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Code Section 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF CONTRA COSTA

TOWN OF ATHERTON, a Municipal Corporation; TRANSPORTATION SOLUTIONS DEFENSE AND EDUCATION FUND, a California nonprofit corporation, and COMMUNITY COALITION ON HIGH-SPEED RAIL, a California nonprofit corporation,

Petitioner,

v.

PENINSULA CORRIDOR JOINT POWERS BOARD, a public entity, and DOES 1 – 20,

Respondents,

Case No: MSN15-0573

RESPONDENT'S OPPOSITION TO PETITION FOR WRIT OF MANDATE

Action Under the California Environmental Quality Act (CEQA)

ASSIGNED FOR ALL PURPOSES:
Hon. Barry P. Goode
Dep.: 17
Hearing Date: July 22, 2016
Time: 9:00 a.m.

Filing Date of Action: February 9, 2015

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I. INTRODUCTION

The Town of Atherton, Transportation Solutions Defense and Education Fund, and Community Coalition on High-Speed Rail (collectively "Petitioners") challenge the Peninsula Corridor Joint Powers Board's (PCJPB) approval of the Caltrain Peninsula Corridor Electrification Project (the "Project" or "Electrification Project"). At heart, Petitioners' challenge to the PCJPB's approval of the Project is driven by their opposition to the California High Speed Rail (HSR) project. Petitioners are not necessarily opposed to the Electrification Project with its many environmental benefits, and instead disagree with the PCJPB's policy decision to approve a system that may accommodate, but does not approve, future HSR (the "Blended System") in the Bay Area. Of course, as the court well knows, a policy disagreement can never be a basis for a court to overturn a lead agency's decision that is supported by substantial evidence under the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) (CEQA). Rather, the court must resolve all reasonable doubts in favor of the lead agency's decision and the court may not interfere with the agency's discretion regarding the action taken.

Abundant substantial evidence supports the PCJPB's decision to approve the Project, which will electrify the Caltrain Peninsula Corridor rail line between San Jose and San Francisco. The PCJPB engaged in extensive review pursuant to CEQA, resulting in a thorough environmental impact report (EIR) containing hundreds of pages of technical analysis. The Project will provide numerous environmental and community benefits, including accommodating and encouraging increased transit ridership, improved air quality, and reduced greenhouse gas emissions. The community is largely in support of this important modernization of the rail line.

The PCJPB's decision to approve the Project and certify the EIR is entitled to deference from the court. The administrative record contains ample substantial evidence to fully support the PCJPB's EIR and approval of the Project. For each of the above reasons, the court should reject Petitioners' arguments and allow the PCJPB to proceed with this vital project.

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II. STATEMENT OF FACTS

A. The Peninsula Corridor Electrification Project

The PCJPB operates the Caltrain commuter rail service along the San Francisco Peninsula, through the South Bay to San Jose and Gilroy ("Caltrain"). The $1.5 billion Electrification Project (AR 204, 218) will electrify approximately 51 miles of the existing Caltrain line, from its current northern terminus at 4th and King Streets in the City of San Francisco to 2 miles south of the Tamien Station in San Jose. (AR 210, 276, 294.) Caltrain trains currently consist of diesel locomotive-hauled, bi-level passenger cars. (AR 294.) The Project will convert approximately 75 percent of these trains to Electric Multiple Unit (EMU) trains by 2020/2021. (AR 209, 276, 299.) Maximum operating speeds of the trains will remain the same, up to 79 miles per hour. (*Ibid.*) Caltrain currently operates 92 trains per weekday between San Jose and San Francisco. (AR 214, 294.) With implementation of the Project, due to the ability of electrified trains to start and stop more quickly, Caltrain will be able to operate up to 114 trains per day. (AR 209, 214, 332, 336.)

