making every reasonable effort to facilitate the project while ensuring structures to be built by the HSRA contractor will be safe and durable, that the County does not incur any excess costs due to the project, and that inconvenience to the public is minimized.

On December 10, 2013, the Board approved Cooperative Agreement No. 13-767, establishing general procedures governing interaction between the parties pertaining to the anticipated impacts of the project on County facilities. The agreement included, for example, provisions that defined the task order process and activities associated with each task order, in addition to the allocation and delegation of responsibility for the making of reimbursement payments relating to facility relocation work.

In spite of the Department's efforts to ensure that the agreement included clauses needed to protect the County's infrastructure, coordination with HSRA has been difficult, as both HSRA and its contractors have frequently been reluctant to abide by requirements that are specified in the agreement. For example, the agreement clearly requires that HSRA, through action of its contractor, was to document the condition of County roads before project work that may cause them to deteriorate, and thereafter mitigate the damage. After several months of discussion, the Department has not been able to reach consensus with HSRA's contractor on details that must be addressed in mitigating the deterioration of County roads due to project construction.

An ongoing issue the Department has experienced and which has made progress difficult is HSRA's tendency to defer the resolution of controversial issues to its contractor. For example, in the initial stages of coordination, the Department did not agree with certain deviations from design standards proposed by HSRA's contractor. Instead of working proactively to resolve the issues promptly, HSRA staff repeatedly deferred the resolution to its contractor.

Some of the most serious problems to date with HSRA and its contractors involve the American Avenue grade separation. This is the southernmost grade separation in CP 1 under the exclusive jurisdiction of the County (i.e.: the City of Fresno does not maintain any portion of this intersection). During an initial discussion, the HSRA contractor indicated that it would be necessary to close American Avenue to public traffic at the HSR alignment for a period of one year, and it appeared that a good faith effort was being made to abide by the provisions of the agreement; however, as a prerequisite to construction, it was necessary for HSRA to acquire the necessary right-of-way from the County. The transfer of County right-of-way was accomplished pursuant to the right-of-way transfer agreement, Agreement No. 15-465, approved by the Board on September 22, 2015. Contrary to all previous representations, American Avenue has now been closed to traffic for more than two years, and it is now anticipated that HSRA may intend to keep it closed for another year, which would extend the duration of the closure to approximately three years.

The extended closure of roads is not merely a public inconvenience, but also results in tangible financial detriment, as the lost use of public access to the road and extended use of detours results directly in lost time and additional transportation costs for County residents. Use of other roads to detour traffic for the duration of the road closure also results in deterioration to those roads constituting the detour route, similar

in terms of causation to the cost of pavement degradation attributable to the use of County roads in transporting construction materials for the HSR project, as discussed above.

On several occasions, HSRA staff has attempted to circumvent the Department's process via direct contact with the County Administrative Officer and has now resorted to making informal threats to attempt to declare the County in breach of its agreement(s) with HSRA. These actions ignore that the Cooperative Agreement includes a detailed conflict resolution process, the applicability of which HSRA has not acknowledged, except by their initial approval of the agreement.

In the interest of continuing to safeguard County transportation facilities and resolving outstanding issues between the Department and HSRA, the Department is seeking your Board's direction to initiate an amendment to the agreement. The agreement contemplates and specifically provides for the issuance of Task Orders, which are documents executed by HSRA, HSRA Contractor, and the County to define the scope, schedule, cost and coordination of work pertaining to a specific County facility. Some of the revisions that may be proposed to the agreement and/or associated task orders include:

- Necessary prerequisites to closures of any road for any duration will be identified in greater detail, including specification of an agreed-upon schedule and/or timeline for the duration of each road closure, and establishment of a tiered, liquidated damage structure to be paid to the County in the event closure extends beyond the scheduled duration.
- The role of HSRA should be clarified to ensure that they are sufficiently involved and willing to assume a more responsible role in the process, including assistance in facilitating a reasonable resolution when disputes arise between the County and the HSRA contractor.
- The process of documenting pre-construction and post-construction pavement condition of County roads used in hauling materials for HSR project construction activities, and the means and timing for providing the requisite mitigation or compensation must be set forth in greater detail.

REFERENCE MATERIAL:

BAI #48, January 8, 2019
BAI #51, March 15, 2016
BAI #34, December 8, 2015
BAI #59, September 22, 2015
BAI #10, March 1, 2015
BAI #52, December 10, 2013
BAI #35, August 28, 2013
BAI #11, October 11, 2011
BAI #6, September 20, 2011

ATTACHMENTS INCLUDED AND/OR ON FILE:

Exhibit A
Exhibit B

CAO ANALYST:

Sonia M. De La Rosa