



April 2, 2014

California High Speed Rail Authority
Chairman Dan Richard and Board Members
Attn: Draft 2014 Business Plan
770 L Street, Suite 800
Sacramento, California 95814

Subject: Improper Public Notice and Public Hearing Procedure for the 2014 Draft Business Plan

Dear Chairman Richard and Board Members:

According to California Public Utilities Code Section 185033, the California High-Speed Rail Authority is required to do the following:

1. **Prepare** a “business plan,” which includes publishing a draft at least 60 days before final publication so that the public can review it and submit comments to the Authority about it. The Authority is required to “take into consideration comments from the public hearing and written comments” before publishing the final business plan.
2. **Submit** the draft to four committees of the California State Legislature – the committee in each house that deals with transportation and the committee in each house that deals with the budget.
 - Senate Committee on Transportation and Housing
 - Assembly Committee on Transportation
 - Senate Committee on Budget and Fiscal Review
 - Assembly Committee on Budget

If these committees hold hearings on the draft, the Authority is required to take into consideration the content of those hearings before publishing the final business plan.

3. **Publish** the final business plan by May 1, 2014 (and then every two years thereafter).
4. **Adopt** the plan through a vote of the California High-Speed Rail Authority board at a regularly scheduled hearing, with at least one public hearing on the plan.

Did the Authority Hold a Legitimate Public Hearing on the Plan? The California High-Speed Rail Authority posted on its web site a February 7, 2014 press release entitled “High-Speed Rail Authority Releases Draft 2014 Business Plan: Updates 2012 Business Plan.” It says “To ensure that the public

has an opportunity to respond, the Authority is providing five methods for submitting comments on this draft plan.” Here are the five listed methods:

1. Online comment form through the Draft 2014 Business Plan website at:
http://www.hsr.ca.gov/About/Business_Plans/Draft_2014_Business_Plan.html
2. By email at 2014businessplancomments@hsr.ca.gov
3. By U.S. mail to the Authority:

California High-Speed Rail Authority
Attn: 2014 Business Plan
770 L Street, Suite 800, Sacramento, CA 95814
4. Voice mail comment at [916-384-9516](tel:916-384-9516).
5. Provide public comment at the Authority’s Board of Directors Meeting on February 11, March 11 and April 10.

The California High-Speed Rail Authority apparently considers the fifth method for public comment listed on the February 7, 2014 press release – “Provide public comment at the Authority’s Board of Directors Meeting on February 11, March 11 and April 10” – to fulfill its legal obligation for “at least one public hearing on the plan.” We don’t agree. We believe this method violates the intent of the state legislature, if not the law. Here is evidence that the Authority has not formally held a public hearing:

- The Authority did not provide the public with a notice indicating a “public hearing on the plan.” We do not consider its February 7, 2014 press release to be a legitimate public hearing notice, which we would expect to be posted sometime between 72 hours and – reasonably at the earliest – ten days before the hearing. That notice should include, at a minimum, the date, time, and place of the hearing, the identity of the hearing body, an explanation of the matter to be considered, and an invitation for the public to address the body about the matter.

Based on a comment of the Authority CEO during the February 11, 2014, meeting, the Authority considers the release of the Draft 2014 Business Plan on February 7 as what “starts the statutorily required 60-day public comment period.” But there is also a public hearing required in California Public Utilities Code Section 185033(b)(2).

- The Authority did not include anything on its February 11, 2014 and March 11, 2014 board meeting agendas indicating a public hearing on the 2014 Draft Business Plan.
- The Authority has not provided the public with evidence in its board meeting minutes that a public hearing was held on the 2014 Draft Business Plan. As seen in the approved minutes of the February 11, 2014 Authority board meeting, meeting minutes typically report public comments with this standard statement: “An opportunity was made for public comment. Speakers commented on a variety of topics.” As a result, meeting minutes do not indicate the Authority held a “public hearing on the plan.”

- Oral comments comprising the “public hearing” have been minimal. Only five people have spoken during public comment about the 2014 Draft Business Plan, according to transcripts of the February 11, 2014 and March 11, 2014 board meetings posted on the Authority web site. Five speakers commented on the plan at the February 11 meeting, and one of those five speakers was also the sole commenter on the plan at the March 11 board meeting. Those five speakers regularly address the Authority during public comment on a variety of issues.

This is rather paltry public comment on the business plan for the most expensive public works project in American history – a highly controversial project with national and international significance. The Authority board needs to consider whether this scant oral testimony reflects deficiencies in the notice for a “public hearing on the plan.”

