

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
May 31, 2018
Part of
Public Record

Finance Docket No. 36025

**TEXAS CENTRAL RAILROAD AND INFRASTRUCTURE, INC. & TEXAS CENTRAL
RAILROAD, LLC – AUTHORITY TO CONSTRUCT AND OPERATE – PETITION
FOR EXEMPTION FROM 49 U.S.C. § 10901 AND SUBTITLE IV – PASSENGER RAIL
LINE BETWEEN DALLAS, TX AND HOUSTON, TX**

**REPLY IN OPPOSITION
TO
PETITION TO REOPEN**

Karyn A. Booth
David E. Benz
THOMPSON HINE LLP
1919 M Street N.W., Suite 700
Washington, D.C. 20036
Phone: (202) 331-8800
Fax: (202) 331-8330

Attorneys for Delta Troy Interests, Ltd.

May 31, 2018

TABLE OF CONTENTS

	<u>Page</u>
Table of Contents.....	i
List of Exhibits.....	iii
I. Summary of Argument	2
II. Reopening is Not Warranted.....	4
A. No circumstances have changed and reopening is not warranted because the alleged “Reservation and Ticketing Agreement” does not contain an enforceable through ticketing provision	4
B. The alleged “Voluntary Coordination Agreement” does not warrant reopening.....	7
C. TCR should be required to obtain a declaratory order from a court before seeking reopening	8
D. Even if some form of through ticketing is found to exist, reopening should be denied because the proposed TCR project remains outside Board jurisdiction	10
E. TCR has effectively admitted that it is a non-jurisdictional interurban electric railway.....	12
III. Reopening is Not Warranted on the Current Record Because the True Moving Entity Behind the Project is Unknown.....	14
IV. Even if Reopening Occurs, the Board Should Require TCR to File an Application.....	17
A. Delta Troy previously showed that an Application is required	17
B. The California High-Speed Rail project confirms that TCR should use an Application.....	17
C. Significant litigation and opposition confirms that the exemption process is not appropriate for the TCR proposal	20
V. If Reopening Occurs, the Board Should Take Several Other Steps to Ensure a Proper Consideration of this Unprecedented Project.....	21
A. TCR should be required to substantiate its funding sources, as the Board required in the recent <u>Great Lakes Basin</u> case	21
B. TCR should be required to update the details in its Petition for Exemption	22

	<u>Page</u>
C. The Board should order TCR to re-designate certain material in the Petitioners' Response to Replies to Petition for Exemption.....	23
VI. Conclusion	23

Exhibits

Number	Brief Description
1	TCR Ridership Brochure (“Transforming Travel in Texas: Assessing passenger demand for high-speed train service between North Texas, the Brazos Valley, and Greater Houston”)
2	TCR Press Release (May 4, 2018) (“Texas Central, Amtrak reach agreement to link Bullet Train and Amtrak’s interstate passenger network”)
3	Integrated Texas Logistics, Inc.’s Verified Petition in Intervention and Application for Injunctive Relief (filed May 4, 2018), <u>Miles v. Texas Central Railroad & Infrastructure, Inc. et al.</u> , Cause No. 16-0137CV (Leon County District Court)
4	“Our Company” from TCR website (May 15, 2018)
5	Intervenor Texas Central High-Speed Railway, LLC’s Motion for Partial Summary Judgment (filed March 7, 2017) in <u>Texans Against High-Speed Rail, Inc. v. Paxton</u> , Cause No. D-1-GN-16-000942 (Travis County District Court)
6	Verified Original Petition and Application for Injunctive Relief (filed Aug. 15, 2016) in <u>Texas Central Railroad & Infrastructure, Inc. v. Delta Troy Interests, Ltd.</u> , Cause No. 201654130 (Harris County District Court)
7	Correspondence from Rep. Kevin Brady to Chairman Elliott and Board Members (filed May 13, 2016) regarding STB Finance Docket No. 36025
8	“No Eminent Domain for Texas High Speed Rail” (dated May 14, 2016), excerpt from website of Rep. Kevin Brady
9	“The High-Speed Intercity Passenger Rail (HSIPR) Grant Program: Overview” (October 18, 2016), Congressional Research Service, R44654

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36025

**TEXAS CENTRAL RAILROAD AND INFRASTRUCTURE, INC. & TEXAS CENTRAL
RAILROAD, LLC – AUTHORITY TO CONSTRUCT AND OPERATE – PETITION
FOR EXEMPTION FROM 49 U.S.C. § 10901 AND SUBTITLE IV – PASSENGER RAIL
LINE BETWEEN DALLAS, TX AND HOUSTON, TX**

**REPLY IN OPPOSITION
TO
PETITION TO REOPEN**

Pursuant to 49 C.F.R. § 1104.13(a), Delta Troy Interests, Ltd. (“Delta Troy”) hereby replies in opposition to the Petition to Reopen (“Petition”) filed by Texas Central Railroad and Infrastructure, Inc. and Texas Central Railroad, LLC (collectively, “TCR”) on May 4, 2018.¹ The Surface Transportation Board (“Board” or “STB”) should deny the Petition, which asks the Board to reopen this proceeding based on alleged “changed circumstances.” As described herein, reopening is not warranted because the proposed project is not within the Board’s jurisdiction. If reopening does occur, the Board should require TCR to submit an Application for its proposed project and take certain other steps, as described below.

The Petition implicates and relates to many issues previously-addressed by Delta Troy in this proceeding, and, consequently, Delta Troy respectfully requests that the Board incorporate and consider Delta Troy’s previous filings in ruling on TCR’s Petition.

¹ The due date for responsive pleadings was extended to May 31, 2018 in a decision served by the Board on May 15, 2018.

I. Summary of Argument.

The Board should reject TCR's thinly-veiled attempt to gain the preemptive power of federal law for its unprecedented and controversial proposal to forcibly take the land of Texas landowners for a rail project that lacks basic necessities such as funding and sufficient riders. TCR bases its attempt solely on a tentative plan to work with Amtrak on ticketing issues, but this meager effort has not even begun to scratch the surface of the many jurisdictional, procedural, and substantive problems inherent in TCR's intrastate rail project proposal.

The assertion of "changed circumstances" due to a purported arrangement with Amtrak for through ticketing should be rejected. This arrangement includes no enforceable through ticketing provision and, at most, signifies nothing more than an agreement to agree. Even assuming the new Amtrak arrangement includes enforceable through ticketing, reopening is still not warranted because TCR's proposed passenger rail project remains outside the Board's jurisdiction under a consideration of all relevant facts. As was made clear in the earlier phase of this proceeding, TCR's proposed intrastate passenger rail line would not be part of the national rail network. It would be a completely closed, insular system, with no track connections to other railroads and no use of Amtrak stations. Instead, it would rely on proprietary Japanese technology that is not used by any other railroad in the United States.

If reopening were to occur, the Board should require TCR to file an Application for this unique, first of its kind, and highly-controversial rail proposal. The Board's exemption process is not appropriate for complex, novel, and widely-opposed proposals like that advanced by TCR. The California High-Speed Rail ("CHSR") project is the poster child for why an Application

should be required here and why a thorough Board evaluation of the TCR proposal is necessary.² CHSR has suffered massive cost increases, significant project delays, and federal and state audits in the years since Board authorization. These circumstances counsel that extreme caution should be exercised when considering high-speed rail projects. This is doubly true for the TCR proposal, which is privately promoted and not subject to the normal openness and free accessibility of information that occurs in government projects like the CHSR. TCR's Dallas-to-Houston proposal is shrouded in uncertainty, with a concerted lack of information available to interested parties, as TCR's excessively-redacted Response to Replies to Petition for Exemption (filed June 20, 2016) confirmed. An ever-evolving series of private entities has been promoting the project, only two of which have sought Board authority, and only the Board has the ability to investigate the web of relationships among the six or more project proponents. As the economic regulator of the nation's railroads, the Board has a legal duty to carefully evaluate the assertions and claims supporting the TCR proposal before the consequences of this epic, unprecedented project cause irreversible harms. If TCR wants the benefit of federal preemption that comes with a Board-authorized project, then the project must be subjected to critical Board review. The Board is not and should not be seen only as a "rubber stamp," especially for a proposal that would have such far-reaching consequences for landowners, citizens, the economy, governance, wildlife, and the land itself in Texas. An Application should be required.

In the event of reopening, the Board should also (1) require TCR to substantiate its funding for the proposed project in light of Board precedent such as Great Lakes Basin, STB Docket No. 35952, (2) require TCR to explain how it will avoid the cost overruns and funding problems that have plagued the CHSR project, which, like TCR, would be a new-build high-

² The Board previously granted Petitions for Exemption covering two segments of the CHSR project, in STB Docket Nos. 35724 and 35724 (Sub-No. 1).

speed passenger railroad, (3) require TCR to support its project cost estimates, ridership claims, and other assertions, (4) require TCR to explain the ever-expanding web of entities pursuing this project, (5) require TCR to update, and correct the inconsistencies in, its previous filings in this docket, (6) schedule public hearings in Texas, and (7) order re-designation of certain material improperly redacted from TCR's earlier filings.

II. Reopening is Not Warranted.

TCR supports its Petition exclusively through reliance on two alleged agreements with Amtrak: a "Reservation and Ticketing Agreement" and a "Voluntary Coordination Agreement." TCR asserts that these two agreements warrant Board jurisdiction for the proposed project because of the "through ticketing" and other arrangements described therein. See Petition at 3. Close evaluation of the asserted agreements reveals that they do not actually require TCR to engage in through-ticketing with Amtrak. Furthermore, the agreements lack indicia of enforceable contracts; even if enforceable, the two agreements consist of measures that are irrelevant or insufficient to justify Board jurisdiction.

A. No circumstances have changed and reopening is not warranted because the alleged "Reservation and Ticketing Agreement" does not contain an enforceable through ticketing provision.

The Reservation and Ticketing Agreement ("RTA") does not actually require TCR or Amtrak to engage in through ticketing; therefore, no circumstances have changed that would support the exercise of Board jurisdiction and reopening is not warranted. Under standard contract formation principles, a contract must be "sufficiently definite" as to material terms, such as the subject matter, price, and duration.³ "If the essential terms are so uncertain that there is no

³ See, e.g., Eastbanc, Inc. v. Georgetown Park Associates II, L.P., 940 A.2d 996, 1002 (D.C. 2008) (quotation and citation omitted). The RTA invokes District of Columbia law. See RTA at § 13.

basis for deciding whether the agreement has been kept or broken, there is no contract.”⁴ The RTA lacks essential terms, including the scope of services to be provided, the price, and the duration. These three topics are seemingly covered in Section 1 (scope), Sections 2.1 and 2.2 (price), and Section 11.1 (duration); however, a close inspection of Section 2.1 reveals that no definitive agreement has been reached in any of these three areas.

Section 2.1 states that “[p]rior to the development of Reservation and Ticketing Services, Amtrak and Texas Central **shall agree upon the scope and cost of work required** to develop and implement the Reservation and Ticketing Services, **and Texas Central shall provide to Amtrak notice in writing to proceed** with such development and implementation” (emphasis added). Thus, Section 2.1 makes clear that TCR and Amtrak have not yet agreed upon either the scope of the “through ticketing” services, or the price that TCR will pay for such services. Section 2.1 also gives TCR unilateral and unfettered discretion to decide when, if at all, Amtrak provides the through ticketing services described in Section 1. In other words, TCR could simply refrain from giving “notice in writing to proceed” to Amtrak. The RTA could expire as soon as three years after TCR operations begin. See RTA at § 11.1. Due to the failure to agree on the scope and price, and also the fact that TCR could simply avoid triggering the start of through ticketing, the RTA does not contain an enforceable through ticketing provision. Indeed, the entire RTA may not be an enforceable contract. “To have a valid contract, all terms should be definitely agreed upon, and the failure to agree to even one essential term means there is no agreement to be enforced.”⁵

The RTA also evinces a lack of agreement between TCR and Amtrak regarding the details of the “through ticketing” arrangement. The key provisions about “through ticketing” are

⁴ RESTATEMENT (SECOND) OF CONTRACTS § 33, Comment a (1981).

⁵ 17A AM. JUR. 2D *Contracts* § 181 (2004).

found in Section 1⁶ – yet this Section clearly reveals that TCR and Amtrak have not yet agreed upon the governing terms. As shown in the following excerpts, each of the four sub-sections of Section 1 include language indicating that TCR and Amtrak have not yet reached agreement:

- “TCRR shall provide to Amtrak up-to-date, complete and accurate information regarding its fares and schedules and consumer policies **in the manner mutually agreed upon by the Parties.**” § 1.1 (emphasis added).
- “TCRR shall accept all Through Tickets generated by Amtrak in accordance with the Reservation and Ticketing Services Technical Specifications, **to be mutually agreed upon by the Parties.**” § 1.2 (emphasis added).
- “The technical requirements and schedule for implementing and hosting the Reservation and Ticketing Services **shall be mutually agreed upon by the Parties.**” § 1.3 (emphasis added).
- “**The Parties agree to explore** opportunities for providing (a) reservations and tickets for travel solely on TCRR Rail Service through Amtrak’s reservations and ticketing channels, and (b) Through Tickets for transportation on both TCRR and Amtrak trains through the reservation and ticketing systems to be developed by TCRR. The fees and payments applicable to the sale of such tickets shall be **upon such terms as the Parties may agree.**” § 1.4 (emphasis added).

As shown above, TCR and Amtrak agreed to agree in the future on several significant aspects of the through ticketing arrangement described in Section 1 of the RTA. This “agreement to agree”

⁶ TCR implicitly admits this fact by referring solely to provisions in Section 1 in support of its Petition. See Petition at 5-6.

is unenforceable under standard contract law.⁷ “If any essential term is left open for future consideration, there is no binding contract, and an agreement to agree is not enforceable.”⁸

The RTA does include a severability clause, in Section 9, which indicates that the unenforceable through ticketing provisions could potentially be excised without affecting the remainder of the agreement. The extent of severability and enforceability can only be addressed by a District of Columbia court, however, as the RTA incorporates D.C. law in Section 13. See Section II.C below.

B. The alleged “Voluntary Coordination Agreement” does not warrant reopening.

TCR also relies on the Voluntary Coordination Agreement (“VCA”) to support its reopening request. See, e.g., Petition at 6 (“Texas Central’s connection to the interstate passenger rail network will be further enhanced by the parties’ VCA.”). However, the VCA does not reveal a connection between the TCR proposal and the national rail network.

Although it is unclear if TCR believes the VCA, standing alone, would be sufficient to warrant Board jurisdiction, the coordination efforts in the VCA are largely immaterial to Board jurisdiction. To the extent they are (or would be) relevant, the VCA is an unenforceable “agreement to agree” or it is superseded by the RTA. TCR specifically cited five provisions of the VCA in support of the Petition, but none of the five reveal an actual agreement. See Petition at 6-7. The first citation is to the first recital in the VCA, wherein the parties stated that they both “support” the development of high-speed rail. The second and third citations are to Section 4, wherein the parties “agree to cooperate in marketing,” and Section 5, wherein the parties “agree to explore” using frequent traveler programs to promote travel. The fourth citation is to

⁷ Garzon v. District of Columbia Commission on Human Rights, 578 A.2d 1134, 1136 and 1139 (D.C. 1990).

⁸ 17A AM. JUR. 2D *Contracts* § 39 (2004).

Section 6, which concerns the transfer service between the TCR stations and the Amtrak stations, but this provision is superseded by the transfer service provisions of the RTA. The final citation is to Section 8, which includes no specified services of any kind; it merely states that TCR agrees to purchase additional services from Amtrak, but cautions that “Texas Central shall not be required to purchase any particular Additional Services.”

Although the VCA generally describes the parties’ desire for through ticketing, it does not actually require through ticketing because the VCA (executed in December 2016) was superseded by the RTA (executed in October 2017). As described above in Section II.A of this Reply, the RTA does not require through ticketing. Section 15 of the RTA makes clear that, in the event of a conflict between the RTA and the VCA, the RTA will control. Therefore, if the appropriate court believes that the RTA is a valid contract, then any commitment of the parties in the VCA to engage in through ticketing is superseded by the lack of commitment in the RTA. Changed circumstances only justify reopening if the changed circumstances “could materially affect the prior decision.”⁹ Here, the RTA and VCA do not show that through ticketing will occur, meaning that the Petition does not raise any issue that could “materially affect” the Board’s decision issued July 18, 2016 and, consequently, reopening is not warranted.

C. TCR should be required to obtain a declaratory order from a court before seeking reopening.

“A dispute over the interpretation of a private contract is generally for the courts to decide.”¹⁰ Although the Board has said “[i]t is well-settled that the Board has jurisdiction to

⁹ Florida Department of Transportation – Acquisition Exemption – Certain Assets of CSX Transportation, Inc., STB Docket No. 35110, slip op. at 4 (served June 22, 2011) (citations omitted).

¹⁰ U S Rail Corporation – Construction and Operation Exemption – Brookhaven Rail Terminal, STB Docket No. 35141, slip op. at 6 (served July 8, 2015) (citations omitted).

determine its jurisdiction,”¹¹ the Board and the courts have also been clear that contract interpretation issues can only be decided by the courts.¹² Thus, disputes about the enforceability and interpretation of private contracts such as the RTA and VCA can only be resolved by the courts. See, e.g., Dyno Nobel, Inc. and Dyno Nobel Louisiana Ammonia, LLC v. NuStar Pipeline Operating Partnership, LP, STB Docket No. 42147 (served Mar. 24, 2017) (holding proceeding in abeyance so that parties can seek court decision under state law regarding several issues, including whether anhydrous ammonia shipper contractually agreed to pay certain costs to pipeline operator for pipeline service).

If TCR wishes to proceed, the courts must resolve the uncertainty surrounding the RTA and VCA. In particular, the RTA has a through ticketing provision that, under D.C. law, lacks indicia of enforceability by its plain language.¹³ In fact, the entire RTA may be an unenforceable contract under D.C. law, and nothing more than an unenforceable agreement-to-agree. At the same time, the RTA has a severability clause and also supersedes the VCA. These sorts of issues – the indicia of an enforceable contract under D.C. law, severability, supersession, and what constitutes an “agreement-to-agree” – are obviously outside the Board’s purview. If TCR persists in asserting that the agreements contain enforceable through ticketing provisions, these

¹¹ Rail Transportation Contracts Under 49 U.S.C. 10709, STB Ex Parte No. 676, slip op. at 5 (n. 10) (served Jan. 6, 2009).

¹² See, e.g., General Railway Corporation, d/b/a Iowa Northwestern Railroad – Exemption for Acquisition of Railroad Line – In Osceola and Dickinson Counties, IA, STB Docket No. 34867, slip op. at 4 (served June 15, 2007) (“Any dispute regarding the validity of this agreement [for purchase of a rail line], or ownership of the Line, involves questions of state contract and property law. The Board is not the proper forum to resolve such disputes.”); Cleveland-Cliffs Iron Co. v. ICC, 664 F.2d 568, 591 (6th Cir. 1981) (finding no support in the Staggers Act for the proposition that the ICC can “entertain and decide questions concerning the existence and validity of contracts”); Kansas City Power & Light Co. v. Burlington Northern Railroad Co., 740 F.2d 780, 785 (10th Cir. 1984) (“The courts, not the ICC, in cases such as this, is [sic] the appropriate forum for determining the existence of an enforceable contract.”).

¹³ EastBanc, 940 A.2d 996; Garzon, 578 A.2d 1134.

issues should be decided by the D.C. courts. Pursuant to governing precedent, the Board should require TCR to obtain a declaratory order from a D.C. court if TCR wants to proceed with seeking reopening and Board jurisdiction.

D. Even if some form of through ticketing is found to exist, reopening should be denied because the proposed TCR project remains outside Board jurisdiction.

TCR proposes a rail network entirely within one state. Consequently, the Board has jurisdiction over the TCR project only if the TCR intrastate transportation is “part of the interstate rail network.”¹⁴ As the Board made clear in this proceeding less than two years ago, a “fact-specific determination based on the totality of circumstances” is required to decide whether an intrastate rail operation is part of the interstate rail network.¹⁵ Consideration of all relevant circumstances reveals that the proposed TCR project, even assuming the existence of Amtrak through ticketing, would not be part of the national rail network. Therefore, no Board jurisdiction applies, and reopening is not warranted.¹⁶

TCR has proposed a completely closed and insular intrastate rail line, a “totally dedicated, grade separated, secure corridor”¹⁷ featuring “[s]teel-wheeled trains on secure, separate, closed tracks dedicated fully to high-speed passenger rail system.”¹⁸ In the words of the Federal Railroad Administration (“FRA”), the TCR system would be a “fully sealed corridor

¹⁴ 49 U.S.C. § 10501(a)(2). See also DesertXpress Enterprises, LLC – Petition for Declaratory Order, STB Docket No. 34914, slip op. at 9 (served May 7, 2010).

¹⁵ See Board decision in this docket, slip op. at 4 (served July 18, 2016). See also All Aboard Florida – Operations LLC and All Aboard Florida – Stations – Construction and Operation Exemption – In Miami, Fla. and Orlando, Fla., STB Docket No. 35680, slip op. at 3 (served Dec. 21, 2012).

¹⁶ Florida DOT, STB Docket No. 35110, slip op. at 4 (served June 22, 2011).

¹⁷ Petition for Exemption at 2.

¹⁸ <https://www.texascentral.com/project/>.

with grade-separated crossings” and a “dedicated right-of-way.”¹⁹ There would be no physical connection to any other rail line, no physical connection to Amtrak, and no use of Amtrak rail stations. TCR is only planning to transport in-state travelers, not interstate travelers.²⁰ The proposed rail service would not “travel on existing or planned freight lines or share tracks with other passenger services, such as Amtrak.”²¹ It would rely on proprietary Japanese technology that is not used by any other railroad in the U.S. The FRA has plainly stated that the proposed project would involve a “closed system” that “is not interconnected with any other railroad systems.”²²

TCR apparently believes that its proposed “transfer service” in Dallas and Houston transforms its insular, closed intrastate system into just another element of the interstate rail network. TCR has not provided any details regarding the transfer service, but it could consist of a bus trip between the TCR and Amtrak stations in both Dallas and Houston. In a recent press release, TCR stated that it “will offer a convenient transfer service connecting riders between Amtrak passenger stations and the high-speed train stations in Dallas and Houston.”²³

The creation of a TCR-provided bus transfer service, in conjunction with through ticketing on Amtrak, does not mean that the TCR project becomes “part of” the interstate rail network. A comparison of recent Board precedent confirms that the TCR proposal is far less tied to interstate commerce and the rail network than the passenger rail project in All Aboard Florida

¹⁹ Dallas to Houston High-Speed Rail Project, Alignment Alternatives Analysis Report, Federal Railroad Administration, p. 1 (Nov. 6, 2015).

²⁰ See, e.g., Exhibit 1 (attached hereto) at page 11 (“Texas Central will deliver a safer, more productive, faster and more reliable travel option for Texans.”).

²¹ Dallas to Houston High-Speed Rail Project, Alignment Alternatives Analysis Report, Federal Railroad Administration, page 1 (Nov. 6, 2015).

²² Dallas to Houston High-Speed Rail Project, Alignment Alternatives Analysis Report, Federal Railroad Administration, pages 1 and 7 (Nov. 6, 2015).

²³ See Exhibit 2 (attached hereto) (TCR Press Release, May 4, 2018).

– where no Board jurisdiction existed. Delta Troy has previously shown that the TCR project is not part of the interstate rail network. See Delta Troy Reply in Opposition to Petition for Exemption, at pages 4-11 (filed May 31, 2016). Delta Troy incorporates those arguments here, and respectfully requests that the Board especially consider the illustrative chart at page 6 of that filing. As revealed by that chart, the TCR project is far more divorced from interstate commerce and the national rail network than the project in All Aboard Florida, STB Docket No. 35680 (served Dec. 21, 2012) – where no jurisdiction was found. Even assuming the existence of through ticketing and a bus transfer service, the TCR project, at most, would be elevated to approximately the same level of “connectedness” as All Aboard Florida. TCR remains far less connected than CHSR, which will feature blended Amtrak operations, station-sharing with Amtrak, and tracks that physically connect to other Board-regulated railroads.²⁴

E. TCR has effectively admitted that it is a non-jurisdictional interurban electric railway.

TCR recently argued in Texas state court that Texas Central Railroad and Infrastructure, Inc. (“TCRI,” one of the two petitioners before the Board) and an entity called Integrated Texas Logistics, Inc. (“ITL”) are “interurban electric railways.”²⁵ As the Board’s statutes make clear, rail carriers under Board jurisdiction do not include “interurban electric railways not operated as part of the general system of rail transportation.” 49 U.S.C. § 10102(5). Virtually all available evidence suggests that TCR will not be part of the general system of rail transportation. TCR will operate wholly intrastate on a closed, insular system. Its oft-stated objective is (apparently)

²⁴ See, e.g., California High-Speed Rail Authority – Construction Exemption – In Merced, Madera and Fresno Counties, Cal., STB Docket No. 35724, slip op. at 11-15 (served June 13, 2013).

²⁵ See Exhibit 3 (attached hereto) at pages 4-5 and 7-8 (Integrated Texas Logistics, Inc.’s Verified Petition in Intervention and Application for Injunctive Relief), filed May 4, 2018 in Miles v. Texas Central Railroad & Infrastructure, Inc. et al., Cause No. 16-0137CV (Leon County District Court).

to transport only Texas citizens.²⁶ Its tracks will not connect with other railroads. It will not use the same stations as Amtrak. It will have no direct interchange with other railroads. TCR may be planning a bus service from its stations to the Amtrak stations in Dallas and Houston, but any actual interstate rail travelers using the TCR system will be an infinitesimal fraction of total TCR ridership. Based on 2017 figures, annual Amtrak passengers in Dallas and Houston amount to only 67,274 – which is only 1.35% of the five million passengers envisioned by TCR for its service in 2026.²⁷ Consequently, the total number of passengers traveling interstate on Amtrak and directly interchanging between Amtrak and TCR would almost certainly be far below 1% of TCR traffic. This is hardly a “considerable portion” of TCR traffic, as required by the Interstate Commerce Commission in determining applicability of a similar provision in the Railway Labor Act.²⁸

The TCR project would not be part of the general system of rail transportation. Instead, the TCR system is *sui generis*. Details surrounding TCR are far different from those found in situations where there is agency jurisdiction over an interurban electric railway. See, e.g., Piedmont & Northern Railway Co. v. ICC, 286 ICC 299, 311 (1932) (“The petitioner’s railway is of such importance in interstate commerce and renders a service so predominantly devoted to the handling of interstate freight in connection with steam railroads, is in such relation to connecting steam carriers, and competes with steam trunk lines in such manner, that in view of

²⁶ See Exhibit 1 (attached hereto) at page 2 (“Texans will have a safe, productive and reliable choice for travel between Houston, the Brazos Valley and North Texas.”), 3 (“Texans like to travel across Texas”), 6 (“the system will benefit every Texan”), 7 (“Texans are excited about the Texas Bullet Train.”), 8 (“the research shows not only that Texans are excited by the prospect of the Texas Bullet Train, but also that they have a strong intention to use it for future journeys”), and 12 (“The Texas Bullet Train will provide Texans with a faster, safer, more convenient and reliable alternative to driving or flying.”).

²⁷ See Exhibit 1 (attached hereto) at pages 10-11.

²⁸ Texas Electric Railway, 208 ICC 193, 202 (1935), *aff’d* Texas Electric Railway Company v. Eastus, 25 F.Supp. 825 (N.D. Tex. 1938).

the declared policy of the act we cannot hold it an ‘interurban’ railway within the exemption of the same paragraph.”).²⁹

Two other elements of this recent Texas court filing highlight the confusion surrounding the project’s many proponents, an issue which is addressed further in Section III. First, TCRI and ITL claim in this filing that they are not only “interurban electric railways” but also that they are “railroad companies.”³⁰ Of course, an entity cannot simultaneously be both a railroad company under Board jurisdiction and an interurban electric railway outside such jurisdiction. In this recent Texas court filing, TCRI also disclosed a Certificate of Amendment that it filed in 2015 with the Texas Secretary of State. In this Certificate, TCRI revealed that it is only an interurban electric railway:

The purpose for which the corporation is organized is to plan, build, maintain and operate an **interurban electric railroad**, and to conduct or promote any other lawful businesses or purposes that a corporation is legally allowed to conduct or promote, within this state or any other jurisdiction.³¹

As shown in Sections II.D and II.E, the project proposed by TCR is not within Board jurisdiction.

III. Reopening is Not Warranted on the Current Record Because the True Moving Entity Behind the Project is Unknown.

The Board cannot move forward in this docket on the current record because substantial confusion surrounds the identity of the true moving entity(-ies) behind the proposed Dallas-

²⁹ Similarly, the Board has made clear that the phrase “as part of the interstate rail network” means that intrastate rail operations must be tied to interstate commerce before Board jurisdiction would attach. DesertXpress, STB Docket No. 34914, slip op. at 9-10 (served May 7, 2010). Delta Troy has previously shown that no such “tie” would exist for the TCR project. See Delta Troy Reply in Opposition to Petition for Exemption, pages 5-9 (filed May 31, 2016).

³⁰ See Exhibit 3 (attached hereto) at page 3.

³¹ See Exhibit 3 (attached hereto) at Ex. B (Certificate of Amendment, filed Jan. 21, 2015) (emphasis added).

Houston rail project. In what can only be described as an ever-evolving “shell game,” the identity of the project proponent continues to change, as shown below:

Texas Central Railroad & Infrastructure, Inc. (“TCRI”) and **Texas Central Railroad, LLC (“TCR LLC”)** sought authorization from the Board in the Petition for Exemption on April 19, 2016.

