

SERVICE DATE – DECEMBER 3, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35544

DESERTXPRESS ENTERPRISES, LLC, AND DESERTXPRESS HSR CORPORATION—
CONSTRUCTION AND OPERATION EXEMPTION—IN VICTORVILLE, CAL., AND
LAS VEGAS, NEV.

Digest:¹ In connection with a pending request to modify the authorized route for the rail line sought to be constructed in this case, the Board's Office of Environmental Analysis prepared an environmental memorandum based on a review conducted by the Federal Railroad Administration and the Board now seeks public comment.

Decided: December 2, 2020

On July 28, 2011, DesertXpress Enterprises, LLC (DesertXpress), and its wholly owned subsidiary, DesertXpress HSR Corporation (collectively, DXE) filed a petition under 49 U.S.C. § 10502 for an exemption from the prior approval requirements of 49 U.S.C. § 10901 to construct and operate an approximately 190-mile rail line for high-speed passenger rail service between Victorville, Cal., and Las Vegas, Nev. (the Line). The Federal Railroad Administration (FRA), with the cooperation and participation of the Board's Office of Environmental Analysis (OEA), conducted an environmental review of the proposed project by preparing an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA).² Following an examination of the entire record on both the transportation merits and environmental impacts of the proposed project, the Board, by decision served on October 25, 2011 (October 2011 Decision), granted the petition for a construction and operation exemption, subject to environmental conditions and the condition that DXE construct the FRA-designated Selected Alternative. See October 2011 Decision, FD 35544, slip op. at 8.

On March 27, 2019, DesertXpress filed a petition to reopen this proceeding, seeking modification to the condition in the October 2011 Decision authorizing construction of the

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² On July 8, 2011, FRA published its Record of Decision (ROD) approving the environmentally preferred alternative for the route, facilities, and technology (Selected Alternative), subject to 146 mitigation measures to avoid or minimize potential adverse environmental impacts. (See DXE Pet. for Exemption, Ex. D (July 28, 2011).)

Selected Alternative route in order to permit the Line to be constructed along a different route, referred to as the I-15 median alignment. In an order served by the Director of the Board's Office of Proceedings on June 24, 2019, the Board noted that FRA had agreed to reevaluate the environmental review relied upon by the Board in the October 2011 Decision in light of the alignment changes proposed by DesertXpress and that OEA would participate in that process as a cooperating agency.

On September 15, 2020, DesertXpress filed a letter stating that FRA had completed its reevaluation³ and concluded that a supplemental EIS is not required in connection with the proposed project modifications. (DesertXpress Letter 2.) DesertXpress also asserts that "[t]he Board need not revisit the [October 2011 Decision'] findings with respect to the transportation merits of the Line," as "[n]one of those findings would be affected by substituting the modified I-15 median alignment for the side-running alignment previously designated by FRA." (*Id.* at 2 n.4) Accordingly, DesertXpress asks the Board to grant its pending petition to reopen the October 2011 Decision to revise the routing condition to provide that it may build the route alignment and project design designated by FRA in its reevaluation of the project. (*Id.* at 3.)⁴

In furtherance of its responsibilities under NEPA, OEA has examined FRA's reevaluation and prepared a memorandum, which is attached to this decision, discussing OEA's recommendations. OEA concludes that FRA's reevaluation adequately assesses the potential environmental impacts associated with DesertXpress' project modifications and concurs with FRA's determination that a supplemental EIS is not necessary. (OEA Mem. 13.) Accordingly, OEA recommends that the Board consider FRA's reevaluation, along with the EIS, when it decides whether to authorize DesertXpress' project as modified. (*Id.* at 13-14.) Mitigation measures previously recommended in the 2011 Final EIS and imposed in FRA's ROD were refined in the course of preparing the reevaluation to account for the project modifications. Therefore, OEA recommends that, in any decision approving the proposed project modifications, the Board impose the revised mitigation measures recommended in FRA's reevaluation. (OEA Mem. 14.)

Interested persons may file comments in this proceeding by December 23, 2020.

³ The reevaluation is available on FRA's website at <https://railroads.dot.gov/environment/environmental-reviews/desertxpress-xpresswest-las-vegas-victorville>.

