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ENTERED
Office of Proceedings
August 13, 2020
Part of
Public Record

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August 13, 2020

VIA E-FILING

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: California High-Speed Rail Authority – Acquisition Exemption – Peninsula
Corridor Joint Powers Board, FD 36351

Dear Ms. Brown:

Enclosed for E-filing in the above-captioned proceeding is a Verified Notice of Exemption (the “Notice”) filed on behalf of California High-Speed Rail Authority, a Class III non-operating rail carrier, pursuant to 49 CFR §1150.41, et seq. A filing fee in the amount of \$2,100.00 has been paid via Pay.gov. If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance with this matter.

Respectfully submitted,

/s/ William Mullins

William A. Mullins
Attorney for California High-Speed Rail Authority

Enclosures

FEE RECEIVED
August 13, 2020
SURFACE
TRANSPORTATION BOARD

FILED
August 13, 2020
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36351

**CALIFORNIA HIGH-SPEED RAIL AUTHORITY
– ACQUISITION EXEMPTION –
PENINSULA CORRIDOR JOINT POWERS BOARD**

VERIFIED NOTICE OF EXEMPTION PURSUANT TO 49 CFR §1150.41, ET SEQ.

**William A. Mullins
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Suite 300
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Phone: (202) 663-7820
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Dated: August 13, 2020

**Attorneys for California High-Speed Rail
Authority**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36351

**CALIFORNIA HIGH-SPEED RAIL AUTHORITY
– ACQUISITION EXEMPTION –
PENINSULA CORRIDOR JOINT POWERS BOARD**

VERIFIED NOTICE OF EXEMPTION PURSUANT TO 49 CFR §1150.41, ET SEQ.

Pursuant to 49 U.S.C. § 10902 and the related regulations as set forth in 49 CFR §1150.41, et seq., California High Speed Rail Authority (the “Authority” or “CHSRA”), a Class III non-operating rail carrier subject to the Board’s jurisdiction,¹ hereby files this Verified Notice of Exemption (“Notice”) for the Authority’s acquisition of a permanent non-exclusive easement for the purpose of conducting future rail operations over approximately 50.94-miles of rail line owned by the Peninsula Corridor Joint Powers Board (“PCJPB”)² located between San Francisco, CA at Milepost 0.00 (formerly Milepost 0.147 under the 1991 Trackage Rights Agreement between PCJPB and Southern Pacific Railroad (predecessor to Union Pacific Railroad (“UPRR”) (“1991 TRA”)) and Lick, CA at PCJPB Milepost 50.94 (present UPRR Milepost 51.64, which formerly was Milepost 51.4 under the 1991 TRA) (collectively, the

¹ The Authority became a carrier in 2013 upon the Board’s finding of jurisdiction over the CHSRA project, which is expected to link Los Angeles and San Francisco. See California High-Speed Rail Authority—Construction Exemption—in Merced, Madera & Fresno Counties, California, FD 35724 (STB served June 13, 2013).

² PCJPB is itself a Class III carrier. See Peninsula Corridor Joint Powers Bd.—Acquis. Exemption—S. Pac. Transp. Co. (Caltrain Acquisition), FD 31980 (ICC served Jan. 17, 1992).

“Corridor”).³ The beginning and endpoints of the Corridor are set forth in the attached Track Chart/Map, which comprises Exhibit A.

This Notice and associated acquisition of the easement only grants CHSRA with a property right in the Corridor. Such property right does not include the right to operate intercity passenger trains in the Corridor. Acquisition of the easement would not by itself allow CHSRA to operate intercity passenger trains in the Corridor. CHSRA does not currently possess any right to operate intercity passenger trains in the Corridor. UPRR currently holds the exclusive right to operate intercity passenger trains in the Corridor, although CHSRA and UPRR are presently in discussions about the transfer of those rights to CHSRA (subject to further STB authorization, if required). Furthermore, in the event CHSRA or its future operator acquires those rights, CHSRA or its future operator would also need to obtain operating authority from the STB before CHSRA or its future operator could actually operate intercity trains in the Corridor.