During the 2016 time period, however, TCR’s website stated that **Texas Central Partners, LLC (“TCP”)** will be “the ultimate builder and operator of the Project.”³² Even today, the TCR website continues to say that TCP is the moving party behind the project.³³

The RTA and VCA both state that three “Texas Central” entities are developing the Dallas-Houston high-speed rail line: TCRI, TCR LLC, and a third entity: **Texas Central Rail Holdings, LLC (“TCRH”)**.³⁴

In March 2017, an entity known as **Texas Central High-Speed Railway, LLC (“TCHSR”)** intervened in a Texas state court dispute about a public records request because of alleged harm it would suffer if documents about the Dallas-to-Houston project were disclosed. In this intervention, TCHSR defined itself as “TCR” and argued that “release of the TCR Confidential Information would put TCR and the TCR Project at a competitive disadvantage and would benefit competing transportation providers as well as competing infrastructure projects.”³⁵

³² See Delta Troy Reply to Petition for Exemption, at p. 11-12 (filed May 31, 2016).

³³ See Exhibit 4 (attached hereto) (“About Texas Central”) (“Texas Central Partners, LLC....is developing a new high-speed passenger rail system that will connect Dallas/Fort Worth and Houston”).

³⁴ See TCR Petition to Reopen at Exhibits 1 and 2.

³⁵ See Exhibit 5 (attached hereto) at page 13 (Intervenor Texas Central High-Speed Railway, LLC’s Motion for Partial Summary Judgment), filed March 7, 2017 in Texans Against High-Speed Rail, Inc. v. Paxton, Cause No. D-1-GN-16-000942 (Travis County District Court) (several exhibits to this filing were omitted due to size constraints).

A former employee stated that TCHSR “promotes and facilitates the development and construction of a high-speed rail system” through agreements with TCRI and TCR LLC.³⁶

Finally, the moving party behind the TCR project was identified as **Integrated Texas Logistics, Inc. (“ITL”)** in a document filed May 4, 2018 in Texas state court. ITL intervened in litigation between TCRI and a landowner in Texas regarding TCRI’s desire to survey the landowner’s property. In this document, ITL plainly stated that it:

is in the process of developing a high-speed rail line between Dallas and Houston, Texas. ITL was chartered for the express purpose of **planning, building, maintaining, and operating an electric railroad.**³⁷

ITL’s Certificate of Formation was appended to the intervention request. It reveals that ITL was organized to “**construct, acquire, maintain, or operate lines of electric railway** between municipalities in this state....[and]....[t]o operate and transact business as a railroad company.”³⁸ Moreover, ITL apparently owns or plans to own a shortline railroad,³⁹ thereby implicating the prior approval requirements of 49 U.S.C. §§ 11323 – 11325.

As described above, at least four separate parties claim to be the true moving entity behind the Dallas-Houston high-speed rail proposal: TCRI, TCR LLC, TCP, and ITL. Meanwhile, a fifth entity – TCRH – is one of those who entered the alleged “through ticketing” arrangement with Amtrak. A sixth entity – TCHSR – claims to be promoting and facilitating the project. Given the confusing and overlapping claims to the proposed project by six separate entities, the Board cannot move forward with consideration of the proposal on the current record. It is axiomatic that an entity cannot build or operate a jurisdictional rail line without first

³⁶ See Exhibit 5 (attached hereto), at Ex. A, page 1.

³⁷ See Exhibit 3 (attached hereto) at page 2 (emphasis added).

³⁸ See Exhibit 3 (attached hereto), at Ex. A (Certificate of Formation, Article Three) (emphasis added).

³⁹ See Exhibit 3 (attached hereto) at page 5 (“ITL will also procure, own, and operate any short line railroads necessary to facilitate the Project.”).

obtaining Board authorization. 49 U.S.C. § 10901. Various public information reveals that the Dallas-Houston high-speed rail project has at least six proponents, only two of whom have sought Board authorization.

IV. Even if Reopening Occurs, the Board Should Require TCR to File an Application.

A. Delta Troy previously showed that an Application is required.

The exemption process is not appropriate for unprecedented, novel projects such as that proposed by TCR. Delta Troy has previously shown that an Application is warranted under 49 U.S.C. § 10901 and various precedent, including but not limited to Ozark Mountain. See Delta Troy Reply in Opposition to Petition for Exemption at 12-22 (filed May 31, 2016). Delta Troy incorporates those arguments again here, as they have not been rebutted by TCR, nor were they addressed in the Board's dismissal decision on July 18, 2016. The arguments and issues previously raised by Delta Troy are critical to a proper evaluation of the TCR proposal, and Delta Troy respectfully requests that the Board seriously consider them if the Board determines that jurisdiction exists over the proposed project.

B. The California High-Speed Rail project confirms that TCR should use an Application.

In two recent CHSR proceedings, the Board granted Petitions for Exemption despite assertions that an Application should be required.⁴⁰ Indeed, TCR relies heavily on these two CHSR decisions to assert that an Application is not needed for its proposal.⁴¹ The intervening years have shown the fallacy of TCR's position: the Board and the citizens of California would

⁴⁰ California High-Speed Rail Authority – Construction Exemption – In Merced, Madera and Fresno Counties, Cal., STB Docket No. 35724 (served June 13, 2013); California High-Speed Rail Authority – Construction Exemption – In Fresno, Kings, Tulare, and Kern Counties, Cal., STB Docket No. 35724 (Sub-No. 1) (served Aug. 12, 2014).

⁴¹ See Petitioners' Response to Replies to Petition for Exemption at pages 29-36 (filed June 20, 2016) (citing ten times to the CHSR decisions).

have benefitted greatly from a more searching evaluation of the CHSR project. When originally proposed in 2008, Phase 1 of the CHSR project (San Francisco to Los Angeles) was to be complete by 2021 and cost \$33 billion.⁴² Now, completion has been pushed to 2033 and the estimated cost has more than doubled to be \$77 billion.⁴³ State and federal audits of the CHSR project have begun.⁴⁴

In other words, the CHSR experience reveals that the Board should require an Application if TCR wants to pursue the Dallas-to-Houston proposal. Already, details escaping from TCR's veil of secrecy reveal that the TCR proposal is beginning to repeat some of the same problems that have become so evident in California. A project that originally was estimated to cost "over \$10 billion" just two years ago is now estimated at \$16.5 billion +/- \$1.5 billion.⁴⁵ An in-service date of late 2021 has now slipped to late 2023.⁴⁶ Litigation at the state level confirms widespread concerns among Texas citizens and local government officials. The CHSR experience reveals that the Board should require TCR to submit an Application so that the Board can begin a comprehensive evaluation of the TCR project before it is too late and private parties suffer substantial injury.

⁴² California High-Speed Train, 2008 Business Plan (Nov. 2008), at pages 19-21; available at: http://www.hsr.ca.gov/docs/about/business_plans/BPlan_2008_FullRpt.pdf. See also Gutierrez, Melody, "California high-speed rail project facing more delays, higher costs" (March 9, 2018), available at: <https://www.sfgate.com/politics/article/California-high-speed-rail-project-facing-more-12741787.php>.

⁴³ California High-Speed Rail Authority, Draft Revised 2018 Business Plan, at page 33; available at: http://www.hsr.ca.gov/docs/about/business_plans/Draft_Revised_2018_Business_Plan.pdf.

⁴⁴ Vartabedian, Ralph, "Legislature approves first state audit of bullet train project since 2012" LOS ANGELES TIMES (Jan. 30, 2018). Ronayne, Kathleen, "High-speed rail project faces federal audit" Associated Press, THE MERCURY NEWS (San Jose, CA) (April 13, 2018).

⁴⁵ Compare Petition for Exemption at 4 ("over \$10 billion") to the Federal Railroad Administration, Draft Environmental Impact Statement, Appendix F, TCRR Constructability Report, Appendix A8 (\$16.5 billion +/- \$1.5 billion).

⁴⁶ Compare Petition for Exemption at 4 ("as early as late 2021") to the Federal Railroad Administration, Draft Environmental Impact Statement, Appendix F, TCRR Constructability Report, Appendix A8 (showing "revenue service" starting at the very end of 2023).

The concerns expressed by Chairman Begeman in the two CHSR decisions should be heeded here, if the Board believes jurisdiction exists. In the first CHSR decision, Chairman Begeman dissented in part, stating:

I....cannot support granting an exemption here in lieu of a more thorough examination of the proposal through the application process....The Board made its jurisdictional finding in part due to the scope of the project and significant public interest. It should not then ignore these same factors when approving the project's construction in its dash to meet the Authority's tight deadlines.⁴⁷

In the second decision, Chairman Begeman explained her dissent by stating “[e]ach segment of this project, including its financing, merits the Board’s thorough examination, which has not and cannot occur under the exemption process.”⁴⁸

As described in Sections III-V, the publicly available information about the TCR proposal is insufficient for a proper evaluation, indicating that an Application is required. See, e.g., Tulare Valley Railroad Company – Abandonment and Discontinuance Exemption – In Tulare and Kern Counties, CA, STB Docket No. AB-397 (Sub-No. 5X) slip op. at 8 (served Feb. 21, 1997) (“The exemption process....is used only when the information provided is sufficient for us to reach an informed decision.”). The CHSR project is again instructive on this point, as it (1) is being pursued by an agency of the state government, inherently creating public availability of information, (2) was subject to a statewide referendum, and (3) has received significant federal funding. Moreover, the state of California has an annual budget of over \$180 billion. In contrast, TCR has not been forthcoming with information, was not subject to a statewide vote,

⁴⁷ California High-Speed Rail Authority – Construction Exemption – In Merced, Madera and Fresno Counties, Cal., STB Docket No. 35724, slip op. at 29 (served June 13, 2013), Vice Chairman Begeman, concurring in part and dissenting in part.

⁴⁸ California High-Speed Rail Authority – Construction Exemption – In Fresno, Kings, Tulare, and Kern Counties, Cal., STB Docket No. 35724 (Sub-No. 1), slip op. at 23 (served Aug. 12, 2014), Commissioner Begeman, dissenting.

and has no known source of funding, yet proposes to build a “first of its kind”⁴⁹ project costing untold billions of dollars in a state where significant opposition exists.⁵⁰ If there was ever a case where an Application should be required, this is that case.

C. Significant litigation and opposition confirms that the exemption process is not appropriate for the TCR proposal.

The TCR proposal has resulted in voluminous litigation and opposition at the state and local level. Dozens of lawsuits have occurred or are occurring in Texas, including a Petition and Application for Injunctive Relief filed by TCR against Delta Troy in an attempt to gain forced access to Delta Troy’s property.⁵¹ Opposition has come from not just landowners,⁵² but also local government officials,⁵³ state legislators,⁵⁴ sheriffs,⁵⁵ and U.S. Congressman Kevin Brady, the Chairman of the House Ways and Means Committee.⁵⁶ The extreme controversy

⁴⁹ Verified Statement of Timothy B. Keith, CEO of Texas Central Partners, LLC, page 5, attached to TCR’s Petition for Exemption (filed April 19, 2016).

⁵⁰ See, e.g., Delta Troy Reply in Opposition to Petition for Exemption at 21-22 (filed May 31, 2016). See also Section IV.C below.

⁵¹ See Exhibit 6 (attached hereto) (several exhibits to this filing were omitted due to size constraints).

⁵² See, e.g., Thompson, Roxanne, “Landowners Give Emotional Testimony Against High-Speed Rail Plans,” GROESBECK JOURNAL (Feb. 7, 2018), available at: <https://www.groesbeckjournal.com/area-news/landowners-give-emotional-testimony-against-high-speed-rail-plans-2876> (“No one spoke in favor of the railway, only against it, bringing up a wide variety of concerns and objections to the project.”).

⁵³ See, e.g., Farkas, Tony, “County vocal in opposition to rail project,” THE MADISONVILLE METEOR (Feb. 6, 2018), available at: <http://www.madisonvillemeteor.com/stories/county-vocal-in-opposition-to-rail-project,29519>. (Madison Co. official Thomas Collard said “the county passed a resolution several years ago against the project, and will stand behind it to the end.”).

⁵⁴ See, e.g., Begley, Dug, “Texas lawmakers move to stymie high-speed rail project,” THE HOUSTON CHRONICLE (Feb. 21, 2017), available at: <https://www.chron.com/news/houston-texas/texas/article/Lawmakers-rain-down-anti-rail-bills-10948520.php>.

⁵⁵ See, e.g., Carroll, John, “Central Texas sheriff joins fight against high-speed rail project,” KWTX (Feb. 23, 2018), available at: <http://www.kwtx.com/content/news/Central-Texas-sheriff-joins-fight-against-high-speed-rail-project-472377883.html>.

⁵⁶ See, e.g., Exhibit 7 (attached hereto) (Rep. Brady letter, dated May 13, 2016) and Exhibit 8 (attached hereto) (page from Rep. Brady’s website). See also Clark, Caitlin, “All aboard? No, say many area residents at hearing about high-speed rail,” THE EAGLE (Bryan, Texas) (Feb. 7,

surrounding the TCR proposal reveals that the exemption process is wholly insufficient and inappropriate. An Application should be required. See, e.g., Tulare Valley, STB Docket No. AB-397 (Sub-No. 5X), slip op. at 3 (served Mar. 6, 1998) (requiring full application for proposed abandonment where opposition exists and “serious questions have been raised”).

V. If Reopening Occurs, the Board Should Take Several Other Steps to Ensure a Proper Consideration of this Unprecedented Project.

A. TCR should be required to substantiate its funding sources, as the Board required in the recent Great Lakes Basin case.

In the face of rapidly-increasing cost estimates, TCR has provided virtually no information regarding how it will fund the \$15 to \$18 billion rail line. It is critical for the Board to investigate and verify the funding for this epic, “significant and....first of its kind”⁵⁷ rail project in order “to protect....the affected communities from needless disruptions and environmental impacts if the applicant were to start construction but not be able to complete the project and provide the proposed service.”⁵⁸ Although the Board does not require rail construction proposals to be fully funded at the start of the regulatory proceeding, “the financial fitness of the applicant is a part of the § 10901 application process.”⁵⁹ The need for investigation into and substantiation of TCR’s funding sources is all the more compelling when considering the experience of the CHSR project, which is being developed by a state agency, the California High-Speed Rail Authority (“CAHSRA”). As a state agency, CAHSRA has engaged in

2018) available at: http://www.theeagle.com/news/local/all-aboard-no-say-many-area-residents-at-hearing-about/article_c27cbe57-b7a6-5138-b1d0-ae3cb51bae76.html (referring to continuing opposition of Rep. Brady).

⁵⁷ Verified Statement of Timothy B. Keith, CEO of Texas Central Partners, LLC, page 5, attached to TCR’s Petition for Exemption (filed April 19, 2016).

⁵⁸ Great Lakes Basin Transportation, Inc. – Rail Construction and Operation – In Rock County, Wisc., Winnebago, Ogle, Lee, LaSalle, Grundy, and Kankakee Counties, Ill., and Lake, Porter, and LaPorte Counties, Ind., STB Docket No. 35952, slip op. at 4 (served Aug. 31, 2017) (citation and quotation omitted).

⁵⁹ Great Lakes Basin, STB Docket No. 35952, slip op. at 4 (served Aug. 31, 2017).

extensive outreach to the public and is subject to various legal requirements regarding transparency, document availability, and similar issues. Moreover, the California project was approved in a statewide referendum several years ago. Despite these characteristics (which inherently enable public participation and engagement), the CHSR project suffers from serious and growing concerns about inadequate funding. In contrast, very little information about the TCR proposal has been made public, which should raise alarm bells as the Board considers whether TCR has sufficient funding to complete this “first of its kind” project.

B. TCR should be required to update the details in its Petition for Exemption.

The meager information submitted in the Petition for Exemption is already stale, and the Board should direct TCR to update that information in an Application. To cite just a few examples, the cost estimate of \$10 billion is now \$15 to \$18 billion, and the in-service date has slipped by at least two years. See Section IV.B above. TCR previously stated that its project would be privately-funded: as part of the ongoing environmental review process, TCR told the FRA that “[a]s this is a privately developed project, **we are not seeking public funding.**”⁶⁰ Similarly, the Congressional Research Service found that TCR asserted in October 2016 that “[t]his project is not backed by public funds.”⁶¹ However, the TCR website now admits that “**the project will explore....federal loan programs,**”⁶² and commentators have begun addressing TCR’s “fuzzy” definition of private funding.⁶³ Finally, the two entities seeking authorization

⁶⁰ See Draft Environmental Impact Statement, Appendix F, TCRR Constructability Report, Chapter 8, page 34 (emphasis added).

⁶¹ See Exhibit 9 (attached hereto) at page 13 (Congressional Research Service report, Oct. 18, 2016).

⁶² <https://www.texascentral.com/rumors-vs-reality/project-financing/> (emphasis added).

⁶³ Nicholson, Eric, “Texas Central Railway’s Fuzzy Definition of ‘Privately Financed,’” DALLAS OBSERVER (Aug. 11, 2015), available at: <http://www.dallasobserver.com/news/texas-central-railways-fuzzy-definition-of-privately-financed-7479867>.

from the Board in this docket comprise less than half of those who claim to be the builders and operators of the proposed rail line. See Section III above.

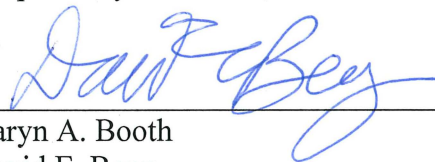
C. The Board should order TCR to re-designate certain material in the Petitioners' Response to Replies to Petition for Exemption.

Delta Troy previously requested⁶⁴ that the Board order TCR to re-designate a large amount of material that was improperly redacted from TCR's Response to Replies to Petition for Exemption filed on June 20, 2016. The Board has yet to rule on that request. If the Board accepts jurisdiction over the proposed project, Delta Troy respectfully requests that the Board order TCR to re-designate and re-file the material previously identified by Delta Troy.

VI. Conclusion.

For all the reasons described herein, Delta Troy respectfully requests that the Board deny the Petition to Reopen because the proposed TCR project is not within Board jurisdiction. If reopening does occur, the Board should require TCR to file an Application given that the exemption process is wholly unsuited for this controversial and novel project. In the event of reopening, the Board should also take the other steps described herein.

Respectfully submitted,



Karyn A. Booth
David E. Benz
THOMPSON HINE LLP
1919 M Street, N.W., Suite 700
Washington, D.C. 20036
(202) 331-8800

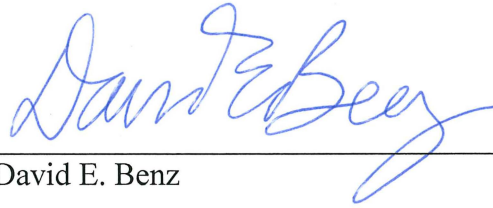
Attorneys for Delta Troy Interests, Ltd.

May 31, 2018

⁶⁴ See Delta Troy Reply in Opposition to Both the Motion for Leave to File Response to Replies and the Response at pages 3-11 (filed July 11, 2016).

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of May 2018, I served a copy of the foregoing upon counsel for Texas Central Railroad and Infrastructure, Inc. and Texas Central Railroad, LLC via electronic mail. All other parties of record were served on this day via U.S. first-class mail, postage prepaid.



David E. Benz

Exhibit 1

Finance Docket No. 36025

Delta Troy Reply In Opposition to Petition to Reopen

May 31, 2018



TRANSFORMING TRAVEL IN TEXAS

Assessing passenger demand for high-speed train
service between North Texas, the Brazos Valley
and Greater Houston



TEXAS CENTRAL
AMERICA'S BULLET TRAIN



ABOUT THE PROJECT

The design, construction, finance and operation of a new high-speed passenger train line connecting Houston and North Texas has been under development for five years. The project expects to begin construction in 2018, and will enable passengers to travel between Houston and North Texas in 90 minutes, including a stop in the Brazos Valley. This transformational project will provide a safe, productive, fast and reliable choice for travelers between Texas' two largest economic hubs, using proven, world-class technology. The increased mobility between two of the fastest growing metropolitan areas in the US made possible by the Texas Bullet Train will deliver substantial and long-lasting benefits to both the state and local economies.

Texans will have a safe, productive and reliable choice for travel between Houston, the Brazos Valley and North Texas.

ABOUT THE STUDY

In January 2016, Texas Central appointed L.E.K. Consulting to conduct a study exploring the opportunity for a high-speed train service in Texas and the benefits it could bring to Texans.

L.E.K. has developed a commercially-driven, technology-enabled forecast for passenger demand including:

- Estimating the market size and growth rate for travel between the two metropolitan areas;
- Undertaking primary market research with input from more than 2,000 Texans to understand local travel habits and determine the Texas Bullet Train's potential share of the travel market; and
- Building a robust and highly granular forecasting model to predict future passenger demand under a range of assumptions and different scenarios.

This study is the most comprehensive work conducted to date for this specific region and is unprecedented in its depth, innovative approach and use of both new, private research and publicly available data.

L.E.K. has worked closely with Texas state and regional governments, macro-economic forecasters, and cell phone data providers to obtain robust and highly granular third party data and forecasts.

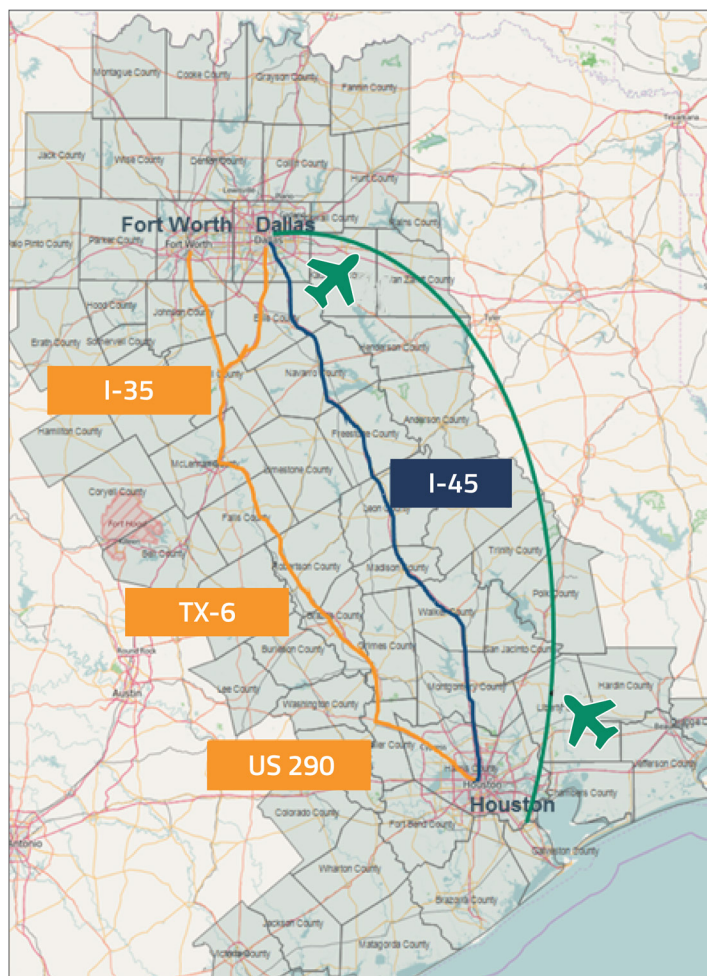
L.E.K. has combined all the data using modeling techniques which either meet or exceed the best practices outlined by the United States Department of Transportation, deploying standard transport economics, statistical analysis and big data approaches to produce a robust and detailed forecast.

1. TRAVEL MARKET OVERVIEW

TEXANS LIKE TO TRAVEL ACROSS TEXAS...

Each year, roughly 14 million journeys¹ are made between Greater Houston and North Texas. Calculated using a variety of data sources, including traffic count data from TxDOT, Bluetooth data from TTI and cell-phone data, this estimate includes all flights, bus journeys, and non-commercial/non-freight road traffic.

Research indicates most journeys are made for personal reasons, nearly half of which are to visit friends and family. Other reasons for travel across the region include taking a vacation/weekend trip, going to a game or shopping. Trips for business are common, representing nearly 20% of all journeys, while students also represent a significant portion of the travel market between Houston and North Texas.



... BUT TRAVEL OPTIONS ARE LIMITED AND JOURNEY TIMES ARE LONG AND UNPREDICTABLE

More than 90% of journeys between Houston and North Texas are made by road, typically using Interstate-45 or the Western alternative route, which consists of a series of interstates, state highways and farm to market roads. Drive times can range from 3.5 to 5.5 hours during busy times, and - once congestion is factored in - may be significantly longer than anticipated and difficult to predict. Moreover, congestion will only get worse, both in and around the metropolitan areas, and along I-45 where vehicle counts have increased at a rate of nearly 10% per year since 2012.

Approximately 1 million journeys are made by air each year, with the connection between Dallas Love Field (DAL) and Houston Hobby (HOU) airports the most popular. Although in theory scheduled flight times range between 60 – 75 minutes, in reality flight times are typically longer, once delays are factored in.

In fact, when all stages of the trip are taken into consideration (check-in, baggage drop, choke-point security, and lining up single-file to board in a cramped aisle) travel by air is not much faster than by road. As a result, air travel inadequately serves the most time sensitive travelers on this route, and has been in decline, with travelers choosing to drive instead of flying.

¹Defined as one-way travel between the North Texas and Houston regions made by one single passenger

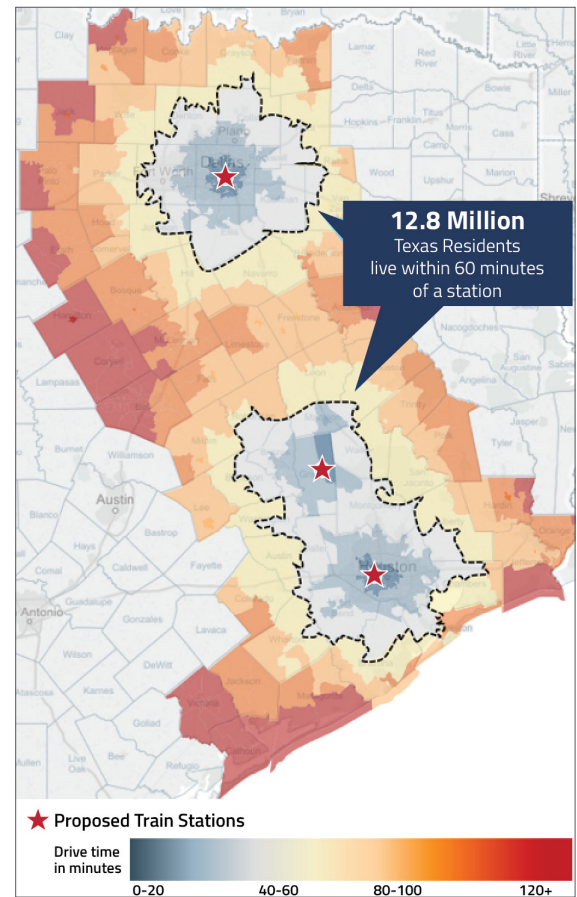
TEXANS DESERVE THE BEST

The Bullet Train will fundamentally transform the journey between North Texas and Greater Houston, providing travelers with a safer, more productive, more reliable and faster alternative to driving or flying. At speeds approaching 200 miles per hour, the Bullet Train will take less than 90 minutes from station-to-station, including one stop in the Brazos Valley.

The Bullet Train system is based on the Tokaido Shinkansen Technology, which has operated for more than 50 years in Japan with **a perfect track record of no crashes and zero passenger fatalities or injuries** due to train accidents.

Three stations will be conveniently located to serve the people of the Houston-North Texas corridor:

- In Dallas serving North Texas;
- In Grimes County serving the Brazos Valley, and
- In Houston serving the Greater Houston region.



OF THE 16 MILLION TEXANS LIVING IN THE LOCAL AREA, OVER 90% WILL BE ABLE TO SAVE AT LEAST 1 HOUR OF THEIR JOURNEY TIME BY TAKING THE BULLET TRAIN

Stations will be within 60 minutes' drive for more than 80% of local residents and will provide easy access to each region's excellent highways, thoroughfares and expansive public transit networks. Passengers will navigate easily through each of the three new stations, designed with the customer in mind, with frequent departures to help minimize waiting time.

SYSTEM SECURITY

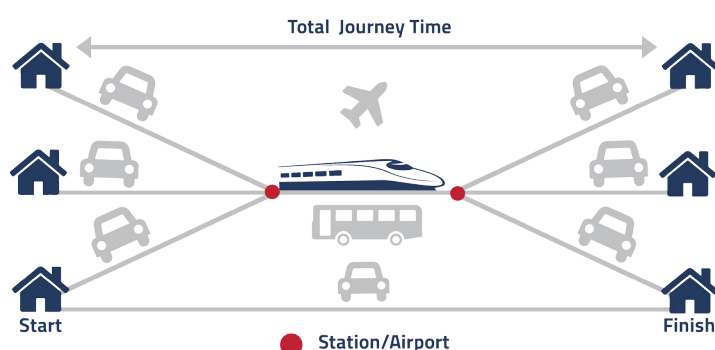
Passenger safety and system security is a top priority for government agencies, law enforcement, the project's private sector workforce and investors. The Department of Homeland Security (including the TSA), Federal Railroad Administration and other oversight agencies will review and approve the passenger security and emergency preparedness plans. Detailed planning is ongoing and of necessity isn't appropriate for full public disclosure. However, we can say that the Texas Bullet Train will adhere to many practices used by the highly successful Japanese Shinkansen train systems (tailored to the unique Texas operational environment)

including a "total system" approach that seamlessly integrates all major train safety system functions. As a privately developed project, there will be an unwavering focus on safety and deploying world-class technologies and practices while ensuring safe operations without imposing the intrusive, time-consuming procedures airline passengers must endure while flying. As threat assessments evolve, the project will continue to adopt security technologies and safety protocols that effectively protect passengers and provide customers peace of mind while traveling.