⁴ The Board notes that review of historic and cultural resources is ongoing pursuant to Section 106 of the National Historic Preservation Act and that the agency cannot issue a final decision modifying the routing condition, if appropriate, until that process is complete. See Mid States Coal. for Progress v. STB, 345 F.3d 520, 554-55 (8th Cir. 2003). Currently, FRA is continuing work on the Programmatic Agreement necessary to complete the Section 106 process. (OEA Mem. 3.)

It is ordered:

1. Comments are due by December 23, 2020.
2. This decision is effective on its service date.

By the Board, Board Members Begeman, Fuchs, and Oberman.



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Environmental Analysis

MEMORANDUM

TO: Ann Begeman, Chairman
Martin Oberman, Vice Chairman
Patrick Fuchs, Commissioner

Cc: Allison Davis
Director, Office of Proceedings

FROM: Victoria Rutson *ujr*
Director, Office of Environmental Analysis

DATE: November 4, 2020

SUBJECT: Docket No. FD 35544, DesertXpress Enterprises, LLC and DesertXpress HSR Corporation – Construction and Operation Exemption – in Victorville, Cal. and Las Vegas, Nev.: Environmental Memorandum

This memorandum summarizes the reevaluation undertaken by the Federal Railroad Administration (FRA) to determine whether supplemental environmental analysis under the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 *et seq.*, was warranted to address proposed project modifications for DesertXpress Enterprises, LLC's (DesertXpress), and its wholly-owned subsidiary, DesertXpress HSR Corporation's (collectively, Applicant)¹ construction and operation of a 190-mile high-speed rail line between Southern California and Las Vegas, Nevada. This memorandum also presents the Office of Environmental Analysis' (OEA) final recommendations to the Board based on FRA's reevaluation, including a recommendation that the Board impose the revised environmental mitigation in FRA's Reevaluation in any decision authorizing the project as modified.

INTRODUCTION

On July 28, 2011, the Applicant filed a petition under 49 U.S.C. § 10502 for an exemption from the prior approval requirements of 49 U.S.C. § 10901 to construct and operate approximately 190 miles of high-speed passenger rail line between Victorville,

¹ In its reevaluation, FRA referred to the project as the "DesertXpress Enterprises LLC XpressWest High-Speed Train Project," and noted that the project was formerly known as the "DesertXpress Project."

California and Las Vegas, Nevada (Line). The purpose of the Line was to create an alternative transportation option (in addition to auto and air) from Southern California to Las Vegas. The Applicant planned to operate as a common carrier providing passenger rail service on the Line.

The Board, through its OEA, participated in the environmental review as a cooperating agency under the lead of FRA.² A number of other agencies, including the Bureau of Land Management (BLM), the Federal Highway Administration, the National Park Service, the California Department of Transportation (Caltrans), and the Nevada Department of Transportation (NDOT), participated in the environmental review process as cooperating agencies or consulting parties. FRA, with the assistance of the cooperating agencies, including the Board through OEA, prepared a Draft Environmental Impact Statement (DEIS) in March 2009, a Supplemental DEIS in August 2010, and a Final Environmental Impact Statement (FEIS) in March 2011.³

The EIS identified a preferred alternative and developed environmental mitigation conditions to avoid or minimize that alternative's potential environmental impacts. Following the issuance of a Record of Decision (ROD) by FRA, the Board considered the entire record on both the transportation and the environmental issues and granted the Applicant's petition for exemption on October 25, 2011, subject to environmental conditions and the condition that the Applicant build the route designated in the EIS and ROD as environmentally preferable. Despite having the requisite agency approvals to construct and operate the Line, the project was not immediately constructed.

In 2018, the Applicant proposed design modifications to the alignment, station locations, operations maintenance storage facility, and some ancillary facilities. FRA agreed to work with other federal and state agencies and the Applicant to prepare a written reevaluation⁴ to determine whether a supplemental EIS would be needed under NEPA. The Board, through OEA, participated as a cooperating agency with FRA in its reevaluation process.

On March 27, 2019, the Applicant filed a petition with the Board to reopen this proceeding, seeking modification to the condition in the October 2011 decision

² FRA was the lead agency in the environmental review because of its jurisdiction and expertise related to high-speed train operations and railroad safety. See DesertXpress Enters., LLC & DesertXpress HSR Corp.—Constr. & Operation Exemption—in Victorville, Cal. & Las Vegas, Nev., Docket No. FD 35544, slip op. at 4 n.6 (STB served Oct. 25, 2011).

