

CHSRA Board Meeting, July 2, 2009.

Provided by Rita Wespi on behalf of CARRD.

Partial transcript covers most of the meeting; some smaller sections were skipped.

NOTE: This transcript includes verbatim and paraphrased translations. Much, but not all, is verbatim. Use the video link to confirm if you plan to quote – I've placed frequent minute markers to help. –Rita rwespi@carrdnet.org

Audio:

http://www.cahighspeedrail.ca.gov/images/chsr/20090707125735_CHSRBoardMeeting070209.MP3

Video: http://mattmc.granicus.com/MediaPlayer.php?publish_id=5

5:20 Kopp: Kirk Lindsey, former CHSRA Board Member, died last month. Burns sworn in, replaced TJ Stapleton who served nearly 12 years.

8:00 [Kopp comments about his last day as Chair.] If I could give expression to my concerns, it'd probably be 2-fold. One is a caution not to engage in hyperbole about our activities. This is a very difficult project to consummate. There will be those who succeed us who will be confronted with perhaps not identical but similar obstacles ...it's absolutely imperative that we save face in front of the taxpayers ... And secondly, in the face of the success we've enjoyed with the passing of prop 1a and a new president who has consistently evoked HSR as a transportation legacy of his, there are nevertheless forces and elements that appear not to embrace the notion or the system of HSR of Europe and Asia. It's disconcerting from time to time, but it's a fact of life ... Believe me, this project will be built. HSR will be built and operate a revenue service in CA. In spite of the continuing but lessening group of skeptics who devote some time and attention to our destruction. Criticism of our work and our accomplishments. We must continue to lead the nation. We must make it our policy to serve as an example to other regions in the US as we inherently do in virtue of the 15 years of time and money that's been invested in HSR in CA And not only by our Exec Dire and other staff members and our predecessors on this board including our 4 or so contractors. I want to propose for our action in the future a public effort to transform manufacturing facilities that can serve in such way. ...

20:00 Crane: ...I'm sitting on this board because you [Q. Kopp] asked me to sit on it.... [Crane was appointed by Gov.]

24:30 Mehdi Morshed's report begins.

29:40 Sent a memo on how to structure their staff. Enlisted KPMG to help figure it out. Has nothing to do with SB 409 for restructuring the CHSRA.

31:40 Morshed: Following last month's board meeting I had a meeting with the 4 members of the Independent Peer Review Group and I received some very useful and helpful suggestions and I appreciate that help.

32:00 "I think you probably know the legislature adopted the Authority's budget and our full request for \$139M. However they put some caveats in it and I gave you a copy of this in the blue form that has the exact language that's included in the budget that was approved by the joint conference committees."

One of the key requirements is that a new business plan due by January 1, and half of the money will not be available until after we publish the business plan after 30 days review by joint legislative budget committee. And there is some prescriptive items on how the plan should be ... to do.

It also has a significant item in there that I want to bring to your attention. And that is that [reads the line] Identified as preferred alignment... (read from statute). "That requirement, once it becomes statute, will have some significant impact on our schedule. And it's going to be important to keep this in mind when we talk about the next item about the ARRA application."

Kopp: It's right here – the next to last page. Behind the budget conference committee transportation action list.

MM: The table with the budget and then following that there's the full language.

MM: That has a significant impact on our schedule for that segment and given that the schedule is tight, it is possible that we will not be able to meet the additional requirements and the deadline for putting that project, full project – and meet the federal deadline. Chairman, you and other board members asked for a number of legal opinion that those things –

Schenk: This is surprising - to me, anyway. Does anybody else know about it, what's behind it?

MM: "What's behind it is the fact that when we had the budget hearing before the Senate Conference Committee as I reported to you about I guess it was 2-3 months ago we had a group of probably 30 or more people from Atherton and that area (Kopp: Menlo Park) Menlo Park and others show up and complain about the projects that they don't – basically they don't want the project in their neighborhood. And they have some concerns about how the project is proceeding and they would like to have – they would like us to reopen the issue. And some of them are suggesting that we look at the 101 and 280 corridor. Now, I pointed out that that review would be in the program level and in the project level we're no longer looking at either

280 or 101 corridor because those corridors were found to be not workable for what we need. So obviously they have a point of view and they prevailed in inserting the language and it requires us to look at that so we would have to look at other options. Whether it's 101 or 280 –
“

Schenk: --Mehdi, if this is approved, is it going to impact our application for the stimulus funds?

MM: This is in the budget, it's in the big budget [bill] that is in the state of CA that's before the legislature. It is in the conf committee's report. If the budget is approved, then this language becomes statute. Obviously there is no budget approved yet, but this is an item that's been closed, it's been heavily negotiated – not between us because nobody– we weren't asked to provide any comments or any input – it was negotiated between the assembly and the senate and was adopted as a conference committee and is currently before the legislature for adoption.

37:45 Pringle: This is disconcerting. Privately we should all figure out contact points because the budget has passed; the revision to the budget is what this is and that hasn't passed and that hasn't been before both houses of the legislature and certainly not been before the Gov, so there's multiple opportunities there. I don't know the governor's ability to strike language as this would be a budget action. But more specifically, I just want to make sure I understand the words here. As part of the project level design, so this is not part of the programmatic design which a route was described at the programmatic EIR and it was certified, correct? (yes) We're now in the project level design and review; and in that aren't there alternative analysis, alternatives that have to be recommended and studied as a part of that anyway?