TEXAS BULLET TRAIN WILL REDUCE JOURNEY TIMES BY 60 MINUTES ON AVERAGE

A comprehensive analysis of every component of a trip between North Texas and Greater Houston via the Bullet Train—including getting to and from the station, check-in, security and boarding—indicates an average total journey time of under 3 hours 30 minutes.

To determine how this compares to current journey times across the region by car or by air, it is necessary to consider the total journey time from start (e.g., home) to finish (e.g., work).



JOURNEYS USING THE TEXAS BULLET TRAIN ARE AROUND 70 MINUTES FASTER THAN TRAVELING BY CAR

When traveling by car, journeys starting from Houston city center and finishing in Dallas city center (or vice versa) take approximately 4 hours 40 minutes at busy times. This includes time spent driving on local roads and the freeway, as well as rest stops.



JOURNEYS USING THE TEXAS BULLET TRAIN ARE AROUND 50 MINUTES FASTER THAN TRAVELING BY PLANE

When traveling by air, journeys starting from Houston city center and finishing in Dallas city center (or vice versa) take approximately 4 hours 20 minutes at busy times. This includes driving to and from the airport, total flight time, as well as time spent at the airport before departure (i.e., for check-in, clearing security, boarding) and upon arrival (i.e., for disembarkation and bag-collection).

SIGNIFICANT TIME SAVINGS WILL DRAW PASSENGERS TO HIGH-SPEED TRAINS

The Texas Bullet Train is therefore an attractive choice of travel for local residents, many of whom would save 60 minutes or more on their total journey time between Greater Houston and North Texas. For instance, people traveling from McKinney to Houston city center would arrive 90 minutes earlier if they took the Bullet Train instead of driving. Likewise, people traveling from Galveston to Denton would save 80 minutes versus an equivalent journey by car, or save 70 minutes versus an equivalent journey by air.

Overall, more than 90% of residents in the area around or between Houston, North Texas and Brazos Valley will make significant time savings over car and air by using the Bullet Train to travel between Greater Houston and North Texas. The Texas Bullet Train should therefore become the preferred mode of travel for millions of travelers. Moreover, to the degree the Bullet Train helps relieve any congestion on busy roadways and at crowded airports, the system will benefit every Texan, even if they choose to continue to drive or fly.

[illegible]

General attitudes towards the Texas Bullet Train are highly positive. When asked to write up to three statements or words that describe their reaction to a picture and description of the Bullet Train, the majority of survey respondents reacted positively, with "fast" and "convenient" most commonly expressed.

Everyone knows Texans love their cars and trucks—we do too! Nevertheless, an overwhelming majority of Texans (more than 80%) said they would use the Bullet Train in the right circumstances, with only 15% of survey respondents stating they would not consider any alternative but their personal vehicle.

A horizontal stacked bar chart comparing the willingness to pay for a COVID-19 vaccine between frequent and non-frequent travelers. The chart uses two colors: red for 'Definitely Would' and dark blue for 'Probably Would'. The total percentage for each group is shown at the end of each bar.

Traveler Type	Definitely Would (%)	Probably Would (%)	Total (%)
Frequent Travelers	35	36	71
Non-Frequent Travelers	24	25	49

The survey also tested Texans' likely intention to use the Bullet Train, were it available today. Among survey respondents who had traveled between Greater Houston and North Texas over the last 12 months for personal or business reasons, more than two thirds said that they either "definitely" or "probably would" travel by the Bullet Train on their next journey.



TEXANS ARE NOT SATISFIED WITH THEIR CURRENT CHOICES FOR TRAVEL BETWEEN NORTH TEXAS AND HOUSTON

Encouragingly, almost half of survey respondents who had not traveled between Houston and North Texas in the last 12 months also indicated they “definitely” or “probably would” travel between the two metropolitan areas in the next 12 months, if the Bullet Train existed.

This important finding demonstrates that Texans are not satisfied with their current choices for travel between North Texas and Houston. By providing an alternative that eliminates many of the things that keep people from making the trip in the first place, such as long journey times that make single day trips impractical, high-speed trains have the potential to inspire exciting new journey opportunities.

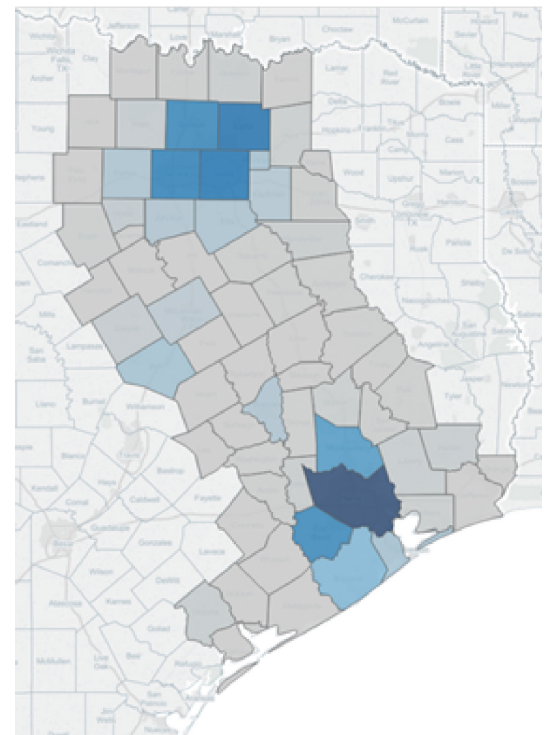
In summary, the research shows not only that Texans are excited by the prospect of the Texas Bullet Train, but also that they have a strong intention to use it for future journeys.

3. FUTURE MARKET DEVELOPMENT

The Texas Bullet Train is expected to launch in the early 2020s. As such, the forecast level of demand for high-speed trains must be based on the total number of long distance journeys we expect to be made between Greater Houston and North Texas for decades to come. To determine the expected size of the underlying travel market, three fundamental drivers of growth were analyzed: (i) population, (ii) economic activity, and (iii) journey costs.

POPULATION TRENDS WILL FAVOR TRAVEL MARKET GROWTH IN TEXAS

Simply put, more people living in the region means more journeys between the Greater Houston and North Texas. Forecasts estimate the population in the 66 relevant counties of the Houston-North Texas corridor to grow at 1.5% per year to 2050, almost twice the US national average. This will add an additional 11 million residents to the area by 2050, of which 9 million will reside in the urbanized areas of Greater Houston and North Texas. This will underpin significant growth to the underlying travel market.



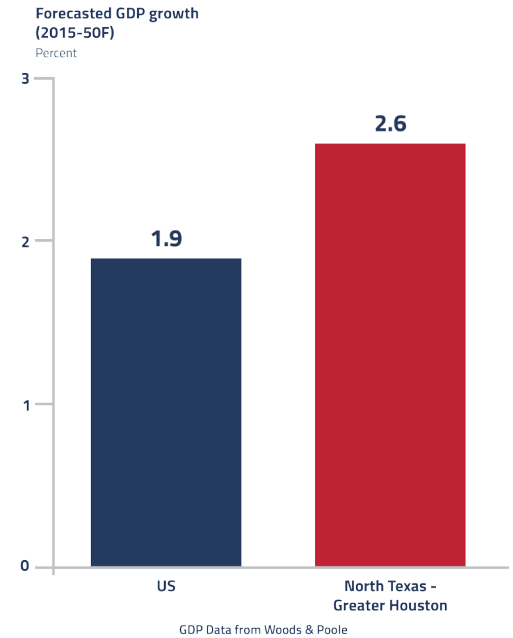
Population increase 2015-50F (thousands)

0 3,000

A STRONG TEXAS ECONOMY STIMULATES GROWTH IN THE TRAVEL MARKET

Changes in levels of economic activity will have a direct impact on travel across the region. Rising incomes are an important influence on demand for travel, not only because people with higher incomes tend to make more trips, but also because income levels influence decisions about which modes of travel to use.

Texas State GDP has been growing considerably faster than the US national average since 1997. Strong growth in levels of economic activity is expected to continue in the Greater Houston-North Texas region, with growth rates of 2.6% per year over the forecast period to 2050 (compared to 1.9% per year for the rest of the United States). This increase in wealth will support significant growth in the underlying travel market.

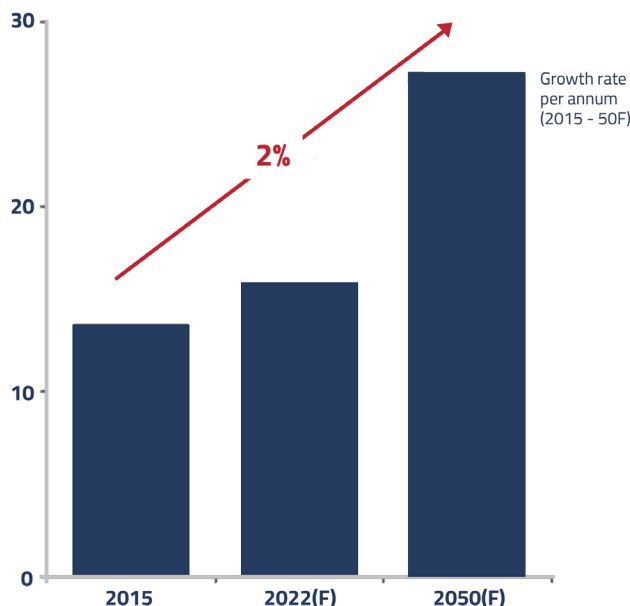


STEADY FUEL COSTS SUPPORT STEADY GROWTH OF THE TEXAS TRAVEL MARKET

Changes in journey costs will also have an impact on the travel market between Greater Houston and North Texas. Journey costs change with fuel prices and vehicle fuel efficiency. Underlying trends in the oil market suggest a steady increase in fuel prices in real terms throughout the forecast period, while improving technology and environmental regulations will drive significant improvements in vehicle fuel efficiency out to 2050. In combination, the changes in price and efficiency factors suggests fuel cost per mile is likely to remain relatively stable between 2015 and 2050 in real terms.

Forecasted growth of the travel market (2015-50F)

Millions of journeys



MORE THAN 27 MILLION JOURNEYS WILL BE MADE BETWEEN NORTH TEXAS AND GREATER HOUSTON IN 2050

As a result of the underlying trends in population, economic activity and journey costs, the size of the travel market between Greater Houston and North Texas is expected to grow at 2% per year over the forecast period, resulting in a total of just under 16 million journeys in 2022 and just over 27 million journeys in 2050.

4. PASSENGER DEMAND FOR THE TEXAS BULLET TRAIN

The Texas Bullet Train will drive growth in the travel market beyond trends in population, economic activity and journey costs, as it transforms transportation in Texas.

THE TEXAS BULLET TRAIN WILL STIMULATE NEW JOURNEYS ACROSS TEXAS

Research findings indicate many new journeys will take place, as the existence of the Bullet Train stimulates additional travel demand. Below are just a few representative examples of Texans describing how the Bullet Train could impact their lives:



This additional demand from new journey opportunities will increase the total size of the Texas travel market. Our estimates suggest that with the introduction of the Texas Bullet Train, the total number of journeys in the region, across all modes of travel, will rise from 13.7 million in 2015 to 31 million by 2050.

NEARLY 5 MILLION PASSENGERS ARE FORECAST TO USE THE BULLET TRAIN BY 2026 AND 10 MILLION PASSENGERS BY 2050

Bringing together end-to-end journey time analysis, primary market research on perceptions of high-speed trains, and long distance travel market size estimates, it is possible to develop estimates for future levels of demand for the Texas Bullet Train.

We forecast that following a ramp-up period in the mid-2020s, the number of journeys on the Texas Bullet Train will reach nearly 5 million, representing almost 25% of the total number of long distance journeys between Houston and North Texas. By 2050, the Texas Bullet Train's share of the total travel market is forecast to reach almost 30%, or over 10 million journeys.

TEXAS CENTRAL WILL DELIVER A SAFER, MORE PRODUCTIVE, FASTER AND MORE RELIABLE TRAVEL OPTION FOR TEXANS – AND HELP DRIVE THE TEXAS ECONOMY



CEO Tim Keith - Texas Central

Texas Central is a privately funded company. With a group of primarily Texan investors, Texas Central is poised to bring high-speed train service to the state with Lone Star entrepreneurial values in mind. This project is not backed by government grants and will not require taxpayer operating subsidies.

Taking a private-sector approach to financing this project changes everything, bringing real-world fiscal discipline to all decisions and careful scrutiny of economic models and timelines. Private projects have to demonstrate that

there is a viable market before a project is built. The market identified and described by this latest study demonstrates strong, pent-up demand for better travel options in Texas and demonstrates how the Bullet Train will make a significant impact on the Texas travel market. **Further, the number of riders forecast to use the Bullet Train will provide the basis for the long-term commercial success of this private venture.**

The project's financial and technical experts are developing the Bullet Train to maximize ridership and capital efficiency. Without the political constraints of a public endeavor, this project has much greater freedom with which to deliver these commercial objectives, compared with other lines around the world that have arbitrary political hurdles to overcome. In addition, management of the Texas Bullet Train will have far greater scope to adjust schedule, service and ticketing to improve the value delivered to customers which will drive commercial success.

By deploying world-class, proven technologies and cutting edge commercial strategies, we can expect the Texas Bullet Train to deliver more passengers over and above equivalent state-run ventures.

THE TEXAS BULLET TRAIN WILL TRANSFORM TRAVEL FOR TEXANS

The Texas Bullet Train will provide Texans with a faster, safer, more convenient and reliable alternative to driving or flying. Our research has illustrated that the Texas Bullet Train will not only save travelers time on their journeys, but Texans are already excited by the prospect of high-speed trains, and say they will make more journeys because of it. For all of these reasons, the Texas Bullet Train is set to transform travel in Texas and bring a new high-tech industry to the Lone Star State.



The majority of the Bullet Train line will be elevated on concrete viaducts which ensures the easy movement of people, wildlife, vehicles and equipment.



TEXAS CENTRAL
AMERICA'S BULLET TRAIN

ABOUT TEXAS CENTRAL

Texas Central Partners, LLC (Texas Central) is a private company bringing a transformational project to Texas that advances the economy, respects Texan values and keeps our state on track for future growth.

It is a Texas-based private company, employing a market-led approach to transportation infrastructure in Texas. Unlike other high-speed train projects, Texas Central is backed by private investors, not public grants or operating subsidies.

For more information, go to www.texascentral.com



ABOUT L.E.K. CONSULTING

L.E.K. Consulting is a global management consulting firm that uses deep industry expertise and rigorous analysis to help business leaders achieve practical results with real impact. L.E.K. helps clients make consistently better decisions, improve business performance and create greater shareholder returns.

Founded more than 30 years ago, L.E.K. has extensive experience in advising commercial railways, high speed train operators and governments across the Americas, Asia-Pacific, and Europe.

THE INFORMATION PROVIDED HEREIN IS PROVIDED WITHOUT ANY WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED. ALL WARRANTIES ARE EXPRESSLY DISCLAIMED. NOTHING HEREIN SHOULD BE CONSTRUED AS ADVICE TO TAKE ANY POSITION WITH REGARD TO THE SUBJECT MATTER HEREIN, AND PARTIES SHOULD CONDUCT THEIR OWN ANALYSIS AND DILIGENCE. IN NO EVENT SHALL L.E.K. CONSULTING BE LIABLE FOR ANY PARTY'S USE OF THIS INFORMATION.

Exhibit 2

Finance Docket No. 36025

Delta Troy Reply In Opposition to Petition to Reopen

May 31, 2018



Texas Central, Amtrak reach agreement to link Bullet Train and Amtrak's interstate passenger network

- **Plans call for through-ticketing for interstate travel, marketing collaboration and provision of Amtrak services**
- **Passengers will get connections between Amtrak and Texas Bullet Train stations in Dallas and Houston**

DALLAS [May 4, 2018] – Developers of Texas' high-speed train have forged an agreement with Amtrak, allowing passengers to use Amtrak's reservation system to buy tickets for through travel on both the Texas Bullet Train and Amtrak's national routes.

Texas Central will offer a convenient transfer service connecting riders between Amtrak passenger stations and the high-speed train stations in Dallas and Houston. The agreement also will make other Amtrak services, such as training, marketing and sales capabilities, available to Texas Central.

Tim Keith, Texas Central's president, said it has been working with Amtrak and others on a commercial basis to expand opportunities to attract, assist and serve passengers on the 200 mph North Texas-to-Houston line.

"This agreement is another important step in the progress of the Texas Bullet Train," Keith said. "It gives both local and interstate travelers more options and ease of travel not previously available by intercity passenger trains in Texas."

Stephen Gardner, Amtrak's executive vice president and chief commercial officer, said one of the most significant gaps in Amtrak's route structure involves the country's 4th and 5th largest economies and Texas' largest metro areas, North Texas and Houston. The Texas Bullet Train will provide a direct connection between Amtrak routes serving the two commercial hubs, helping to facilitate interstate train travel.

"Amtrak supports the development of high-speed train service throughout the United States as part of a national passenger rail system, capable of meeting the nation's transportation needs," Gardner said. "When Texas Central's high-speed line begins operation, the joint ticketing arrangement will benefit Amtrak customers who currently cannot connect by train between Texas' two largest markets. We welcome the opportunity to partner with the private sector to expand the reach of our national network."

The agreement comes as the Federal Railroad Administration (FRA) works to complete a final environmental study of the train's 240-mile route. The FRA issued its Draft Environmental

Impact Statement (DEIS) Dec. 15, saying the train will alleviate strains on Texas' infrastructure. The FRA now is reviewing public comments it received on the draft in meetings from January to March this year.

The Texas Bullet Train is expected to pump more than \$36 billion directly into the state economy over the next 25 years, including providing more than \$2.5 billion in local and state taxes, creating 10,000 direct jobs during each year of construction and boosting development around the passenger stations. The project will not take federal or state grants to build or operate the project.

Under the joint agreement, Texas Central and Amtrak will facilitate the ability of interstate and intrastate train passengers to travel between points on the Texas Central line and throughout Amtrak's national network. The coordination includes:

- Through ticketing, an option that will allow Amtrak passengers to use its reservation system to buy Texas Central tickets.
- A Texas Central-provided transfer service, conveniently connecting passengers between Amtrak stations and the high-speed train terminals in Houston and Dallas.
- Potential coordination of frequent travel programs.
- Texas Central's purchase of services from Amtrak, such as training, marketing and sales.

Amtrak serves over 500 stations in 46 states and three Canadian provinces. More than 16 million Texans live within 25 miles of an Amtrak station. By making ticket-buying and trip-scheduling easier for travelers, both Amtrak and Texas Central can better serve their customers, enhancing the value of the innovative project to travelers nationwide.

Harris County Judge Ed Emmett, a former commissioner on the Interstate Commerce Commission, said, "These agreements between Amtrak and Texas Central provide for a passenger-first coordination of services that will increase Houstonians' access to Amtrak's national system and maximize the national impact of the Texas Bullet Train. "

Amtrak has not operated service between Dallas and Houston since 1995 when a leg of the Chicago-to-San Antonio/Los Angeles *Texas Eagle* route was discontinued. Texas Central will again provide service to this market, including Texas A&M University, with a passenger stop serving Bryan-College Station and Huntsville in the Brazos Valley.

ABOUT TEXAS CENTRAL

Texas Central is developing a new high-speed train system that will connect North Texas, the Brazos Valley and Houston, using proven, world-class technology. The 90-minute trip will provide a safe, reliable and productive transportation alternative. The company's free market approach is backed by investors, not government grants, a new business model for public infrastructure projects. Texas Central and its affiliated entities will be responsible for the system's design, finance, construction, operation and maintenance.

MEDIA INQUIRIES

For more information, please visit www.texascentral.com or contact:

Olivia Spaulding
Hill+Knowlton Strategies

olivia.spaulding@hkstrategies.com
214-238-8142

Exhibit 3

Finance Docket No. 36025

Delta Troy Reply In Opposition to Petition to Reopen

May 31, 2018

PARCEL TX-LE-066.320

CAUSE NO: 16-0137CV

JAMES FREDRICK MILES,	§	IN THE 87th DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
TEXAS CENTRAL RAILROAD & INFRASTRUCTURE, INC.	§	LEON COUNTY, TEXAS
	§	
Defendant,	§	
	§	
and	§	
	§	
INTEGRATED TEXAS LOGISTICS, INC.,	§	
	§	
Intervenor.	§	

**INTEGRATED TEXAS LOGISTICS, INC.'S VERIFIED PETITION IN
INTERVENTION AND APPLICATION FOR INJUNCTIVE RELIEF**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant Texas Central Railroad and Infrastructure, Inc. ("TCRI") and Intervenor Integrated Texas Logistics, Inc. ("ITL") plan to construct the first high-speed passenger train in the United States. As railroad companies and electric railways, TCRI and ITL have the absolute statutory right to examine and survey real property to determine the most advantageous route for the train, which will run between Dallas and Houston. Under the law, TCRI and ITL are not required to provide notice to landowners or to seek permission for surveying. That said, TCRI and ITL respect private property rights, are responsible corporate citizens, and intend to establish a good working relationship with landowners. For these reasons, TCRI has previously sought written permission from landowners before entering any property to conduct the examination and surveying activities needed to determine the most advantageous route for the train.

Plaintiff and Counter-Defendant James Miles (“Plaintiff”) has denied that TCRI—and, by extension, ITL—has the statutory right to enter his property and has refused permission to do so. TCRI and ITL have determined that the safest, and most prudent course of conduct, is to secure a temporary injunction that can leave no doubt of its right to enter Plaintiff’s property to conduct examinations and surveys.

Additionally, as it has been disputed that TCRI and ITL qualify as railroad companies and electric railways such that they have the statutory authority to exercise the rights afforded such entities, TCRI and ITL further seek a declaratory judgment that they are both railroad companies, as that term is used in TEX. TRANSP. CODE § 112.051, *et. seq.*, and electric railways, as that term is used in TEX. TRANSP. CODE § 131.012, *et. seq.* Intervenor ITL files this Petition in Intervention to join TCRI in this action because they have no adequate remedy at law for the relief sought. For more than 70 years, Texas courts have recognized that injunctive relief is an appropriate remedy when the right to examine and survey in advance of a project like TCRI’s and ITL’s is being denied.¹

I. DISCOVERY CONTROL PLAN

1. ITL pleads that discovery should be conducted in accordance with a Level 3 discovery control plan, pursuant to TEX. R. CIV. P. 190.3.

II. PARTIES

2. Intervenor Integrated Texas Logistics, Inc. is a Texas Corporation licensed to do business in the State of Texas and is in the process of developing a high-speed rail line between Dallas and Houston, Texas. ITL was chartered for the express purpose of planning, building,

¹ *Lewis v. Tex. Power & Light Co.*, 276 S.W.2d 950, 954 (Tex. App.—Dallas 1955 writ ref’d n.r.e.); *see also Occidental Chem. Corp. v. ETC NGL Transp., LLC*, 425 S.W.3d 354, 363 (Tex. App.—Houston [1st Dist.] 2011, pet. dismissed) (holding that “Texas courts have also recognized that injunctive relief is appropriate in this specific context, i.e., to grant relief to an entity with the right to access land to conduct preliminary survey work before instituting a condemnation proceeding.”).

maintaining, and operating an electric railroad.² ITL is a railroad company, as that term is used in TEX. TRANSP. CODE § 112.051 *et. seq.* and an electric railway as that term is used in TEX. TRANSP. CODE § 131.012 *et. seq.* Accordingly, ITL has been statutorily granted the right to “enter on the land or water of any person or corporation” in order to “have an examination and survey of its proposed railway made as necessary to select the most advantageous route” for its proposed railway.³

3. Texas Central Railroad and Infrastructure, Inc. is a Texas Corporation licensed to do business in the State of Texas and is in the process of developing a high-speed rail line between Dallas and Houston, Texas. TCRI amended its charter in 2015 to include, for the first time, its express purpose of planning, building, maintaining, and operating an electric railroad.⁴ TCRI is a railroad company, as that term is used in TEX. TRANSP. CODE § 112.051 *et. seq.* and an electric railway as that term is used in TEX. TRANSP. CODE § 131.012 *et. seq.* Accordingly, TCRI has been statutorily granted the right to “enter on the land or water of any person or corporation” in order to “have an examination and survey of its proposed railway made as necessary to select the most advantageous route” for its proposed railway.⁵

4. Plaintiff James Frederick Miles is an individual who resides in Leon County, Texas.

² See Certificate of Formation attached hereto as Exhibit “A.” ITL was created out of an abundance of caution after certain property owners related to the Project alleged that TCRI did not have eminent domain powers as an electric railway. While TCRI and ITL believe this argument is without merit, as discussed in their declaratory judgment action, below, TCRI and ITL created ITL to erase any question as to their authority to enter onto and survey the Property, as well as other properties related to the Project.

³ TEX. TRANSP. CODE §§ 112.051(a), 131.013(b).

⁴ See Certificate of Amendment attached hereto as Exhibit “B.”

⁵ TEX. TRANSP. CODE §§ 112.051(a), 131.013(b).

III. JURISDICTION AND VENUE

5. This Court has jurisdiction over this case pursuant to TEX. CIV. PRAC. & REM. CODE § 65.021(a).

6. Venue is proper pursuant to TEX. CIV. PRAC. & REM. CODE §§ 15.016 and 65.023(a) because the primary relief requested in this petition is injunctive in nature, and the Defendants are domiciled in Leon County, Texas.

IV. TEXAS RULE OF CIVIL PROCEDURE 47 DISCLOSURE

7. ITL seeks non-monetary relief in the form of injunctive relief and a declaratory judgment, as set forth herein. Additionally, ITL seeks monetary relief of \$100,000 or less in the form of attorneys' fees related to its declaratory judgment action.

V. GROUNDS FOR INTERVENTION

8. Texas Rule of Civil Procedure 60 provides that “[a]ny party may intervene by filing a pleading, subject to being stricken out by the court for sufficient cause on the motion of any party.” TEX. R. CIV. P. 60. A party has a justiciable interest in a lawsuit, and thus a right to intervene, when his interests will be affected by the litigation.⁶ ITL is entitled to intervene in this matter because it has a justiciable interest in the subject matter of this litigation and because the disposition of this action in ITL’s absence may, as a practical matter, impair or impede ITL’s ability to protect its interest.

9. Both TCRI and ITL are chartered for the purpose of constructing and operating a railroad under Texas law. Plaintiff seeks by this litigation to limit the power of TCRI and ITL to enter and survey his property for purposes of constructing and operating a railroad and interurban

⁶ See *Miami Indep. Sch. Dist. v. Moses*, 989 S.W.2d 871, 879 (Tex. App.—Austin 1999, pet. denied); *Intermarque Auto. Prods v. Feldman*, 21 S.W.3d 544, 549 (Tex. App.—Texarkana 2000, no pet.).

electric railway (the “Project”) because they have “no trains, no tracks, no stations, and no passengers.” See Pl.’s 2d Am. Pet. ¶¶ 23–25. The resolution of this suit will substantially affect the progress of the Project, ITL’s interest therein, and may broadly impact ITL’s power of eminent domain in the future. Therefore, ITL has an interest in the outcome of this litigation sufficient to justify intervention. Moreover, judicial economy is served by allowing ITL to intervene to prevent a duplicity of suits related to the right to survey Plaintiff’s property for purposes of completing the Project.

VI. BACKGROUND FACTS

1. Plaintiff is the record owner of certain real property (the “Property”) located in Leon County, Texas, more particularly described in the attached Exhibit “C.”

2. TCRI and ITL, along with their affiliated entities, are in the process of planning, surveying, and acquiring the right-of-way necessary for a 240-mile high-speed rail line that will connect the two largest metropolitan areas in the State of Texas, with a planned intermediate stop to be located in Grimes County (the “Project”).

3. TCRI is primarily responsible for pre-construction activities related to the design and right-of-way acquisition of the Project. ITL will support and assist TCRI and contractors in the procurement, storage, and timely delivery of the rolling stock and component parts necessary for construction. ITL will also procure, own, and operate any short line railroads necessary to facilitate the Project. Following construction, ITL will maintain the rail infrastructure and rolling stock.

4. Employing the N700-I bullet train technology, the Project will operate on a dedicated right-of-way that will be similar in width to that of a standard county road and, where possible, is being designed to parallel pre-existing rights-of-way.

5. Plaintiff’s Property is one of the numerous individual properties that will likely be

crossed by the Project.

6. TCRI submitted a petition for a Rule of Particular Applicability to the Federal Railroad Administration (“FRA”) addressing the safety issues presented by the Project. Pursuant to the National Environmental Policy Act, a draft environmental impact statement (“DEIS”) covering this request was released on December 15, 2017. In the DEIS, the FRA designated a preferred build alternative route for the Project. The FRA continued to analyze the environmental impacts of the various build alternatives during a public notice and comment period ending March 9, 2018, and held ten public hearings along the design corridor. Plaintiff attended the public hearing in Leon County. The project has reached a point where actual access to the Property is necessary in order to determine the viability of the proposed route and the exact location it might take over the Property.

7. TCRI has entered an agreement with National Railroad Passenger Corporation doing business as Amtrak (“Amtrak”) to connect the Project to Amtrak’s interstate rail system. As part of the agreement between the parties, TCRI will be permitted to sell through-tickets for passengers to connect to the Amtrak’s extensive interstate rail network in Dallas and Houston.

8. Based on the incorporation of the Project into the national rail network through its agreement with Amtrak, TCRI has filed its application with the Surface Transportation Board (“STB”) requesting that it assert jurisdiction over the Project. The STB, formerly known as the Interstate Commerce Commission, has exclusive jurisdiction over transportation by rail carrier between a place in one state and a place in another state “as part of the interstate rail network.”⁷

9. TCRI and ITL have engaged land surveyors to survey the Property in an effort to determine the exact route the proposed high-speed rail line may take over the Property, and to determine the legal boundaries of any right-of-way that TCRI and ITL may need to acquire.

⁷ See 29 U.S.C. § 10501(a)(2)(A).

