

amount per broker-dealer regardless of the quantity of issues traded, and concern regarding the cost of acquiring the technology necessary if they opt to receive the TOPO Plus raw data stream.<sup>57</sup> The Commission believes that, in the Phlx Letter, the Exchange addressed the commenters' concerns in clarifying that the Exchange would only consider them to be Internal Distributors (and thus subject to a \$4,000 monthly fee) if they opt to receive the TOPO Plus data as a raw data feed. The Exchange noted that the commenters could opt to receive TOPO Plus from an External Distributor, whereby they would be considered Professional Subscribers. In such a case, the proposal would charge an External Distributor \$20 per month for each Professional Subscriber to whom it distributes the feed and Phlx notes that the External Distributor may pass through the Professional Subscriber fee to its subscribers, along with any other fees agreed upon, which should be significantly less than the monthly distributor fees proposed under the proposed rule change.

Though the Commission notes the commenters cost concerns regarding receiving the TOPO Plus raw data stream, if the commenters choose to receive the raw data stream, they would be subject to the same technology constraints and costs in dealing with the data as other market participants. In addition, the Commission notes that the Exchange has stated that it would make the SOF data feed available for those current SOF users that may encounter issues beyond their control that render them unable to migrate to TOPO Plus before June 1, 2010.

## V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b)(4), (5), and (8) of the Act.<sup>58</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>59</sup> that the proposed rule change (SR-Phlx-2010-48) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>60</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Adoption of Environmental Impact Statement; Availability of an Environmental Reevaluation

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Adoption and Recirculation of Final Environmental Impact Statement and Notice of Availability of Environmental Reevaluation.

**SUMMARY:** FRA is issuing this notice to advise the public and interested agencies that FRA has decided to adopt portions of the Environmental Impact Statement (EIS) issued by the Federal Transit Administration (FTA) in 2004 for the construction of the Transbay Transit Center (TTC) in San Francisco, California, in order to satisfy FRA's National Environmental Policy Act obligations related to funding the train box element of the TTC. Additionally, FRA has made available an Environmental Reevaluation of the EIS, updating certain relevant sections of the environmental analysis and describing design modifications to the train box. Under applicable Council on Environmental Quality (CEQ) regulations, FRA may adopt and recirculate the FTA's Final EIS since FRA's proposed action is substantially the same as the action covered by the FTA's EIS, and FRA has determined that the FTA EIS meets the standard for an adequate statement under the CEQ Regulations. In addition, under FRA's environmental procedures, FRA is required to issue a reevaluation of the adequacy, accuracy and validity of a final EIS in certain circumstances, which the agency has also done for this project.

**FOR FURTHER INFORMATION CONTACT:** Melissa DuMond, Environmental Protection Specialist, Federal Railroad Administration, 1200 New Jersey Ave., SE, MS-20, Washington, DC 20590, Telephone: (202) 493-6366.

**SUPPLEMENTARY INFORMATION:** The FTA and the Transbay Joint Powers Authority ("TJPA") prepared a joint environmental impact statement/environmental impact report for the Transbay Terminal/Caltrain Downtown/Extension Redevelopment Project ("2004 EIS"). The 2004 EIS included an analysis of the environmental impacts of the Caltrain Downtown Extension, the establishment of a redevelopment area plan, and the construction of the TTC on the site of the existing Transbay Terminal at First and Mission Streets in

San Francisco, California. The purpose of the project is to improve public access to bus and rail services, modernize the Transbay Terminal and improve service, reduce non-transit vehicle usage, alleviate blight, and revitalize the Transbay Terminal area. The TTC will replace the existing Transbay Terminal, which was first built in 1939, because the existing Terminal does not currently meet seismic safety or space utilization standards. In addition to the above mentioned benefits, the 2004 EIS contemplated a future high-speed rail system at the TTC in the form of a rail box that could accommodate high-speed rail trains. On the basis of the 2004 EIS, the FTA issued a Record of Decision (ROD) in 2005. In response to project modifications and refinements, the TJPA adopted five addenda to the EIS, which are described in the Environmental Reevaluation.