MM: It is, however because at the program level, we looked at various options and the other options were excluded and the only option that went forward as a preferred alignment was the Caltrain corridor.

P: So when there are alternatives offered and studied as a part of the project level EIR, are you suggesting that -- the alignment you suggested in the past is just a general route and exactly if it's in this ROW, aren't those defined as the alignment?

MM: The alignments described were all in the Caltrain corridor.

P: I understand that. But this doesn't suggest that – and if you read the language exactly as it's written – this doesn't suggest that we need to open the programmatic EIR, where a route was selected under the program level EIR it just says there's a part of the project level EIR the authority will study alternative alignments. I thought to some degree that is all contained within it and the definition of 'alignment' is what's important. And 'alignment' is exactly in this right-of-way or in one distance to either side of the alignment. Those are the ...

MM: Correct, but again, Chris, you might want to verify this because my understanding by represented by Chris and the FRA(?) is that the reading of this and the difference between our program level and the project level – that this language requires us to reopen the other options. The alignment being that now we're only looking at the Caltrain corridor. For example, in your area we're (not?) looking at any option than I-5 or anywhere else. This requires that basically they take it away from this neighborhood and put it somewhere else. And that's my understanding of this... Chris?

41:00 Christine Sproul: I'm the Deputy Attorney General assigned to assist the Authority on Environmental Law matters including the preparation of the EIR MM is correct in stating that when the board approved the programmatic EIR for the Bay Area to the Central Valley portion of the HST systems to select general corridor alignments and designated general station locations. We have not yet however approved specific footprint locations for the track-related facilities. Using the program level EIR, you're able to go to the project level EIR analysis and consider a narrower group of alternatives than you otherwise could. We understand that the suggested language to be intended to make you study at the project EIR level a broader range of alternatives than you'd be allowed to claim to study in the program EIR based on your program decisions. There's still some need for clarification and interpretation and apparently those suggesting the language intend to take the Authority to a broader review of alternatives than you would be entitled to do based on your program decisions.

Pringle: That may very well be the intent but first we should still explore(?) avenues in the legislature and the governor's office. I think the language here is ambiguous so I think our legal counsel could - if in fact this reopens the program level EIR, I don't know how consistent with CEQA that is, it would be an interesting internal challenge if this would bring a non-conformity with the CEQA process. But furthermore, how does this put us as we address the next item on the agenda, that of prioritizing and the ARRA fed funds. This isn't law at this time. So we proceed as we proceed. Certainly with a level of sensitivity we have and have always displayed, but also this doesn't say that this isn't necessarily going to be adopted. We've seen many words written in proposed budget bills in the past and thankfully many of them were removed, at least the ones I've snuck in budget bills.

Diridon: I'm concerned that we didn't know about this earlier. It had to have been inserted by a legislator on the peninsula – probably the south peninsula. ... If we knew of the intent to provide that kind of an amendment, well I think we could have forestalled it.

MM: Well, if you knew that. But if you knew – what I'm saying – what occurred in the conference committee was the 2 sides negotiated and they provided the language to the conference committee and the conf. committee adopted it. And we found out once they adopted it, but what they were negotiating we weren't privy to.

Diridon: When did it come out? How long has this been available for public ___?

MM: More than a week; a week, 10 days.

Diridon: "It should have been the biggest red light you've had go off in your office for a long time, Mehdi, as soon as you saw that language. My daughter-in-law works for Joe Simitian who I suspect is probably the author of the language. We have the ability to communicate with those people if we know what's going on, but if we get it here on a paper that's passed out to us on the day of the meeting, we don't have any ability to make remedy."

MM: Well, for the legislative budget process and the way it works, and the fact that there are billions of issues at stake, once a conference committee adopts an item, and this is relatively minor, there's virtually no room to go back and renegotiate.

RD: But the bill now has to come to the full house --

MM: the full house has to decide whether to adopt the entire ... billion dollar budget, not individual items. So once the conference committee decides to adopt that, our ability to influence that particular item is closed. Whether we know it 1 day, 2 days, or a week.

RD: What I see in this language is either the Peninsula corridor is not going to receive stimulus funds or we're going to be stuck in court for a long time over this language as to whether or not it required us to do a full additional environmental evaluation of additional corridors. We can't go back and do a program level evaluation of all those corridors and still meet the stimulus bill schedule; I don't see a way in the world to do that. In fact, we're already one month over the schedule. We have to scope down one month in order to meet the schedule without doing this-

Kopp: --Let me, wait a minute, let me -- I do not disagree at all, I agree with everything you've said except with respect to the stimulus bill, I'll ask the exec director, we'll get to the item in a couple minutes. Will our stimulus application still contain those items -- the grade separation, electrification, signaling system, communication system, automatic train control system -- that we have been discussing since last December as probable candidates for our application?

MM: We are, as of now, continuing to proceed with the stimulus and that includes the SF-SJ corridor we still think that it's possible. We have also looked at the language and we are not quite sure yet in terms of what the full impact is going to be. It could be something we can deal with in a relatively short period of time or it could be that it gets tied up for a very long period of time. And that depends on what the intent was, how it's interpreted and how it's going to be read. Mr. Pringle is correct in that the language is there, but what does it mean hasn't been quite analyzed and made clear what it is and exactly what we would have to do.