Pursuant to the PRS Easement Agreement,⁴ PCJPB is conveying to the Authority a permanent non-exclusive easement over the Corridor for the purpose of conducting future rail operations.⁵ The terms and conditions of the actual future operations will be described and

³ PCJPB and the Authority are referred to collectively as the “Parties.”

⁴ The specific rights granted to the Authority by PCJPB are set forth in and to be governed by the terms of the PRS Easement, the Project Management and Funding Agreement (“PMFA”), and a Shared Use Agreement to be negotiated. The PRS Easement has not yet been recorded and finalized as a matter of property law nor could it be until STB approval of Authority’s acquisition of the PRS Easement has been obtained.

⁵ The acquisition of a property easement by a Class III carrier over the property of another carrier has been held to qualify as a transaction subject to 49 U.S.C. 10902 and 49 CFR 1150.41. See Port of Pend Oreille D/B/A Pend Oreille Valley Railroad – Acquisition and Operation Exemption – The Burlington Northern and Santa Fe Railway Company, FD 33561, 1998 STB Lexis 808 (STB served Oct. 23, 1998); Portland & Western Railroad, Inc. – Acquisition and Operation Exemption – Union Pacific Railroad Company, FD 34792 (STB served Nov. 24,

agreed upon by the Parties in a to-be negotiated future Shared Use operating agreement. Upon completion of the Shared Use Agreement, the Authority, or its third party operator, will seek STB operating authority to conduct the actual operations on the Corridor. The exemption in this proceeding will grant the Authority the ownership of a recognized property right to provide future passenger rail service over the Corridor. The exemption will not affect existing freight operations over the Corridor because no actual passenger operating authority is being sought at this time.

In accordance with the requirements of 49 CFR §1150.43, the Authority submits the following information:

Full name and address of Class III rail carrier applicant: 49 CFR §1150.43(a)

California High-Speed Rail Authority
770 L Street, Suite 620
Sacramento, CA 95814

Applicant's Representatives: 49 CFR §1150.43(b)

William A. Mullins
Crystal M. Zorbaugh
Baker & Miller PLLC
2401 Pennsylvania Ave., NW, Ste. 300
Washington, DC 20037
Telephone: (202) 663-7820
E-mail: wmullins@bakerandmiller.com

2006); Portland & Western Railroad, Inc. – Acquisition and Operation Exemption – The Burlington Northern and Santa Fe Railway Company, FD 33424 (STB served July 6, 1998) (recognizing that the class exemption set forth at 1150.41 for class III carriers includes acquisition of an easement interest in the rail property of another carrier and that the exemption does not exclude any 10902 transactions); and Eastside Community Rail, LLC – Acquisition and Operation Exemption – GNP Rly.; Ballard Terminal Railroad Company, L.L.C. – Lease Exemption – Eastside Community Rail, LLC, FD 35692 and FD 35730 (STB served Dec. 13, 2018) (expressing concern that it appears that there were several conveyances of the rail easement for which parties did not seek or obtain the needed Board authority pursuant to §§ 10901-10902 and reminding parties and practitioners that any acquisition of a property interest requires prior Board approval through the appropriate application or exemption process).

Statement that an agreement has been reached or details about when an agreement will be reached: 49 CFR §1150.43(c)

The Parties have come to an agreement in principle on two agreements that will govern the specific rights granted to the Authority by PCJPB. These agreements include the PRS Easement and the PMFA. In addition, the Authority and PCJPB will negotiate a Shared Use Agreement that will govern the respective rights and obligations of the Parties with respect to future passenger operations by the Authority or its contractor over the Corridor.

Operator of the property: 49 C.F.R. §1150.43(d)

PCJPB is the owner of the Corridor. PCJPB does not conduct freight operations over the Corridor.

Brief summary of the proposed transaction: 49 C.F.R. §1150.43(e)

Pursuant to the PRS Easement Agreement, PCJPB is conveying to the Authority a permanent non-exclusive easement for the purpose of conducting future rail operations on the Corridor. At this time, the Authority is not seeking operating authority over the Corridor. Rather, following completion and execution of the above-referenced Shared Use Agreement and upon completion of construction of the high-speed rail line, the Authority intends to contract with a third-party operator to conduct the actual operations. The Authority or this third party operator will at a later date seek operating authority from the Board to provide passenger rail service over the Corridor on the Authority's behalf.

