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Appendix B
FHWA Rail Memorandum

Memorandum

U.S. Department
of Transportation
Federal Highway
Administration

IR 5/5/04

Subject: Rail Outside Virginia

Date: May 4, 2004

From: John Simkins
I-81 Corridor Environmental Project Manager

To: Irene Rico
I-81 Corridor Program Manager

The Virginia Department of Transportation (VDOT), as the applicant for federal assistance and agency with statewide jurisdiction over Virginia's roadways, is preparing the Tier 1 environmental impact statement (EIS) for the I-81 Corridor Improvement Study. As part of the scoping process for the Tier 1 EIS, comments were received regarding evaluating potential rail improvements outside of Virginia as part of the Tier 1 EIS. These comments likely resulted from people who read the Reebie Associates report entitled "The Northeast-Southeast-Midwest Corridor Marketing Study" that was commissioned by the Virginia Department of Rail and Public Transportation. This report studied freight diversion from I-81 under two broad scenarios: 1) a Virginia-based strategy, and 2) a corridor-wide strategy, which would involve improving rail infrastructure in 12 states from New York to New Orleans. VDOT has requested our assistance in addressing the comment regarding out-of-state rail.

Clearly, the request to study a different mode of transportation in different states is not the type of comment that normally comes up on one of our roadway projects. After receiving VDOT's March 31, 2004 e-mail, I contacted our Headquarters Office of Project Development and Environmental Review for an additional perspective. I have also discussed it at length with staff from our Virginia Division office. In addition, our office sent correspondence to the Federal Highway Administration (FHWA) Division offices in every state requesting information on any multi-state approaches to rail improvements. Based on the responses from the Division offices, FHWA has been involved in only two other studies that dealt with multi-state rail issues in some fashion:

1) The Latin America Trade and Transportation Study (LATTS). The purpose of the LATTS was to evaluate opportunities for trade with Latin America, and to determine transportation infrastructure investment needs for a 14-state alliance to capitalize on such trade. The LATTS looked at highway needs, rail needs, airport needs, and water port needs in the southern region of the United States.
2) The Mid-Atlantic Rail Operations Study. This study was conducted by the I-95 Corridor Coalition, which is an alliance of transportation agencies, toll authorities, and related organizations, including law enforcement, from the State of Maine to the State of Florida, with an affiliate member in Canada. The study focused on the region's rail system, and identifies opportunities to better utilize the region's existing rail assets.

Neither of these two studies, however, was conducted pursuant to National Environmental Policy Act (NEPA), and, therefore, did not include the action-specific details required by NEPA (e.g., an analysis of alternatives, an analysis of environmental impacts, and environmental impact mitigation.) In fact, none of the FHWA Division offices indicated that FHWA has conducted a multi-state rail study pursuant to NEPA.

At 23 U.S.C. 109(h), Congress directs FHWA to consider the economic, social, and environmental effects relating to any proposed project on any Federal-aid system, and to make final project decisions in the best

overall public interest. Privately owned railroads are not on the Federal-aid system, and any improvements to such railroads would, in fact, be outside of FHWA's jurisdiction and at the discretion of the railroad companies. We are not aware of any currently available federal highway funding categories that can be used to implement privately owned rail improvements as part of this study, and we have recently informed VDOT that any toll revenues received under Section 1216(b) of TEA-21 could not be used to fund rail improvements. Nevertheless, we are studying improvement concepts outside our jurisdiction per the Council on Environmental Quality's (CEQ) requirement. We will be taking a hard look at rail improvement concepts in Virginia to determine their ability to meet the transportation needs. Included in this analysis will be existing rail lines that parallel I-81 in Virginia. We will also reference the Reebie Associates study with regard to out-of-state rail in the Tier 1 EIS.

The CEQ requirement, however, should not be viewed in a vacuum, but rather in the broader context of Congress' direction to FHWA at 23 U.S.C. 109(h). I have concluded that evaluating rail improvements in Virginia is a reasonable approach to fulfilling CEQ's requirement to study improvement concepts outside of our jurisdiction, while at the same time fulfilling Congress' direction to make decisions in the best overall public interest. The Tier 1 EIS and any subsequent Tier 2 National Environmental Policy Act documents will be consistent with 23 C.F.R. 771.111(f) as well as the FHWA Environmental Guidebook memorandum that addresses how 23 C.F.R. 771.111(f) relates to tiering. It is reasonable and appropriate to include rail improvement concepts in Virginia only in this Tier 1 EIS.

We are in no way discounting the fact that there may be transportation needs in adjacent states. On the contrary, we encourage the surrounding states to begin a dialogue on addressing regional rail needs along the I-81 corridor. If they chose to do so, perhaps the states could form an alliance similar to the I-95 Corridor Coalition or the alliance that developed the LATTS. Further, it is our hope that the study of the I-81 corridor in Virginia can be used as a model that adjacent states can use to study their own transportation needs. However, as part of this Tier 1 EIS, it is not reasonable and practical to conduct a detailed NEPA analysis for rail improvements in numerous other states that FHWA and the State of Virginia cannot implement. Each state is different, with different requirements, different processes, different governmental bodies, and different needs. In order for rail improvements to be implemented in a particular state, that state would have to conduct its own analysis and make decisions based on the rail needs of the particular state. Further, even if all the out-of-state improvements as envisioned in the Reebie Associates study were implemented, they would still not obviate the need for transportation improvements along the I-81 corridor in Virginia. Reebie Associates estimated a maximum of approximately 30% freight diversion (i.e., the "High Public Investment Scenario") to Norfolk Southern's rail lines. Considering that truck traffic makes up a maximum of approximately 40% of the total traffic, the freight diversion to rail as described in the Reebie Associates study would only remove approximately 12% of the total traffic from I-81 in Virginia.

Based on the above, I have concluded that spending public dollars to conduct a NEPA analysis for out-of-state rail improvements as part of this Tier 1 EIS is not in the best overall public interest. This conclusion will, as appropriate, be revisited and confirmed as the study progresses.