Kopp: may I suggest that we suspend further comment 'til we reach the ARRA item and the director complete his report.

MM: Two other items: you asked for legal opinions... are sent in your book for you to read. Finally I did receive a letter from Solomon & assoc law firm recommending that we should be looking at an alternative station at TBT different from what the TBT Joint Powers Authority has designed. Providing his legal opinion that based on that opinion we're obligated to look at that. I've referred that letter and the contents to Chris Brown, our legal counsel, to review and provide us with comments. Again, we'll have to look at the options. That concludes my report.

50:30 Kopp: Election of chair/vice chair. Asking for nominations.Pringle.

?: Recognizing dire need for legislative experience, I nominate Umberg.

...

Public Input (5 or so speakers.)

1:18:00 Brian Stanke on behalf of ??? for HSR: speaking of the importance of the Central Valley. Advocating for CV over SF and LA as a priority.

1:20:00 **Policies and procedures.** Long discussion about the policies and procedures. Diridon concerned about "All" communication with contractors must be through Exec Dir. Said that board members have communications with them all the time. Proposed that "directive" communication must go through staff.

1:38:20 **ARRA Application**

Morshed reports that FRA is asking for the universal size of the project, not just what's being applied for. He recommends that they include all the corridors.

One of the things that they are asking is that all potential applicants give them the list of all the potential projects that they may be asking by July 10. And our reading of that is that what they want to know is the universal projects that we will be applying for -- not that actually we are applying for it -- what are some potentials.

And in looking at the guidelines provided to us and the conditions consistent with the past action of the board we are recommending that the 3 corridors that are in the current schedule meet the federal deadline for start and completion be forwarded to the FRA as potential projects that we will be asking for ARRA funding, and that also for the Track I -- and I'm using Track I as a reference that FRA uses, which is the first funding part -- that we apply for funding for all our engineering and environmental work for the next 4 years. But in terms of the list of the 3 corridors, and you have a table in there that points out which each one of the corridors

are, and you can see that the total cost is over \$15 billion. That shouldn't scare anybody or raise an alarm because this is the universal project. Between now and the deadline for application we have to go through and actually do additional homework in terms of finding out which portion of those corridors are going to be capable of going out to contract and actually be constructed and meet the federal requirement that that segment is constructed with ARRA money is going to have an independent utility. And that's a key item. To be eligible for fund it has to have independent utility without additional funds. So there is more work to be done. Once we finish with the application it's going to be substantially less than the \$15 [billion] but that is currently in this table. Our application is going to be limited to these 3 corridors. These are the 3 corridors of the current schedule we believe we could meet the deadline. We also – part of our application – the board will have to discuss and come up with the suggestions about, for each one of those corridors, how much money we're going to be asking from the federal government and how much local and state dollars will be used to match those federal dollars. Because obviously we have the bond money and we were planning to do this so there is some of those are going to be state and local matching – there are, financially, some of the work in those corridors are going to involve some significant amount of local match. And those things will be categorized and included in our application.

That is the work that's going to take place between now and the deadline for the actual submittal application which is in October. So for now I would just like to recommend that the board approve this for submission to Caltrans to be included in the list of universal projects that we could potentially apply for federal funding and do it by the July 10 deadline. Also want to add that I received a phone call this morning from congressman Costa who said he intended to come here to speak to you in support of the staff recommendations and his plane was delayed so he wanted me to relay that message to you, and I'm doing that.

1:43:00 Kopp: I want to reverify that the application will not be in the amount of \$15B dollars.

P:

K: That will not constitute the dollar amount of the application.

M: The application is going to point out these 3 corridors and our current costs and also we're going to say that that is not our ask. That when we come in for the ask it's going to be a fraction of that and it's going to include a discussion of what the local match will be. The information is only for this purpose of informing, not as the amount that what we're applying for.

K: Motion to adopt Exec Dir.

Crane: I think what Mehdi has outlined makes sense as long as we're all on the same page about what it really means. So let me make sure I understand what it really means. And before I

clarify that, uh, we are in sales mode here. This is somebody else's money. We are going to the federal government and we are going to be asking them for some money and our objective here is to get as much of that as we possibly can. That's our goal. At the same time our goal is to minimize the use of the state bond. \$9 billion dollars for HSR. Sounds like a lot of money, but we have an enormous project to undertake here, and we have to husband those funds and use them in an optimal fashion. So ideally we use as little of the state money as possible and we talk about matching. And, we would also, Mehdi mentioned, we mentioned local match but you didn't mention private match. Now, it could well be that we're not going to have any private match for any of this because it's very early stage, maybe you're right - but if it's in - if vendor match is possible or private match is possible we ought to go for it.

And I say that for another reason because we had a number of discussion where the president talked to us and the vice president, and the Secretary of Transportation about this, and one thing they will love about California's application - and they'd mentioned this many times - is the multiplier effect. Every dollar they give us is getting multiplied more than if it goes somewhere else in the U.S. Not just because of our state money, but local money, private money, vendor money, etc. So assuming we're all in agreement that we're in sales mode here - and I say this actually in part because of the comments that were made publicly about not turning a blind eye to the Central Valley which nobody is doing or any other part of the state - we're going for money from somebody else and so we're in sales mode. We want to maximize our chances to get a maximum amount of their money. Then if what Mehdi is proposing here is to present a broad list of \$15 billion dollars to Will Kempton of Caltrans who is going to be in charge of submitting the state application, then working with Will to whittle it down to an application amount that we'll submit to the federal government - I like that. Is that what we think? <voice: Yes.> Is that what it is? Alright, great.