The Transbay Terminal project is divided into two construction phases, which have been refined through the five addenda to the 2004 EIS. Phase 1, which relates to the portion of the 2004 EIS adopted by FRA, includes the above-grade portion of the TTC and limited below-grade structural support work including the train box. Phase 2 includes the construction of the Downtown Extension. Under this notice, the FRA is adopting the portions of the 2004 EIS dealing with Phase 1 construction as it directly relates to the FRA's funding of the train box under the High-Speed Intercity Passenger Rail Program.

The American Recovery and Reinvestment Act ("Recovery Act") provided \$8 billion to the FRA as initial funding for the High-Speed Intercity Passenger Rail Program. The Secretary of Transportation selected the California High-Speed Rail Authority ("CHSRA") to receive up to \$2.25 billion from the Recovery Act to fund the development of high-speed intercity passenger rail service in California. As the TTC has been demonstrated to be the only feasible and practicable site in downtown San Francisco for the northern terminus of the California high-speed rail system, FRA proposes to provide up to \$400 million of the CHSRA Recovery Act funding to the TJPA in order to construct the train box designed to accommodate the future high-speed rail service at the TTC. Constructing the train box now results in substantial savings over options involving later construction of high-speed rail facilities under an already completed TTC.

The CEQ regulations allow Federal agencies, such as the FRA, to adopt

<sup>57</sup> See *supra* notes 23-24 and accompanying text.

<sup>58</sup> 15 U.S.C. 78f(b)(4), (5), and (8).

<sup>59</sup> 15 U.S.C. 78s(b)(2).

<sup>60</sup> 17 CFR 200.30-3(a)(12).

environmental documents prepared by another Federal agency when the proposed actions are “substantially the same” and the adopting agency has concluded that the initial statement meets the standards for an adequate statement under the CEQ regulations. 40 CFR 1506.3. Furthermore, the CEQ regulations state that when the actions are substantially the same, “the agency adopting the agency’s statement is not required to recirculate it except as a final statement.” *Id.* FRA has conducted an independent review of the 2004 EIS for the purpose of determining whether FRA could adopt it pursuant to 40 CFR 1506.3. FRA’s review concluded that FRA’s action in funding the train box is substantially the same as the action documented in the 2004 EIS, that the EIS adequately assessed the environmental impacts associated with the train box and meets the standards of the CEQ NEPA Regulations (40 CFR parts 1500 through 1508), and that the FRA can adopt the 2004 EIS. CEQ’s regulations implementing NEPA strongly encourage agencies to reduce paperwork and duplication. 40 CFR 1500.4. One of the methods identified by CEQ to accomplish this goal is adopting the environmental documents prepared by other agencies in appropriate circumstances. 40 CFR 1500.4(n), 1500.5(h), and 1506.3.

In order to comply with its obligations under Section 106 of the National Historic Preservation Act, 16 U.S.C. 470 *et seq.*, the FRA also intends to join the existing Memorandum of Agreement (MOA) between the FTA and the California State Historic Preservation Officer. That MOA describes the roles and responsibilities of the parties and will allow FRA to take into account the potential effect of the FRA’s action on historic properties pursuant to the requirements of Section 106. In addition, the 2004 EIS includes a final determination according to the requirements of Section 4(f) of the Department of Transportation Act of 1966. 49 U.S.C. 303. Section 4(f) requires that projects undertaken by DOT must avoid using parks, recreational areas, wildlife and waterfowl refuges, or public and private historical sites unless there is no feasible and prudent alternative, and the action includes all possible planning to minimize harm to the property. By adopting the 2004 EIS, the FRA is also adopting the FTA’s Final Section 4(f) Evaluation and will therefore be in compliance with the requirements of that statute.