- Staff indicated at the February 11, 2014 and March 11, 2014 board meetings that Authority staff would summarize the oral (and written) comments for the board and categorize comments to avoid redundancy. This concerned one speaker:

MR. OLIVEIRA: Frank Oliveira. I'm with Citizens for California High Speed Rail Accountability. I spoke before you many times. Okay. I'm going to talk about some very specific things pertaining to the business plan, okay, and other documents and meetings that I have been to. One of the things that was referenced in the documents I'm reading is that the public comment pertaining to the business plan is going to be summarized for the Board. Okay. Who's going to do the summarizing, and is that appropriate, if that's in a document. So if I make a comment to the Board, is the Board going to read it, or will it be summarized, kind of categorized, you know, a 'yay' or 'nay' type of thing? That's a little bit confusing.

During board discussion of the agenda item later in the meeting entitled “Presentation of the Draft 2014 Business Plan,” the Authority CEO made these remarks:

All – each and every comment that is received will be reviewed. Each and every comments (*sic*) will be made available to the Board for their review. When there was discussion in the memo and there was a question about what it will mean for staff to summarize for the Board, what that will be is really sorting comments in order for the Board to look at them and understand, for instance, that we got -- 72 percent of the comments were relating to one particular area of the reports. So it's really about the analysis of comments so that the Board can understand where the focus has been, but the full comments will be made available to the Board so that they can consider them.

Where we go from here. So the plan is now out for that 60-day comment period. We have already received some comments. I think we got the first half dozen or so over the weekend, and we'll continue to take them in on a rolling basis and analyze them, look at them, and recommend changes where we think it's appropriate to do. The plan is that at the April 10th board meeting, we would come back to the Board with a proposal for – with recommended changes and hear from the Board its comments about what needs to be changed in order to adopt then a final 2014 business plan and then submit that to the legislature as required on May 1st on schedule.

Authority Board member Perez Estolano then made a general inquiry about what the Authority was doing to notify agencies (and presumably, the public) about the request for comments:

MS. PEREZ-ESTOLANO: What is the process in terms of the outreach, just getting this information that the updated plan is available for comment, for review? Are we sending it out to, like, transportation agencies, the planning MPOs? How are we doing that, or I'm not sure if we have a responsibility, but I think we have a duty to certainly try to get that out.

MR. MORALES: We have various ways of doing it. One is we issued a press release when we put it out. It's on the very front page of our website, prominently displayed, certainly. So when anyone goes to the website, they'll see it right there. We do work directly with our stakeholders to make them aware of it and invite their comment. We're doing that also through our regional directors, taking responsibility for dealing directly with the people within their areas. We expect we'll get – we did certainly the last time – got a significant number of comments from around the state and would expect the same this time.

Notice of a public hearing was not mentioned as part of that “outreach.”

- During discussion of the agenda item entitled “Update on the Draft 2014 Business Plan” at the March 11 board meeting, staff reported receiving 111 total comments. The Authority CEO made these remarks during the March 11 board discussion:

CHIEF EXECUTIVE OFFICER MORALES: Very clearly, Mr. Chairman, I just wanted to update the Board but also remind the public that we are still in the public comment period on the draft plan. As of this morning, we had received 110 comments. With Mr. Dayton's, we're up to 111 now. We are in the process of reviewing those, reminding people again they have several different ways they can submit comments, through the website, which is the way the majority of comments have been submitted. Also through the mail and phone and by speaking here at the Board meeting. So we are moving forward with that again receiving a good number of comments. Some very specific, some suitable for discussion of public some not. But we're moving ahead.

As occurred at the February 11, 2014 meeting, Authority Board member Perez Estolano followed-up with questions:

BOARD MEMBER PEREZ-ESTOLANO: I just have a quick question. Jeff, are we going to receive copies of those comments? At the end of that 60 days period, we'll receive them all?

CHIEF EXECUTIVE OFFICER MORALES: What we will have available to the Board and the public is a full cataloguing of the comments sorted. What we do is, among other things, try to group them together. So if we have 15 comments all in the

same area, we note that. And so that you will also get a sense of where the preponderance of issues were or comments or questions.

As of March 31, 2014, the Authority has not provided public access to these comments or any subsequent comments, either in raw form or in a summarized and categorized form.