1:46:30 Pringle: On page 4 of agenda item 9, what is suggested here is the total cost of those 3 corridors. Is that correct? That's \$15.25 billion. And then the next section is basically half of that, with some type of match - state bond, private or local and that gets you down to \$7.7 billion - is that correct?

Morshed: That's one potential possibility, yes.

Pringle: and then there are additional funds under ... Motion, second, done.

1:48:00 **Legislative Update - Business Plan requirements - Item #10**

Morshed: Routine monthly we send you legislative info.

Steve Schnaidt gives legislative update. Starts with budget bill and the requirement to update the Business Plan.

SS: You have to do the business plan by December 15 to get the second half [of the \$139M requested state funds]. There's a 30 day review so if you submit it earlier you'd have access to the funds but if you wait until the 15th there's a blackout period and you may have some cash flow issues.

Now, the issue of the business plan is legislative and it keeps coming up again and again in legislative hearings. It seems to be a very key interest in the part of several legislators. You've heard criticism before that the BP done last fall they thought could have been more extensive and more thorough. If you remember that the budget is [?] at the time that the business plan was due. So there were some circumstances that we're all aware of. But that BP is looming out there as a very large object relative to the budget and the workings of the Authority.

Pringle: On that point, where do we stand with that? I mean, under every circumstance, I think there have been suggestions from different quarters to amend, revise, address the BP as it pertains to [?] now. With or without legislation, we probably should do that anyway. So, why can't we be proactive? Without being slapped around by the legislature.

MM: Mr. Chairman, that's a very good question. For different people, different words have different meanings. The description of the business plan provided to us, we provided to the legislature the latest and the best information that was available to us in November. At the time we gave them the best and the most accurate information available. Including ridership, including phasing of the project, including the cost of the project, including all the items that they asked. There's some staff within the legislature that said, "well, that's not adequate". But it's adequate – that's all the information we have.

P: Mr. Morshed, What are they seeking?

MM: For example, one of the things they say, "well, your ridership numbers are inaccurate". Okay? Well I don't know how to respond to that because we hired and we used Cambridge Systematics to run a contract with MTC to provide the ridership and revenue numbers – we're using ridership and revenue numbers. I don't have any other mechanism for producing new ridership and revenue numbers but we have requested funding to create a new model and start to do ridership and revenue estimating process which is going to take 2 or 3 years. With the budget this year we will engage a contractor--

P: --Mr. Morshed, you think that the ridership numbers in the BP are not supported by certain members of the legislature and that is the challenge?

MM: That's one of the challenges. Another one of the challenges is "well, give us a schedule of when you're going to build which section and how much money is it?" Well, part of the problem – 1A's requirement – is that we have to give, first of all we have to find a 50% match

from the sources before we have access to the funds. We have to maximize the use of matching money – we have to maximize it. And without knowing where the federal money is going to come from, or the cost of this, there is no physical way for us to produce that required desire which is to tell me what date you're going to start what construction. We can't.

Schenk: The Leg Analyst provided some comment on our PB as well and I for one thought they were fairly well-founded comments. I do think it is important to do an updated BP acknowledging those areas that we can't meet what the Leg Analyst or the legislators are recommending. In other words, addressing it rather than just ignoring it. But where we can, to do so and again, just speaking for myself, I would like to see our BP more in the nature of a transparent proxy than an advocacy piece. So I think we did as good a job as we could knowing what we knew then but I think it is timely and quite right, Mr. Chairman, we should do it without having the whip at our back . We should do this because it is the right thing to do.

Umberg: There are 2 items of interest for me on each piece of legislation. One, what does it do to our money; two, what does it do to the time. And so when we analyze each piece of legislation if you could add that at least to your opinion as to what each piece of legislation does with respect to delaying the project – or maybe advancing the project,

who knows – and what it's impact is on our budget, and to our ability to seek funding from other sources? That'd useful information, at least for me. I don't know about other members.

1:55:00 Diridon: "I agree with Tom, I think those are good objectives, but before we get apologetic I think we should recognize and stress what Mehdi commented on a moment ago, and that is that we provided 2 prior business plans based on the very best information we had at the time. In 2001 and 2008. And that material was accomplished by the best consultants in the world. Selected by competitive bids. Now maybe we have a staff member for senate committee that's a better consultant than they are, and is therefore critical, but I don't think we should be apologetic at all for those prior business plans based on the data available at the time. You can't create data out of whole (?) cloth. Now if we're going to go way beyond that, it's going to take a long time. And it's going to cost a lot of money. If we're going to reiterate prior – we're going to create a business plan based on previously available data, I'm not sure we're going to be able to go far beyond the 2008 business plan. Okay? And I worry about the cost, but I *really* worry about the delay that it costs."

Pringle: Well we have a number of bills in front of us with recommendations from you. I would like to go through them. I don't think the BP pertains t o more than a couple of them.

(SS gives instruction on where to find the info in their packet.)