10. TCRI and ITL also need to examine the Property to determine if there are any cultural, environmental/wetlands, or topographical obstacles to construction.

11. Each of the aforementioned examinations and surveys are necessary in order for TCRI and ITL to select the most advantageous route for its high-speed rail line and to legally identify and define the right-of-way they will ultimately need to acquire from Plaintiff.

12. TCRI and ITL, through TCRI, have repeatedly sought to coordinate their examination and survey activities with Plaintiff by entering into a voluntary access agreement that would allow TCRI and ITL to conduct the examination and surveying activities they are entitled to conduct under the law. Within those agreements, and within this petition, TCRI and ITL acknowledge that they are statutorily responsible for any damages that may occur to the Property as a result of their examination and survey activities.⁸

13. Plaintiff has been unwilling to enter into a voluntary access agreement and has denied TCRI access to the Property. Plaintiff has asserted one reason for this denial is that TCRI is not a railroad company and interurban electric railway under Texas law. Plaintiff is thus preventing TCRI and ITL from completing the examination and surveying activities that need to be conducted in order for the Project to move forward.

VII. CLAIMS

A. Declaratory Judgment Action

14. ITL seeks a declaratory judgment pursuant to Chapter 37 of the Texas Civil Practice and Remedies Code as to its status under the Texas Transportation Code. Specifically, ITL seeks a declaration that it is a railroad company as that term is used in TEX. TRANSP. CODE § 112.051 *et. seq.*

⁸ TEX. TRANSP. CODE, §§ 131.013(b) and 112.051(b).

ITL further seeks a declaration that it is an electric railway as that term is used in TEX. TRANSP. CODE § 131.012 *et. seq.*

15. ITL's power to conduct the examinations and surveys necessary to determine the most advantageous route for the proposed high-speed rail line is derived from two separate statutes. As Plaintiff has denied TCRI's and ITL's authority under these statutes, ITL hereby seeks a declaratory judgment as set forth below.

1. ITL is a "railroad company"

16. TEX. TRANSP. CODE § 112.051(a) provides that a railroad company "is entitled to make an examination and survey for the company's proposed railway, to be performed as necessary to select the most advantageous route for the proposed railway, and, subject to Subsection (c), may enter on the lands or waters of any person or corporation for that purpose."⁹

17. The term "railroad company" is statutorily defined in TEX. TRANSP. CODE § 81.002 as including "any other legal entity operating a railroad, including an entity organized under the Texas Business Corporation Act or the Texas Corporation Law provisions of the Business Organizations Code." Plaintiff has denied that TCRI constitutes a railroad company under the Texas Transportation Code. Therefore, pursuant to TEX. CIV. PRAC. & REM. CODE 37.004(a), ITL seeks declaratory relief from the Court in the form of a declaration of its rights, status, or other legal relations under the Texas Transportation Code as a railroad company, as that term is defined in § 81.002 and used in § 112.051 *et. seq.*

2. ITL is an "electric railway"

18. Additionally, TEX. TRANSP. CODE § 131.013(b) provides that an electric railway may:

- (1) have an examination and survey of its proposed railway made as necessary to select the most advantageous route; and

⁹ TEX. TRANSP. CODE. ANN. § 112.051(a) (Vernon 2011).

(2) for the purposes of Subdivision (1), enter on the land or water of any person or corporation, subject to responsibility for all damages that may be caused by the entrance, examination, or survey.

19. An electric railway is defined by TEX. TRANSP. CODE § 131.011 as “a corporation chartered under the laws of this state to conduct and operate an electric railway between two municipalities in this state.” Plaintiff has denied that TCRI constitutes an electric railway under the Texas Transportation Code. Therefore, pursuant to TEX. CIV. PRAC. & REM. CODE 37.004(a), ITL seeks declaratory relief from the Court in the form of a declaration of its rights, status, or other legal relations under the Texas Transportation Code as an electric railway, as that term is defined in § 131.011 and used in § 131.012 *et. seq.*

B. Application for Temporary Injunctive Relief

20. In order to preserve the status quo and to protect ITL’s statutory legal right to access Plaintiff’s Property to conduct the examinations and survey activities necessary for the Project, Plaintiff should be cited to appear and show cause why a temporary injunction should not issue enjoining Plaintiff and those acting by or at Plaintiff’s direction from taking any further action interfering with ITL’s right to conduct examinations and surveys. As set forth herein, all prerequisites to temporary injunctive relief have been satisfied.

21. Texas courts have conclusively established that entities vested with the power of eminent domain, such as ITL,¹⁰ have the right to enter onto private property in order to conduct examinations and surveys, and have consistently granted injunctive relief to preserve and protect this legal right.¹¹ For over 70 years, courts have held that the status quo in these instances is “one of

¹⁰ TCRI is vested with the right of eminent domain under TEX. TRANSP. CODE §§ 131.012 and 112.053.

¹¹ See *Lewis*, 276 S.W.2d at 954 (upholding injunction allowing surveys to move forward and holding that the term “enter on” as used in Section 181.004 of the Texas Utilities Code recognized the necessity of preliminary surveys and was intended to grant authority to conduct the same); *Coastal Marine Serv. of Tex., Inc. v. City of Port Neches*, 11 S.W.3d 509 (Tex. App.—Beaumont 2000, no pet.) (upholding injunction and allowing for environmental

action, not of rest.”¹² A diligent search of Texas authorities has not disclosed a single appellate case in which a condemning authority (of any kind) was denied injunctive relief to conduct lineal surveys or environmental examinations.

1. Statutory grounds.

22. Pursuant to TEX. CIV. PRAC. & REM. CODE § 65.011(1), injunctive relief is appropriate when the applicant is entitled to the relief sought and such relief requires the restraining of some act prejudicial to the applicant.¹³ As a matter of law, ITL is entitled to enter upon the Property to conduct examinations and surveys, and Plaintiff should be restrained from interfering with ITL’s exercise of this legal right.

2. Equitable grounds.

23. Plaintiff’s wrongful conduct in preventing ITL from having unimpeded access to the Property also entitles ITL to common law injunctive relief as more fully explained below.

(a) Wrongful Act. ITL is entitled to injunctive relief since it has demonstrated one or more wrongful acts committed by Plaintiff. TCRI has requested that Plaintiff allow TCRI entry onto the Property to conduct examinations and surveys necessary to select the most advantageous route for the Project. Plaintiff refuses to grant TCRI and ITL permission to enter onto the Property for these purposes, despite TCRI’s and ITL’s legal right to do so.

examinations); *I.P. Farms v. Exxon Pipeline Co.*, 646 S.W.2d 544, 545 (Tex. App.—Houston [1st Dist.] 1982, no writ) (ancillary to eminent domain power is the authority to enter upon the land to make a preliminary survey); *Puryear v. Red River Auth.*, 383 S.W.2d 818, 820–21 (Tex. Civ. App.—Amarillo 1964, writ ref’d n.r.e.); *Hicks v. Tex. Mun. Power Agency*, 548 S.W.2d 949, 955 (Tex. App.—Houston [14th Dist.] 1977, writ ref’d n.r.e.) (“[g]enerally, courts have upheld the right of a governing body vested with condemnation power to enter into lands for the purpose of a preliminary survey either by express statutory grant or by implication”); *In re Energy Transfer Fuel, L.P.*, 298 S.W.3d 357, 358 (Tex. App.—Tyler 2009, no writ) (acknowledging that a gas corporation with the power of eminent domain had the right to enter upon property to make preliminary surveys of proposed routes).

¹² See *Lewis*, 276 S.W.2d at 955; *Coastal Marine Serv. of Tex., Inc.*, 11 S.W.3d at 515.

¹³ TEX. CIV. PRAC. & REM. CODE § 65.011(1); see *Coastal Marine Serv. of Tex., Inc.*, 11 S.W.3d at 515.

(b) Probable Right to Relief. ITL is entitled to injunctive relief since it has demonstrated a probable right to the relief sought upon final hearing. As set out more specifically above, ITL is statutorily and legally entitled to enter Plaintiff's Property for the purposes of conducting examinations and surveys associated with the Project. Plaintiff has refused to allow the requested examinations and surveys, and is therefore denying the exercise of ITL's legal rights without good cause.

(c) Probable Injury. ITL is entitled to injunctive relief since it has shown it will suffer probable injury by establishing: (1) imminent harm; (2) irreparable injury; and (3) no adequate remedy at law.

(i) Imminent Harm. An injunction is proper when the harm sought to be prevented is imminent or immediate.¹⁴ TCRI has requested entry upon the Property in order to conduct the examinations and surveys needed for the Project. Without access to the Property to conduct these examinations and surveys, the planning and other preliminary activities associated with the Project (much less the actual acquisition of right-of-way or construction of the railroad) cannot continue. By denying TCRI and ITL the right to exercise its statutory right to conduct the requisite examinations and surveys, Plaintiff is causing current and actual harm to ITL.

(ii) Irreparable Injury. An injunction is proper when the harm sought to be prevented is irreparable. Irreparable injury has been defined as an injury that cannot be compensated in damages, or an injury that results in damages that cannot be measured by any pecuniary standard.¹⁵ ITL's purpose for seeking entry to the Property is to perform

¹⁴ *Crawford Energy, Inc. v. Tex. Indust.*, 541 S.W.2d 463, 467 (Tex. Civ. App.—Dallas 1976, no writ).

¹⁵ *Pipkin v. JVM Oper., L.C.*, 197 B.R. 47, 55 (E.D. Tex. 1996) (holding irreparable injury where economic damage is difficult to calculate, as where party will incur injury to its operations, reputation, and goodwill); *Cho v. Itco, Inc.*,

examinations and surveys that will allow them to determine a suitable location and establish legal boundaries for the Project discussed above. Until those examinations and surveys are performed, it is impossible to determine the location of the railroad, the area to be encumbered by the right-of-way, the legal boundaries of any proposed right-of-way, or the feasibility of construction given the natural and cultural resources that may exist on the Property. Without examination and survey of the Property, the Project cannot be finalized—causing monetary damages that cannot be adequately measured or easily calculated, as well as damages to ITL’s operations, goodwill, and reputation that cannot be monetarily measured at all. Conversely, enforcement of ITL’s statutory right to enter the Property and conduct these preliminary surveys will cause no harm and minimal inconvenience to Plaintiff.¹⁶ Furthermore, to the extent that any damage is caused to Plaintiff’s Property, ITL is statutorily required to compensate Plaintiff for those damages.¹⁷

(iii) **No Adequate Remedy at Law.** A party is entitled to injunctive relief when there is no adequate remedy at law.¹⁸ For a remedy to qualify as being adequate, it must

782 F. Supp. 1183, 1185 (E.D. Tex. 1991) (finding threat of losing customer goodwill may constitute irreparable harm); *Assoc. Gen. Contract v. City of El Paso*, 932 S.W.2d 124, 126 (Tex. App.—El Paso 1996, no writ); *Canteen Corp. v. Republic of Tex. Prop., Inc.*, 773 S.W.2d 398, 401 (Tex. App.—Dallas 1989, no writ); *see also Estate of Dilasky*, 972 S.W.2d 763, 767 (Tex. App.—Corpus Christi 1998, no writ) (costs and delay may be factors of irreparable harm); *Liberty Mut. Ins. Co. v. Mustang Tractor & Equip. Co. & Eureka Inv. Co.*, 812 S.W.2d 663, 666 (Tex. App.—Houston [14th Dist.] 1997, no writ) (disruption of business can be irreparable harm).

¹⁶ *See Lewis*, 276 S.W.2d at 955–56 (“the trial court no doubt weighed the relative convenience and inconvenience and the comparative injuries to the parties and to the public which would arise from the granting or refusal of this temporary injunction, and found the equities to lie with Appellee [utility company]. There can be little if any doubt that Appellee under the facts shown in this record is entitled to acquire easement rights over the Appellant’s land, either by voluntary conveyance or by condemnation. That being so, the injuries suffered by Appellant from the survey will be small compared with the injuries suffered by the Appellee and the public if Appellee were denied the right to proceed with its preliminary survey...”).

¹⁷ TEX. TRANS. CODE ANN. § 131.013(b) (Vernon 2011); TEX. TRANS. CODE ANN. § 112.051(b) (Vernon 2011).

¹⁸ *Fasken v. Darby*, 901 S.W.2d 591, 592 (Tex. App.—El Paso 1995, no writ).

give the plaintiff complete, final, and equal relief.¹⁹ If damages cannot be calculated for the harm complained of, or if the defendant will be unable to pay damages, there is no adequate remedy at law.²⁰ Plaintiff's action in obstructing TCRI from completing its examinations and surveys on the Property effectively prevent TCRI and ITL from moving forward with the Project. ITL cannot identify any impediments to the proposed route or the proposed right-of-way which it would seek to purchase from the Plaintiff without first conducting the necessary examinations and surveys required—actions that will cause no harm to Plaintiff, but which Plaintiff refuses to allow TCRI and ITL to perform. No amount of monetary damages can cure Plaintiff's denial of access complained of herein. Assuming for argument's sake that monetary damages could somehow be calculated, they would be in the billions of dollars—amounts that Plaintiff undoubtedly could not pay.²¹ Accordingly, ITL has no adequate remedy at law.

(d) Bond. ITL will post a reasonable bond as set by the Court in this case.

C. Permanent Injunction

24. ITL further requests that the Court, after trial is completed, enter a permanent injunction against Plaintiff and those acting in concert with him, enjoining Plaintiff from interfering with ITL's right to conduct the examinations and surveys necessary to select the most advantageous route for the Project.

D. Attorneys' Fees

¹⁹ See *Henderson v. KARTS, Inc.*, 822 S.W.2d 769, 773 (Tex. App.—Houston [1st Dist.] 1992, no writ).

²⁰ *Tex. Indus. Gas v. Phx. Metallurgical Corp.*, 828 S.W.2d 529, 533 (Tex. App.—Houston [1st Dist.] 1992, no writ).

²¹ *Tel. Equip. Network, Inc. v. TA/Westchase Place, Ltd.*, 80 S.W.3d 601, 611 (Tex. App.—Houston [1st Dist.] 2002, no pet.)

25. Pursuant to TEX. CIV. PRAC. & REM. CODE § 37.009, ITL is entitled to recover its reasonable and necessary attorneys' fees and costs associated with its declaratory judgment action.

VIII. PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, ITL respectfully requests the following relief:

1. A declaration that ITL is a railroad company, as that term is defined in TEX. TRANSP. CODE § 81.002 and used in TEX. TRANSP. CODE § 112.051 *et. seq.*, and an electric railway, as that term is defined in TEX. TRANSP. CODE § 131.011 and used in TEX. TRANSP. CODE § 131.012 *et. seq.*, along with the reasonable and necessary attorneys' fees and costs incurred related to this claim;

2. That Plaintiff be cited to appear and show cause and that upon such hearing, a temporary injunction be issued restraining the Plaintiff, his agents, servants, employees, and assigns, and anyone else working in active concert or participation with him, from directly or indirectly impeding or interfering in any way with access on and across the Property by ITL or its agents, employees, operators, surveyors, and engineers for the purposes of conducting examinations and surveys of the Property in connection with the proposed high-speed rail line and proposed easement and right-of-way across the Property and further restraining Plaintiff from removing or in any way tampering with the stakes and markers placed upon the Property by the survey crews during the pendency of this action;

3. That a permanent injunction be issued prohibiting Plaintiff, his agents, servants, employees, assigns, and anyone else working in active concert or participation with them, from directly or indirectly impeding or interfering in any way with access on and across the Property by ITL or its agents, employees, operators, surveyors, and engineers for the purposes of conducting examinations and surveys of the Property in connection with the proposed high-speed rail line and proposed easement and right-of-way across the Property and further restraining Plaintiff from

removing or in any way tampering with the stakes and markers placed upon the Property by the survey crews; and

4. Such other and further general relief, at law or in equity, to which ITL may be entitled.

Respectfully submitted,

/s/ Robert Neblett

JACKSON WALKER L.L.P.
100 Congress Avenue, Suite 1100
Austin, Texas 78701
512-236-2000
Fax No. 512-236-2002
Robert B. Neblett III—14849300
rneblett@jw.com
Monte F. James—10547520
mjames@jw.com
Brad Anderson—24055106
banderson@jw.com
Susan Dillon Ayers—24028302
sayers@jw.com
Faith Johnson Lowry—24099560
flowry@jw.com

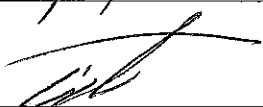
ATTORNEYS FOR TEXAS CENTRAL
RAILROAD & INFRASTRUCTURE, INC.
AND INTEGRATED TEXAS LOGISTICS,
INC.

VERIFICATION

My name is Travis Kelly. I am Vice President for Integrated Texas Logistics, Inc. ("ITL"). My birth date is January 23, 1982. My address is 1409 South Lamar Street Suite 1022, Dallas, Texas 75215. I have read the foregoing ITL's Verified Petition in Intervention and Application for Injunctive Relief, and the factual statements set forth therein are true and correct based upon either my personal knowledge or information obtained from the records attached hereto, upon which information I am relying. I reserve the right to amend the aforesaid filing if it should appear at any time that omissions or errors have been made, or that additional or more accurate information has been obtained. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Dallas County, Texas, on

5/3/18



Travis Kelly, Vice President
Integrated Texas Logistics, Inc.

EXHIBIT A



Office of the Secretary of State

CERTIFICATE OF FILING OF

Integrated Texas Logistics, Inc.
File Number: 802823731

The undersigned, as Secretary of State of Texas, hereby certifies that a Certificate of Formation for the above named Domestic For-Profit Corporation has been received in this office and has been found to conform to the applicable provisions of law.

ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing filing effective on the date shown below.

The issuance of this certificate does not authorize the use of a name in this state in violation of the rights of another under the federal Trademark Act of 1946, the Texas trademark law, the Assumed Business or Professional Name Act, or the common law.

Dated: 09/26/2017

Effective: 09/26/2017



A stylized, handwritten signature of Rolando B. Pablos.

Rolando B. Pablos
Secretary of State

SEP 26 2017

Corporations Section

CERTIFICATE OF FORMATION

OF

INTEGRATED TEXAS LOGISTICS, INC.

The undersigned natural person of the age of eighteen years or more, acting as the sole incorporator of a corporation under the Texas Business Organizations Code, does hereby adopt the following Certificate of Formation for such corporation:

ARTICLE ONE

The name of the corporation is Integrated Texas Logistics, Inc.

ARTICLE TWO

The period of its duration is perpetual.

ARTICLE THREE

The purpose or purposes for which the corporation is organized are:

To construct, acquire, maintain, or operate lines of electric railway between municipalities in this state for the transportation of freight, passengers, or both freight and passengers, with all powers conferred pursuant to and all limitations imposed by Chapter 131 of the Texas Transportation Code;

To operate and transact business as a railroad company, with all powers conferred pursuant to and all limitations imposed by Chapter 112 of the Texas Transportation Code;

To conduct or promote any other lawful businesses or purposes that a corporation is legally allowed to conduct or promote, within this state or any other jurisdiction; and

In general, to have and exercise all of the powers conferred by the laws of Texas upon corporations formed under the Texas Business Organizations Code, and to do any and all things hereinafter set forth to the same extent as natural persons might or could do.

ARTICLE FOUR

The aggregate number of shares which the corporation shall have authority to issue is One Thousand (1,000) shares, and the par value of each of such shares shall be One Cent (\$.01). All such shares shall be of one class and shall be designated as Common Stock.

ARTICLE FIVE

The address of its initial registered office is 1999 Bryan Street Suite 900, Dallas, Texas 75201, and the name of its initial registered agent at such address is C T Corporation System.

ARTICLE SIX

The number of directors constituting the initial Board of Directors is one (1) and the name and address of the person who is to serve as the director of the corporation until the first annual meeting of the shareholders or until his successors are elected and qualified are:

Name

Address

Paul Lansdale

2001 Ross Avenue, Suite 3700
Dallas, Texas 75201

ARTICLE SEVEN

The name and address of the incorporator is KJ Pedersen, c/o Vinson & Elkins L.L.P., 2001 Ross Avenue, Suite 3700, Dallas, Texas 75201.

ARTICLE EIGHT

Unless a Bylaw adopted by the shareholders provides otherwise as to all or some portion of the corporation's Bylaws, the corporation's shareholders may amend, repeal or adopt the corporation's Bylaws even though the Bylaws may also be amended, repealed or adopted by its Board of Directors.

ARTICLE NINE

Any action required by the Texas Business Organizations Code to be taken at any annual or special meeting of shareholders, or any action which may be taken at any annual or special meeting of shareholders, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall have been signed by the holder or holders of shares having not less than the minimum number of votes that would be necessary to take such action at a meeting at which the holders of all shares entitled to vote on the action were present and voted.

ARTICLE TEN

No director of the corporation shall be liable to the corporation or its shareholders for monetary damages for an act or omission in the director's capacity as a director, except for liability (i) for any breach of the director's duty of loyalty to the corporation or its shareholders, (ii) for acts or omissions not in good faith that constitute a breach of duty of the director to the corporation or an act or omission that involves intentional misconduct or a knowing violation of law, (iii) for any transaction from which the director received an improper benefit, regardless of whether the benefit resulted from an action taken within the scope of the director's office, and (iv) for acts or omissions for which the liability of a director is expressly provided by statute. Any repeal or amendment of this Article by the shareholders of the corporation shall be prospective only, and shall not adversely affect any limitation on the personal liability of a director of the corporation existing at the time of such repeal or amendment. In addition to the circumstances in which a director of the corporation is not personally liable as set forth in the

preceding sentences, a director shall not be liable to the fullest extent permitted by any amendment to the Texas statutes hereafter enacted that further limits the liability of a director.

[Remainder of page intentionally blank.]

IN WITNESS WHEREOF, the undersigned has set his hand this 25th day of September,
2017.

/s/ KJ Pedersen

KJ Pedersen

Incorporator

EXHIBIT B



Office of the Secretary of State

The undersigned, as Secretary of State of Texas, does hereby certify that the attached is a true and correct copy of each document on file in this office as described below:

Texas Central Railroad & Infrastructure, Inc.
Filing Number: 801704184

Certificate of Amendment

January 21, 2015

In testimony whereof, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in Austin, Texas on March 30, 2016.



A handwritten signature in black ink, appearing to read "Cascos", followed by a horizontal line.

Carlos H. Cascos
Secretary of State

Form 424
(Revised 05/11)

Submit in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512/463-5709
Filing Fee: See instructions



Certificate of Amendment

This space reserved for office use.

FILED
In the Office of the
Secretary of State of Texas

JAN 21 2015

Corporations Section

Entity Information

The name of the filing entity is:

TXHS Railroad, Inc.

State the name of the entity as currently shown in the records of the secretary of state. If the amendment changes the name of the entity, state the old name and not the new name.

The filing entity is a: (Select the appropriate entity type below.)

- | | |
|--|---|
| ☒ For-profit Corporation | ☐ Professional Corporation |
| ☐ Nonprofit Corporation | ☐ Professional Limited Liability Company |
| ☐ Cooperative Association | ☐ Professional Association |
| ☐ Limited Liability Company | ☐ Limited Partnership |

The file number issued to the filing entity by the secretary of state is: 801704184

The date of formation of the entity is: 12/20/2012

Amendments

1. Amended Name

(If the purpose of the certificate of amendment is to change the name of the entity, use the following statement)

The amendment changes the certificate of formation to change the article or provision that names the filing entity. The article or provision is amended to read as follows:

The name of the filing entity is: (state the new name of the entity below)

Texas Central Railroad & Infrastructure, Inc.

The name of the entity must contain an organizational designation or accepted abbreviation of such term, as applicable.

2. Amended Registered Agent/Registered Office

The amendment changes the certificate of formation to change the article or provision stating the name of the registered agent and the registered office address of the filing entity. The article or provision is amended to read as follows:

Registered Agent
(Complete either A or B, but not both. Also complete C.)

☐ A. The registered agent is an organization (cannot be entity named above) by the name of:

OR

☐ B. The registered agent is an individual resident of the state whose name is:

First Name	M.I.	Last Name	Suffix
The person executing this instrument affirms that the person designated as the new registered agent has consented to serve as registered agent.			

C. The business address of the registered agent and the registered office address is:

Street Address (No P.O. Box)	City	State	Zip Code
		TX	

3. Other Added, Altered, or Deleted Provisions

Other changes or additions to the certificate of formation may be made in the space provided below. If the space provided is insufficient, incorporate the additional text by providing an attachment to this form. Please read the instructions to this form for further information on format.

Text Area (The attached addendum, if any, is incorporated herein by reference.)

☐ Add each of the following provisions to the certificate of formation. The identification or reference of the added provision and the full text are as follows:

☒ Alter each of the following provisions of the certificate of formation. The identification or reference of the altered provision and the full text of the provision as amended are as follows:

Article 5 - Purpose is amended and restated in its entirety to read as follows:

"The purpose for which the corporation is organized is to plan, build, maintain and operate an interurban electric railroad, and to conduct or promote any other lawful businesses or purposes that a corporation is legally allowed to conduct or promote, within this state or any other jurisdiction."

☐ Delete each of the provisions identified below from the certificate of formation.

Statement of Approval

The amendments to the certificate of formation have been approved in the manner required by the Texas Business Organizations Code and by the governing documents of the entity.

Effectiveness of Filing (Select either A, B, or C.)

- A. ☒ This document becomes effective when the document is filed by the secretary of state.
- B. ☐ This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____
- C. ☐ This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: _____

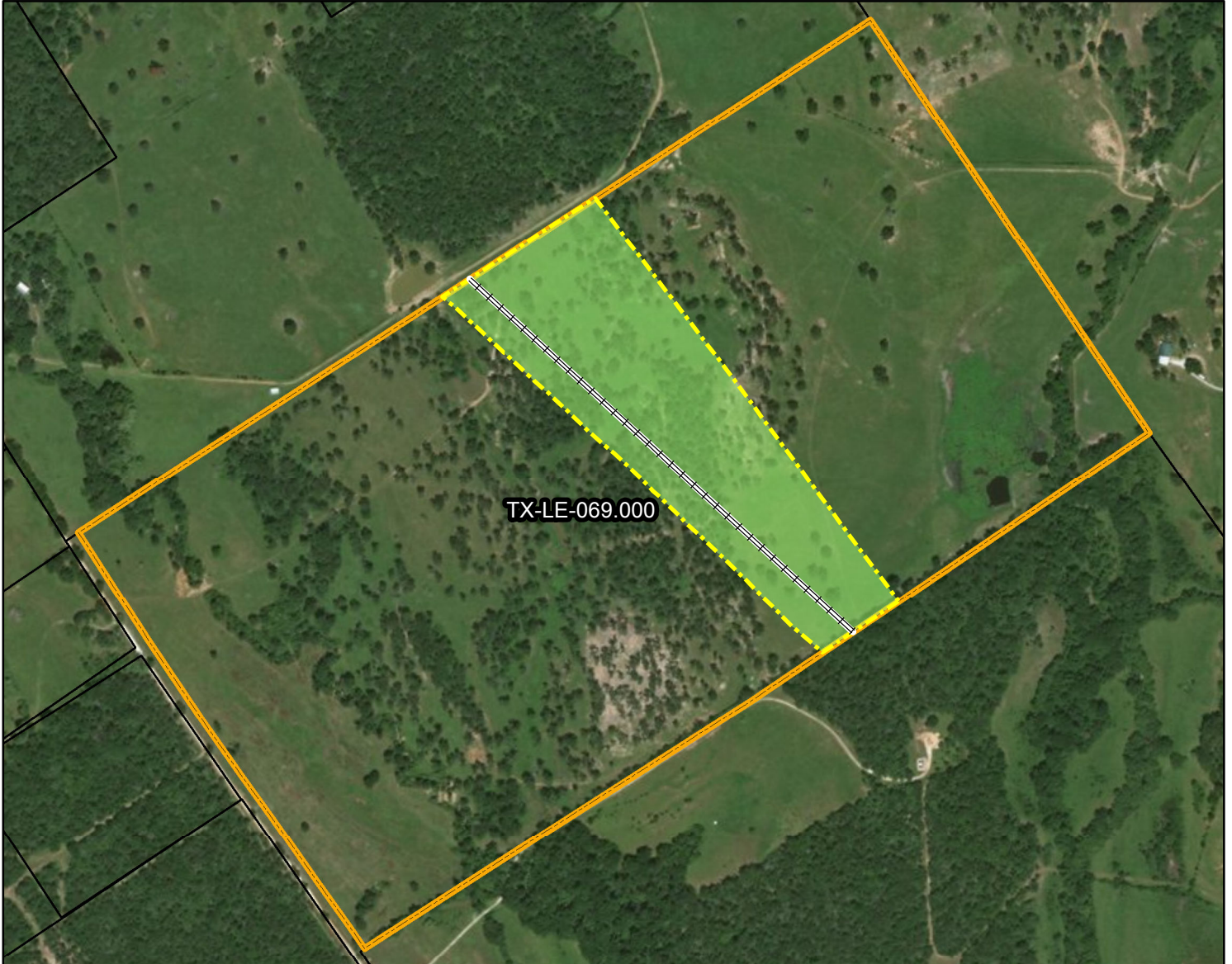
By: _____


Signature of authorized person

Mark M. Walker
Printed or typed name of authorized person (see instructions)

EXHIBIT C

**PRELIMINARY ACQUISITION DRAWING
LEON COUNTY, TX**



ROW LENGTH: 2300.1 FT.
TRACT ACREAGE: 186.5 AC.
ACREAGE TO BE ACQUIRED: 30.795 AC.

AREAL CALCULATIONS AND LINEAR DISTANCES
WERE CALCULATED USING: NAD1983 (2011)
STATE PLANE ZONE TEXAS CENTRAL FIPS 4203
(US FEET)

TRACT NO.: TX-LE-069.000



0 1,000 Feet



**TEXAS
CENTRAL
RAILROAD &
INFRASTRUCTURE**

TEXAS CENTRAL RAILROAD & INFRASTRUCTURE, INC.