³ The DEIS, Supplemental DEIS, and FEIS are referred to collectively as the EIS.

⁴ In accordance with FRA's Procedures for Considering Environmental Impacts (64 Fed. Reg. 28545, May 26, 1999), if major steps toward implementation of the proposed action have not occurred within the time frame, if any, set forth in the Final EIS, or within five years from the date of approval of the Final EIS, a written reevaluation of the adequacy, accuracy, and validity of the Final EIS shall be prepared, and a new or supplemental EIS prepared, if necessary.

authorizing construction of the rail line along the previously selected preferred alternative route due to the Applicant's proposed design modifications and other changes. By decision dated June 24, 2019, the Board indicated that the Applicant's petition to reopen would be addressed in a subsequent decision after FRA had completed its Reevaluation and issued its findings. FRA's Final Reevaluation document (Reevaluation) was approved by FRA on September 9, 2020.

FRA'S REEVALUATION

FRA's Reevaluation analyzes whether new information, changed circumstances, or design refinements to the proposed action (collectively referred to as the project modifications) require the preparation of a supplemental EIS under NEPA.

FRA assessed the project modifications alongside the proposed action described in the EIS and ROD. FRA determined that the project modifications would result in similar impacts to those evaluated in the EIS and concluded that the project modifications would reduce certain environmental impacts of the proposed action. The Reevaluation updated and revised some mitigation measures developed in the EIS to address changes in the affected environment and project modifications since publication of the EIS. Based on the analysis and findings in the Reevaluation, FRA concluded that the project modifications, with the implementation of the proposed mitigation, do not constitute changes to the proposed action that would result in significant environmental impacts that were not evaluated in the EIS.

In addition, no new information or circumstances relevant to environmental concerns regarding the proposed action were identified that would result in new significant impacts. FRA's Reevaluation also identified regulatory changes that had taken effect since the issuance of the EIS, and the affected environment was analyzed to ensure that the conclusions of the EIS remain valid given the passage of time and updates to the regulatory setting. Based on the analysis in the Reevaluation, FRA concluded that a supplemental EIS is not required and that the proposed project modifications are consistent with the proposed action described in FRA's EIS and ROD.

FRA continues to work with relevant federal and state agencies to complete reviews required by other environmental laws. FRA is working with the appropriate consulting parties to complete federal historic preservation review under Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. § 306108). The Programmatic Agreement (PA) concluding the historic review for the proposed action, executed in 2011, expired prior to initiation of the Reevaluation. FRA therefore reinitiated consultation under Section 106 and will develop a new PA memorializing the completion of the Section 106 consultation for the project.

PROJECT MODIFICATIONS

The Reevaluation focuses on the modifications to the project footprint and facilities listed below that have been proposed since the issuance of FRA's ROD:

- **Alignment.** The rail alignment between Apple Valley⁵ and Las Vegas would be modified to be located primarily within the I-15 freeway median with portions following the east side of the I-15 freeway. The reevaluated alignment is illustrated below.
- **Stations.** Passenger stations include the Dale Evans Station in Apple Valley and the Warm Springs Station in Las Vegas. These facilities would be constructed on undeveloped land. Although stations were analyzed previously, the current footprints of the modified stations were not evaluated in the EIS.
- **Operations Maintenance Storage Facility (OMSF).** The OMSF includes a lead track, loop tracks, storage tracks, and maintenance and storage buildings. The OMSF is co-located with the Dale Evans Station in Apple Valley. Although OMSF sites were analyzed previously, the footprint of this facility was not previously evaluated in the EIS.
- **Ancillary Facilities.** Ancillary facilities include temporary construction areas, negative shoulders, roadway reconstruction areas, utility corridors, electrical substations, paralleling sites, emergency crossovers, and a maintenance of way (MOW) facility. The project modifications include ancillary facilities that were not previously evaluated in the EIS.



SUMMARY OF ENVIRONMENTAL CONSEQUENCES

⁵ As noted in FRA's Reevaluation, the Applicant's project modifications include relocating the Victorville terminus and Dale Evans Passenger Station to within the Town of Apple Valley.