Furthermore, FRA’s Procedures for Considering Environmental Impacts (64 FR 28545, May 26, 1999) require the

reevaluation of a Final EIS if major steps toward implementation of the proposed action have not commenced within three years from the date of approval of the final EIS. The reevaluation is required to determine whether the final EIS is still accurate, adequate and valid. As described above, the train box was an element of the 2004 EIS; however, design modifications to the train box occurred, and the Environmental Reevaluation provides an update to those sections for which new information is available that is pertinent to the proposed action in Phase 1 of the Transbay Terminal project. In accordance with the Environmental Protection Agency’s (EPA) requirements regarding the filing of EISs, FRA has provided the EPA with a notice of adoption and five copies of the FTA’s Final EIS and the Environmental Reevaluation. EPA will publish a notice of availability of the Final EIS in the **Federal Register** consistent with its usual practices. Because of the multi-volume size of the FEIS and its continued availability in libraries in the affected community and on the TJPA’s and FRA’s Web sites, FRA is not republishing the document on its own. This would be costly, defeat CEQ’s goals of reducing paperwork and duplication of effort, and be of little or no additional value to other agencies or the public. The Environmental Reevaluation is also available on the TJPA’s Web site ([www.transbaycenter.org](http://www.transbaycenter.org)), on the FRA’s Web site (<http://www.fra.dot.gov>), and at libraries in San Francisco, San Bruno, and Oakland, California. FRA has mailed a notification of FRA’s adoption and identified places where the 2004 EIS and the Environmental Reevaluation are available to persons and parties of record who have participated in the most recent phase of the 2004 EIS process, as well as to elected officials, local transit agencies, regional agencies, local media, and potentially interested community organizations. Comments on the 2004 EIS or the Environmental Reevaluation may be submitted no later than June 28, 2010 to Melissa DuMond at the address noted above.

The final stage in the environmental review process under NEPA is the issuance of a Record of Decision by the agency describing the agency’s decision and the basis for it. Under the timelines included in the CEQ regulation (40 CFR 1506.10), a Record of Decision cannot be issued by an agency earlier than thirty days after the EPA publishes its **Federal Register** notice notifying the public of the availability of the final EIS. Any Record of Decision issued by the FRA will be consistent with 40 CFR 1505.2

and section 15 of FRA’s Procedures for Considering Environmental Impacts.

*Accordingly, FRA has adopted and is recirculating the 2004 EIS and has issued an Environmental Reevaluation.*

Issued in Washington, DC, on May 28, 2010.

**Joseph C. Szabo,**

*Administrator.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Environmental Impact Statement: Calvert and St. Mary’s Counties, MD

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of withdrawal.

**SUMMARY:** The FHWA is issuing this notice to advise the public that a prior Notice of Intent to prepare an Environmental Impact Statement (EIS) for the proposed roadway widening and bridge replacement project in Calvert and St. Mary’s Counties, Maryland (**Federal Register** Vol. 72, No. 203; FR Doc. 07–5190) is being withdrawn and an Environmental Assessment (EA), in lieu of an EIS, is being prepared for this proposed highway project.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jeanette Mar, Environmental Program Manager, Federal Highway Administration, DelMar Division Office, City Crescent Building, Suite 2450, 10 South Howard Street, Baltimore, Maryland 21201; Telephone: (410) 779–7152, e-mail address: [Jeanette.Mar@dot.gov](mailto:Jeanette.Mar@dot.gov).

**SUPPLEMENTARY INFORMATION:** The Federal Highway Administration (FHWA), in cooperation with the Maryland State Highway Administration (SHA), is advising the general public that SHA conducted studies of the potential environmental impacts associated with the proposed roadway widening and bridge replacement of MD 4 from MD 2 to MD 235 in Calvert and St. Mary’s Counties, a distance of approximately 4.1 miles.

Improvements to the corridor are necessary to improve existing capacity and traffic operations, and to increase vehicular, pedestrian and bicycle safety along MD 4, while supporting existing and planned development in the area. Improvements to the bridge are necessary due to inadequate shoulder widths, major traffic delays and/or closures currently occur along the Thomas Johnson Memorial Bridge during crashes and maintenance