The Project will require installation of 130 to 140 single-track miles of overhead contact system (OCS) for distribution of electrical power to the electric rolling stock. (AR 209, 276, 300.) The OCS will be powered from a 25 kilovolt, 60 Hertz, single-phase, alternating current supply system consisting of traction power substations, one switching station, and paralleling stations. (AR 210, 300.) This type of supply and distribution system is one of the most common approaches to electrified rail systems in the world. (AR 2005, 2015, 2089, 2210-2211, 11453-11454.) The PCJPB envisioned this type of system long before Proposition 1A or any discussion of the Blended System. (AR 2005.) The system and voltage will be compatible with the requirements of HSR and will not preclude future development of HSR along the corridor. (AR 300.) The Electrification Project and the Blended System, however, are each stand-alone projects and are not dependent upon one another.

As a result of the Electrification Project, Caltrain ridership is expected to increase from 57,000 riders to 69,000 riders in 2020 (an increase of over 21 percent), and from 84,000 riders to 111,000 riders in 2040 (an increase of over 32 percent). (AR 215, 337.) The conversion from diesel trains to EMUs will substantially decrease diesel fuel use; existing fuel consumption is approximately 4.5 million gallons per year, whereas with the Project, diesel consumption is estimated to go down to 1.1

million gallons per year. (*Ibid.*) This conversion from diesel fuel will also substantially reduce criteria air pollutant emissions. (AR 475-478.) In addition, the Project will substantially reduce greenhouse gas emissions and will facilitate attainment of regional and statewide greenhouse gas policies and reduction targets. (AR 630-631.) The Project will have a beneficial impact on regional and city-level traffic, as the total number of vehicle-miles-traveled (VMT)[1] in the Bay Area will decrease as well. (AR 884, 904.)

B. The High Speed Rail Project and the Blended System

The California High-Speed Rail Act (Pub. Util. Code, § 185000 et seq.) directs the California High Speed Rail Authority (the "Authority") to develop and implement an intercity high-speed rail service throughout California. (Pub. Util. Code, § 185030.) The Act states that "[t]he authorization and responsibility for planning, construction, and operation of high-speed passenger train service at speeds exceeding 125 miles per hour in this state is exclusively granted to the authority." (Pub. Util. Code, § 185032, subd. (a).) The Authority is responsible for, among many other things, preparing, publishing, adopting and submitting to the Legislature a business plan every two years describing the development of the HSR system. (Pub. Util. Code, § 185033.) California voters approved bond measure Proposition 1A ("Prop 1A") in November 2008, which authorized the California Transportation Commission to allocate funds for capital improvements to provide connectivity to the HSR train system and its facilities. (Assem. Bill No. 3034 (2007-2008 Reg. Sess.).)

Also in 2008, the Authority certified a final Program EIR for the Bay Area to Central Valley High-Speed Train ("2008 PEIR"). (AR 7690.) The Town of Atherton and Transportation Solutions Defense and Education Fund, two of the petitioners in this lawsuit, filed suit against the Authority alleging that the 2008 PEIR violated CEQA. (*Town of Atherton v. Cal. High-Speed Rail Authority* (2014) 228 Cal.App.4th 314, 324; AR 7690 ("*Town of Atherton*").) The trial court thereafter issued a writ of mandate and commanded the Authority to revise the 2008 PEIR. (228 Cal.App.4th at pp. 324-325; AR 7690.) In 2010, the Authority certified a revised Program EIR ("2010 PEIR") and filed a return to the writ declaring that it had complied with the court's orders. (228 Cal.App.4th at p. 325; AR

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[1]/ VMT is a performance measure used to quantify the amount of vehicle travel that measures the amount of miles vehicles travel along or over roadway networks. (AR 876.)

7690.) The petitioners in that litigation objected to the Authority's return to the writ. (228 Cal.App.4th at p. 326; AR 7690.) The same petitioners, joined by the Community Coalition on High-Speed Rail, the third petitioner in this action, also filed a lawsuit alleging that the 2010 PEIR was inadequate under CEQA. (*Ibid.*) Thus, by 2010 all three petitioners currently challenging the Caltrain Electrification Project were actively engaged in litigation against the Authority on the HSR project.