Crane: I don't pretend to know much about the way legislators think, but that's never stopped me from having an opinion. But in this case, I think, what they need, what would work for us and for them, is something that won't cost us any money other than the money that we're going to spend anyway building the system – and that's momentum. I think if we start to see some validation from third parties, so for example when the fed. gov does allocate some capital to us, when we get aggressive interest from third parties in providing capital to us, or just providing the services to us, and also -- this goes back to earlier discussion about the lawsuit in Atherton and all that, you know -- Quentin has pointed out a number of times that we're talking about 8 different sections here that are in a way in competition with each other, for limited amounts of resources. And to me that's a good thing because those sections that move quickly to assemble what they need will start to show some momentum and I think that will give some comfort to the legislators who right now --

“We can't do another business plan for them for all the reasons Mehdi said. So we need to start showing some action and momentum. I think that's where our attention should be focused.”

Pringle: But I do think that if you look at the list of items on the budget, I don't necessarily believe these are all things that we have to reproduce in a BP. I think they're like quarterly updates of what's happening here. If every one of the segments is listed, I think it's to our benefit to say that all of these sections are on one matrix and it says that these are the consultants we've hired, the timeline for completion that's being proposed, the present cost estimates, the present ridership estimates, and we can update things like that on a quarterly basis to have a broader more universal dissemination of that information into the legislative body. I think sometimes people wonder what's happening, and I think sometimes we even wonder what's happening in a segment by segment process. We can't come here once a month and hear an update on *one* segment and somehow know everything that's happening. So I think there needs to be more means by which we're informed and at the same time sharing it with our legislative friends and foes so they see that there's progress going on, and to add to your point, and therefore they see that momentum because there are – as Mr. Kopp suggested – there are scores of consultants, there's bodies working every day, there's money being expended, there's advancement toward completion of env work being done every single day in multiple segments across the state. And nobody may be able to just put their finger on all of that. And maybe we need to figure out how to make sure that information is provided on a regular basis to us, and thus a regular basis to the legislative membership.

2:00:00

Pringle: So we have a number of bills before us. And even though I know the greatest pressure comes from budget language that could in fact harm us, are you recommending that we take an oppose position on the language of the budget? Is that one of the things you're asking for?

MM: Mr. Chairman, as I pointed out, we are providing you with the information on the legislation. We're not asking for any action by the Board. Only in case you want any action.

Pringle: Very good. Then let's get focused on the bills you are seeking recommendation on, is that right?

MM: We're not seeking recommendations on any of the bills.

... (clarification on staff's purpose for reporting)

Kopp: Mr. Chairman. This **AB 153**, we're the sponsor, correct? Alright. The only thing I find in here that's absolutely necessary is hiring outside legal consult if we need it, but we don't need it now. The use of Caltrans for some services. I say, Mr. Chairman, forget the bill. Forget it.

MM: That particular bill, the author has actually left it with the committee for now. She's not planning to pursue it at this time.

...(repetitive comments)

Pringle: if the author is already dropping, so be it.

Kopp: I don't want to leave this. I don't know what the author will do a week from now, two weeks from now. The author may want to use that bill for something else. I think we ought to send a letter saying that we're not pursuing.

SS: Perhaps a comment will help inform your decision. The bill was to be presented before the Senate Transportation Committee. The Chairman asked that it be put over so that proposed amendments could be drafted by staff. While we saw those amendments and the author saw those amendments the day before the hearing, they were quite prescriptive and expanded the bill including intent language that says the project is misunderstood and really people don't understand this project. They wanted to put in a process for public outreach – a formal program – they wanted to put in a process for negotiating with [?] for local street closures. The author, Fiona Ma, looked at that and my understanding is she is not inclined to move the bill at this time.

P: Mr. Morshed, you don't believe there's a need for the bill to move forward with the original language?

MM: It's not essential for our operation.

Pringle: Mr. Kopp suggests that we write a letter to author suggesting we no longer need the bill and we withdraw our support of it. All in favor? Aye. Done.

...

Pringle: Let's not go bill by bill, just cover the ones you want our direction on.

2:04:40 Steve Schnaidt: There are 2-3 others that should be coming to your attention. **SB409** is the reorganization bill by Sen Ducheny. It would create a dept of Railroads. The Authority would become a division of that dept. The Executive Director would go away, be replaced by Division Chief; the Dir of RR would become your Chairman and substitute for Mr. Pringle. [joke] The bill is an unfinished product, let's say. [more jokes] I would invite your attention to that bill. It is proceeding in the senate, but it would make major structural changes to the board and governance of the board and the relevance of the Authority would become unclear in my view. I would invite your attention to that.

Katz?: We have a 'work with author' on that, I think? Why don't we have a straight-out oppose? I want to defend this Chairman.

Pringle?: Well, I want to defend this Body.

Katz: Seriously, this raises a lot of issues. There are a lot of issues of concern once this gets swept into the agency in terms of our ability to protect funds – including federal funds – the bureaucracy that becomes another part of Caltrans, and no disrespect to my friends at Caltrans but part of the reason I think this commission – this Authority - has been successful – other than Sen. Kopp's leadership, of course - is that the reason we are in the position we are is because we have a stand-alone, high profile, high risk, public support for HSR. And I think just folding into the bureaucracy runs against the grain of that.

P: Does this allow us to continue to use outside engineering contractors and such?