Name And Address Of Party Transferring Property: 49 C.F.R. §1150.43(e)(1) –

Peninsula Corridor Joint Powers Board
P.O. Box 3006
1250 San Carlos Ave.
San Carlos, CA 94070-1306

Proposed Time Schedule: 49 C.F.R. §1150.43(e)(2)

The Parties anticipate that the transaction will be consummated on or after September 11, 2020 (30 days after filing this notice of exemption).

Mileposts and Description: 49 C.F.R. §1150.43(e)(3) & (4)

The approximately 50.94-mile Corridor extends between San Francisco, CA at Peninsula Corridor Joint Powers Board (“PCJPB”) Milepost 0.00 (formerly Milepost 0.147 under the 1991 Trackage Rights Agreement between PCJPB and Southern Pacific Railroad (predecessor to Union Pacific Railroad (“UPRR”) (“1991 TRA”)) and Lick, CA at PCJPB Milepost 50.94 (present UPRR Milepost 51.64, which formerly was Milepost 51.4 under the 1991 TRA).

Map: 49 CFR §1150.43(f)

A Track Chart/Map showing the Corridor and surrounding area is attached as Exhibit A to this Notice.

Certificate of compliance: 49 CFR §1150.43(g)

Certification of compliance with the provisions of 49 CFR 1150.43(g) is attached as Exhibit B to this Notice.

Interchange commitments: 49 CFR §1150.43(h)

The Authority’s acquisition of a permanent non-exclusive passenger operating easement over the Corridor does not include any provision or agreement limiting future freight interchange over the Corridor with third-party connecting carriers.

Advance Notice (Posting): 49 CFR §1150.42(e)

Neither the Authority nor its future operator will provide any freight service on the Corridor, only passenger service. As a result, the proposed transaction will not result in the creation of a carrier with projected freight annual operating revenues exceeding \$5 million, and,

accordingly, the advance notice requirement of 49 CFR §1150.42(e) is not applicable to this transaction. See Exhibit B.

Environmental and Historic Preservation Information: 49 CFR §1105.6

Under 49 CFR §1105.6(c)(1), the transaction is exempt from environmental reporting requirements because the Authority's acquisition of a permanent non-exclusive passenger operating easement over the Corridor will not result in significant changes in carrier operations (i.e., changes that exceed the thresholds established in 49 CFR §1105.7(e)(4) or (5)). Indeed, the Authority does not seek any operating authority from the Board at this time. Any potential environmental impacts from future operations will be considered in any future STB proceeding authorizing operations. Accordingly, this action, i.e., the acquisition of property easement, will not significantly affect either the quality of the human environment or energy conservation.

Under 49 CFR §1105.8(b)(1), the Authority's acquisition of a permanent non-exclusive passenger operating easement over the Corridor is also exempt from historic preservation reporting requirements because further STB approval would be necessary to discontinue or abandon service over the Corridor. Furthermore, there are no plans to dispose of or alter properties subject to STB jurisdiction that are 50 years old or older.

Caption Summary: 49 CFR §1150.44

A caption summary in the appropriate form is attached as Exhibit C to this notice.

Respectfully submitted,

/s/ William A. Mullins

William A. Mullins
Crystal M. Zorbaugh
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2401 Pennsylvania Ave., N.W.
Suite 300
Washington, DC 20037
(202) 663-7820