OWNER NAME:
JAMES F. MILES AND WIFE, BARBARA
MILES



ALIGNMENT



ACREAGE TO BE ACQUIRED



RIGHT OF WAY



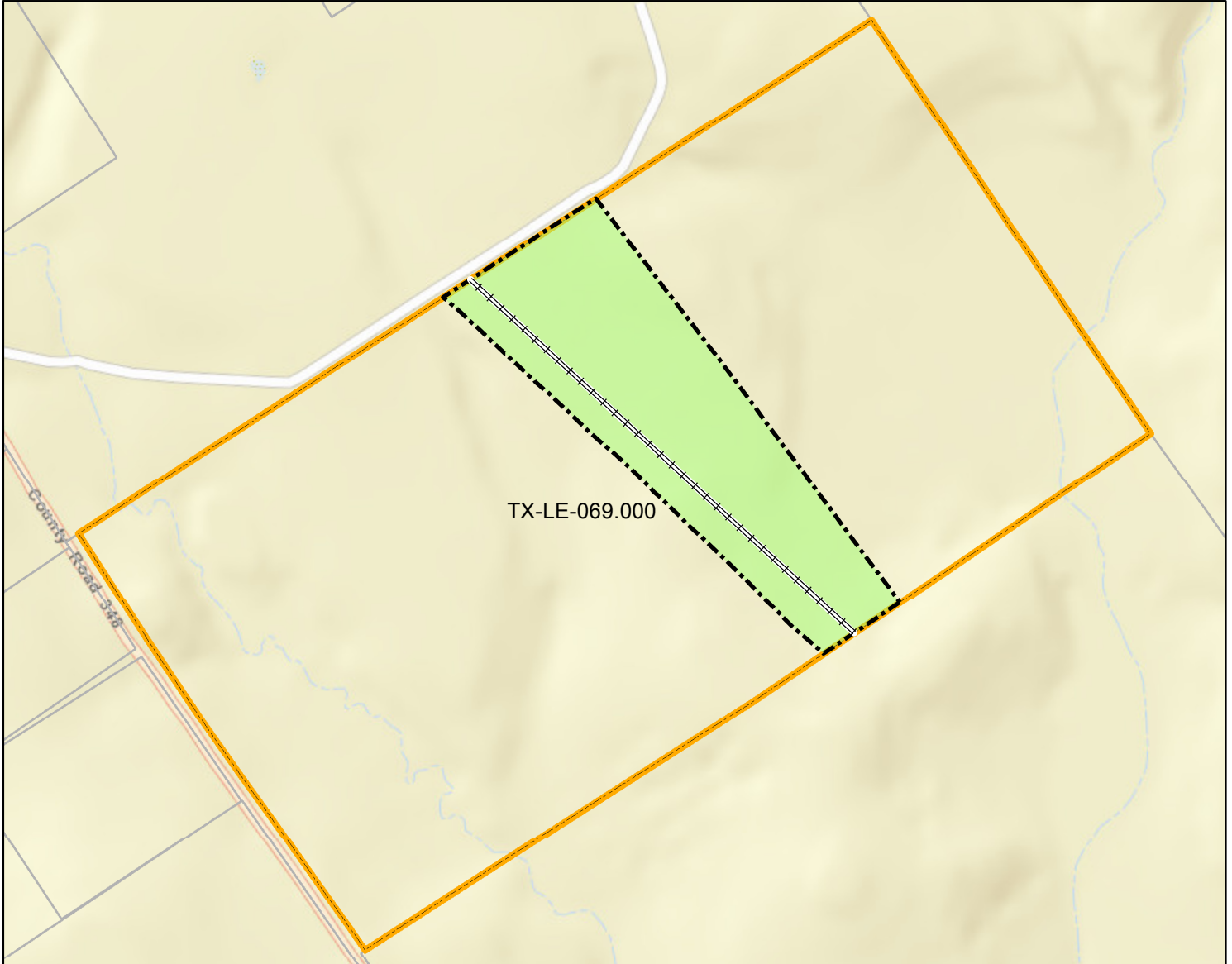
PROPERTY BOUNDARIES



ADJACENT PROPERTY BOUNDARIES

THIS MAP IS FOR INFORMATION PURPOSES. DISTANCES IN THIS MAP ARE APPROXIMATIONS ONLY AND SHOULD NOT BE USED FOR AUTHORITATIVE DEFINITION OF LEGAL BOUNDARY OR PROPERTY TITLE.

**PRELIMINARY ACQUISITION DRAWING
LEON COUNTY, TX**



ROW LENGTH: 2300.1 FT.
TRACT ACREAGE: 186.5 AC.
ACREAGE TO BE ACQUIRED: 30.795 AC.

AREAL CALCULATIONS AND LINEAR DISTANCES
WERE CALCULATED USING: NAD1983 (2011)
STATE PLANE ZONE TEXAS CENTRAL FIPS 4203
(US FEET)

TRACT NO.: TX-LE-069.000



0 1,000 Feet



**TEXAS
CENTRAL
RAILROAD &
INFRASTRUCTURE**

TEXAS CENTRAL RAILROAD & INFRASTRUCTURE, INC.

OWNER NAME:
JAMES F. MILES AND WIFE, BARBARA
MILES



ALIGNMENT



ACREAGE TO BE ACQUIRED



RIGHT OF WAY



PROPERTY BOUNDARIES



ADJACENT PROPERTY BOUNDARIES

THIS MAP IS FOR INFORMATION PURPOSES. DISTANCES IN THIS MAP ARE APPROXIMATIONS ONLY AND SHOULD NOT BE USED FOR AUTHORITATIVE DEFINITION OF LEGAL BOUNDARY OR PROPERTY TITLE.

Exhibit 4

Finance Docket No. 36025

Delta Troy Reply In Opposition to Petition to Reopen

May 31, 2018

OUR COMPANY

WE ARE A PRIVATE, TEXAS-BASED COMPANY

Texas Central Partners, LLC (Texas Central) is a private company bringing a transformational project to Texas that advances the economy, respects Texan values and keeps our state on track for future growth.

We are a Texas-based private company, employing a market-led approach. Unlike other high-speed rail projects, we are backed by private investors, not public funds.

Texas Central is developing a new high-speed passenger rail system that will connect Dallas/Fort Worth and Houston using a proven, world-class technology that will provide a travel time of less than 90 minutes.

CEO

Exhibit 5

Finance Docket No. 36025

Delta Troy Reply In Opposition to Petition to Reopen

May 31, 2018

TEXANS AGAINST HIGH SPEED
RAIL, INC., and
FRANK M. REILLY

Plaintiffs,

v.

KEN PAXTON, ATTORNEY GENERAL
FOR THE STATE OF TEXAS, and
TEXAS DEPARTMENT OF
TRANSPORTATION,

Defendants.

[illegible]

TRAVIS COUNTY, TEXAS

Intervenor Texas Central High-Speed Railway, LLC (“TCR”) files this motion for partial summary judgment, and would respectfully show the Court as follows:

TCR promotes and facilitates the development of a high-speed rail project that will connect the Dallas/Fort Worth and Houston areas. Texans Against High-Speed Rail (“TAHSR”) is an organization whose stated mission is to defeat that project. In furtherance of that mission, TAHSR brought this mandamus suit under the Texas Public Information Act after the Office of the Attorney General correctly ruled that the Texas Department of Transportation (“TxDOT”) must withhold 75 pages of sensitive, confidential information TCR submitted to facilitate regulatory review of the project.

The Public Information Act protects the privacy and property rights of private business entities, and thus it does not require release of a company's confidential information if the release would give advantage to the company's competitors or substantially harm the company's competitive position. The summary-judgment evidence establishes that release of the

information at issue would both give advantage to competitors of TCR's high-speed rail project and would substantially harm TCR's competitive position, both in the immediate term as the project competes for investment dollars and once the rail system is operational and TCR competes for riders. The Public Information Act thus protects TCR's confidential information as a matter of law, and the Court should deny Plaintiffs' request for mandamus relief against TxDOT with regard to that information.

II. BACKGROUND AND FACTS

A. TCR promotes the Dallas–Houston High Speed Rail Line amid competition for ridership and financing.

TCR promotes and facilitates the development and construction of a high-speed rail system that will offer passenger service between the Dallas/Fort Worth and Houston areas (the “Dallas–Houston HSR” or the “TCR Project”). (Ex. A, McCabe Aff. ¶ 3.) The Dallas–Houston HSR is projected to begin operating in 2022. (Ex. B, McCabe Dep. 133:7-14.) At that point, the Dallas–Houston HSR will compete for passengers with all other forms of transportation, including the many airlines and bus lines that provide passenger transportation service between Dallas and Houston. (*Id.* at 43:19-25, 44:1-4, 98:13-25, 99:1-9.)

The TCR Project is still in its development and financing stage. (*Id.* at 87:8-10.) It competes for financing not just with other high-speed rail projects in Texas or the United States, but with major infrastructure projects of all types from across the world. (*Id.* at 24:20-25, 25:1-13.) Even in the narrower space of high-speed rail projects, at least ten other groups have proposed high-speed rail projects to federal regulators for construction in the United States, at least two of which have been proposed for Texas. (Ex. A at ¶ 6.) One project proposed by a consortium of Chinese entities, would, like the TCR Project, connect the Dallas/Fort Worth and Houston areas. (*Id.*; Ex. B at 44:6-15.)

B. TCR submits sensitive and confidential information to TxDOT.

As part of the environmental regulatory review of the TCR Project, TxDOT requested that TCR submit certain information related to the project. (Ex. B at 112:16-25, 113:1-3.) The information TCR submitted to TxDOT included portions of a draft feasibility study of the TCR Project dated February 23, 2013 and entitled “Texas Central High Speed Rail Feasibility Study” (the “Study”). (*Id.* at 3:12, 9:6-23.) Of the portion submitted, 75 pages contain in-depth ridership analysis derived from extensive market research and revenue models (the “TCR Confidential Information”). (*Id.* at 15:9-10; 121:6-8.)¹

TCR has used and continues to use the TCR Confidential Information in developing business and technical aspects of the TCR Project. (*Id.* at 24:7-11.) For example, the TCR Confidential Information contains revenue projections, fare estimates, passenger diversion and conversion rates, and other insight into the price points and service options being considered for the Dallas–Houston HSR. (*Id.* at 15:9-25, 16:1-2, 16:17-25, 17:1-25, 18:1-7, 26:19-23, 69:14-20, 70:4-9.) Further, the TCR Confidential Information has been instrumental in obtaining financing for the TCR Project, as the return on investment reflected in its ridership and revenue estimates is used in combination with other data and information developed by TCR in discussions with potential investors in the project. (*Id.* at 24:14-19.)

The TCR Confidential information is highly sensitive, as publication of the TCR Confidential Information would give advantage to TCR’s competitors and put TCR at a competitive disadvantage. (*Id.* at 27:4-17, 69:21-25, 70:1-14, 95:22-25, 96:1-9.) If they obtain the TCR Confidential Information, the companies currently offering commercial transportation

¹ The portions of the Study submitted to TxDOT are attached as Exhibit D in the form provided to TxDOT, except that the pages containing the TCR Confidential Information—pages 52 through 126—are omitted. (*See* Ex. J, McDonald Affid. ¶ 5.) Various portions of the Study were not submitted to TxDOT and are thus not at issue in this case and are not contained in Exhibit D.

service between Dallas and Houston with which the Dallas–Houston HSR will compete for passengers can use the TCR Confidential Information to shore up their competitive positions—for example, by undercutting the Dallas–Houston HSR’s pricing structure—before the Dallas–Houston HSR begins service. (*Id.* at 26:15-23, 69:21-25, 70:3-9, 95:22-25, 96:1-9.) Such actions would also immediately prejudice TCR’s financing efforts by negatively impacting the TCR Project’s projected return on investment, reducing its attractiveness to investors. (*Id.* at 140:22-25, 141:1-8.)

Release of the TCR Confidential information would also prejudice TCR by giving its competitors for financing an opportunity that TCR lacks, *i.e.*, the ability to try to persuade investors based on a direct comparison of their competitor’s sensitive financial information with their own. (*Id.* at 27:4-17, 96:23-25, 97:1-5, 134:3-14, 143:10-14.) The prejudice to TCR’s financing efforts would likely be exacerbated by the fact that the TCR Confidential Information does not reflect the TCR Project’s development since the date of the draft Study nearly four years ago, and the TCR Confidential Information would necessarily give the capital markets an incomplete and inaccurate representation of the project. (*Id.* at 76:17-25, 77:1-7, 77:20-25, 78:1-2, 80:15-25, 81:1-10, 83:3-12.) If Plaintiffs are successful in causing the public disclosure of the TCR Confidential Information, then there will be a substantial risk that prospective investors will form an unfair impression of the TCR Project based on information that is partial, outdated, and out-of-context, and TCR may lose out on the opportunity to make its case to such potential investors. (*Id.*)

Due to the sensitive and valuable nature of the TCR Confidential Information, TCR has consistently maintained its confidentiality. Within TCR, access to the TCR Confidential Information is limited to five or fewer of its employees. (*Id.* at 118:13-23.) TCR

does not share the TCR Confidential Information with potential investors until the potential investor has signed a strict non-disclosure agreement. (*Id.* at 26:2-9.)² TCR and TxDOT have entered into a non-disclosure agreement under which TxDOT has generally agreed not to disclose any information it received from TCR deemed “Proprietary Information.” (Ex. A at ¶ 4; Ex. B at 110:23-25, 111:1-2; *see generally* Ex. C, Texas High-Speed Rail Projects Agreement for Use and Non-Disclosure of Confidential/Proprietary Information, effective October 7, 2014, by and between TxDOT and TCR.)

C. Reilly seeks the TCR Confidential Information, and the Office of the Attorney General prohibits TxDOT from releasing the TCR Confidential Information.

On March 20, 2015, Frank M. Reilly submitted an open-records request to TxDOT seeking all information “regarding high speed rail or Texas Central Railway.” (Ex. E, June 23, 2015 letter from Sarah Parker to Justin Gordon (enclosing Reilly’s original request).) In follow-up correspondence, Reilly clarified that his request was limited to “anything connected to a route from Harris County, Texas to Dallas County, Texas” after January 1, 2009. (*Id.* (enclosing subsequent emails).) On May 5, 2015, TxDOT requested a ruling from the Office of the Attorney General (the “OAG”) as to whether certain documents, including the TCR Confidential Information, were excepted from disclosure under the Public Information Act. (*Id.* at 1.) In support of its request, TxDOT submitted to the OAG a representative sample of the information at issue. (Ex. F, May 15, 2015 letter from Sarah Parker to Justin Gordon at 1.)

In accordance with the Public Information Act, TxDOT notified TCR of Reilly’s request. (Ex. E at 2.) On June 2, 2015, TCR submitted its own briefing to the OAG, arguing that

² Once the non-disclosure agreement is signed, the potential investor is given access to a variety of types of confidential information related to the TCR Project, including the TCR Confidential Information. (Ex. B at 116:14-25, 117:1-25, 118:1-25, 119:1-9.)

the TCR Confidential Information was excepted from disclosure because it constitutes trade secrets and because it is confidential commercial or financial information whose release would cause TCR substantial competitive harm. (*See generally* Ex. G, June 2, 2015 letter from Derek McDonald to Hon. Ken Paxton (enclosing brief)); *see also* TEX. GOV'T CODE § 552.110. TCR provided a redacted copy of its briefing to Reilly as required by the Public Information Act.³ *See* TEX. GOV'T CODE § 552.304(b).

On July 23, 2015, the OAG issued a letter ruling in which it held that TxDOT must withhold the TCR Confidential Information because TCR demonstrated that its release “would result in substantial harm to [TCR’s] competitive position.” Tex. Att’y Gen. OR2015-14983 at 5 (attached to this motion as Exhibit K); *see* TEX. GOV'T CODE § 552.110(b).

D. Plaintiffs seek mandamus relief against TxDOT, and TCR intervenes.

TAHSR proclaims itself to be an “organization dedicated to the defeat of the proposed Texas Central High-Speed Railway.”⁴ (Ex. H, Texans Against High Speed Rail (@TexansAgainstHSR), Description of “Mission” in “About” section of profile, FACEBOOK, www.facebook.com/pg/TexansAgainstHSR/about/?ref=page_internal (last visited Feb. 23, 2017); *see also* Ex. L, Certificate of Formation filed by TAHSR in the Office of the Secretary of State of Texas (stating TAHSR was formed “[t]o work to oppose efforts in the State of Texas to create high speed rail transportation”).) TAHSR filed this suit against Attorney General Ken Paxton and TxDOT seeking mandamus relief under the Public Information Act, declaratory relief under Civil Practice and Remedies Code chapter 37, and attorneys’ fees. *See* Pl.’s Appl.

³ The OAG subsequently provided its own redacted version of TCR’s brief to Plaintiffs, and it is that version that is attached as Exhibit G. (*See* Ex. J at ¶ 7.)

⁴ Similarly, Blake Beckham, Plaintiffs’ lead counsel in this case, holds himself out as “partnered with Texans Against High Speed Rail to defeat the Bullet Train project.” (Ex. I, *Meet Texas Business Litigation Attorney Blake L. Beckham*, THE BECKHAM GROUP, <http://beckham-group.com/attorneys/blake-beckham> (last visited Feb. 27, 2017).)

for Writ of Mand. and Orig. Pet. ¶¶ 24-26. Defendants answered, and both asserted pleas to the jurisdiction. *See* Def. Att’y Gen.’s 1st Am. Plea to the Juris. and Orig. Ans. ¶¶ 1.1-1.4; Def. TxDOT’s Orig. Ans., Plea to the Juris., Spec. Exceps., and Req. for Discls. ¶¶ 2-7. TAHSR amended its pleading to add Reilly as a plaintiff. *See* Pls.’ Appl. for Writ of Mand. and 1st Am. Pet. ¶ 2. Plaintiffs subsequently non-suited the Attorney General and again amended their pleading, dropping the requests for declaratory relief and attorneys’ fees. *See* Not. of Part. Nonsuit 1; *see generally* Pls.’ 2nd Am. Appl. for Writ of Mand. In their live pleading, Plaintiffs seek a “writ of mandamus requiring TxDOT to produce all information responsive to Reilly’s request.”⁵ Pls.’ 2nd Am. Appl. for Writ of Mand. ¶ 28.

TCR intervened, alleging that the TCR Confidential Information is excepted from disclosure under the Public Information Act and seeking judgment denying Plaintiffs’ request for mandamus relief. *See* TCR’s Am. Plea in Interv., Spec. Exceps., and Ans. ¶¶ 8, 14. TCR asserts that “disclosure of [the TCR Confidential Information] would cause substantial competitive harm to TCR, as found by the OAG.” *See id.* ¶ 8 (citing TEX. GOV’T CODE § 552.110(b)). TCR also asserts that “[r]elease of the TCR Confidential information would give advantage to TCR’s competitors.” *See id.* ¶ 8 (citing TEX. GOV’T CODE § 552.104).

III. LEGAL STANDARDS

A. Summary Judgment

A movant is entitled to summary judgment if it establishes that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); *Elliott-Williams Co. v. Diaz*, 9 S.W.3d 801, 803 (Tex. 1999). Once the movant

⁵ Plaintiffs also request that, to the extent necessary to resolve the claims at issue in this lawsuit, the Court review the information at issue *in camera* per Texas Government Code section 552.3221. *See* Pls.’ 2nd Am. Appl. for Writ of Mand. ¶ 27. In case the Court wishes to review the TCR Confidential Information *in camera*, TCR will be prepared to submit those pages at the hearing of this motion, subject to the protective order that is required by Texas Government Code section 552.3221(b).

establishes a right to summary judgment, the burden shifts to the non-movant to present any issues that would preclude summary judgment, including presenting summary-judgment proof when necessary to establish that a fact issue exists. *City of Hous. v. Clear Creek Basin Auth.*, 589 S.W.2d 671, 678 (Tex. 1979). Although a court should review the record in the light most favorable to the non-movant, summary judgment is proper unless the non-movant presents more than a scintilla of evidence supporting the disputed issue. *See Forbes Inc. v. Granada Biosciences, Inc.*, 124 S.W.3d 167, 172 (Tex. 2003).

B. Texas Public Information Act

The Public Information Act generally requires that a governmental agency makes “public information” available to the public. TEX. GOV’T CODE § 552.021. “Public information” includes information “collected, assembled, or maintained . . . in connection with the transaction of official business . . . by a governmental body.” *Id.* § 552.002(a)(1). The Public Information Act allows a person who requests public information from an agency to seek mandamus compelling the agency to release the information. *Id.* § 552.321(a); *Kallinen v. City of Hous.*, 462 S.W.3d 25, 27-28 (Tex. 2015).

But the Public Information Act also “shield[s] private business from unwarranted interference.” *Greater Hous. P’ship v. Paxton*, 468 S.W.3d 51, 53 (Tex. 2015). Though “[t]ransparency, openness, and accountability in the government are all of fundamental importance,” those policy concerns “cannot extinguish the privacy rights properly belonging to private business entities in Texas.” *Id.*

To that end, an agency is not required to release information that falls under various exceptions provided in the Public Information Act. *See generally* TEX. GOV’T CODE ch. 552, subch. C. Information is excepted from the disclosure requirement “if it is information that, if released, would give advantage to a competitor or bidder.” *Id.* § 552.104(a). Additionally,

information is excepted from the disclosure requirement if it is “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.” *Id.* § 552.110(b). These provisions are intended to protect the privacy and property rights of third parties that are implicated by a request for public information. *See Boeing Co. v. Paxton*, 446 S.W.3d 831, 838 (Tex. 2015); *see also* TEX. GOV’T CODE § 552.305(a) (“In a case in which information is requested under this chapter and a person’s privacy or property interests may be involved, including a case under Section 552.101, 552.104, 552.110, or 552.114 . . .”).

“[W]hether information is subject to the Act and whether an exception to disclosure applies to the information are questions of law.” *City of Garland v. Dall. Morning News*, 22 S.W.3d 351, 357 (Tex. 2000).

IV. ARGUMENTS AND AUTHORITIES

As a matter of law, the TCR Confidential Information is excepted from disclosure under Public Information Act sections 552.104 and 552.110(b). First, the summary-judgment evidence shows that if released, the TCR Confidential Information would give a competitive advantage both to other infrastructure projects with which TCR competes for financing and the various companies that provide or are seeking to provide passenger service between Dallas and Houston. *See* TEX. GOV’T CODE § 552.104. Second, the TCR Confidential Information constitutes confidential commercial or financial information, and the summary-judgment evidence demonstrates conclusively that its release would cause substantial competitive harm to TCR and the TCR Project. *See id.* § 552.110(b). Because the information is excepted from disclosure under the Public Information Act as a matter of law, this Court should render summary judgment denying Plaintiffs’ mandamus request as it pertains to the TCR Confidential Information.

A. The TCR Confidential Information is excepted from the disclosure requirement pursuant to section 552.104 because its release would give advantage to TCR's competitors.

1. Section 552.104 excepts information from the disclosure requirement if its release would give a competitor any advantage.

In *Boeing Co. v. Paxton*, published after TCR's submission of its briefing to the OAG, the Supreme Court of Texas decided for the first time that based on the Public Information Act's "apparent deference to third-party privacy and property rights," a private party may invoke section 552.104 to protect those rights.⁶ 446 S.W.3d at 838-39. The Court further clarified that the test is whether release of the information at issue would give *any* advantage to a competitor, "not whether it would be a decisive advantage." *Id.* at 841. The Court held that certain financial information contained in a lease between an aerospace company and public entity was protected under section 552.104 as a matter of law because a competitor could use the information to undercut the company in bidding on future government contracts. *Id.* at 841-42.

2. Release of the TCR Confidential Information would prejudice TCR and the Dallas–Houston HSR and benefit TCR's competitors.

When the Dallas–Houston HSR becomes operational, it will compete with all other modes of transportation for passengers "for every dollar. Every rider." (Ex. B at 43:19-25, 44:1-4, 108:3-5.) Those competing modes of transportation include the many airlines (*e.g.*, Southwest Airlines and RISE Airlines) and bus lines (*e.g.*, Vonlane and Megabus) that provide passenger transportation service between Dallas and Houston. (*Id.* at 26:15-17, 35:20-24, 43:19-25, 44:1-4, 98:18-25, 99:1-9.)

⁶ Before the issuance of the Court's opinion, the Attorney General had consistently taken the position that section 552.104 could be invoked only based on the competitive interests of governmental bodies. *See Boeing*, 446 S.W.3d at 835-36. For that reason, TCR did not raise section 552.104 in its briefing to the Texas Attorney General.

Further, the TCR Project is still in its development stages, and it competes for financing in the global capital markets for infrastructure projects. (*Id.* at 25:1-13.) Due to the nature of the markets, TCR's competition is not limited to other infrastructure projects proposed in the Texas region or even the United States more broadly, but extends to infrastructure projects worldwide. (*Id.*) In the United States high-speed-rail arena, no fewer than ten other groups have made proposals to federal regulators for high-speed rail projects that would likely directly compete for access to capital markets. (Ex. A at ¶ 6.) At least two of those groups seek to build high-speed rail systems in Texas. (*Id.*; Ex. B at 44:6-18.) One group, a consortium of Chinese entities, has proposed a Texas high-speed rail system that, like the Dallas–Houston HSR, would link the Dallas/Fort Worth and Houston areas. (Ex. A at ¶ 6; Ex. B at 44:6-15.)

Access to the TCR Confidential Information would give TCR's competitors an advantage. The TCR Confidential Information contains information that would provide insight into the price points and service options being considered for the Dallas–Houston HSR, including fare estimates and passenger conversion and diversion rates. (Ex. B at 16:24-25, 17:1-25, 18:1-2.) Release of the TCR Confidential Information would give the companies with which the Dallas–Houston HSR will compete for ridership, *e.g.*, the airlines and bus lines, time to adjust their business plans to their advantage in an attempt to influence the market before Dallas–Houston HSR service even reaches the market. (*Id.* at 26:10-23, 95:22-25, 96:1-9.) For example, a competing airline or bus line will be able to use the TCR Confidential Information to undercut the Dallas–Houston HSR's pricing structure before it even begins service. (*Id.* at 26:10-23, 70:3-9, 95:22-25, 96:1-9.) That is the same type of concern that drove the *Boeing* court's decision. *See Boeing*, 446 S.W.3d at 840.

Further, TCR does not have access to the confidential information underlying any other service providers' approaches to the market. Thus, release of the TCR Confidential Information would deprive TCR of a level playing field on which to compete for passengers. (Ex. B at 27:4-17, 96:19-25, 97:1-5, 134:3-14, 143:8-14.) As Boeing successfully argued in the Texas Supreme Court, "Knowing some, if not most, of a competitor's cards is an advantage over knowing none of them." *Boeing*, 466 S.W.3d at 840.

Release of the TCR Confidential Information would have a similar and related effect with regard to the TCR Project's competitive position in the capital markets. An investor's eagerness to invest in the TCR Project is a function of metrics like the projected return on investment, which, in turn, is determined in part by the Dallas–Houston HSR's success in competing for passengers once operational. (Ex. B at 24:14-19, 25:1-7, 26:10-23, 139:22-25, 140:1-8.) Because release of the TCR Confidential Information would allow competitors to preemptively act to minimize TCR's market share, its projected return on investment, and thus attractiveness to investors, would be instantly prejudiced, lending an advantage to competing high-speed-rail and other transportation projects. (*Id.* at 70:3-9, 139:22-25, 140:1-8.)

Further, the TCR Confidential Information is at this point nearly four years old, with additional information having been developed since it was created. (*Id.* at 9:21-23, 77:20-25, 78:1-2.) Release of the TCR Confidential Information out of context and at its level of detail could be misleading and negatively affect the TCR Project's ability to engage potential investors in a substantive discussion, further prejudicing its financing efforts and giving an advantage to competing projects. (*Id.* at 25:17-20, 76:17-25, 77:1-7, 80:15-25, 81:1-10, 83:3-12.) Effectively, competitors—or groups opposing the Dallas–Houston HSR such as Plaintiffs—could attempt to use the TCR Confidential Information to sabotage the TCR Project. (*Id.* at 83:3-17.)

Because release of the TCR Confidential Information would put TCR and the TCR Project at a competitive disadvantage and would benefit competing transportation providers as well as competing infrastructure projects, the TCR Confidential Information is excepted from the Public Information Act's disclosure requirement pursuant to Texas Government Code section 552.104.

B. The TCR Confidential Information is confidential commercial or financial information, and the factual evidence shows that release would result in substantial competitive harm to TCR.

Texas Government Code section 552.110(b) provides, "Commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained is excepted from" disclosure. "This section is a fact-specific exemption for information that is found to be a trade secret or privileged and confidential commercial or financial information." *Envoy Med. Sys., L.L.C. v. State*, 108 S.W.3d 333, 337 (Tex. App.—Austin 2003, no pet.).

Just as the summary-judgment evidence establishes that release of the TCR Confidential Information would give an advantage to TCR's competitors, it also establishes that disclosure would cause TCR to suffer substantial competitive harm.

1. As a threshold matter, TCR has maintained the confidentiality of the TCR Confidential Information.

The summary-judgment evidence establishes that TCR has maintained the confidentiality of the TCR Confidential Information, both within the organization and without. Within TCR, access to the TCR Confidential Information is limited to five or fewer of its employees. (Ex. B at 118:13-23); *see Boeing*, 446 S.W.3d at 835 ("The information is not publicly available, and only about a dozen of Boeing's 165,000 employees have access to it."). Further, TCR shares the TCR Confidential Information with potential investors only after the

potential investors have signed a non-disclosure agreement, and even then only subject to a strict technical protocol. (Ex. B at 26:3-6, 83:1-2 116:14-25, 117:1-25, 118:1-25, 119:1-9.) TCR and TxDOT have entered into a non-disclosure agreement under which TxDOT has generally agreed not to disclose TCR's proprietary information. (Ex. A at ¶ 4; Ex. B at 110:23-25, 111:1-2; *see generally* Ex. C.)