SS?: Well that would be a good question because many details are not fleshed out and would be subject to a task force that would be after the bill becomes law to work those out. Something else I should bring to your attention – there are some initial indications from staff counsel that this could raise significant issues with the bond – the passage of the bond, and the clearance of the bond relative to a bond council opinion for the sale of bonds.

Pringle: What would be the ramifications, other than maybe getting the author's attention, of us modifying our position to an oppose position?

?: What's the down side?

SS: Uh, the down side. Any time you oppose a bill it raises questions from the author. But I think it's in your interest to determine what's best for the Authority. I would say that if this bill would become law right now it would present significant problems for the operation of --

Pringle: I think it's all kind of – so let's don't beat around the bush; if the bill is a death knell to something, you don't say we want to suffer a mild death. You say we don't like the idea. And to say we want to watch to a monitor request the death of this organization, I don't think that's really how we'd want to send a signal. So I do like Mr. Katz's suggestion.

Schenk: I certainly endorse that position; it's not just a matter of the death knell to the Authority, but a major - a major roadblock to the project. It's premature. Maybe someday, you know, when we're up and running, and it's appropriate to put it into this kind of a department, but it is not appropriate at this moment. I certainly support Com. Katz's proposal --

P: Motion to modify our position to oppose? (yes) (seconded) Comments?

2:08:55

Umberg: A question to counsel. As I recall, Prop 1A specified that the Authority had responsibility and the authority to deal with certain issues with respect to the bond. Can the legislature basically subvert the will of the voters as abiding Prop 1A by passing 409 and then somehow changing the mechanism?

Attorney Tony?: The bond act, Prop 1A, refers not only to the Authority but to the successor organization. The problem that Mr. Schnaidt is referring to regarding the bond is not what you're referring to regarding the bond is that if you don't have a single successor agency – if you have a rather complicated arrangement that replaces what is now clearly a sole entity, namely the Authority, it may undermine the possibility to get an unqualified bond agreement. Now I'm relaying to you what our bond consultant Mr. H? is relaying to me. In other words you can't bifurcate or split the Authority – that's the powers of the authority – and stay in harmony with the bond act.

U: So it seems as though we want to both vigorously oppose and also make known that this is going to cause grave impediments to the bond and so that not only the legislature knows, but also the governor's office knows early on. Is that the sense of the Authority?

P?: Wise that we oppose it. We have a motion that's before us. Any further comment?

Kopp: The letter expressing opposition should be – as always – carefully prepared.

MM: Mr. Chairman, I would recommend that we prepare a draft letter submitted to you and Mr. Katz who is the original person who submitted the motion and anybody else who would like to see it, and once we get your comments in we'll send it under your signature.

Florez: I also, in reading this, it's going to go to Appropriations, I think we need to be there. Whenever that comes up, we need to be notified and we need to be there.

P?: Has this extended beyond the deadlines of bills moving out of the house of origin so it's a two year bill?

SS: No, this bill was granted waivers to supersede the deadlines, so this bill has been given a clear path through the Senate.

P?: Has it gotten a waiver to be heard when there's no senate hearings being held?

SS: That's an operational problem. The senate has suspended its hearings indefinitely but I would think that once the budget is completed that they would resume maybe after the recess, if there is a recess, when the budget's completed.

P: Motion to send letter of opposition and to oppose 409, aye, passed.

2:12:17

SS: **SB455**, Sen. Lowenthal. It started out as some technical provisions that the authority staff thought were important and counsel conforming. When it came to print it had many other things: it would set additional criteria for the selection of phases, it would make the gov's appointee subject to confirmation by the senate; it would require quarterly progress reports adopted formally by you; it would require essentially – and the way we read it and the consultants read it - any change order to the project would have to be blessed by the authority at its monthly meeting; and the construction I've talked to say that would be unworkable. There would have to be some threshold at least, high threshold of cost relative to the change orders or you'll be bogged down in minutia and that *would* delay the project significantly in my view. The bill is quite comprehensive. It would create a lot of work for you. Under the issue of oversight, the proposal is based on transparency and oversight of the Authority. The author and sponsors want to see more information produced to the legislature on a periodic basis. Now I'm not criticizing that, I'm just saying this bill is comprehensive; it includes a lot of things that you should pay attention to and you may want to visit that. It is proceeding in the assembly. It's interesting to note that the senate bills of this nature are proceeding through the legislature, but the bills that the authority has supported & sponsored on the assembly side have been bogged down in the senate. So there's kind of a dual process going on: One process is slow or stopped and the other process is moving quickly.

P: We presently have that bill as a monitor position. Does anybody feel that we should do anything different than that?

Kopp: Well, this raises the same questions as the prior discussion, to a lesser degree. This is not a bill that enhances the ability of the Authority to complete this project at the least amount of money. It's a 'make work' bill for us. I will leave it to others at the moment to understand why

we shouldn't send a letter of opposition to this, too. With all that is already in law that we are obligated to perform.

Pringle: I actually think we should maintain a monitor position on this, and seek to make sure Mr. Lowenthal continues to hear our concerns on that. One item is that if it does ever pass, addressing the gubernatorial aspect that certainly gives the governor reasons why he may not like it. We have a lot of time to address the potential opposition if we wish to do that.

Pringle: any other discussion on the legislative report?

