

**State of California
Business Transportation and Housing Agency**

Notice of Intent by the Secretary of the California Business Transportation and Housing Agency to grant State highway rights-of-way to DesertXpress Enterprises, Inc., which is not otherwise disposed of or in use, for its proposed privately funded high-speed passenger rail line between Victorville, California, and Las Vegas, Nevada, along existing Interstate 15 alignment.

AGENCY: California Business Transportation and Housing Agency

ACTION: Notice of intent.

SUMMARY: Pursuant to the authority granted under California Public Utility Code Section 7551.1, the Secretary of the California Business Transportation and Housing Agency (BTH) intends to grant rights-of-way to DesertXpress Enterprises Inc. (DesertXpress) which is not otherwise disposed of or in use, for its proposed privately funded high-speed rail line between Victorville, California, and Las Vegas, Nevada, along the existing Interstate 15 alignment. The Secretary is seeking public comments on his proposed action to grant the rights-of-way to DesertXpress.

DATES: BTH will accept written and electronic comments on the Secretary's proposed action to grant rights of way to DesertXpress until October 1, 2010.

ADDRESSES: You may submit comments by the following methods:

Written: William Mosby, California Department of Transportation, District 8 Office
464 West 4th Street, 6th Floor, San Bernardino, California 92401
Electronic: secretary@bth.ca.gov.

FOR FURTHER INFORMATION, CONTACT: For general information, including information on how to comment, you may contact William Mosby, California Department of Transportation, District 8 Office, 464 West 4th Street, 6th Floor, San Bernardino, California 92401, or phone (909) 383-4147.

SUPPLEMENTARY INFORMATION: Individual respondents may request confidentiality. If you wish BTH to withhold your street address, except for the city or town, from public view or from disclosure under the California Public Records Act, you must state this prominently at the beginning of your written comment. We will honor requests to the extent allowed by law. BTH will not consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

Background Information: Under California Public Utility Code section 7551.1, the Secretary of the BTH may grant every railroad corporation whose primary business is the transportation of passengers, the rights-of-way for the location, construction and maintenance of its necessary works and for every necessary adjunct thereto over any portion of highway owned by the State of California which is not otherwise disposed of or in use.

DesertXpress is proposing to construct a privately funded high-speed rail line between Victorville, California, and Las Vegas, Nevada, along the existing Interstate 15 alignment and has requested that the Secretary grant State Highway rights-of-way to DesertXpress Enterprises Inc. (DesertXpress) which is not otherwise disposed of or in use. State law requires DesertXpress to pay fair market value for all rights-of-way granted by the Secretary.

Following this Notice of Intent process, the Secretary intends to move ahead with a conditional grant of rights-of-way for the DesertXpress. The conditions that must be met prior to the actual grant of rights-of-way include the following:

- DesertXpress must obtain a Certificate of Public Convenience and Necessity to Construct and Operate from the Federal Surface Transportation Board (STB).
- BTH and the Department of Transportation must complete a financial “due diligence” review of DesertXpress’ capability to construct and operate high-speed passenger rail over a period beyond the two-year period called for in the Certificate of Public Convenience and Necessity to Construct and Operate to ensure the system can be operated without future State financial exposure.
- If not submitted as part of the application for the STB Certificate of Public Convenience and Necessity to Construct and Operate, DesertXpress must ensure the Final Project Environmental Impact Statement is complete and the Records of Decision from the federal participating agencies are filed.
- Access or easement agreements must be in place with the Federal Bureau of Land Management and all other right-of-way owners along the proposed DesertXpress rail corridor.
- BTH and the Department must obtain agreement with DesertXpress on the value of the right-of-way and a method of compensation to the State for such right-of-way.
- BTH and the Department must execute Joint Use and Maintenance Agreements with DesertXpress that include, but are not necessarily limited to the following conditions:
 - That design documents be submitted at appropriate milestones for review to assure no impacts on highway operations resulting from construction and operation of the rail facility.
 - That the operator conforms to all requirements imposed by the Federal Highway Administration relative to its Interstate Access policy.
 - The Department be fully reimbursed for its review and approval of design and environmental documents or for any construction inspections that may be required.
 - Construction shall commence by date certain.
 - The safe and efficient operation and maintenance of the highway facility be unimpaired by construction, operation, and maintenance of the rail facility.
 - The operator assumes full responsibility and liability for the presence and operation of the rail facility within the right-of-way.

- The operator fully indemnifies, protects, and defends the Department and the State as a consequence of any lawsuit arising out of the presence and operation of the rail facility on State right-of-way. The operator should also obtain and maintain a sufficiently sized personal injury and property damage insurance policy naming the Department and its officers and employees as additional insured.
- Operation of the system shall start by date certain.
- The property reverts to the State pursuant to Public Utilities Code, section 7554, should the operator cease operation of the facility.

WILLIAM MOSBY, Deputy
District 8 Director Program/Project Manager
California Department of Transportation

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