In their pleading, Plaintiffs assert that TCR waived confidentiality of the TCR Confidential Information by claiming in a proceeding before the Surface Transportation Board of the U.S. Department of Transportation that TCR anticipates the Dallas–Houston HSR “will attract approximately four million riders annually by the year 2025.” Pls.’ 2nd Am. Appl. for Writ of Mand. ¶¶ 24-25. But it is not any aggregate, high-level ridership calculation that is at issue here. Rather, the TCR Confidential Information includes market research and analysis and inputs, methodology, and assumptions underlying that analysis, which is the type of information that section 552.110(b) protects. (Ex. B at 15:9-25, 16:1-2, 16:24-25, 17:1-25, 18:1-7, 70:4-9.)

2. Specific factual evidence shows that release of the TCR Confidential Information would cause TCR substantial competitive harm.

As discussed in Section IV.A.2 above, the summary-judgment evidence establishes that TCR and the Dallas–Houston HSR face competition for passengers from all other modes of transportation, including several commercial airlines and bus lines. (*Id.* at 35:20-24, 43:19-25, 44:1-4, 98:18-25, 99:1-9, 108:3-5.) TCR further faces competition from other infrastructure projects for financing, including high-speed rail projects proposed to be developed in Texas. (Ex. A at ¶ 6; Ex. B at 25:1-13, 44:6-18.)

As also discussed in Section IV.A.2 above, the summary-judgment evidence establishes that release of the TCR Information would subject TCR and the TCR Project to competitive harm by allowing other transportation companies to tailor their business models to

prevent the Dallas–Houston HSR from cutting into their market share once it is operational. (Ex. B at 26:10-23, 70:3-9, 95:22-25, 96:1-9.) TCR would be disadvantaged in that it has no access to comparable information regarding other service competitors. (*Id.* at 27:4-17, 96:19-25, 97:1-5, 134:3-14, 143:8-14.) TCR would realize that competitive harm immediately, as any potential disadvantage with regard to the market would be immediately reflected in the TCR Project’s expected return on investment and would immediately make the project less attractive to investors. (*Id.* at 70:3-9, 139:22-25, 140:1-8.) The evidence further shows that the competitive harm to TCR and the TCR Project would be substantial. Considering that the TCR Project is currently in the development stage and its projected operational date is five years away, it is uniquely vulnerable to unfair competitive postures taken by transportation providers currently occupying the market it seeks to enter as well as by competing high-speed rail projects and other infrastructure projects. (*Id.* at 26:10-23, 70:3-9, 95:22-25, 96:1-9, 133:8-14.)

Indeed, TAHSR’s stated purpose is to inflict substantial harm on TCR. TAHSR proclaims itself to be an “organization dedicated to the defeat of the proposed Texas Central High-Speed Railway.” (Ex. H.) Blake Beckham, Plaintiffs’ lead counsel in this case, holds himself out as “partnered with Texans Against High Speed Rail to defeat the Bullet Train project.” (Ex. I.) Through publication of the TCR Confidential Information and the resulting substantial competitive harm, Plaintiffs would further their ultimate goal of impeding development of the Dallas–Houston HSR.

The specific factual evidence in the record establishes that release of the TCR Confidential Information would result in substantial competitive harm to TCR and the TCR Project, and Texas Government Code subsection 552.110(b) protects it from disclosure as a matter of law.

V. CONCLUSION AND PRAYER

For the foregoing reasons, TCR requests that the Court issue partial summary judgment denying Plaintiffs' request for mandamus relief regarding the TCR Confidential Information. TCR further requests all such further relief to which it is entitled.

Respectfully submitted,

BAKER BOTTS L.L.P.

By: /s/ Derek R. McDonald

Derek R. McDonald

Texas Bar No. 00786101

derek.mcdonald@bakerbotts.com

Scott D. Powers

Texas Bar No. 24027746

scott.powers@bakerbotts.com

Wade O. Allison

wade.allison@bakerbotts.com

Texas Bar No. 24092031

98 San Jacinto Boulevard

Suite 1500

Austin, Texas 78701

Tel: 512.322.2667

Fax: 512.322.8342

ATTORNEYS FOR INTERVENOR
TEXAS CENTRAL HIGH-SPEED
RAILWAY, LLC

CERTIFICATE OF SERVICE

By my signature below I certify that on March 7, 2017, I served the above and foregoing motion on each party via the Court's CM/ECF service:

FOR PLAINTIFFS TEXANS AGAINST HIGH SPEED RAIL, INC.
AND FRANK M. REILLY:

Blake L. Beckham
blake@beckham-group.com
M. Patrick McShan
patrick@beckham-group.com
The Beckham Group, P.C.
3400 Carlisle, Suite 550
Dallas, Texas 75204

FOR DEFENDANT TEXAS DEPARTMENT OF TRANSPORTATION:

Thornton O. Wood
thornton.wood@texasattorneygeneral.gov
Assistant Attorney General
Transportation Division MC-020
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548

/s/ Derek R. McDonald
Derek R. McDonald

EXHIBIT A

Y.

Defendants.

IN THE DISTRICT COURT OF

126th JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

Before me, the undersigned authority, personally appeared Shaun McCabe, who after being duly sworn, stated as follows:

1. My name is Shaun McCabe, and I am over the age of 18 and am otherwise competent to make this Affidavit. The matters set forth herein are true and correct and are based on my personal knowledge.

2. I am currently an officer of two entities affiliated with Texas Central High-Speed Railway, LLC ("TCR"): Texas Central Railroad, LLC ("TCRR") and Texas Central Railroad & Infrastructure, Inc. ("TCRI"). I was an employee of TCR from 2012 until July 31, 2016.

3. TCR, through agreements with TCRR and TCRI, promotes and facilitates the development and construction of a high-speed rail system that will offer passenger service between the Dallas/Fort Worth area and the Houston area (the “Project”). TCR has led the feasibility phase of the Project, and it manages aspects of the Project’s environmental regulatory review. That review includes preparation of an Environmental Impact State (“EIS”) by the

Federal Railroad Administration (“FRA”). FRA is preparing the EIS with assistance from the Texas Department of Transportation (“TxDOT”).

4. TCR and TxDOT entered into an agreement styled Texas High-Speed Rail Projects Agreement for Use and Non-Disclosure of Confidential/Proprietary Information, effective October 7, 2014 (the “NDA”). Under the NDA, TxDOT generally agreed not to disclose any information it received from TCR deemed “Proprietary Information.” A true and correct copy of the NDA is attached to TCR’s Motion for Partial Summary Judgment as Exhibit C.

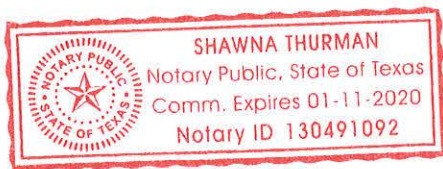
5. On or about May 15, 2015, I received a copy of a letter from Sarah Parker, Associate General Counsel for TxDOT, to Justin Gordon, Chief, Open Records Division, Office of the Attorney General. A true and correct copy of that letter is attached to TCR’s Motion for Partial Summary Judgment as Exhibit F.

6. In response to a request for proposals issued by the FRA, at least ten other groups have submitted proposals to develop high-speed rail projects in the United States. *See* Notice of Request for Proposals for Implementing a High-Speed Rail Corridor, 81 Fed. Reg. 14,212 (March 16, 2016); *Proposals for High Speed Rail Corridors*, REGULATIONS.GOV, www.regulations.gov/docket?D=FRA-2016-0014. At least two of the submissions include proposals to develop high-speed rail projects in Texas. *See* Letter from Alain Leray, President & Chief Exec. Officer, SNCF America, Inc., to U.S. Dep’t of Transp. (Aug. 31, 2016), www.regulations.gov/document?D=FRA-2016-0014-0008 (resubmitting 2008 proposal); China High-Speed Rail Enterprise Consortium, Proposal on Implementing Suggestions (Aug. 31, 2016), www.regulations.gov/document?D=FRA-2016-0014-0003 (submitting proposal for South Central Corridor). One submission includes a proposal by a consortium of Chinese entities to

develop a high-speed rail line in Texas that would ultimately connect the Dallas/Fort Worth and Houston areas. *See China High-Speed Rail Enterprise Consortium, supra.*


Shaun McCabe

SWORN TO AND SUBSCRIBED before me on the 7th day of March, 2017.




NOTARY PUBLIC, IN AND FOR
THE STATE OF TEXAS
My Commission Expires: 1-11-20

Exhibit 6

Finance Docket No. 36025

Delta Troy Reply In Opposition to Petition to Reopen

May 31, 2018

PARCEL TX-HA-O1.027.000, TX-HA-O1.027.200,
TX-HA-O1.027.360, TX-HA-O1.030.301

CAUSE NO. 201654130

TEXAS CENTRAL RAILROAD & INFRASTRUCTURE, INC., Plaintiff,	§	IN THE 234 TH JUDICIAL DISTRICT COURT
	§	
	§	
VS.	§	
	§	
DELTA TROY INTERESTS, LTD.	§	
Defendant.	§	HARRIS COUNTY, TEXAS

VERIFIED ORIGINAL PETITION
AND APPLICATION FOR INJUNCTIVE RELIEF

TO THE HONORABLE JUDGE OF SAID COURT:

Texas Central Railroad and Infrastructure, Inc. ("TCRI") plans to construct the first high-speed passenger train in the United States, and will do so with exclusively private financing. As a railroad company and electric railway, TCRI has the absolute statutory right to examine and survey real property to determine the most advantageous route for its train, which will run between Dallas and Houston. Under the law, TCRI is not required to provide notice to landowners or to seek permission for surveying. That said, TCRI respects private property rights, is a responsible corporate citizen, and intends to establish a good working relationship with landowners. For these reasons, TCRI has sought written permission from landowners before entering any property to conduct the examination and surveying activities needed to determine the most advantageous route for its train.

Defendant Delta Troy Interests, Ltd. ("Defendant") has denied that TCRI has the statutory right to enter its property and has refused permission to do so. TCRI has determined that the

safest, and most prudent course of conduct, is to secure a temporary injunction that can leave no doubt of its right to enter Defendant's property to conduct examinations and surveys.

TCRI files this action because it has no adequate remedy at law for the relief it seeks. For more than 70 years, Texas courts have recognized that injunctive relief is an appropriate remedy when the right to examine and survey in advance of a project like TCRI's is being denied.¹

I. DISCOVERY LEVEL

1. TCRI pleads that discovery should be conducted in accordance with a discovery control plan Level 2, under Rule 190.3, Texas Rules of Civil Procedure.

II. PARTIES

2. Texas Central Railroad and Infrastructure, Inc. is a Texas Corporation licensed to do business in the State of Texas and is in the process of developing a high-speed rail line between Dallas and Houston, Texas. TCRI was chartered for the express purpose of planning, building, maintaining and operating an electric railroad.² TCRI is a railroad company, as that term is used in Section 112.051 *et. seq.* of the Texas Transportation Code, and an electric railway as that term is used in Section 131.012 *et. seq.* of the Texas Transportation Code. Accordingly, TCRI has been statutorily granted the right to "enter on the land or water of any person or corporation" in

¹ *Lewis v. Tex. Power & Light Co.*, 276 S.W.2d 950, 954 (Tex. App.—Dallas 1955 writ ref'd n.r.e.); *see also Occidental Chem. Corp. v. ETC NGL Transp., LLC*, 425 S.W.3d 354, 363 (Tex. App.—Houston [1st Dist.] 2011, pet. dismiss'd) (holding that "Texas courts have also recognized that injunctive relief is appropriate in this specific context, i.e., to grant relief to an entity with the right to access land to conduct preliminary survey work before instituting a condemnation proceeding.").

² See Certificate of Amendment attached hereto as Exhibit "A."

order to “have an examination and survey of its proposed railway made as necessary to select the most advantageous route” for its proposed railway.³

3. Defendant Delta Troy Interests, Ltd. is an entity with its principal place of business in Harris County, Texas and may be served with process by and through its registered agent, Christina P. Papandreou, at 3939 Hartsdale, Houston, Texas 77063, or 506 Thamer Lane, Houston, Texas 77024-6920, or 615 Saddlewood Lane, Houston, Texas 77024-5403 or wherever she may be found.

III. JURISDICTION AND VENUE

4. This Court has jurisdiction over this case pursuant to TEX. CIV. PRAC. & REM. CODE § 65.021(a).

5. Venue is proper pursuant to TEX. CIV. PRAC. & REM. CODE § 15.016 and § 65.023(a) because the primary relief requested in this petition is injunctive in nature and the Defendant is domiciled in Harris County, Texas.

IV. TEXAS RULE OF CIVIL PROCEDURE 47 DISCLOSURE

6. This is an Application for Injunctive Relief in which TCRI does not seek monetary relief, but is seeking non-monetary relief.

V. STATEMENT OF FACTS

7. Defendant Delta Troy Interests, Ltd. is the record owner of certain real property (the “Property”) located in Harris County, Texas more particularly described in the attached Exhibits “B” and “C.”

³ Tex. Trans. Code. Ann. § 131.013(b) (Vernon 2011); Tex. Trans. Code. Ann. § 112.051(a) (Vernon 2011).

8. TCRI, along with its affiliated entities, is in the process of planning, surveying, and acquiring the right-of-way necessary for a 240 mile long high-speed rail line that will connect the two largest metropolitan areas in the State of Texas, with a planned intermediate stop to be located in Grimes County (the “Project”).

9. This state of the art Project is expected to cost over 10 billion dollars to construct, take over 4 years to build, and ultimately provide world class transportation when it goes into service in late 2021.

10. Employing the N700-I bullet train technology, the Project will operate on a dedicated right-of-way that will be similar in width to that of a standard county road and, where possible, is being designed to parallel pre-existing rights-of-way.

11. Defendant’s Property is one of the numerous individual properties that may be crossed by the Project.

12. The desktop design and planning stage for the Project has reached a point where actual access to the Property is necessary in order to determine the viability of the proposed route and the exact location it might take over the Property.

13. TCRI has engaged land surveyors to survey the Property in an effort to determine the exact route the proposed high-speed rail line may take over the Property, and to determine the legal boundaries of any right-of-way that TCRI may need to acquire.

14. TCRI also needs to examine the Property to determine if there are any cultural, environmental/wetlands, or topographical obstacles to construction.

15. Each of the aforementioned examinations and surveys are necessary in order for TCRI to select the most advantageous route for its high-speed rail line and to legally identify and define the right of way it will ultimately need to acquire from Defendant.

16. TCRI has repeatedly sought to coordinate its examination and survey activities with Defendant by entering into a voluntary access agreement that would allow TCRI to conduct the examination and surveying activities it is entitled to conduct under the law. Within those agreements, and within this petition, TCRI acknowledges that it is statutorily responsible for any damages that may occur to the Property as a result of TCRI's examination and survey activities.⁴

17. Defendant has been unwilling to enter into a voluntary access agreement and has denied TCRI access to the Property. Defendant is thus preventing TCRI from completing the examination and surveying activities that need to be conducted in order for the Project to move forward.

18. Due to the lineal and interrelated nature of the Project, TCRI's failure to legally identify and finalize the route on the Property places the ultimate design and acquisition of the Project in jeopardy.

VI. TCRI IS STATUTORILY ENTITLED TO EXAMINE AND SURVEY PROPERTY

19. Two separate statutes provide TCRI with the power to conduct the examinations and surveys necessary to determine the most advantageous route for its proposed high-speed rail line. Specifically, Section 131.013(b) of the Texas Transportation Code provides that an electric railway such as TCRI may:

(1) have an examination and survey of its proposed railway made as necessary to select the most advantageous route; and

(2) for the purposes of Subdivision (1), enter on the land or water of any person or corporation, subject to responsibility for all damages that may be caused by the entrance, examination, or survey.

20. Likewise, Section 112.051(a) of the Texas Transportation Code provides that a railroad company "is entitled to make an examination and survey for the company's proposed railway, to

⁴ Tex. Trans. Code. Ann. § 131.013(b) (Vernon 2011); Tex. Trans. Code. Ann. § 112.051(b) (Vernon 2011).

be performed as necessary to select the most advantageous route for the proposed railway, and, subject to Subsection (c), may enter on the lands or waters of any person or corporation for that purpose.”⁵

21. Aside from the express statutory right, Texas courts have conclusively established that entities vested with the power of eminent domain, such as TCRI⁶, have the right to enter onto private property in order to conduct examinations and surveys, and have consistently granted injunctive relief to preserve and protect this legal right.⁷ For over 70 years, courts have held that the status quo in these instances is “one of action, not of rest.”⁸ A diligent search of Texas authorities has not disclosed a single case in which a condemning authority (of any kind) was denied injunctive relief to conduct lineal surveys or environmental examinations.

⁵ Tex. Trans. Code. Ann. § 112.051(a) (Vernon 2011).

⁶ TCRI is vested with the right of eminent domain under Sections 131.012 and 112.053 of the Texas Transportation Code.

⁷ See *Lewis v. Tex. Power & Light Co.*, 276 S.W.2d 950, 954 (Tex. App.—Dallas 1955, writ ref’d n.r.e.) (upholding injunction allowing surveys to move forward and holding that the term “enter on” as used in Section 181.004 of the Texas Utilities Code recognized the necessity of preliminary surveys and was intended to grant authority to conduct the same); *Coastal Marine Serv. of Tex., Inc. v. City of Port Neches*, 11 S.W.3d 509 (Tex. App.—Beaumont 2000, no pet.) (upholding injunction and allowing for environmental examinations); *I.P. Farms v. Exxon Pipeline Co.*, 646 S.W.2d 544, 545 (Tex. App.—Houston [1st Dist.] 1982, no writ) (ancillary to eminent domain power is the authority to enter upon the land to make a preliminary survey); *Puryear v. Red River Auth.*, 383 S.W.2d 818, 820-21 (Tex. Civ. App.—Amarillo 1964, writ ref’d n.r.e.); *Hicks v. Tex. Municipal Power Agency*, 548 S.W.2d 949, 955 (Tex. App.—Houston [14th Dist.] 1977, writ ref’d n.r.e.) (“[g]enerally, courts have upheld the right of a governing body vested with condemnation power to enter into lands for the purpose of a preliminary survey either by express statutory grant or by implication”); *In re Energy Transfer Fuel, L.P.*, 298 S.W.3d 357, 358 (Tex. App.—Tyler 2009, no writ) (acknowledging that a gas corporation with the power of eminent domain had the right to enter upon property to make preliminary surveys of proposed routes).

⁸ See *Lewis v. Tex. Power & Light Co.*, 276 S.W.2d at 955; *Coastal Marine Serv. of Tex., Inc. v. City of Port Neches*, 11 S.W.3d at 515.

VII. APPLICATION FOR TEMPORARY INJUNCTIVE RELIEF

22. In order to preserve the status quo, and to protect TCRI's statutory legal right to access Defendant's Property to conduct the examinations and survey activities necessary for TCRI's proposed high-speed rail line, it is essential that the Court set this matter for hearing prior to Defendant's answer date. Defendant should be cited to appear and show cause why a temporary injunction should not issue enjoining Defendant and those acting by or at Defendant's direction from taking any further action interfering with TCRI's right to conduct examinations and surveys. As set forth herein, all prerequisites to temporary injunctive relief have been satisfied.

A. Statutory grounds.

23. Pursuant to Section 65.011(1) of the Texas Civil Practice and Remedies Code, injunctive relief is appropriate when the applicant is entitled to the relief sought and such relief requires the restraining of some act prejudicial to the applicant.⁹ As a matter of law, TCRI is entitled to enter upon the Property to conduct examinations and surveys and Defendant should be restrained from interfering with TCRI's exercise of this legal right.

B. Equitable grounds.

24. Defendant's wrongful conduct in preventing TCRI from having unimpeded access to the Property also entitles TCRI to common law injunctive relief as more fully explained below.

(i) **Wrongful Act.** TCRI is entitled to injunctive relief since it has demonstrated one or more wrongful acts committed by Defendant. TCRI has requested that Defendant allow TCRI entry onto the Property to conduct examinations and surveys necessary to select the most advantageous route for its Project. Defendant refuses to grant TCRI permission to enter onto the Property for these purposes, despite TCRI's legal right to do so.

⁹ Tex. Civ. Prac. & Rem. Code § 65.011(1); see *Coastal Marine Serv. v. City of Port Neches*, 11 S.W.3d 509, 515 (Tex. App.—Beaumont 2000, no pet.).

(ii) Probable Right to Relief. TCRI is entitled to injunctive relief since it has demonstrated a probable right to the relief sought upon final hearing. As set out more specifically above, TCRI is statutorily and legally entitled to enter Defendant's Property for the purposes of conducting examinations and surveys associated with its proposed high-speed rail line. Defendant has refused to allow the requested examinations and surveys, and is therefore denying the exercise of TCRI's legal rights without good cause.

(iii) Probable Injury. TCRI is entitled to injunctive relief since it has shown it will suffer probable injury by establishing: (1) imminent harm; (2) irreparable injury; and (3) no adequate remedy at law.

(1) Imminent Harm. An injunction is proper when the harm sought to be prevented is imminent or immediate.¹⁰ TCRI has requested entry upon the Property in order to conduct the examinations and surveys needed for its proposed high-speed rail line. Without access to the Property to conduct these examinations and surveys, the planning and other preliminary activities associated with the proposed high-speed rail line (much less the actual acquisition of right-of-way or construction of the railroad) cannot continue. By denying TCRI the right to exercise its statutory right to conduct the requisite examinations and surveys, Defendant is causing current and actual harm to TCRI.

(2) Irreparable Injury. An injunction is proper when the harm sought to be prevented is irreparable. Irreparable injury has been defined as an injury that cannot be compensated in damages, or an injury that results in damages that cannot be measured by any pecuniary

¹⁰ *Crawford Energy, Inc. v. Texas Indus.*, 541 S.W.2d 463, 467 (Tex. Civ. App.—Dallas 1976, no writ).

standard.¹¹ TCRI's purpose for seeking entry to the Property is to perform examinations and surveys that will allow it to determine a suitable location and establish legal boundaries for the proposed high-speed rail line discussed above. Until those examinations and surveys are performed, it is impossible to determine the location of the railroad, the area to be encumbered by the right-of-way, the legal boundaries of any proposed right-of-way, or the feasibility of construction given the natural and cultural resources that may exist on the Property. Without examination and survey of the Property, the proposed high-speed rail line project will be indefinitely suspended—causing monetary damages that cannot be adequately measured or easily calculated, as well as damages to TCRI's operations, goodwill, and reputation that cannot be monetarily measured at all. Conversely, enforcement of TCRI's statutory right to enter the Property and conduct these preliminary surveys will cause no harm and minimal inconvenience to Defendant.¹² Furthermore, to the extent that any damage is caused to Defendant's Property,

¹¹ *Pipkin v. JVM Oper., L.C.*, 197 B.R. 47, 55 (E.D. Tex. 1996) (holding irreparable injury where economic damage is difficult to calculate, as where party will incur injury to its operations, reputation, and goodwill); *Cho v. Itco, Inc.*, 782 F. Supp. 1183, 1185 (E.D. Tex. 1991) (finding threat of losing customer goodwill may constitute irreparable harm); *Assoc. Gen. Contract v. City of El Paso*, 932 S.W.2d 124, 126 (Tex. App.—El Paso 1996, no writ); *Canteen Corp. v. Republic of Texas Properties, Inc.*, 773 S.W.2d 398, 401 (Tex. App.—Dallas 1989, no writ); see also *Estate of Dilasky*, 972 S.W.2d 763, 767 (Tex. App.—Corpus Christi 1998, no writ) (costs and delay may be factors of irreparable harm); *Liberty Mut. Ins. Co. v. Mustang Tractor & Equip. Co. & Eureka Investment Co.*, 812 S.W.2d 663, 666 (Tex. App.—Houston [14th Dist.] 1997, no writ) (disruption of business can be irreparable harm).

¹² See *Lewis*, 276 S.W.2d at 955-56 (“the trial court no doubt weighed the relative convenience and inconvenience and the comparative injuries to the parties and to the public which would arise from the granting or refusal of this temporary injunction, and found the equities to lie with Appellee [utility company]. There can be little if any doubt that Appellee under the facts shown in this record is entitled to acquire easement rights over the Appellant's land, either by voluntary conveyance or by condemnation. That being so, the injuries suffered by Appellant from the survey will be small compared with the injuries suffered by the Appellee and the public if Appellee were denied the right to proceed with its preliminary survey...”).

TCRI is statutorily required to compensate Defendant for those damages.¹³

(3) No Adequate Remedy at Law. A party is entitled to injunctive relief when there is no adequate remedy at law.¹⁴ For a remedy to qualify as being adequate, it must give the plaintiff complete, final, and equal relief.¹⁵ If damages cannot be calculated for the harm complained of, or if the defendant will be unable to pay damages, there is no adequate remedy at law.¹⁶ Defendant's action in obstructing TCRI from completing its examinations and surveys on the Property effectively prevent TCRI from moving forward with the Project. TCRI cannot identify any impediments to the proposed route or the proposed right-of-way which it would seek to purchase from the Defendant without first conducting the necessary examinations and surveys required—actions that will cause no harm to Defendant, but which Defendant refuses to allow TCRI to perform. No amount of monetary damages can cure Defendant's denial of access complained of herein. Assuming for arguments sake that monetary damages could somehow be calculated, they would be in the billions of dollars—amounts that Defendant undoubtedly could not pay.¹⁷ Accordingly, TCRI has no adequate remedy at law.

(iv.) Bond. TCRI will post a reasonable bond as set by the Court in this case.

VIII. PERMANENT INJUNCTION

25. TCRI further requests that the Court, after trial is completed, enter a permanent

¹³ Tex. Transp. Code. Ann. § 131.013(b) (Vernon 2011); Tex. Transp. Code. Ann. § 112.051(b) (Vernon 2011).

¹⁴ *Fasken v. Darby*, 901 S.W.2d 591, 592 (Tex. App.—El Paso 1995, no writ).

¹⁵ *See Henderson v. KARTS, Inc.*, 822 S.W.2d 769, 773 (Tex. App.—Houston [1st Dist.] 1992, no writ).

¹⁶ *Texas Indus. Gas v. Phoenix Metallurgical Corp.*, 828 S.W.2d 529, 533 (Tex. App.—Houston [1st Dist.] 1992, no writ).

¹⁷ *Tel. Equip. Network, Inc. v. TA/Westchase Place, Ltd.*, 80 S.W.3d 601, 611 (Tex. App.—Houston [1st Dist.] 2002, no pet.)

injunction against Defendant and those acting in concert with it, enjoining Defendant from interfering with TCRI's right to conduct the examinations and surveys necessary to select the most advantageous route for TCRI's proposed high-speed rail line.

IX. PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff Texas Central Railroad and Infrastructure, Inc. respectfully requests the following relief:

1. That Defendant be cited to appear and show cause and that upon such hearing, a temporary injunction be issued restraining the Defendant, its agents, servants, employees, and assigns, and anyone else working in active concert or participation with them, from directly or indirectly impeding or interfering in any way with access on and across the Property by TCRI, its agents, employees, operators, surveyors, and engineers for the purposes of conducting examinations and surveys of the Property in connection with the proposed high-speed rail line and proposed easement and right-of-way across the Property and further restraining Defendant from removing or in any way tampering with the stakes and markers placed upon the Property by the survey crews during the pendency of this action;

2. That a permanent injunction be issued prohibiting Defendant, its agents, servants, employees, and assigns, and anyone else working in active concert or participation with them, from directly or indirectly impeding or interfering in any way with access on and across the Property by TCRI, its agents, employees, operators, surveyors, and engineers for the purposes of conducting examinations and surveys of the Property in connection with the proposed high-speed rail line and proposed easement and right-of-way across the Property and further restraining Defendant from removing or in any way tampering with the stakes and markers placed upon the Property by the survey crews; and

3. Such other and further general relief, at law or in equity, to which it may be entitled.

Respectfully submitted,

/s/ Susan Dillon Ayers

JACKSON WALKER L.L.P.
100 Congress Avenue, Suite 1100
Austin, Texas 78701
512-236-2000
Fax No. 512-236-2002
Robert B. Neblett III—14849300
rneblett@jw.com
Brad Anderson—24055106
banderson@jw.com
Susan Dillon Ayers—24028302
sayers@jw.com

JACKSON WALKER L.L.P.
1401 McKinney Street, Suite 1900
Houston, Texas 77010
713-752-4200
Fax No. 713-752-4221
Scott R. McLaughlin - 00791234
smclaughlin@jw.com

ATTORNEYS FOR PLAINTIFF TEXAS
CENTRAL RAILROAD &
INFRASTRUCTURE, INC.

CERTIFICATE OF SERVICE

This is to certify that on the 15th day of August, 2016, a true and correct copy of the foregoing has been forwarded to the following:

Via Electronic Mail

J. Mark Breeding
Andrew Kurth LLP
800 Travis, Suite 4200
Houston, Texas 77002
(713) 220-4709
(713) 238-7360 fax
mbreeding@andrewskurth.com

/s/ Susan Dillon Ayers

Susan Dillon Ayers

VERIFICATION

STATE OF TEXAS

§

§

COUNTY OF DALLAS

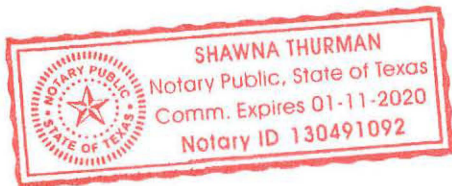
§

Travis Kelly, Vice President for Texas Central Railroad & Infrastructure, Inc. being duly sworn, states that he has read the foregoing Plaintiff's Verified Original Petition and Application for Injunctive Relief, and that the factual statements set forth therein are true and correct based upon either personal knowledge or information obtained from the records attached hereto, upon which information he relies, and that he reserves the right to amend the aforesaid petition if it should appear at any time that omissions or errors have been made, or that additional or more accurate information has been obtained.