To determine whether project modifications would result in substantial changes to the evaluation of environmental impacts described in the EIS, FRA reassessed each of the environmental resource areas analyzed in the EIS in the Reevaluation. FRA considered the following environmental topics using publicly available resources: land use, community, and environmental justice impacts; growth; farmlands and grazing lands; utilities/emergency services; visual resources; paleontological resources; geology and soils; hazardous materials; energy; and cumulative impacts. The Reevaluation explained that impacts of the project modifications on these topics would be unlikely to occur, or were easily assessed using publicly available information, and were provided primarily in qualitative terms. The remaining resource areas were discussed in technical reports containing focused, quantitative analysis.

Mitigation measures were evaluated for each resource area to determine if new or modified mitigation measures would be required to address the modified project's environmental impacts.

Land Use, Community, and Environmental Justice Communities

The evaluation of land use, community, and environmental justice impacts in the Reevaluation considered changes to the project footprint, existing land uses, community demographics, and local land use designations. According to the Reevaluation, the modified alignment would reduce the project's land use impacts relative to the alignment analyzed in the EIS. The preferred alternative considered in the EIS would have traversed residential areas between Apple Valley and Barstow, as well as commercial areas between Barstow, California and Las Vegas, Nevada. The modified alignment is located within the I-15 freeway right-of-way (ROW), which would eliminate the need to convert residential or commercial land uses to a transportation use, resulting in fewer land use impacts relative to the impacts discussed in the EIS.

Since publication of the EIS, changing demographics have resulted in a greater number of environmental justice communities within the project corridor. Specifically, minority populations have increased along the I-15 freeway corridor. The modified alignment would remain primarily within the I-15 freeway ROW, avoiding division or other direct impacts to nearby communities. FRA determined that the type and magnitude of impacts resulting from the proposed project modifications would be comparable to those identified in the EIS, and the mitigation recommended in the EIS to address noise, dust, traffic, visual resources, and utilities would still apply. Thus, the impacts to land uses, communities, and environmental justice communities would be minimized or avoided.

Growth

The evaluation of growth impacts in the Reevaluation included construction-period and operational employment projections. According to the Reevaluation, the overall economic setting, population projections, and employment estimates for the project vicinity have not substantially changed since the publication of the EIS. Although the project modifications would require marginally less construction activity than considered in the EIS, construction would still introduce a substantial amount of

temporary jobs to the project region. The project modifications would not substantially change the amount of permanent employment required for project operation. FRA concluded that the mitigation measures developed in the EIS would still apply to minimize or avoid the project growth effects. Thus, the type and magnitude of impacts resulting from the project modifications would be comparable to those identified in the EIS.

Farmlands and Grazing Lands

The farmlands and grazing lands evaluation in the Reevaluation considered newly designated farmlands and grazing lands not evaluated in the EIS, as well as a new project footprint that would encounter previously unevaluated farmlands or grazing lands. Review of farmlands in the modified project vicinity did not reveal the presence of new designated farmland. Grazing land designations in the modified project vicinity have changed since publication of the EIS. Because the modified project's alignment would be primarily within the I-15 freeway ROW, FRA determined that design modifications would avoid impacts on farmlands and grazing lands outside the I-15 freeway ROW identified in the EIS. Where project modifications would place ancillary facilities and stations outside of the I-15 freeway ROW, mitigation measures developed in the EIS would minimize or avoid impacts to farmlands and grazing lands. Accordingly, FRA concluded that, with mitigation, the type and magnitude of impacts resulting from the project modifications would be comparable to those identified in the EIS.

Utilities/Emergency Services

The evaluation of utilities and emergency services in the Reevaluation considered changes to the project footprint, updated ridership assumptions, and the capacity of local utility providers. Although the project modifications would relocate the station sites and maintenance facility originally analyzed in the EIS, the Reevaluation concluded that these modified facilities would remain of a similar size and scope to facilities considered in the EIS. Additionally, the modified project would incorporate design guidelines provided in the 2011 DesertXpress Highway Interface Manual to allow for emergency vehicles to cross portions of the project alignment located within the I-15 freeway ROW at access-controlled emergency crossovers. According to FRA, the modified project facilities would not require greater utility or emergency services than the facilities evaluated in the EIS. As the modified project ridership would not increase beyond the estimates established in the EIS, the demands on utility and emergency services would similarly remain unchanged. Utility providers in the project vicinity would still maintain sufficient capacity to supply the modified project. FRA determined that the mitigation measures developed in the EIS would minimize or avoid impacts on utility and emergency services. Thus, FRA concluded that the type and magnitude of impacts resulting from the project modifications would be comparable to those identified in the EIS.