2:16:05

Steve Schnaidt: The last one. **SB783** Ashburn – is related to the prior discussion. It would require a formal business plan every 2 years starting in 2012. Because the budget includes a business plan for this cycle and every 2 years thereafter you would have to redo the business plan in the same form – a comprehensive plan. It'd become a binding task. I bring it to your attention.

Schenk: Redoing the business plan doesn't mean redoing the entire business plan. We ought to think about the same page here – providing information, providing transparency, providing update. It doesn't mean going back and doing everything all over again. That was my point earlier.

P: mr. Allen on #10.

Allen: Item #8, the Altamont Pass - don't forget that BART is a better choice than trying to put a tunnel under the Altamont Pass.

Diridon: Did we conclude our discussion regarding **the amendment in the budget bill**?

P: Unless there's action by this body, nothing's been concluded.

2:17:50

Diridon: "May I address it just one more time because I think it's a major, major issue for anyone who wants to see the Peninsula corridor receive ARRA funds. Because one of the primary criteria both at the state level in terms of forwarding the project on and at the federal level will be readiness. And readiness in this context will be a legal decision. Because if we set aside – if we *willingly* set aside our program level certification for the Peninsula corridor then it's not a simple task to go back and get a recertification. I don't think it can be done in two years."

Pringle: So what are you suggesting? If you wish to make a motion, make it and then we'll talk about it.

D: "My comment will lead then into a motion that would suggest that we communicate directly with Senator Simitian – that we send a delegation of board members and staff to Sen. Simitian and try to explain the process to him so that he's aware of the impact of his amendment and then work with whatever procedure you who are past legislators feel most effective to mitigate that language."

P: Well if you wish to make that a motion you certainly can. I actually would like a motion to be made that says we would like to express our opposition to the second sentence in item 3 and explain why it would be detrimental to the progress of —

D?: -- that was my motion!

?: I'll second that

P: Very good. Any other discussion on that item? Because I think it should be extended beyond the members of the budget conference committee, too. If they get a budget reported, the gov's staff – I know the governor's staff are aware of these items and this language. But I want to make sure we are heard, that this could delay that section even to the point of missing out on the ARRA funds that could be provided to the state of CA for that project.

D: That's a concern.

P: And under #3, the 2nd sentence is really -- much of it is troublesome, but I think that is the most difficult because that does extend that timeline or certainly could.

Crane: In reading that language it wasn't clear to me that this would necessarily hamstring us. If I understand correctly, which I probably don't, 3 requires us to come up with alternative alignments; 4 requires us to -- says we can only spend \$139M less \$70M before January 1, but after January 1 we can spend that \$70M but only if we comply with those 4 items, and the way we comply with those 4 items is to submit a revised bus plan. In other words all we have to do is submit.

P: Right. We aren't tackling every element of the language as a concern. Mr. Diridon's point was on section #3, the 2nd sentence primarily, which our legal counsel has suggested could call into question, which we already approved, which is the program level EIR to make us reopen that whole process of redesignating or reanalyzing the alternative alignments and if that happens that does add many, many months or years to further review of that section. So I think that's what is the most troublesome. Is that correct, Mr. Diridon?

D: That's accurate. I don't have a concern about the rest of it. I think we can comply with the rest of it in a timely manner. But item 3 I don't think we can comply with – Tony might want to comment – but I don't think we can comply with it.

P: Mr. Crane, if we focus our concern and articulate why the process living within CEQA could be extended beyond the time we could qualify for federal money I think it's a much more powerful argument than worrying about every of the other nitpicky items that are a part of this.

Crane: I see.

D: And even if we could, with real terrific effort, do the additional studies required by para 3, we have to submit our material – our grant application – both at the state level and at the federal level with the requirement pending. I'm debating in support of the motion.

P: Very good. If you made it you don't have to debate it more. So the motion before us is to send a letter to the legislative leadership and others expressing our opposition to the second sentence of item 3 of the info counsel has provided us and explain why we have a concern as it pertains to timing, eligibility for federal funding. Moved, seconded. Passed.

2:23:30

Pringle: Item #8, **Project Phasing**

MMorshed: Item #8 has been before you a number of times, once again I want to emphasize to all of you that this item and this issue is one of the most important, critical and relevant part of your activities in the next few years. Because you have a very large project that involves building a brand new railroad from SF-LA and Anaheim with a very large price tag. And the issue will be how you prioritize your activity over the next 10 years. Which segments go 1st, 2nd, 3rd, what are the reasons for selecting those, and make sure that the whole selection process is objective and transparent. And in order to proceed with that we need to have clear objective and a clear process in place for those activities to take place. We have brought to you a number of times piece by piece these items and today I like to have Kent Riffy go over that again with you. And as you indicated, Mr. Chairman, I recommend that as a follow-up to that, that at the next board meeting you have a workshop and allow more time for the board members to have open discussion amongst themselves as well as the consultants answer relevant questions, have maps on wall and some of the other things so we can get a real good handle as to what are the steps that need to take place, how the decisions are going to be made, how the funding is going to fit into those decisions; why are we doing environmental impact report on this corridor, and why are we buying right of way in that corridor, and the whole schedule.