Travis Kelly
Vice President
Texas Central Railroad & Infrastructure, Inc.

Subscribed and sworn to before me this 15th day of August, 2016, to certify which witness my hand and official seal of office.



Notary Public, State of Texas

My Commission Expires: 1-11-20

EXHIBIT “A”



Office of the Secretary of State

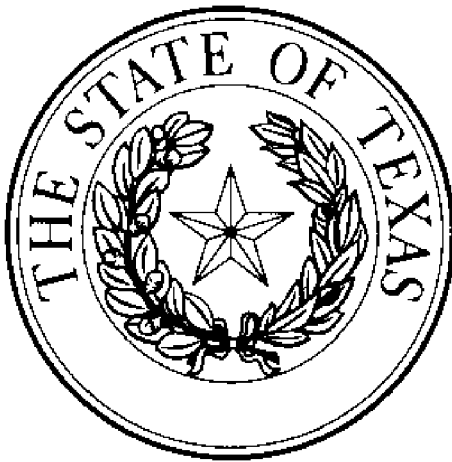
The undersigned, as Secretary of State of Texas, does hereby certify that the attached is a true and correct copy of each document on file in this office as described below:

Texas Central Railroad & Infrastructure, Inc.
Filing Number: 801704184

Certificate of Amendment

January 21, 2015

In testimony whereof, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in Austin, Texas on March 30, 2016.



A handwritten signature in black ink, appearing to read "Cascos", followed by a horizontal line.

Carlos H. Cascos
Secretary of State

Form 424
(Revised 05/11)

Submit in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512/463-5709
Filing Fee: See instructions



Certificate of Amendment

This space reserved for office use.

FILED
In the Office of the
Secretary of State of Texas

JAN 21 2015

Corporations Section

Entity Information

The name of the filing entity is:

TXHS Railroad, Inc.

State the name of the entity as currently shown in the records of the secretary of state. If the amendment changes the name of the entity, state the old name and not the new name.

The filing entity is a: (Select the appropriate entity type below.)

- | | |
|--|---|
| ☒ For-profit Corporation | ☐ Professional Corporation |
| ☐ Nonprofit Corporation | ☐ Professional Limited Liability Company |
| ☐ Cooperative Association | ☐ Professional Association |
| ☐ Limited Liability Company | ☐ Limited Partnership |

The file number issued to the filing entity by the secretary of state is: 801704184

The date of formation of the entity is: 12/20/2012

Amendments

1. Amended Name

(If the purpose of the certificate of amendment is to change the name of the entity, use the following statement)

The amendment changes the certificate of formation to change the article or provision that names the filing entity. The article or provision is amended to read as follows:

The name of the filing entity is: (state the new name of the entity below)

Texas Central Railroad & Infrastructure, Inc.

The name of the entity must contain an organizational designation or accepted abbreviation of such term, as applicable.

2. Amended Registered Agent/Registered Office

The amendment changes the certificate of formation to change the article or provision stating the name of the registered agent and the registered office address of the filing entity. The article or provision is amended to read as follows:

Registered Agent
(Complete either A or B, but not both. Also complete C.)

☐ A. The registered agent is an organization (cannot be entity named above) by the name of:

OR

☐ B. The registered agent is an individual resident of the state whose name is:

First Name	M.I.	Last Name	Suffix
The person executing this instrument affirms that the person designated as the new registered agent has consented to serve as registered agent.			

C. The business address of the registered agent and the registered office address is:

Street Address (No P.O. Box)	City	State	Zip Code
		TX	

3. Other Added, Altered, or Deleted Provisions

Other changes or additions to the certificate of formation may be made in the space provided below. If the space provided is insufficient, incorporate the additional text by providing an attachment to this form. Please read the instructions to this form for further information on format.

Text Area (The attached addendum, if any, is incorporated herein by reference.)

☐ **Add** each of the following provisions to the certificate of formation. The identification or reference of the added provision and the full text are as follows:

☒ **Alter** each of the following provisions of the certificate of formation. The identification or reference of the altered provision and the full text of the provision as amended are as follows:

Article 5 - Purpose is amended and restated in its entirety to read as follows:

"The purpose for which the corporation is organized is to plan, build, maintain and operate an interurban electric railroad, and to conduct or promote any other lawful businesses or purposes that a corporation is legally allowed to conduct or promote, within this state or any other jurisdiction."

☐ **Delete** each of the provisions identified below from the certificate of formation.

Statement of Approval

The amendments to the certificate of formation have been approved in the manner required by the Texas Business Organizations Code and by the governing documents of the entity.

Effectiveness of Filing (Select either A, B, or C.)

A. ☒ This document becomes effective when the document is filed by the secretary of state.

B. ☐ This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____

C. ☐ This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: _____

By: _____



Signature of authorized person

Mark M. Walker

Printed or typed name of authorized person (see instructions)

Exhibit 7

Finance Docket No. 36025

Delta Troy Reply In Opposition to Petition to Reopen

May 31, 2018



ENTERED
Office of Proceedings
May 13, 2016
Part of
Public Record

KEVIN BRADY
MEMBER OF CONGRESS
8TH DISTRICT OF TEXAS

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.

CHAIRMAN
COMMITTEE ON
WAYS AND MEANS

DEPUTY WHIP

JOINT COMMITTEE ON TAXATION

May 13, 2016

Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

RE: F.D. No 36025, Texas Central Railroad and Infrastructure, Inc. & Texas Central Railroad, LLC—Authority to Construct and Operate—Petition for Exemption from 49 U.S.C. § 10901 and Subtitle IV – Passenger Rail Line between Dallas, TX and Houston, TX

Dear Chairman Elliott and Board Members,

I write to you regarding the Texas Central Railroad and Infrastructure, Inc. and Texas Central Railroad, LLC (TCR) filings with the Surface Transportation Board (STB) concerning their proposed Dallas-to-Houston high-speed rail project.

I am a strong proponent of infrastructure projects that increase mobility and economic development for communities in the 8th Congressional District of Texas. However, I strongly oppose the proposed route of the Texas Central Railroad's high-speed rail project, as well as federal financial guarantees that could lead to taxpayer losses should the project prove unsustainable.

The proposed route of the TCR will greatly impact the rural communities and landowners in my congressional district. My constituents - especially those in Grimes, Madison and Leon counties - fear this project will fracture our rural lifestyle without direct economic or transportation benefits to our communities, families and businesses.

The Texas high-speed rail project is widely promoted as a privately-financed state project which rejects all taxpayer bailouts. It is situated entirely within Texas and while it may have the tenuous potential to impact interstate passenger rail travel in the future, upon completion it will simply be an intrastate railroad between two Texas cities. Therefore, jurisdiction and eminent domain matters should reside with and be determined by the State of Texas. I strongly urge the STB to deny the recent filings which seek to designate TCR as a federal project, permit the project to commence preliminary steps leading to eminent domain of private property, or receive federal loan guarantees.

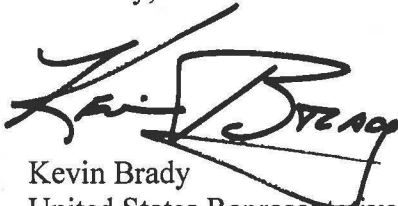
I am also opposed to TCR's petition that would allow the use of eminent domain as laid out in Texas law to establish the condemnation value of properties along the proposed route.

Landowners – especially those whose lands have been passed down from generation to generation - should not be forced into the stress of a condemnation process that saddles them with legal fees, clouds title to their property and injects uncertainty into the market value of their remaining property for a project with neither an approved route nor a permit to construct. The fact that TCR does not intend to take immediate possession of the property in no way mitigates the damage caused to a landowner forced into a costly condemnation fight.

TCR further states in its filing they are currently acquiring property from willing sellers and are prepared to accept the risk of lost capital investment in properties that may not be included in the final route alignment, which is an appropriate and responsible policy. However, while willing sellers may agree to sell land that ultimately is not included in the project, it is an entirely different proposition to use the power of eminent domain to force landowners into an adversarial process without an approved route and certainty that the project will be built.

Other proposed lines have enjoyed significant public support and participation from state and local governments, even going so far in the California High-Speed Rail as being affirmed by voters who approved the State's decision to issue bonds in order to fund the project. However, the proposed Texas Central High-Speed Rail project has yet to demonstrate significant support from communities along the proposed route. Therefore, if the STB chooses to exercise jurisdiction in this case I would request the STB ensure the full application process be adhered to so that the public has ample opportunity to weigh in on this very complicated and important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Brady", with a stylized flourish extending from the end of the name.

Kevin Brady
United States Representative
Eighth District of Texas

Exhibit 8

Finance Docket No. 36025

Delta Troy Reply In Opposition to Petition to Reopen

May 31, 2018

No Eminent Domain for Texas High Speed Rail

Brady lays out opposition to Surface Transportation Board

Washington, May 14, 2016 | 0 comments

f t # e

Washington, DC - In a letter to the federal Surface Transportation Board, U.S. Congressman Kevin Brady filed his strong opposition to Texas Central Railway's (TCR) petition for expedited use of eminent domain and construction authority for the controversial high-speed rail project in Texas.

Brady wrote: "It is entirely unreasonable that a project without even so much as an approved route or permit to construct could be granted the authority by federal bureaucrats to use eminent domain under Texas law. Landowners should not be forced into a stressful, costly condemnation process for a project still in the planning stages and that lacks strong public support. This is a state project and should be decided by Texas."

Brady opposes the route of the high speed rail project which splits rural communities and landowners in his congressional district. He also opposes taxpayer financial guarantees, and is fighting its designation as a federal project. As a state legislator in Texas Brady fought to protect landowners against a similar proposal for a "bullet train" by introducing legislation to prohibit the project from using eminent domain.

Background: TCR has made two filings with the Surface Transportation Board. The first is a Petition of Exemption for construction authority and the other requesting a clarifying order from the STB under expedited consideration to be able to set condemnation land values under the Texas eminent domain process.

Letter can be found [here](#) or below:

May 13, 2016

Surface Transportation Board

395 E Street, S.W.

Washington, DC 20423

RE: F.D. No 36025, Texas Central Railroad and Infrastructure, Inc. & Texas Central Railroad, LLC—Authority to Construct and Operate—Petition for Exemption from 49 U.S.C. § 10901 and Subtitle IV – Passenger Rail Line between Dallas, TX and Houston, TX

Dear Chairman Elliott and Board Members,

I write to you regarding the Texas Central Railroad and Infrastructure, Inc. and Texas Central Railroad, LLC (TCR) filings with the Surface Transportation Board (STB) concerning their proposed Dallas-to-Houston high-speed rail project.

I am a strong proponent of infrastructure projects that increase mobility and economic development for communities in the 8th Congressional District of Texas. However, I strongly oppose the proposed route of the Texas Central Railroad's high-speed rail project, as well as federal financial guarantees that could lead to taxpayer losses should the project prove unsustainable.

The proposed route of the TCR will greatly impact the rural communities and landowners in my congressional district. My constituents - especially those in Grimes, Madison and Leon counties – fear this project will fracture our rural lifestyle without direct economic or transportation benefits to our communities, families and businesses.

The Texas high-speed rail project is widely promoted as a privately-financed state project which rejects all taxpayer bailouts. It is situated entirely within Texas and while it may have the tenuous potential to impact interstate passenger rail travel in the future, upon completion it will simply be an intrastate railroad between two Texas cities. Therefore, jurisdiction and eminent domain matters should reside with and be determined by the State of Texas. I strongly urge the STB to deny the recent filings which seek to designate TCR as a federal project, permit the project to commence preliminary steps leading to eminent domain of private property, or receive federal loan guarantees.

I am also opposed to TCR's petition that would allow the use of eminent domain as laid out in Texas law to establish the condemnation value of properties along the proposed route. Landowners – especially those whose lands have been passed down from generation to generation - should not be forced into the stress of a condemnation process that saddles them with legal fees, clouds title to their property and injects uncertainty into the market value of their remaining property for a project with neither an approved route nor a permit to construct. The fact that TCR does not intend to take immediate possession of the property in no way mitigates the damage caused to a landowner forced into a costly condemnation fight.

TCR further states in its filing they are currently acquiring property from willing sellers and are prepared to accept the risk of lost capital investment in properties that may not be included in the final route alignment, which is an appropriate and responsible policy. However, while willing sellers may agree to sell land that ultimately is not included in the project, it is an entirely different proposition to use the power of eminent domain to force landowners into an adversarial process without an approved route and certainty that the project will be built.

Other proposed lines have enjoyed significant public support and participation from state and local governments, even going so far in the California High-Speed Rail as being affirmed by voters who approved the State's decision to issue bonds in order to fund the project. However, the proposed Texas Central High-Speed Rail project has yet to demonstrate significant support from communities along the proposed route. Therefore, if the STB chooses to exercise jurisdiction in this case I would request the STB ensure the full application process be adhered to so that the public has ample opportunity to weigh in on this very complicated and important issue.

Sincerely,

Kevin Brady

United States Representative

Eighth District of Texas

Exhibit 9

Finance Docket No. 36025

Delta Troy Reply In Opposition to Petition to Reopen

May 31, 2018

The High-Speed Intercity Passenger Rail (HSIPR) Grant Program: Overview

David Randall Peterman

Analyst in Transportation Policy

October 18, 2016

Congressional Research Service

7-5700

www.crs.gov

R44654

Summary

Since 1964, when Japan opened the first rail line allowing trains to travel safely at speeds greater than 150 miles per hour, several European and Asian countries have built high-speed rail lines. There have been frequent calls for the United States to develop similar high-speed rail services, but none have been built. The financial challenge of building high-speed rail lines, which requires many billions of dollars to be spent over a lengthy period before service opens and revenues begin to be collected, makes government financial support unavoidable. Governments in other countries have provided such support, but over many years efforts to get federal support for the construction of high-speed rail lines have, with the partial exception of Amtrak's Northeast Corridor, been unsuccessful. In fact, Congress provided little funding even for expansion of non-high-speed passenger rail service. Opponents of increased funding for intercity passenger rail have contended that it was economically inefficient compared to other modes of travel.

For a brief period in 2008-2009, it appeared that the situation had changed. The 110th Congress authorized several programs to make grants to states for intercity passenger rail development in the Passenger Rail Investment and Improvement Act of 2008 (Division B of P.L. 110-432). The following year, in the American Recovery and Reinvestment Act of 2009 (ARRA, P.L. 111-5) and the FY2010 Department of Transportation Appropriations Act (Division A, Title I, P.L. 111-117), the 111th Congress appropriated \$10.6 billion to develop both high-speed and conventional intercity passenger rail services. The Federal Railroad Administration of the U.S. Department of Transportation used this money to award 158 grants under the new High-Speed Intercity Passenger Rail (HSIPR) Grant Program. Some 80% of the funding went to a relatively small number of large-scale projects. These included multi-billion-dollar grants to California and Florida for high-speed rail lines; Florida subsequently turned down its grant.

This dramatic change in policy ended just as suddenly, as the 112th Congress rescinded \$400 million of the \$10.6 billion previously appropriated and rejected the Administration's requests for additional funding. Succeeding Congresses have also not responded to requests for HSIPR funding. In addition, several states declined significant grants for improvements to their intercity passenger rail lines. That funding was reallocated to other states. All but two of the HSIPR projects are expected to be complete by 2017, but the most ambitious and expensive, the California High-Speed Rail project, will not enter service for many years.

Congress's creation, then abandonment, of the HSIPR program illustrates the challenges of funding major construction projects that take years to complete without a stable source of financing. At the beginning, the federal and state governments lacked the expertise and program framework to implement the program. Now that the expertise and program framework have been developed, they are at risk of disappearing due to the lack of continued funding. Also, such funding spurts make long-term project planning and implementation very difficult.

A challenge facing the future of the HSIPR program is the large amount of funding required for high-speed rail development, combined with the lack of a dedicated funding source and the funding shortages facing other federal transportation programs even with their dedicated funding sources. Another challenge is contending with arguments against intercity passenger rail. Critics assert that it requires larger per-passenger subsidies than other travel modes, that it is not well-suited to the economic geography of the United States, and that near-term technologies may provide better alternatives.

Contents

Introduction	1
Background	1
Definition of High-Speed Rail	3
Program Administration	3
Grants Awarded	4
Status of Major HSIPR Grants	5
California High-Speed Rail Project	6
Chicago-St. Louis Corridor	7
Chicago-Detroit-Pontiac Corridor	8
Chicago-Iowa City Corridor	9
Washington/Pacific Northwest Rail Corridor Program	10
Southeast High-Speed Rail Corridor	10
Northeast Corridor Improvements	11
Why Are the Major HSIPR Projects Taking So Long to Complete?	12
Lessons Learned	13
The Challenge of Sudden Large but Temporary Grant Funding	14
The Challenge of Continuity amid Political Change	15
The Challenge of Providing Large and Stable Amounts of Funding	15
The Challenge of Funding a Small Number of Costly Regional Projects	15

Tables

Table 1. Laws Promoting Development of New or Improved Intercity Passenger Rail Service, 2007-2016	2
Table 2. Timeline of HSIPR Grants	4
Table 3. HSIPR Grants Awarded	5
Table 4. California High-Speed Rail Corridor Major Projects with HSIPR Funding	7
Table 5. Chicago-St. Louis Major Projects	8
Table 6. Chicago-Detroit-Pontiac Corridor Major Projects	9
Table 7. Chicago-Iowa City Corridor Major Projects	9
Table 8. Pacific Northwest Rail Corridor Major Projects	10
Table 9. Southeast High-Speed Rail Corridor Major Projects	11
Table 10. Boston-New York-Washington, DC, NEC Improvements Major Projects	11

Contacts

Author Contact Information	16
----------------------------------	----

Introduction

Since 1971, when it created Amtrak to operate a skeletal network of passenger trains, which were being discontinued by freight railroads, Congress has provided funding to support intercity passenger rail service. Until recently, almost all of that money went to Amtrak, a government-owned corporation, to cover its operating losses and finance capital improvements to Amtrak-owned infrastructure, mainly in the Northeast and Michigan. Amtrak's Northeast Corridor—between Washington, DC, and Boston, with spurs to Harrisburg, PA, and Springfield, MA—offers the fastest rail service in the United States; the route, laid out over a century ago, allows trains to hit 160 miles per hour (mph) for short distances, but the fastest service between major cities averages around 80 mph. This is far slower than many high-speed rail services in other countries.

In 2008 and 2009, Congress took a different approach, appropriating significant amounts to finance development of higher-speed intercity passenger rail services by state governments. To date, however, the results of this investment are not readily apparent in the form of new, faster, or more frequent services. This report examines the High-Speed Intercity Passenger Rail (HSIPR) Grant Program and highlights related issues of potential interest to Congress.

Background

Prior to 2008, Congress rarely provided funding for intercity passenger rail purposes outside of the annual funding for Amtrak. This changed with passage of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA, Division B of P.L. 110-432) in the fall of 2008. PRIIA, which reauthorized Amtrak, included language authorizing the first federal grants to states to develop intercity passenger rail service.¹ Two grant programs for helping states finance rail facilities, infrastructure, and equipment were authorized at a total of \$2.225 billion over five years. This legislation was passed after a number of states expressed interest in expanding intercity passenger rail operations.

President Barack Obama, who took office in January 2009, proposed spending on high-speed rail projects as part of a larger economic stimulus program to address a deep recession. Congress approved the passenger rail program in the American Recovery and Reinvestment Act of 2009 (ARRA, P.L. 111-5), which appropriated \$8 billion for grants to states to develop high-speed and intercity passenger rail services.

In April 2009, two months after the passage of ARRA, the President declared that development of high-speed rail (HSR) was a priority for his Administration and said he would ask Congress to appropriate an additional \$1 billion annually for that purpose.² This priority was reflected in the FY2010 Department of Transportation Appropriations Act (Division A, Title I, P.L. 111-117), in which Congress appropriated \$2.5 billion for high-speed and intercity passenger rail grants to states.

Since that time, Congress has not appropriated further amounts for the HSIPR program, although the Administration has repeatedly requested billions of dollars in additional funding for intercity

¹ §§301-302, Division B.

² In April 2009 the President released a strategic plan for high-speed rail, including a proposal for budgeting an additional \$1 billion a year for five years. The plan said the funding would be “a down payment to jump-start a potential world-class passenger rail system and sets the direction of transportation policy for the future.” U.S. Department of Transportation, “President Obama, Vice President Biden, Secretary LaHood Call for U.S. High-Speed Passenger Trains,” press release, April 16, 2009, DOT 51-09, at <https://www.fra.dot.gov/eLib/details/L00986>.

passenger rail development. Indeed, the 112th Congress rescinded \$400 million previously appropriated for this purpose.³

In December 2015 Congress reauthorized federal surface transportation programs in the Fixing America's Surface Transportation (FAST) Act (P.L. 114-94). The act authorized \$2.2 billion for grants to states and rail carriers for improving intercity passenger and freight rail transportation systems, in addition to funding for Amtrak.⁴ However, this funding was authorized from the general fund, not from dedicated funds, and whether any of the funding is actually appropriated will be determined by Congress through the annual Department of Transportation (DOT) appropriations acts. For FY2016, the FAST Act authorized \$200 million for such grants, but Congress did not appropriate any funding for this purpose.

Table 1 provides a detailed chronology of recent congressional actions to support new or improved intercity passenger rail service.

**Table 1. Laws Promoting Development
of New or Improved Intercity Passenger Rail Service, 2007-2016**

Date of Enactment	Legislation	Notes
December 26, 2007	FY2008 Department of Transportation Appropriations Act (P.L. 110-161, Division K, Title I)	\$30 million for grants to states to improve existing or develop new intercity passenger rail service.
October 16, 2008	Passenger Rail Investment and Improvement Act of 2008 (PRIIA) (P.L. 110-432, Division B)	Authorized an Intercity Passenger Rail Service Corridor Capital Assistance program (§301), a High-Speed Rail Corridor Development program (§501), and a Congestion Grants program (§302) to reduce congestion or facilitate intercity passenger rail ridership growth.
February 17, 2009	American Recovery and Reinvestment Act of 2009 (P.L. 111-5, Division A, Title XII)	Appropriated \$8 billion for the three programs authorized in PRIIA; projects must be completed by September 30, 2017.
March 11, 2009	FY2009 Department of Transportation Appropriations Act (P.L. 111-8, Division I, Title I)	Appropriated \$90 million for grants to states to improve existing or develop new intercity passenger rail service.
December 16, 2009	FY2010 DOT Appropriations Act (P.L. 111-117, Division A, Title I)	Appropriated \$2.5 billion for the three programs authorized in PRIIA; not less than 85% of this funding is for development of entire segments or phases of intercity or high-speed rail corridors.
April 15, 2011	Full-Year Continuing Appropriations Act (P.L. 112-10, Division B)	Rescinded \$400 million from prior year unobligated funding for high-speed and intercity passenger rail projects.
December 4, 2015	Fixing America's Surface Transportation (FAST) Act (P.L. 114-94)	Authorized \$2.2 billion for grants to states and rail carriers for intercity passenger and freight rail development, in addition to grants to support Amtrak. Also expanded uses of the Railroad Rehabilitation and Improvement Financing loan program.

Source: Compiled by CRS.

³ Although between 2010 and 2015 Congress did not appropriate any money for HSIPR grants, Congress did encourage DOT to make greater use of the Railroad Rehabilitation and Improvement Financing (RRIF) loan program for freight and passenger rail projects. In August 2016 it was announced that DOT would loan Amtrak \$2.45 billion through the RRIF program to purchase new high-speed trainsets for the Northeast Corridor.

⁴ The act also made development connected to rail stations eligible for loans under the RRIF program.

Definition of High-Speed Rail

There is no single statutory definition of what constitutes “high-speed rail.” At different times Congress has defined high-speed rail as having maximum speeds above 90 miles per hour, 110 miles per hour, and 125 miles per hour.⁵ The Federal Railroad Administration (FRA), prior to the HSIPR program, had developed a functional definition that did not specify the speed that qualified a service as high-speed; it defined high-speed rail as service “that is time-competitive with air and/or auto for travel markets in the approximate range of 100 to 500 miles.” For the purpose of the HSIPR program, FRA used the standard in the *U.S. Code*: service “reasonably expected to reach speeds of at least 110 mph.”⁶ FRA often refers to routes with track speeds above 79 mph but below 110 mph as “higher-speed” rail. FRA also describes three tiers of intercity rail service:

- Core Express (125 mph-250+ mph);
- Regional (90 mph-125 mph); and
- Emerging (up to 90 mph).⁷

Program Administration

FRA in DOT has primary responsibility for federal grants for passenger rail projects. The FRA had primarily been a rail safety regulatory agency throughout its history, with virtually no experience in grantmaking until September 2008, when it awarded the \$30 million Congress appropriated for grants in FY2008. Five months later, Congress appropriated almost 300 times that amount—\$8 billion—for rail grants in ARRA, giving FRA four months to issue interim guidance to implement the new program.⁸

Although high-speed rail grabbed the headlines, Congress directed that the ARRA funding was also to be used for other intercity passenger rail service and for grants to relieve congestion on the railroad network.⁹ In its program guidance FRA combined the grant programs authorized in PRIIA, the funding in ARRA, and the FY2009 DOT appropriations act to produce four categories (“tracks”) of grants:

- Track 1—Projects: for small-scale construction that could be completed within two years;
- Track 2—Programs: for a set of interrelated projects that improve all or a portion of a corridor;

⁵ See Table 3 in CRS Report R40973, *High Speed Rail (HSR) in the United States*, coordinated by David Randall Peterman.

⁶ 49 U.S.C. §26106(b)(4).

⁷ Federal Railroad Administration, *High-Speed Intercity Passenger Rail (HSIPR) Program: Corridor Investment Strategy*, <https://www.fra.dot.gov/Page/P0134>.

⁸ In the PRIIA legislation enacted four months prior to ARRA, Congress had given FRA two years to develop the guidance for the new passenger rail grant programs created in PRIIA.

⁹ This involved some complications, since the ARRA funding required no matching funding, while the grant programs Congress authorized in PRIIA did require a 20% local match, and the eligible applicants and projects were different among the authorized grant programs.

- Track 3—Planning: to support work needed to advance a project to the point of applying for funding under Tracks 1 or 2 to create a pipeline of future construction projects;¹⁰ and
- Track 4—FY2009 Appropriations Projects: an alternative to Track 1, using the FY2009 funding (which required a 50% match, while the ARRA funding did not require a match).

FRA gave states a relatively short window for submitting grant applications, although it provided a bit more time for the more complex applications for Track 2 grants (see **Table 2**). It required would-be applicants to submit preapplications, in part to help FRA judge the staff resources it would need to administer the program.

Table 2. Timeline of HSIPR Grants

Date	Note
February 17 (ARRA)/March 11, 2009 (FY2009 DOT Appropriations)	Initial round of funding: \$8.09 billion total
June 23, 2009	FRA issues interim grant guidance
July 10, 2009	Preapplications required from potential grantees
August 25, 2009	Deadline for applications for Tracks 1, 3, and 4
October 2, 2009	Deadline for applications for Track 2
December 16, 2009	Congress appropriates another \$2.5 billion for HSIPR grants
January 28, 2010	FRA announces first round of grant awards
May 2010	FRA begins to obligate funding to grantees
October 28, 2010	FRA announces second round of grant awards
December 2010	FRA reallocates \$1.2 billion from grants declined by Ohio and Wisconsin to ongoing projects in other states (mostly to California, Florida, and Washington)
May 2011	FRA reallocates \$2.0 billion from grants to Florida to ongoing projects in other states

Source: Federal Railroad Administration, various *Federal Register* notices regarding HSIPR grants; Government Accountability Office, various reports on HSIPR program.

Grants Awarded

FRA received 278 preapplications requesting \$102 billion in the first round of HSIPR grants in 2009, and ultimately received 229 applications for \$57.8 billion from 39 states, the District of Columbia, and Amtrak. It awarded 108 grants in the first round and 50 in the second (and final) round to 32 states and the District of Columbia. **Table 3** shows the grant awards by track.¹¹

¹⁰ Planning activities are also eligible expenses under Tracks 1, 2, and 4.

¹¹ These numbers represent the final distribution of grants awarded.

Table 3. HSIPR Grants Awarded

Track	Projects		Amount Awarded	
	Number	% of total	Millions of dollars	% of total
Track 1: Individual Project: Preliminary Engineering / NEPA	36	23%	\$253	3%
Track 1: Individual Project: Final Design / Construction	47	30%	\$1,594	16%
Track 2: Corridor	28	18%	\$8,072	80%
Track 3: Planning	35	22%	\$38	>1%
Track 4: FY2009 Appropriations: Individual Project—Final Design / Construction	9	6%	\$80	>1%
Multi-State: FRA-Led Planning	3	2%	\$20	>1%
Total	158	100%	\$10,057	100%

Source: CRS, based on a list of grants provided by the Federal Railroad Administration.

Notes: Percentage columns may total more than 100% due to rounding. NEPA refers to studies required under the National Environmental Policy Act prior to project approval.

Reflecting the two distinct goals of the high-speed rail funding in ARRA—the short-term goal of stimulating the economy and the long-term goal of developing a high-speed rail network—the HSIPR grants fell into two categories. Many small grants were awarded for work that could be completed quickly; 36 grants were for less than \$1 million each, and another 53 were for less than \$10 million each. A relatively small number of grants funded large-scale projects involving heavy construction: 16 grants, roughly 10% of the total number awarded, accounted for 84% (\$8.4 billion) of the total HSIPR grant funding.¹²

After the awards were announced, prominent grants for the development of high-speed rail projects in Florida (\$2.4 billion), Wisconsin (\$810 million), and Ohio (\$400 million) were declined by the newly elected governors of those states, who expressed concern that the construction and operating costs for their rail projects might exceed initial estimates and ultimately require additional state funding. Congress had directed that funding not used by a grantee should be returned to DOT and used for other intercity passenger rail projects at the discretion of the Secretary of Transportation,¹³ so the money was reallocated to other grantees. These forgone and reallocated grants represented nearly one-third of the total funding awarded through the HSIPR program.