Traffic and Transportation

The traffic and transportation analysis in the Reevaluation considered the following factors:

- **Updated ridership estimates.** Ridership refers to the number of passengers that would utilize the project to travel between Las Vegas and Apple Valley. Ridership estimates for the modified project allow for quantification of future traffic volumes created by riders accessing the station sites.
- **Modified station sites.** Evaluation of the modified station sites considered potential impacts to adjacent intersections and roadway segments that were not evaluated in the EIS.
- **Updated analysis years.** The EIS evaluated traffic conditions for the project opening year (2013) and a future buildout year (2030) to account for an increase in ridership over time. The analysis in the Reevaluation identified a modified opening year (2023) and a modified buildout year (2042).

Relative to the traffic studied in the EIS, the Reevaluation concluded that the proposed project modifications would result in similar traffic impacts. Unlike the previous Victorville Station sites considered in the EIS, the Dale Evans Station and OMSF site would avoid impacting nearby intersections. The Dale Evans Station and OMSF would result in a traffic increase along a segment of the I-15 freeway. The Warm Springs Station would result in similar intersection impacts as those originally identified for the Las Vegas Station sites at different intersection locations than were evaluated in the EIS. According to the Reevaluation, mitigation measures developed in the EIS would minimize or avoid these impacts through implementation of roadway improvements. FRA also revised certain mitigation measures in the EIS to address the specific traffic impacts resulting from the modified station sites. With implementation of these revised mitigation measures, FRA concluded that the type and magnitude of impacts resulting from the project modifications would be comparable to those identified in the EIS.

Visual Resources

The visual resource evaluation in the Reevaluation considered project modifications and newly designated areas of visual sensitivity. FRA determined that construction and operation of the modified alignment would include fewer elevated track structures than previously considered, and therefore would reduce the alignment visibility in portions of the corridor. Additionally, the modified alignment would result in fewer visual impacts than those analyzed in the EIS because it would be constructed adjacent to the I-15 freeway or within the I-15 freeway median. Relocated stations and the OMSF would remain in a similar visual setting and of a comparable size to the stations and OMSF evaluated in the EIS. New ancillary facilities would be collocated with existing facilities of a similar nature, and previously evaluated ancillary facilities would not change substantially in size or location. Thus, FRA concluded that the type and magnitude of impacts resulting from the project modifications would be comparable to those identified in the EIS because aesthetic treatments and mitigation measures developed in the EIS would still apply to the modified project during construction and operation.

Cultural Resources

The reevaluation of cultural resources considered archaeological resources, ethnographic resources, and historic built environment (architectural) resources.

Concurrently with the preparation of the Reevaluation, FRA reinitiated consultation in accordance with Section 106 of the NHPA, and its implementing regulations.

For the Reevaluation, FRA made a preliminary identification of cultural resources potentially impacted by the modified project based on records searches, tribal consultation, and pedestrian and reconnaissance field surveys. This approach is consistent with the approach FRA used to evaluate impacts to cultural resources in the EIS. FRA concluded that the modified project would encounter new archaeological resources and historic built environment resources that were not previously evaluated. FRA found during development of the Reevaluation that cultural resources identified within the modified project footprint are of a similar type and quality as the resources originally evaluated in the EIS. FRA prepared a Cultural Resources Technical Report to document this reevaluation.

During preparation of the EIS, FRA, the cooperating agencies, and the State Historic Preservation Offices, with input from the Applicant and Native American tribes, developed a PA in compliance with Section 106 to identify the process for formal determination of cultural resources eligibility. For NEPA purposes, survey work was conducted to identify potentially affected resources, and the EIS included an assumption of resource eligibility to inform the evaluation of impacts to these resources. This preliminary identification and evaluation of effects was conditioned on execution of a PA. The PA was executed in 2011 and established numerous requirements intended to ensure appropriate treatment of historic resources during project construction. The PA also stipulated protocols for how and when formal eligibility determinations would be made. The PA expired in 2018 and, as noted above, the project did not proceed to final design and construction.