Attorneys for California High-Speed Rail Authority

August 13, 2020

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36351

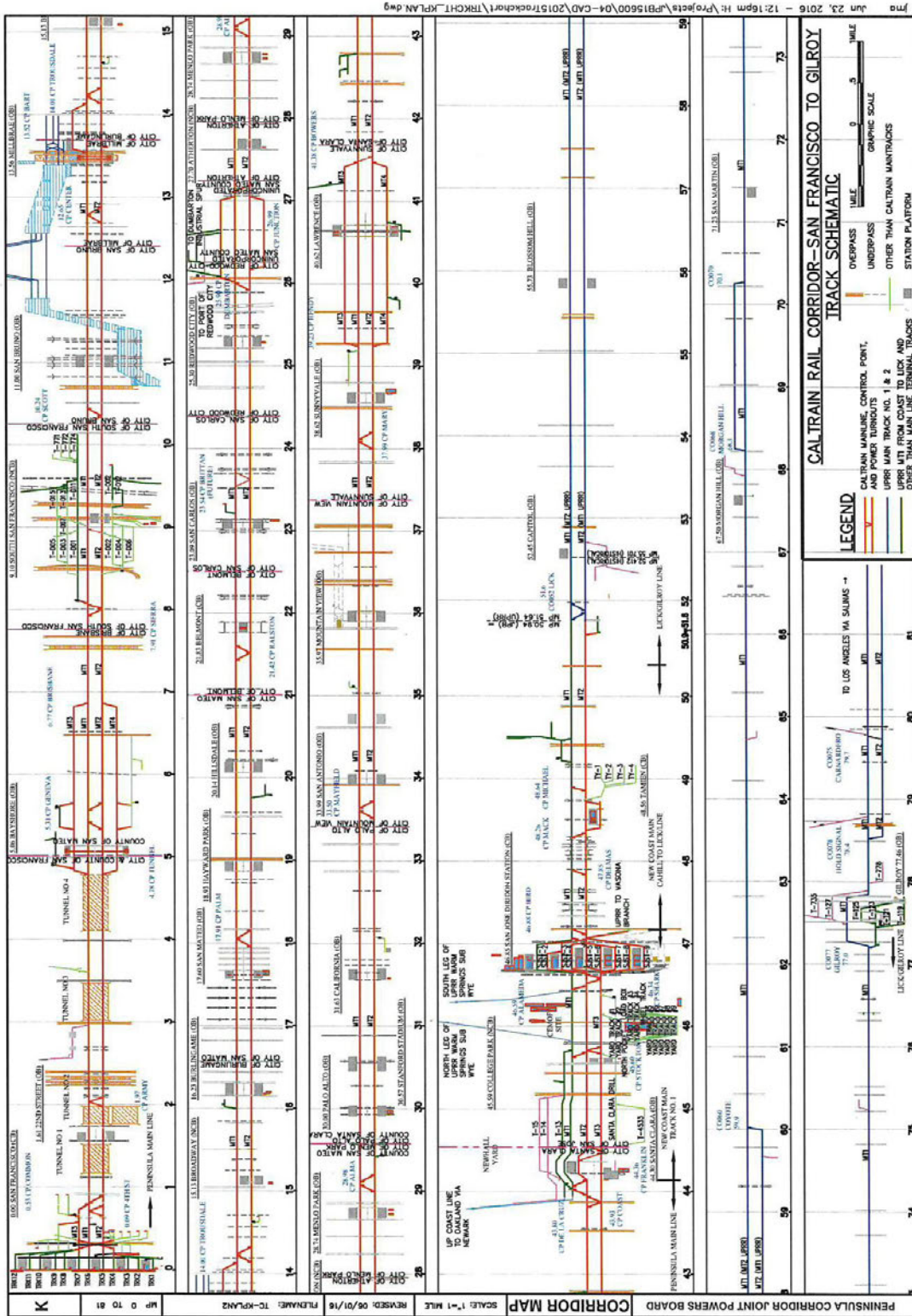
**CALIFORNIA HIGH-SPEED RAIL AUTHORITY
– ACQUISITION EXEMPTION –
PENINSULA CORRIDOR JOINT POWERS BOARD**

VERIFIED NOTICE OF EXEMPTION PURSUANT TO 49 CFR §1150.41, ET SEQ.

EXHIBIT A

Track Chart/Map

EXHIBIT A TRACK SCHEMATIC



**BEFORE THE
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FD 36351

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EXHIBIT B

49 CFR §1150.33(g) – CERTIFICATION

CERTIFICATION

I, Brian Annis, Chief Financial Officer, California High-Speed Rail Authority ("Authority"), hereby certify that the Authority's projected freight annual rail revenues resulting from the consummation of the proposed transaction will not exceed \$5 million annually, and will not result in the Authority becoming a Class I or Class II carrier.