Kent Riffy: Mr. Chair, when one looks at a program of this magnitude, it's overwhelming with respect to timeline. It becomes quickly apparent that now is the time that the Authority must put together a midrange and long range plan that integrates the major program elements together into a single cohesive plan that is aligned with avail funds. Therefore what we propose at this time is a process for the programming of those major elements in a 5 year span (2010 to 2014) followed by a longer range forecast based on best info available at this time in order to move the SF to Anaheim project to revenue service by 2020. The plan would be prepared through a rigorous process which Mr. Morshed touched on that would include board participation as well as public review. The plan would include, among other things, it would include the environmental process through the notice of determination and the record of decision. It would include engineering major activities, the regulatory approvals, right-of-way acquisition, major procurements to include rolling stock, among others – very major portions of this program – and the construction that would be part of the plan, and then it would identify, again, the best estimate that could be placed on the funding requirements for each of those years for those elements that must occur that we determine collectively should occur in those individual years. Identify the funding requirements that go with it and probably funding sources. The plan would also tentatively identify design, build, and P3 contract segments, selected within each section guided by a set of selection criteria, criteria which would establish priorities. However, I'd have to qualify the selection of the design build and P3 segments to say that any such section selected at this point in time would have to be considered very preliminary subject to further validation as we proceed on.

Earlier this year the infrastructure management group presented an approach for prioritizing project segments. And the process that we propose builds on that process that they made at that time. So the process as we would envision it, the basic process, would be to, in a workshop, to identify the current status: where are we today with the environmental activities and the engineering activities and what can be forecast into the future with any degree of reliability. Where we are and where we believe that this program is headed. That would be followed by looking at the estimated funding requirements and the probably funding sources and following agreement upon a set of criteria that would establish the priorities for the various major elements then go back and make any adjustments until the criteria are agreed upon, look at the adjustments and the sequencing of those activities to reflect those priorities. And very importantly, at the very end it's extremely important that all key assumptions and key qualifications that go along with placing this priority here and that major element there that we document what those assumptions are and the major qualifications.

The intended outcome for that process then, is for the authority to adopt a project programming plan that integrates the major project activities, priorities and funding considerations into a single document for each section within Phase 1, for each year, 2010

through 2014, with a longer range view as we can best project at this time. The plan we believe would provide a prioritized roadmap for moving the project forward, and of course the plan would have to be periodically updated to reflect further development in the program as the projects develop, to keep it current. I believe Mr. Morshed, you're going to comment on next steps?

2:31:15

MM: The next one would be a workshop and what I just want to point out for those of you who are familiar with the state transportation improvement program ... the outcome of this activity would be something similar to that for the HSR. a 5-year improvement program with specific dates and times and schedule and that will be a program for which we'll be drawing our budget needs, our negotiations with our contractors. So that's what the outcome of this activity will be. I'm hoping if we move fast enough we'll have this in place by Sept, Oct.

P: These are all challenging issues particularly when there's a lot of segments and a lot of interest now that they're going to be built. I think one of your challenges, and therefore The Authority has to contemplate, is that once a segment is initiated, does that entire segment need to be built in one phase, is there timing on that phase, how that construction should proceed; if dollars are limited to a particular section, once we make a commitment to a section, do we fulfill that commitment to the very end or do we shift dollars around and maintain that so that all segments are operating, are moving forward in construction at the same time. I think all of those are the things that you want us to sit down and really discuss. But I also asked Mr. Morshed to provide for every one of you a bit of the language that's in AB 3034 which was the updated language that was a part of the bond act that talks about that same issue in terms of prioritizing segments or corridors and much of this language is also what we have to fall back on in terms of how that prioritization takes place. It does say at the beginning that the initial prioritization should be made on those where the total cost of construction are state bond money of total cost of construction is the lowest – that's 1 criteria; but it also outlines 4 other points of criteria that "the authority shall include the following". There is prescribed in law some sort of prioritization that we can't avoid, nor should we.

Katz: I'm wondering also if there – I know when there's fed \$\$ involved you cannot have a CA preference for construction in CA. I guess part of my question to staff or the council would be, are there ways that we can do segments, for instance, can we build some segments with state and local funds and other segments with federal. Rather than -- I think we need to be creative to look at the color of our money and are there ways to build parts of this with our CA preference.

P: I think that as we sit in a workshop and discuss all of those things it's certainly something we should consider. Just the construction contract itself – if you take the lowest cost segment which is the LA-Anaheim segment – that still is over \$3B so it is suggested that that segment may have to be built in 3 sep. sections where you have 3 or multiple contractors to get the maximum value out of your bids instead of just a couple contractors who may be able to do the whole contract at once therefore if you have federal money that comes in for that section, I think it is possible for us to contemplate how that some of those dollars can go to one end or one segment or one contractor delivering work in some area and the other contractor could be just state or local funds. I think it's possible to explore how that would work.

K: I want to make sure it's on our radar, I understand that it's touchy, it's difficult, but if there's any way that the folks that are paying all the bills on this can jobs on it –tax dollars - we ought to figure out how to do that.

MM: my request to each one of you is to give it some thought as to the key things that should be included in the process of setting priorities because these are some major public policy issues that we give it some thoughts and be ready next time.

P: we'll be ready with these thoughts. Any other?

Kopp: I want to be certain – we are adopting III, is that correct? The plan of action. Hmm?

P: I believe item 8 is information only.

[Closing comments about items 9-11.]

P: Public comment? No one else wishes to be heard.

[Meeting went to closed session then adjourned.]