In 2019, FRA reinitiated the Section 106 consultation to identify potential cultural resources associated with the modified project. The consulting parties listed below are participating in the reinitiated Section 106 consultation.

- Advisory Council on Historic Preservation;
- California and Nevada State Historic Preservation Officers;
- Federally recognized Native American tribes with an interest in the project area;
- Federal agencies (Bureau of Land Management, FRA, the Board, Federal Highway Administration, and United States Army Corps of Engineers);
- Nevada DOT; and
- Caltrans.

As part of the Reevaluation, FRA prepared draft technical reports to identify and evaluate historic archeological and built environment resources. The final reports will be used to document compliance with Section 106. Based on the information in the draft technical reports, FRA has determined that the project modifications would not result in substantial changes to the evaluation of cultural resource impacts from the EIS.

In accordance with 36 C.F.R. Part 800, FRA intends to continue to move forward with the Section 106 process in consultation with the appropriate parties. In response to requests from several consulting parties subsequent to its finalization of the Reevaluation,

FRA has decided to resolve any adverse effects to historic archeological and built environment resources through the execution of a new PA.

Hydrology and Water Quality

The hydrology and water quality assessment in the Reevaluation considered changes in the duration of the construction period, changes in floodplain maps in the project vicinity, new project footprint across hydrologic resources, and regulatory updates regarding the definition of jurisdictional Waters of the U.S. The modified project would change the location of hydrological and water quality impacts. Because the modified project would be of the same general size, location, and scope as that evaluated in the EIS, FRA determined that the overall magnitude of impacts of water quality, drainage patterns, stormwater runoff, and groundwater availability would not change relative to the EIS analysis.

The modified project footprint would encounter new floodplain areas designated after the publication of the EIS. Notably, the Warm Springs Station would be located within a new 100-year floodplain area not evaluated in the EIS. Mitigation measures identified in the EIS require raising the elevation of structures within floodplains and avoiding the placement of construction materials within floodplains. FRA determined that these measures would adequately reduce impacts associated with newly encountered floodplain areas. Other mitigation measures developed in the EIS avoid impacts on water quality, drainage patterns, flood flows, stormwater runoff and groundwater availability. FRA determined that the mitigation recommended in EIS would still apply. Thus, FRA concluded that the type and magnitude of impacts resulting from the project modifications would be comparable to those identified in the EIS.

Geology and Soils

The analysis of geology and soils impacts in the Reevaluation considered where the project modifications would require a new footprint and could therefore encounter previously unevaluated geologic and soil features. According to the Reevaluation, where new geologic features or hazards, such as ground fissures, could have formed since the EIS, mitigation measures developed in the EIS would adequately address such impacts. Assessment of the modified project footprint determined that previously unevaluated footprint areas overlap areas subject to the same geologic and soil hazards evaluated in the EIS. FRA determined that the mitigation measures developed in the EIS would adequately minimize or avoid geology and soil impacts. Thus, FRA concluded that the type and magnitude of impacts resulting from the project modifications would be comparable to those identified in the EIS.

Paleontological Resources

The paleontological resource evaluation in the Reevaluation considered areas where the project modifications overlap geologic units that could contain paleontological resources. Assessment of project modifications determined that the modified project footprint entirely overlaps geologic units assessed in the EIS. FRA determined that the mitigation measures developed in the EIS would minimize or avoid the modified project

impacts on paleontological resources. Thus, FRA concluded that the type and magnitude of impacts resulting from the project modifications would be comparable to those identified in the EIS.

Hazardous Materials

The hazardous materials evaluation in the Reevaluation considered sites of environmental concern (sites where spills or releases of hazardous materials have occurred), unidentified hazardous materials, buildings constructed before 1980 that may contain lead-based paint or asbestos, and naturally occurring asbestos and erionite (a known carcinogen). As the project modifications would not increase the scope or intensity of construction, the use of hazardous materials during construction was not considered as a source of previously unevaluated impacts.