Status of Major HSIPR Grants

Congress provided that the \$8 billion appropriated for high-speed and intercity passenger rail development in ARRA, which made up the majority of the HSIPR grant funding, had to be expended by the end of FY2017.¹⁴ On July 14, 2016, FRA testified that over half of the projects

¹² Figures and amounts compiled from a list of HSIPR projects provided by FRA.

¹³ 49 U.S.C. §24402(h).

¹⁴ The \$2.5 billion that was appropriated for this purpose in the FY2010 Department of Transportation Appropriations Act was made available until expended.

funded under the HSIPR program have been completed.¹⁵ Following is a brief survey of the status of the major HSIPR grants, defined as those exceeding \$100 million. A total of 15 grants exceeding \$100 million were awarded for six corridors.

California High-Speed Rail Project

The California High-Speed Rail Authority proposes to build a 520-mile dedicated rail line between San Francisco and Los Angeles that will allow trains to reach speeds up to 220 mph. The project, approved by California voters in a 2008 referendum that authorized the sale of \$9 billion of bonds for the initial phase, is to provide service linking San Francisco and Los Angeles in as little as two hours and 40 minutes. A recent change to the first phase would also provide service between San Francisco and the Central Valley city of Merced. A second phase is to serve Sacramento and San Diego.

The total cost of the stretch between San Francisco and Los Angeles, including the link to Merced and some improvements to commuter train infrastructure that will eventually benefit high-speed rail, is estimated to be \$55.3 billion in 2015 dollars.¹⁶ The state legislature has approved the use of certain state revenues for the project, but most of the cost has not yet been funded.

This is the only project receiving HSIPR funding that involves building an entirely new rail line, and is the only HSIPR-supported project that would be considered “high-speed rail” by international standards.¹⁷ ARRA directed DOT to give priority in awarding grants to projects that supported the development of intercity high-speed rail service; after the return of several HSIPR grants by other states, the California project has received four HSIPR grants totaling \$3.9 billion. The “initial construction segment” for which most of that funding was provided extends from just south of Merced to Shafter, just north of Bakersfield, a distance of 118 miles; the estimated construction cost of this segment is \$7.3 billion.¹⁸

¹⁵ Statement of Sarah Feinberg, Administrator, Federal Railroad Administration, before the House of Representatives Committee on Oversight & Government Reform, Subcommittee on Transportation and Public Assets, July 14, 2016.

¹⁶ Or \$64.2 billion in dollars reflecting anticipated inflation during the period of construction. California High-speed Rail Authority, *Connecting and Transforming California: 2016 Business Plan*, May 1, 2016, http://www.hsr.ca.gov/about/business_plans/2016_Business_Plan.html, p. 68.

¹⁷ In the international context, high-speed rail generally refers to trains that operate at more than 125 mph (some operate at up to 180 mph) on tracks that are reserved for the exclusive use of high-speed trains, so that such trains do not have to share tracks with slower trains.

¹⁸ Mac Taylor, *Review of High-Speed Rail Draft 2016 Business Plan*, California Legislative Analyst’s Office, March 17, 2016, p. 7, Figure 4, <http://www.lao.ca.gov/reports/2016/3394/HSR-Draft-Business-Plan-Review-031716.pdf>.

Table 4. California High-Speed Rail Corridor Major Projects with HSIPR Funding

Major Projects	HSIPR Grant (dollars in millions)	Scheduled Completion	Status
Phase I HSR Program—Design/Build: Start of 520-mile Phase I activities - Right-of-way acquisition - Grade separation - Track and station construction and improvements	\$2,553	2022	Construction under way (groundbreaking January 6, 2015)
Initial Central Valley HSR Segment: Madera County to Bakersfield (Kern County) - Right-of-way acquisition - Site work - Final design and construction of HSR segment	\$929	2022	Construction under way
Transbay Transit Center Train Box Build underground level of Transbay Transit Center in San Francisco as station for HSR	\$400	2017	Construction under way

Source: Federal Railroad Administration San Diego—Los Angeles—San Francisco—Sacramento (CAHSR) fact sheet; personal communication from Federal Railroad Administration.

Status: Construction began in the Fresno area in January 2015. The California High-Speed Rail Authority, the state agency overseeing the project, forecast in 2016 that it will open service between San Jose and both Merced and the Bakersfield area in 2025 and on the longer route between San Francisco and Los Angeles in 2029. However, the agency identified “failure to receive the anticipated amount of public funding at the requisite time” as among the risks that could delay the project and increase its cost.¹⁹ Several projects receiving financial support from the California High-Speed Rail Authority to improve existing commuter rail lines to permit future use by high-speed trains are expected to come into service as early as 2021.

Chicago-St. Louis Corridor

Three major HSIPR grants totaling \$1.34 billion were made for improvements on this 285-mile corridor. The purpose of the project was to reduce travel time and increase service in order to convert a portion of travelers in this corridor from driving to using rail. In addition, the improvements are intended to avert the possibility that increased freight rail traffic in the corridor could degrade the speed and reliability of existing passenger rail service over time. Generally, the project involved adding a parallel track along the existing tracks in the corridor to improve reliability and safety and to increase the number of passenger rail trips.²⁰ Project elements include

¹⁹ Ibid., pp. 75, 102. The HSIPR grant funding derived from ARRA has to be expended by September 2017. To allow the California High-Speed Rail Authority to expend the grant funds by this deadline, FRA is allowing the authority to do a “tapered match” (i.e., to spend the federal portion of its grant first and its matching fund portion later); U.S. House of Representatives, Committee on Transportation and Infrastructure, Subcommittee on Railroads, Pipelines, and Hazardous Materials, Field Hearing on “Continued Oversight of the California High-Speed Rail Project,” *Summary of Subject Matter*, August 26, 2016, p. 2, http://transportation.house.gov/uploadedfiles/2016-08-29_-_rr_ssm.pdf.

²⁰ The vast majority of the nation’s rail network is owned by private freight rail companies, so in this and many other (continued...)

- 262 miles of main track upgraded to enable 110-mph service,
- improvements to 252 grade crossings,
- construction of new second tracks and sidings,
- installation of fencing along the corridor (in urban areas and select rural areas),
- upgrading of train control signals to provide positive train control,²¹
- repair and replacement of bridges,
- renovation or construction of eight stations, and
- purchase of eight new high-speed train sets.

Table 5. Chicago-St. Louis Major Projects

Project	HSIPR Grant (dollars in millions)	Scheduled Completion	Goals
Chicago-St. Louis Corridor Improvement	\$1,142	2017	Increase top speed from 79 mph to 110 mph on 92% (262 miles) of the corridor; reduce trip time by 15% (340 to 285 minutes); improve on-time performance and reliability.
Corridor Improvement Program: Dwight-Joliet	\$186	2017	
Midwest Equipment Pool	\$268	2017	

Source: CRS, based on information in the Federal Railroad Administration's Chicago-St. Louis corridor fact sheet and the Illinois Department of Transportation's High-Speed Rail website (www.idothrs.org).

Note: Midwest Equipment Pool grant is for acquisition of equipment that can be used on multiple Midwestern corridors.

Status: As of September 2016, the HSIPR grant work has not resulted in any travel time reductions or service frequency increases on this corridor. When the work is completed, it is expected to result in reduced trip times and increased on-time performance.

Chicago-Detroit-Pontiac Corridor

A total of 11 HSIPR grants totaling \$600 million are funding improvements to this 304-mile corridor. Passenger service is provided by Amtrak's Wolverine route. Major project elements include

- purchase of 135 miles of Norfolk Southern track and right-of-way to be upgraded;

(...continued)

cases the improvements are being made to their property. The improved infrastructure will be owned by the host railroad, and the grantees are required to maintain the improvements and passenger rail service using them for 20 years, or repay a pro-rata share of the grant funding to FRA. In the case of the large-scale corridor projects covered here, most also have agreements to ensure that the passenger rail service benefits that the investments are intended to provide are achieved. These agreements are unique to each project, but typically involve the grantee, Amtrak, and the host freight railroad.

²¹ Positive train control (PTC) is a communications and signaling system that is capable of preventing crashes resulting from mistakes by train operators or dispatchers. Congress has mandated that all passenger routes be equipped with this technology by December 2018. For more information, see CRS Report R42637, *Positive Train Control (PTC): Overview and Policy Issues*, by John Frittelli.

- a flyover eliminating an at-grade crossing of two busy rail lines, reducing delays; and
- infrastructure improvements to increase track speeds.

Table 6. Chicago-Detroit-Pontiac Corridor Major Projects

Major Projects	HSIPR Grant (dollars in millions)	Scheduled Completion	Goals
Dearborn-Kalamazoo Service Development Plan	\$197	2016	Increase top speed from 79 mph to 110 mph for 77% (235 miles) of the corridor; reduce trip time by 9% (335 to 305 minutes); increase on-time performance and reliability.
Dearborn-Kalamazoo Corridor Acquisition and Improvements	\$150	2016	
Englewood Flyover	\$126	2016	
Midwest Equipment Pool	\$268	2017	

Source: CRS, based on information in the Federal Railroad Administration's Chicago—Detroit—Pontiac corridor fact sheet.

Note: Midwest Equipment Pool grant is for acquisition of equipment that can be used on multiple midwestern corridors.

Status: As of September 2016, the HSIPR grant work has resulted in a 10-minute reduction in trip times between Chicago and Detroit. When the work is completed (expected by the end of 2016), it is projected to reduce trip times by another 20 minutes and improve on-time performance. Additional investments will likely be needed to further reduce trip times and increase train frequencies.

Chicago-Iowa City Corridor

The Illinois and Iowa departments of transportation received \$230 million in grants to upgrade track and signaling systems and build new stations as part of restoring 79-mph passenger rail service between Chicago and Iowa City. At the request of the state agencies, the grant was split into two parts, with \$177 million awarded to the Illinois DOT for Phase 1 (Chicago-Moline) and \$53 million awarded to Iowa DOT for Phase 2 (Moline-Iowa City).

Table 7. Chicago-Iowa City Corridor Major Projects

Major Projects	HSIPR Grant (dollars in millions)	Scheduled Completion	Goals
Chicago-Iowa City Corridor Phase I • Upgrade 74 miles of track between Chicago and Moline, IL • Install new signaling and traffic control systems • Build two new rail stations	\$177	Uncertain	To reestablish 79-mph passenger rail service between Chicago and Iowa City; create an alternative to auto, bus, and air travel in this 220-mile corridor; and support the expansion of passenger rail service through Chicago in the Midwest.

Source: Federal Railroad Administration, "HSIPR Grants by Region," <https://www.fra.dot.gov/Page/P0554>; Iowa Department of Transportation, various documents published by the Rail Division, including *Status Report on Midwest Regional Rail Passenger Initiative and Passenger Rail Service in Iowa*, February 1, 2016, <http://publications.iowa.gov/21461/1/2016%20Passenger%20Rail%20Legislative%20report.pdf>.

Status: Work on Illinois’s Phase 1 portion of the corridor was delayed by a new state administration, but the state is now developing a revised schedule for the project so that FRA can amend the grant to extend the project end date. Iowa is pursuing preliminary engineering and environmental clearances for Phase 2, but has not identified state and local match funding required to access the Phase 2 federal funding, and has not yet determined whether it will move forward with final design and construction of Phase 2.

Washington/Pacific Northwest Rail Corridor Program

The Washington State Department of Transportation is administering the Pacific Northwest Rail Corridor Improvement Program (PNWRC Program), which received 11 HSIPR grants totaling \$809 million. The goal of the PNWRC Program is to improve the level of service of the Amtrak Cascades route (a state-supported route) between Portland, OR, and Vancouver, British Columbia.

The PWNRC program has approximately 17 component projects. Several of the components have been completed, including improvements to existing stations. The PNWRC Program is scheduled to be completed by April 2017.

Table 8. Pacific Northwest Rail Corridor Major Projects

Major Projects	HSIPR Grant (dollars in millions)	Scheduled Completion	Goals
Pacific Northwest Rail Corridor Program (reroute existing service and build bypass tracks)	\$752	2017	Reduce travel time by 5% (from 210 to 200 minutes) between Seattle and Portland; add two daily round-trips between Seattle and Portland, bringing the total to seven; increase on-time performance to 88%.

Source: CRS, based on Federal Railroad Administration’s Eugene—Portland—Seattle—Vancouver, BC (PNWRC) fact sheet and personal exchanges with Washington Department of Transportation.

Status: As of September 2016, the HSIPR grant work has not resulted in any travel time reductions or service frequency increases on this corridor. When the work is completed, it is expected to reduce trip time in the corridor by 10 minutes between Seattle and Portland, and two daily round-trips between Seattle and Portland will be added.²²

Southeast High-Speed Rail Corridor

The Southeast High-Speed Rail Corridor extends 730 miles, from Washington, DC, to Atlanta, GA. The corridor received eight HSIPR grants totaling \$740 million. Of that, grants totaling \$630 million were made for improvements to the 173-mile portion of the corridor running between Charlotte and Raleigh in North Carolina; the largest grant was \$520 million.

²² Washington Department of Transportation, *Rail Division Action Plan – 2016*, March 2016, <http://www.wsdot.wa.gov/rail>.

Table 9. Southeast High-Speed Rail Corridor Major Projects

Major Projects	HSIPR Grant (dollars in millions)	Scheduled Completion	Goals
Piedmont Corridor Improvement Program • Preliminary engineering • Environmental review • Equipment rehabilitation • Stations and facilities improvements • Construction	\$520	2017	Enable two additional trains daily between Charlotte and Raleigh; increase safety.

Source: CRS, based on Federal Railroad Administration's Washington, DC—Raleigh—Charlotte—Atlanta (SEHSR) fact sheet.

Status: As of September 2016, the HSIPR grant work has not resulted in any travel time reductions or service frequency increases on this corridor. However, North Carolina DOT has stated that it plans to initiate a fourth daily train in 2017, after the project is completed, and a fifth daily train in 2019. The work is also expected to improve on-time performance.

Northeast Corridor Improvements

A total of 11 HSIPR grants totaling \$983 million were awarded for projects on the Northeast Corridor (NEC), a 455-mile corridor running from Washington, DC, through New York City to Boston, MA. The bulk of that funding went to two projects in New Jersey.

Table 10. Boston-New York-Washington, DC, NEC Improvements Major Projects

Major Projects	HSIPR Grant (dollars in millions)	Scheduled Completion	Goals
NJ: NEC power, signal, track, catenary improvements between Trenton, NJ, and New York; upgrades to electrical power, signal systems, tracks, and overhead catenary wires between Trenton and New Brunswick, NJ	\$450	2020	Increase top speed to 160 mph, increase frequencies of trains, and improve reliability of infrastructure.
NY: NEC Harold Interlocking Amtrak Bypass Routes: new conflict-free interlocking at Harold Bypass in Queens, NY, one of the busiest interlockings in the nation	\$295	2022	Reduce trip times and improve schedule reliability by reducing delays at Harold Interlocking.

Source: Federal Railroad Administration, Boston—New York—Washington, DC (NEC) fact sheet; Amtrak, NEC Projects: New Jersey High-Speed Rail Improvement Program (<https://nec.amtrak.com/content/new-jersey-high-speed-rail-improvement-program>).

Notes: The majority of HSIPR grants were funded from ARRA P.L. 111-5; that funding had an availability deadline of September 2017. The \$2.1 billion in HSIPR funding provided in the FY2010 Department of Transportation Appropriations Act (Title I, Division A of P.L. 111-117) is available until expended. An interlocking is a place where two or more rail lines merge or cross at the same level (at-grade).

Status: As of September 2016, the HSIPR grant work has not resulted in any travel time reductions or service frequency increases on the NEC. When the work is completed, it is expected to result in reduced trip times and increased on-time performance.

Why Are the Major HSIPR Projects Taking So Long to Complete?

Many of the HSIPR grants were for relatively small projects—often planning and/or preliminary engineering work—that have already been completed. With two exceptions—the California High-Speed Rail Corridor project, which is the largest and most complex transportation project ever undertaken in the United States,²³ and the Chicago-Iowa City project, the completion of which is in question—the major projects described above are scheduled for completion by fall 2017, seven years after receiving funding.

The considerable time required to complete the projects has been a focus of criticism. However, it is not clear that the projects are in fact taking a long time, relative to surface transportation projects of similar complexity. Although some planning and environmental clearance work had been done on several of the projects prior to their receipt of HSIPR grants, the grants themselves, which constituted the majority of the funding for these projects, were not awarded until 2010. An analysis in 2001 found that the average time required to complete surface transportation projects was 13 years after the beginning of the preliminary engineering phase, with some projects—typically those that encounter significant community opposition or environmental, funding, or land acquisition issues—taking much longer.²⁴

In addition to the complexities typically faced by major surface transportation projects, the HSIPR projects have faced two challenges not faced by highway projects—the need for many grantee states to create rail planning and project management agencies, and the occasional and unpredictable availability of federal funding for HSIPR projects. Many states had no rail development programs prior to 2008, and had to hire engineering professionals, planners, and managers with experience in passenger rail project implementation in the United States before projects could advance.²⁵ They then had to undertake environmental reviews, design, engineering, and, in some cases, land acquisition before construction could proceed. In some cases, project completion has required additional federal assistance beyond what was provided through the HSIPR program, and that assistance was uncertain. For example, construction of a new station in Raleigh, NC, as part of the Southeast High-Speed Rail Corridor project relies on two grants from DOT's Transportation Investment Generating Economic Recovery (TIGER) program. These grants were approved in 2012 and 2013, well after North Carolina received a \$520 million HSIPR grant.

The largest and most complex of the HSIPR projects, the California High-Speed Rail Corridor, illustrates the challenges involved. The project has been in development for many years. The initial environmental impact statement was completed in 2004, but no funding was then available to advance the project. A state referendum to approve borrowing funds for the project was postponed twice before being put before voters in November 2008. The referendum was

²³ Unless one considers the construction of the Interstate Highway System a single project.

²⁴ Federal Highway Administration, *Evaluating the Performance of Environmental Streamlining: Development of an EPA Baseline for Measuring Continuous Performance*, and *Evaluating the Performance of Environmental Streamlining: Phase II*, cited in National Surface Transportation Policy and Revenue Study Commission, *Evaluation of Time Currently Required to Implement Rail, Highway, Transit, and Port Projects from "First Thought" to Operation*, Commission Briefing Paper 4K-01, January 12, 2007.

²⁵ Federal Railroad Administration, "High-Speed Intercity Passenger Rail Program Notice of Funding Availability and Interim Program Guidance," 74 *Federal Register* 29903, June 23, 2009.

approved, and a few months later Congress authorized the HSIPR grant program in ARRA. In 2010, FRA awarded the project an HSIPR grant.

Subsequently, as the project has proceeded through final design and more detailed environmental clearances, it has faced lawsuits by entities wishing to alter its route or stop its construction. These lawsuits, some of which are still in process, have limited the ability of the project to draw on state funding and have delayed activities such as land acquisition.²⁶ The project, which involves crossing earthquake fault zones and mountain ranges, also faces significant environmental and engineering challenges.

It also faces questions about further funding. As additional engineering has brought the details of the project into focus, the cost estimate has increased, and the current estimate of around \$64 billion for Phase 1 (in dollars reflecting inflation during the construction period) is several times greater than the amount of funding currently identified for the project. The project's business plan calls for a significant portion of the total cost to be covered by federal funding,²⁷ but there is no obvious source of additional federal funds beyond the almost \$4 billion of HSIPR grants already obligated. The state of California has dedicated some receipts from auctions of state carbon dioxide emissions permits to the project, but the rate at which these funds will be received is uncertain.

Lessons Learned

If the United States is ever to have true high-speed rail service, this will likely require significant government funding. Financing high-speed rail projects through private investment is very difficult, because vast amounts of money must be spent to build the service before a project starts to earn any revenue—and even then, very few high-speed rail lines anywhere in the world have generated sufficient revenue to cover both construction costs and operating costs. Although the sponsors of a proposed high-speed rail line in Texas have stated, “This project is not backed by public funds,”²⁸ news reports have indicated that the project is likely to depend on long-term loans from the federal government's Railroad Rehabilitation and Improvement Financing and Transportation Infrastructure Finance and Innovation Act (TIFIA) programs.²⁹ Similarly, while All Aboard Florida, a company related to the Florida East Coast Railroad that is developing a passenger rail service between Miami and Orlando, has stated that it has requested “no state or federal grant money” and that “no ongoing taxpayer subsidies [are] required,”³⁰ the venture has

²⁶ Of about 870 pieces of property needed for the first construction segment, on which construction began in early 2015, about 300 parcels had not yet been acquired as of July 2016. Tim Sheehan, “Vidak, Patterson score wins in legislative efforts on high-speed rail,” *Fresno Bee*, August 23, 2016, <http://www.fresnobee.com/news/local/high-speed-rail/article97427642.html>.

²⁷ The 2016 business plan does not identify a specific amount of federal funding. The previous version of the business plan projected that \$42 billion of the then-estimated \$68 billion project cost (62%) would come from federal funds. The federal share of overall project costs in major federal transportation grant programs is typically 80%, though congressional policy riders have limited the Federal Transit Administration's transit construction program to 60% over the past decade, and federal highway programs can go to 100% under certain circumstances.

²⁸ Texas Central, Learn the Facts, <http://www.texascentral.com/facts/>, viewed October 14, 2016.

²⁹ Eric Nicholson, “Texas Central Railway's Fuzzy Definition of ‘Privately Financed,’” *Dallas Observer*, August 11, 2015, <http://www.dallasobserver.com/news/texas-central-railways-fuzzy-definition-of-privately-financed-7479867>.

³⁰ All Aboard Florida, Fact Sheet, <http://www.allaboardflorida.com/project-details/aaf-fact-sheet>, viewed October 14, 2016.

received federal money to improve rail-highway grade crossings³¹ and is proposing to issue bonds that would benefit from a federal tax subsidy.³²

Given the important role of federal support for high-speed and other intercity passenger rail projects, lessons drawn from experience to date may prove useful for the future.

The Challenge of Sudden Large but Temporary Grant Funding

Each time federal highway and transit programs are reauthorized, a central point made by the states and localities that receive grants through those programs is the great value of having a long period of predictable funding. A predictable level of funding enables the recipients to plan and implement projects efficiently, avoiding the uncertainty of not knowing how much money will be available in a given year and the higher costs that come with that uncertainty. Funding certainty also facilitates the hiring and retention of people with expertise in transportation project development and implementation, without which projects will be more difficult to complete.

Another consequence of unpredictable funding is project delay. For example, the mandatory environmental impact analyses for some of the HSIPR projects had already been completed prior to the availability of HSIPR funding, but the projects had not progressed. Since conditions change over time, environmental impacts need to be reevaluated after a period of time, typically five years. Hence, in some instances earlier environmental analyses needed to be repeated, delaying the start of construction.

Although the term “shovel-ready projects” was frequently used to refer to projects funded under ARRA, the major HSIPR projects were far from shovel-ready; many of the states previously had no reason to invest significant resources in planning for intercity passenger rail projects, and little time was provided for them to develop applications for the suddenly available funding.

FRA faced a similar challenge, as it was given responsibility for awarding billions of dollars for rail projects quickly although it had little capacity for grant management. FRA struggled to implement the new grant program³³ while also responding to increased responsibilities in other areas as assigned in PRIIA.³⁴ As it worked to build the capacity to administer the HSIPR grant program, FRA faced two conflicting responsibilities: to approve grants quickly to meet the legislative intent of stimulating the economy, while also being careful to ensure that the money was well used. The FRA Inspector General later reported that FRA’s efforts to minimize the

³¹ Arnie Rosenberg, “All Aboard Florida received federal financial assistance, investigation finds,” *TCPalm*, February 6, 2015, <http://www.tcpalm.com/news/shaping-our-future/all-aboard-florida-received-federal-financial-assistance-investigation-finds-ep-878686081-332823481.html>.

³² Shelly Sigo, “Why a Judge Allowed a Challenge to a Private Activity Bond Allocation,” *Bond Buyer*, August 17, 2016. The proposed bonds, known as private activity bonds, would have low interest rates because interest would be exempt from federal income taxes. For details about private activity bonds, see CRS Report RL31457, *Private Activity Bonds: An Introduction*, by Steven Maguire and Jeffrey M. Stupak.

³³ Office of Inspector General, Federal Railroad Administration, *Completing a Grants Management Framework Can Enhance FRA’s Administration of the HSIPR Program*, CR-2012-178, September 11, 2012, <https://www.oig.dot.gov/sites/default/files/FRA%20HSIPR%20Grants%20Program%5E9-11-12.pdf>; *FRA Improved Its Guidance on High Speed Rail Grant Agreements, But Policies and Procedures for Amending and Monitoring Grants Remain Incomplete*, ST-2015-038, April 1, 2015, <https://www.oig.dot.gov/sites/default/files/FRA%20HSIPR%20Grant%20Amendment%20and%20Oversight%20Processes%20Final%20Report%5E4-1-15.pdf>.

³⁴ Office of Inspector General, Federal Railroad Administration, *FRA Has Made Progress in Implementing PRIIA Responsibilities but Challenges for Long-Term HSIPR Remain*, CR-2012-072, March 6, 2012, <https://www.oig.dot.gov/sites/default/files/PRIIA%20Report%5E3-6-12.pdf>.

misuse of funds had delayed some short-term HSIPR projects because limited staff resources had been devoted to working with the long-term project grantees.³⁵

The Challenge of Continuity amid Political Change

Major transportation projects typically take decades to come to fruition. As such, in addition to their engineering and financial challenges, they face political risk: the prospect that a change in the political environment will bring them to a halt. The impact on the HSIPR program of the change from the 111th Congress to the 112th Congress was dramatic: After having been appropriated \$10.6 billion over a span of 10 months, the program received no further funding over the next six years, as well as having \$400 million of the funding already appropriated to it rescinded. It is unclear whether any significant amounts of funding will be provided in the future to continue the development set in motion by the HSIPR grants.

Political uncertainty exists at the state level as well. As noted above, changes in state administrations in Florida, Ohio, and Wisconsin led to withdrawal of state support for HSIPR projects that had previously been approved. While these funds were subsequently redirected to other grantees, their unexpected arrival may have interfered with efforts to use the money quickly.

The Challenge of Providing Large and Stable Amounts of Funding

The HSIPR program lacked predictable funding in part because there was no dedicated revenue source for the program, as there is for federal programs that make grants for aviation, highway, and transit construction. In the context of the federal appropriations process it is difficult to provide significant amounts of funding on a predictable basis to a grant program that depends on the Treasury general fund, as it must compete with many other programs for the limited amount of funding Congress appropriates each year. This problem is exacerbated by the limits on overall discretionary spending that were imposed by the Budget Control Act of 2011. Supporters of passenger rail service have long called for a dedicated funding source for rail projects, and the Obama Administration has echoed such calls. To date, however, Congress has not taken such a step.

The Challenge of Funding a Small Number of Costly Regional Projects

Intercity passenger rail development projects for low- and moderate-speed service have relatively modest costs, in part because they generally involve improvements to existing tracks rather than extensive bridge construction and the land acquisition needed for building new lines. High-speed rail lines are considerably more expensive. This poses both a financial and political challenge to a federal program that would support development of high-speed rail: not only must significant amounts of funding be provided over a long period of time, but there must also be a willingness for large portions of that funding to be granted to a small number of projects in relatively few states. This is in contrast to federal programs that distribute resources throughout the country, and to rural as well as urban areas.³⁶

³⁵ Office of Inspector General, Federal Railroad Administration, *FRA's Requirements for High Speed Rail Stakeholder Agreements Mitigated Risk, But Delayed Some Projects' Benefits*, CR-2013-007, November 1, 2012, <https://www.oig.dot.gov/sites/default/files/HSIPR%20Access%20Agreements%5E11-1-12.pdf>.

³⁶ See, for example, the National Infrastructure Investment Program (formerly known as the TIGER grant program), (continued...)

Most of the intercity passenger rail projects that have received federal assistance will operate at speeds below 125 mph, and cannot properly be described as high-speed rail. Given the limited funds available in HSIPR, the program might have been more successful at building a true high-speed rail line had Congress directed FRA to concentrate funding on a single project. Congress did not direct FRA to do so. Many Members of Congress have objected to funding for both the California High-Speed Rail Corridor project and Amtrak's Northeast Corridor improvement project; politically, both projects face a challenge in that their direct benefits are limited to relatively few states. Similar political considerations may pose an obstacle to future congressional support for high-speed rail.³⁷ Others have objected to funding intercity passenger rail in general, contending that it is economically inefficient, requires larger per-passenger subsidies than other modes of travel, is not suited to the economic geography of the United States, and may be superseded by future technologies.³⁸

Author Contact Information

David Randall Peterman
Analyst in Transportation Policy
dpeterman@crs.loc.gov, 7-3267

(...continued)

which limits the amount of funding that can be awarded to a single state.

³⁷ Recently federal officials and leaders of New York and New Jersey announced an agreement for the \$20 billion Gateway Tunnel under the Hudson River between New York and New Jersey, which will benefit both intercity and commuter rail service on the NEC. The agreement calls for the federal government to provide half the funding for this project. DOT has stated that the project will be eligible for funding through the Federal Transit Administration's New Starts program, but no federal funds have been committed under this program.

³⁸ For more information, see CRS Report R42584, *The Development of High Speed Rail in the United States: Issues and Recent Events*, coordinated by David Randall Peterman.