- The Authority board is scheduled on the April 10 meeting agenda for “Approval of the Final 2014 Business Plan” for submission to the four committees of the California State Legislature cited in law. Comments made during public comment at this meeting obviously will not be part of the categorized summary provided to the Authority board and the public.
- Based on the remarks of the Authority CEO at the February 11, 2014 meeting, Authority board members will make comments about what needs to be changed at the April 10 meeting. It is unclear to the public which of these actions the board members will take:
 1. Use parliamentary procedure to make specific amendments to language in the Draft 2014 Business Plan
 2. Use parliamentary procedure to make specific amendments to language in a Final 2014 Business Plan provided to them at the meeting
 3. Make general comments about the Draft 2014 Business Plan for the Authority staff to address in a Final 2014 Business Plan subsequently submitted to the legislature by the Authority without public review.
 4. Make general comments about a Final 2014 Business Plan provided to them at the meeting for the Authority staff to address in an amended Final 2014 Business Plan subsequently submitted to the legislature by the Authority without public review.

The deficiency of public notice and lack of a formal public hearing is especially disturbing because the California State Legislature has not vigorously exercised the provision in California Public Utilities Code Section 185033 that encourages the four committees to hold hearings on the draft and require the Authority to take into consideration the content of those hearings before publishing the final business plan.

Only one informational hearing has been held regarding the 2014 Draft Business Plan in the California State Legislature during the 60-day comment period. On March 27, 2014, the chairman of the Senate Transportation and Housing Committee held an “Informational Hearing on World Class Passenger Rail System in California: Evaluating High Speed Rail's Potential for Success.” This hearing included a panel of experts discussing the 2014 Draft Business Plan.

| Hearing | Date | Documents |
|---|----------------|---|
| Senate Transportation and Housing Committee: Informational Hearing: World Class Passenger Rail System in California: Evaluating High Speed Rail's Potential for Success | March 27, 2014 | Agenda: http://stran.senate.ca.gov/sites/stran.senate.ca.gov/files/Agenda.pdf Background Report: http://stran.senate.ca.gov/sites/stran.senate.ca.gov/files/BackgroundPaper3-27-14_Final_amended.pdf Legislative Analyst's Report: http://www.lao.ca.gov/handouts/transportation/2014/Funding-HSRA-032714.pdf Video of Hearing: http://calchannel.granicus.com/MediaPlayer.php?view_id=7&clip_id=1967 |

The chairman was the only legislator to attend the hearing. It's uncertain if the Authority will follow its legal mandate to take hearing testimony into consideration, as representatives of the California High-Speed Rail Authority were seen leaving the committee room before the conclusion of the hearing.

A subcommittee of the Assembly Budget Committee held a hearing on April 2, 2014 regarding transportation spending. It included eight "issues" regarding California High-Speed Rail, and one of those issues was the 2014 Draft Business Plan.

| Hearing | Date | Documents |
|---|---------------|--|
| Assembly Budget Committee - Subcommittee No. 3 - Resources And Transportation | April 2, 2014 | Agenda and Staff Report: http://abgt.assembly.ca.gov/sites/abgt.assembly.ca.gov/files/Sub%203-%20April%2020Agenda.pdf Audio Recording: http://assembly.ca.gov/listen/447-audio |

Little of substance was said about the 2014 Draft Business Plan in the staff report or during the committee hearing. During public comment after discussion of eight issues related to California High-Speed Rail, one person specifically criticized aspects of it.

Meanwhile, the Assembly Committee on Transportation and the Senate Committee on Budget and Fiscal Review have not held any hearings on the 2014 Draft Business Plan.

It seems that earlier business plans were evaluated much more thoroughly:

| Hearing | Date | Documents |
|---|--------------------------------|---|
| Senate Transportation and Housing Committee Informational Hearing : Review of the High Speed Rail Authority's Business Plan | October 23, 2008 | Agenda: http://stran.senate.ca.gov/sites/stran.senate.ca.gov/files/10-23-08Agenda.doc Background Report: http://stran.senate.ca.gov/sites/stran.senate.ca.gov/files/10-23-08BackgroundPaper.doc |
| Assembly Transportation Committee Informational Hearing - High-Speed Rail Authority 2009 Business Plan | January 11, 2010 | Agenda: http://atrn.assembly.ca.gov/sites/atrn.assembly.ca.gov/files/hearings/011110Agenda.pdf Background Report: http://atrn.assembly.ca.gov/sites/atrn.assembly.ca.gov/files/hearings/011110background.pdf |
| Joint Legislative Informational Hearing of the Senate Transportation and Housing Committee and Senate Budget and Fiscal Review Sub-Committee No. 2 on Resources, Environmental Protection, Energy and Transportation: California High-Speed Rail Authority's 2009 Business Plan | January 19, 2010 | http://www.cc-hsr.org/assets/pdf/Senate-Overview-1-10.pdf (not legislative link) |
| Budget Subcommittee No. 3 on Resources and Transportation - High Speed Rail Authority Business Plan | November 15, 2011 in Palo Alto | Agenda: http://abgt.assembly.ca.gov/sites/abgt.assembly.ca.gov/files/hearings/Nov%202015%20High%20Speed%20Rail%20Oversight%20Hearing%20Agenda.pdf |
| Assembly Transportation Committee Oversight Hearing - High-Speed Rail Authority: Draft Business Plan and Funding Plan | November 29, 2011 | Agenda: http://atrn.assembly.ca.gov/sites/atrn.assembly.ca.gov/files/hearings/11-29-11%20High-Speed%20Rail%202012%20Business%20Plan%20hearing%20Agenda.pdf Background Report: http://atrn.assembly.ca.gov/sites/atrn.assembly.ca.gov/files/hearings/11-29-11%20High-Speed%20Rail%202012%20Draft%20Business%20Plan%20Background.pdf |