The project area remains mainly undeveloped with the same limited areas of industrial activity that could result in the release or spill of hazardous materials. According to the Reevaluation, the modified project may encounter previously unevaluated hazardous materials sites of environmental concern, but such sites would be unlikely to result in new types or higher quantities of hazardous materials than those considered in the EIS. As the project would remain of a similar overall scope as considered in the EIS, the severity and location of impacts from unidentified hazardous materials and buildings constructed before 1980 would be unlikely to change. The Reevaluation also reviewed naturally occurring hazardous materials (asbestos and erionite) that were not considered in the EIS. This investigation determined that the presence of naturally occurring asbestos and erionite was unlikely to occur within the project area. FRA determined that the mitigation measures developed in the EIS would minimize or avoid any hazardous material impacts associated with the modified project. Thus, FRA concluded in the Reevaluation that the type and magnitude of impacts resulting from the project modifications would be comparable to those identified in the EIS.

Air Quality and Global Climate Change

The air quality and global climate change technical analysis in the Reevaluation evaluated emissions generated during construction and operation of the modified project. Relative to the EIS analysis, the modified project would require less construction activity because the overall project footprint would be smaller. The modified project would also require fewer miles of elevated track (viaduct) and would eliminate tunneling, which would reduce the intensity of construction activities from that assumed in the EIS. As a result, air quality and global climate change impacts during construction would be reduced relative to the effects identified in the EIS.

The operational air quality and global climate change analysis in the Reevaluation reached the following conclusions:

- **Emissions resulting from electricity demand to power trains.** An analysis of energy needs under the project's modified operating plan determined that less electricity would

be required to power the trains when compared to the EIS analysis. This reduction would reduce offsite emissions from power plants generating electricity used by the project.

- **Mode-shift from passenger vehicles.** The EIS originally concluded that the project would reduce automobile trips between Apple Valley and Las Vegas by providing a less emission-intensive travel alternative. Because the modified project would still provide an alternative mode of non-automobile travel along the I-15 freeway corridor, it would reduce vehicle miles traveled along this corridor and associated automobile emissions.

- **Localized toxic air contaminant emissions.** The project modifications do not include new sources of toxic air contaminant emissions.

- **Carbon monoxide hotspots.** Carbon monoxide concentrations under the modified project would not exceed carbon monoxide concentrations quantified and disclosed in the EIS. The modified project would not result in new carbon monoxide hotspots.

The Reevaluation determined that the modified project would generate fewer criteria pollutants and greenhouse gases during construction and operation relative to the analysis in the EIS. The EIS concluded that the project would not exceed *de minimis* thresholds, and therefore a general conformity determination under the Clean Air Act would not be required. The air quality analysis in the Reevaluation indicates that the project modifications would reduce the project emissions in comparison to the EIS, and thus the project modifications still would not exceed the *de minimis* threshold.

Noise and Vibration

The noise and vibration analysis in the Reevaluation evaluated construction and operation of the modified project. New noise impact locations were identified due to the following factors:

- **Changes in affected environment.** Decreases in highway traffic noise levels relative to the EIS analysis would increase the relative magnitude of operational noise in the communities of Barstow, Yermo, and Las Vegas.

- **Modified Project footprint.** Changes in the project footprint would result in additional noise impact locations where the alignment would be located closer to existing residences, primarily along the east side of the I-15 freeway in Las Vegas.

- **Modified operating plan.** The modified project's updated operating plan proposes larger trainsets with more frequent headways, which would potentially increase operational noise.

The EIS included mitigation measures to reduce operational noise impacts generated by passing trains – primarily the installation of noise barriers to shield noise-sensitive land uses such as residential areas. The noise analysis in the Reevaluation identified revised noise barrier locations to mitigate and reduce noise from train operation. Thus, FRA concluded in the Reevaluation that the type and magnitude of impacts resulting from the project modifications would be comparable to those identified in the EIS.

Energy

The energy analysis to support the Reevaluation considered electricity and energy consumed during construction and operation of the modified project. The reduced project footprint and shortened construction period indicates that the modified project would likely require less energy during construction relative to the analysis in the EIS. During operation, changes to the modified project's operation plan would not result in substantial changes to the peak-period or overall energy demand. Finally, the modified project would continue to reduce vehicle miles traveled and associated energy consumption along the I-15 freeway corridor due to the transportation mode shift to passenger trains from automobiles. Thus, FRA determined that the type and magnitude of impacts resulting from the project modifications would be comparable to those identified in the EIS.