Brian Annis
Chief Financial Officer
California High-Speed Rail Authority

August 10, 2020

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36351

**CALIFORNIA HIGH-SPEED RAIL AUTHORITY
– ACQUISITION EXEMPTION –
PENINSULA CORRIDOR JOINT POWERS BOARD**

VERIFIED NOTICE OF EXEMPTION PURSUANT TO 49 CFR §1150.41, ET SEQ.

EXHIBIT C

49 CFR §1150.44 – CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

Notice of Exemption

FD 36351

CALIFORNIA HIGH-SPEED RAIL AUTHORITY
– ACQUISITION EXEMPTION –
PENINSULA CORRIDOR JOINT POWERS BOARD

California High Speed Rail Authority (the “Authority”), a Class III rail carrier subject to the jurisdiction of the Surface Transportation Board (“STB” or “Board”),¹ has filed a Verified Notice of Exemption to acquire a permanent non-exclusive easement for the purpose of conducting future rail passenger operations over approximately 50.94-miles of rail line owned by the Peninsula Corridor Joint Powers Board (“PCJPB”)² located between San Francisco, CA at Milepost 0.00 (formerly Milepost 0.147 under the 1991 Trackage Rights Agreement between PCJPB and Southern Pacific Railroad (predecessor to Union Pacific Railroad (“UPRR”) (“1991 TRA”)) and Lick, CA at PCJPB Milepost 50.94 (present UPRR Milepost 51.64, which formerly was Milepost 51.4 under the 1991 TRA) (collectively, the “Corridor”). Upon consummation of the transaction, the Authority will possess a permanent non-exclusive easement for the purpose of conducting future rail passenger operations over the Corridor.

At this time, the Authority is not seeking operating authority over the Corridor. UPRR currently possesses the exclusive right to operate intercity rail passenger operations over the Corridor. Following completion and execution of to-be negotiated operating agreements, and

¹ The Authority became a carrier in 2013 upon the Board’s finding of jurisdiction over the CHSRA project, which is expected to link Los Angeles and San Francisco. See California High-Speed Rail Authority—Construction Exemption—in Merced, Madera & Fresno Counties, California, FD 35724 (STB served June 13, 2013).

² PCJPB is itself a Class III carrier. See Peninsula Corridor Joint Powers Bd.—Acquis. Exemption—S. Pac. Transp. Co. (Caltrain Acquisition), FD 31980 (ICC served Jan. 17, 1992).

upon Authority completion of additional improvements (if necessary) in the Corridor, the Authority intends to contract with a third-party operator to conduct the actual passenger operations. The Authority or its third party operator will at a later date seek appropriate operating authority from the Board and any required STB approval related to the future transfer of such intercity operating rights from UPRR to CHSRA as necessary to conduct future intercity passenger rail service over the Corridor should such a transfer occur.

The Authority's projected annual freight rail operating revenues, after consummation of this transaction will not exceed \$5 million, and, accordingly, the advance notice requirement of 49 CFR §1150.42(e) is not applicable to this transaction. The Authority anticipates that the easement acquisition transaction will be consummated on or after September 14, 2020.

All pleadings or comments relating to this transaction must be filed with the Surface Transportation Board, 395 E Street, SW, Washington, DC 20523-0001. In addition, a copy of each pleading must be served on the Authority's representative, William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Avenue, N.W., Suite 300, Washington, DC 20037.

The notice is filed under 49 CR §1150.41, et seq. If the notice contains false or misleading information, the exemption is void ab initio. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Stay petitions must be filed by _____.

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EXHIBIT D

VERIFICATION

VERIFICATION

Pursuant to 28 U.S.C. 1746, I, Frank Vacca, declare under the penalty of perjury under the laws of the United States that I am authorized to make this verification on behalf of California High-Speed Rail Authority, a Class III rail carrier, and that the foregoing notice of exemption is true and correct to the best of my knowledge and belief.

Frank Vacca

Frank Vacca
Chief of Rail Operations
California High-Speed Rail Authority

August 10, 2020