| | | |
|--|--------------------------|--|
| <p>Joint Informational Hearing of the Senate Transportation and Housing Committee and Select Committee on High-Speed Rail: Review of the Draft High-Speed Rail Authority's Business Plan</p> | <p>December 5, 2011</p> | <p>Agenda: http://stran.senate.ca.gov/sites/stran.senate.ca.gov/files/12-5-11FinalAgenda.pdf Background Report: http://stran.senate.ca.gov/sites/stran.senate.ca.gov/files/12-5-11BackgroundPaper.pdf</p> |
| <p>Assembly Transportation Committee Informational Hearing - High-Speed Rail Authority: Revised 2012 Business Plan</p> | <p>April 30, 2012</p> | <p>Agenda: http://atrn.assembly.ca.gov/sites/atrn.assembly.ca.gov/files/hearings/April%2030%20agenda.pdf Background Report: http://atrn.assembly.ca.gov/sites/atrn.assembly.ca.gov/files/hearings/HSR%20April%2030%20background.pdf</p> |
| <p>Senate Transportation and Housing Committee and Senate Select Committee on High-Speed Rail Senate Budget and Fiscal Review, Subcommittee No. 2 on Resources, Environmental Protection, Energy and Transportation: Joint Informational Hearing on the California High-Speed Rail Project : High-Speed Rail Authority Revised 2012 Business Plan</p> | <p>May 15, 2012</p> | <p>Agenda: http://stran.senate.ca.gov/sites/stran.senate.ca.gov/files/5-15-12%20Agenda.pdf Background Report: http://stran.senate.ca.gov/sites/stran.senate.ca.gov/files/High-Speed%20Rail%20Authority,%20Revised%202012%20Business%20Plan,%20Final%20background%20report.pdf</p> |
| <p>Assembly Transportation Committee Oversight Hearing - California High Speed Rail Authority: High-Speed Rail Project Status Update</p> | <p>February 25, 2013</p> | <p>Agenda: http://atrn.assembly.ca.gov/sites/atrn.assembly.ca.gov/files/hearings/2.25.13%20Agenda%20doc.pdf Background Report: http://atrn.assembly.ca.gov/sites/atrn.assembly.ca.gov/files/hearings/HSR%20Hearing%20Back</p> |

To avoid a legal challenge, the California High-Speed Rail Authority needs to comply with California Public Utilities Code Section 185033(b)(2). It needs to provide adequate public notice of a legitimate public hearing as a stand-alone meeting agenda item for the public to comment before the board on the Authority's 2014 Draft Business Plan. The public hearing needs to be acknowledged in subsequently approved minutes of the meeting. The public needs a clear idea of public comments and how the Authority considered these comments and incorporated into the Final 2014 Business Plan. The public needs a clear idea of how the Authority considered and incorporated content of the sole legislative committee hearing.

We appreciate your consideration in this matter. If you have any questions or comments please do not hesitate to contact us at cchsraorg@gmail.com.

Sincerely,

A handwritten signature in black ink that reads "Aaron Fukuda". The signature is written in a cursive style with a long horizontal line extending to the right.

Aaron Fukuda
Citizens for California High Speed Rail Accountability

cc:

Assemblymember Skinner
Assemblymember Gorell
Assemblymember Lowenthal
Assemblymember Linder
Assemblymember Patterson
Assemblymember Salas
Senator Leno
Senator Nielsen
Senator DeSaulnier
Senator Gaines
Senator Vidak