Biological Resources

The biological analysis in the Reevaluation is informed by on-going coordination with the United States Fish and Wildlife Service (USFWS). Concurrently with the preparation of the Reevaluation, FRA submitted a letter to USFWS on July 20, 2020 seeking concurrence that the project modifications do not require reinitiation of formal consultation under Section 7 of the Endangered Species Act. As described in its letter, FRA determined that this approach was appropriate because impacts on species listed as threatened or endangered and critical habitat have been substantially reduced by the Applicant's proposed changes, and in FRA's view no new impacts would occur as a result of the project modifications that were not previously addressed in the Biological Opinion issued for the project on April 26, 2011.

In addition to the Section 7 consultation process, the biological analysis in the Reevaluation considered the following factors:

- **Changes in affected environment.** Reassessment of the modified project with a focus on new areas of project footprint to determine if new/different biological resources are present from those originally evaluated in the EIS.
- **Regulatory updates.** Regulatory updates that have occurred since publication of the EIS to see if any may have changed the assignment, designation, and protection status of biological resources within the project footprint and vicinity.
- **Modified Project footprint.** Biological resource impacts that may occur in the new project footprint.

Field surveys conducted within the modified project footprint established that the biological environment has not changed substantially since the publication of the EIS. FRA concluded that the modified project would generally reduce impacts to biological resources relative to the analysis in the EIS. Mitigation measures developed in the EIS and the modified Biological Opinion would still apply and would minimize or avoid impacts to biological resources. As explained in the Reassessment, the placement of the entirety of the rail alignment and a greater portion of ancillary facilities within the I-15 freeway ROW would reduce biological resource impacts compared to the EIS.

Cumulative Impacts

The evaluation of cumulative impacts in the Reevaluation considered impacts from the project modifications in combination with current, planned, and reasonably foreseeable projects in the project vicinity. Overall, the modified project's contributions to cumulative impacts would be unchanged or reduced because of the modified project's reduced footprint and location within the I-15 freeway ROW. Review of present and reasonably foreseeable projects within the project vicinity did not identify new information that would substantially affect the cumulative impacts conclusions or assessment conducted in the EIS. FRA concluded that the mitigation measures developed in the EIS to reduce project impacts would be adequate to reduce contributions to cumulative effects from the modified project and thus, the type and magnitude of impacts resulting from the project modifications would be comparable to those identified in the EIS.

MITIGATION MEASURES

The Reevaluation updated and revised some mitigation measures developed in the EIS to address changes in the affected environment and project modifications since publication of the EIS. Some mitigation measures were removed entirely in cases where the modified project would completely avoid impacts addressed by such measures.

Mitigation measures pertaining to the following resource areas required greater revision:

- **Land Use, Community, and Environmental Justice.** A mitigation measure was added to ensure adherence to certain renewable energy development and conservation decisions by BLM in areas where the modified project would traverse BLM-managed lands.
- **Traffic and Transportation.** Mitigation measures pertaining to traffic were revised to address the traffic impacts at the modified station sites.
- **Noise and Vibration.** Mitigation measures pertaining to noise were revised to address noise impacts at new noise sensitive areas.
- **Biological Resources.** Relocation of the alignment within the I-15 freeway ROW would avoid some biological resources impacts, thus eliminating the need for several mitigation measures identified in the EIS.

The Reevaluation concludes that the mitigation measures developed in the EIS, with the revisions described above, would avoid or minimize the modified project impacts such that additional environmental review is not warranted.

OEA'S FINAL ENVIRONMENTAL RECOMMENDATIONS

After participating in the reevaluation process and reviewing FRA's Reevaluation documentation, OEA concludes that the Reevaluation adequately assesses the potential environmental impacts associated with the Applicant's project modifications and concurs with FRA's determination that a supplemental EIS is not necessary. Accordingly, OEA recommends that the Board consider the FRA's Reevaluation, along with the EIS, when

it decides whether to authorize the Applicant's project as modified. Mitigation measures previously recommended in the EIS, and imposed in FRA's ROD and the Board's prior decision, were refined in the course of preparing the Reevaluation to account for the project modifications. Therefore, OEA recommends that, in any decision approving the proposed project, the Board impose the revised mitigation measures recommended in the Reevaluation.