Ultimately, the Third District Court of Appeal upheld the 2010 PEIR. (*Town of Atherton*, *supra*, 228 Cal.App.4th 314.) As program-level EIRs, these documents are not the final review for a specific HSR project segment, nor do they examine in detail site-specific considerations. (*Town of Atherton*, *supra*, 228 Cal.App.4th at p. 344.) Instead, the Authority will consider specific network alternatives, alignment alternatives, and station location options for further study, within the program corridors identified following certification of the PEIRs, in project-level EIRs. (AR 7683.) At the time the PCJPB finalized the EIR for the Caltrain Electrification Project, the Authority had not conducted a project-level CEQA analysis of the Blended System HSR project for the Bay Area or along the Caltrain corridor.

In 2012, the Authority released its Revised 2012 Business Plan, which describes the Blended System concept. According to the Business Plan, a blended system incorporates "integration of high-speed trains with existing intercity and commuter/regional rail systems via coordinated infrastructure … and scheduling, ticketing and other means…." (AR 7207, 7239.) As envisioned by the Authority, the blended system "will significantly reduce community impacts and result in substantial cost savings as compared to the dedicated, four-track system" previously considered for the HSR. (AR 7260.) The California Legislature further bolstered this shared approach when it passed Senate Bill 1029. (Petitioners' Request for Judicial Notice, Exhibit B, Sen. Bill No. 1029 (2011-2012 Reg. Sess.).) This legislation mandates in part that "any funds appropriated … for projects in the San Francisco to San Jose corridor … shall not be used to expand the blended system to a dedicated four-track system." (*Id.* at § 1, provision 4, § 2, provision 4, and § 3, provision 1.) Thus, the Legislature codified the requirement that in order to receive funding, the HSR will combine efficiencies in infrastructure and operations by implementing the Blended System in the corridor.

C. History and Environmental Review of the Electrification Project

Passenger trains have operated between San Jose and San Francisco since 1863, and Caltrain is the oldest commuter rail operation in the San Francisco Bay Area. (AR 278.) Caltrain provides critical weekday commuter service between the South Bay and San Francisco, as well as service on the weekends. (*Ibid.*) The population of the already severely congested Bay Area is increasing. (AR 206, 279.) Commuter traffic between major employment centers in San Francisco, the San Francisco Peninsula, and the South Bay is growing, and economic growth and corresponding demand for transportation services have exceeded the region's ability to provide the needed roadway capacity. (AR 279, 282.) The high levels of roadway congestion constrain goods and people movement, and take a toll on economic development. (AR 207, 282.) What's more, the three counties of the corridor are projected to have 2.4 million jobs in 2040, which is more than half of the employment in the entire Bay Area. (AR 280.) Caltrain has already experienced dramatic increases in ridership; in 1992, weekday Caltrain ridership was approximately 21,100, and by 2013 average daily ridership had grown to approximately 47,000. (AR 279.) The PCJPB anticipates continued increases in demand for its services. (AR 206, 279.)

Opportunities to improve highway capacity are constrained by funding, the need for extensive and costly right-of-way acquisitions, and potentially adverse environmental impacts. (AR 207, 282.) Thus, Caltrain provides an essential and viable transportation alternative to highway expansion. (AR 282.) As Petitioners point out, the PCJPB has seriously considered electrification of the rail line between San Francisco and San Jose since 1992 in an attempt to alleviate some of the transportation issues. (AR 11501; Petitioners' Opening Brief ("POB"), p. 2.)

In 2004, the PCJPB evaluated a similar project to electrify the corridor in a draft EIR; the agency finalized that EIR in 2009. (AR 295, 11429-12026.) However, the PCJPB did not certify that document because of issues regarding joint planning for the shared use of the corridor for Caltrain and future HSR service. (AR 295.) The Federal Transit Administration completed a Final Environmental Assessment for the similar electrification project at that time and adopted a Finding of No Significant Impact. (*Ibid.*) Since 2009, the PCJPB has worked with the Authority, the California Legislature, the Metropolitan Transportation Commission, as well as others, to develop a program to modernize

operation of the corridor, and to create a Blended System whereby Caltrain and HSR could utilize the existing Caltrain Peninsula corridor. (AR 276, 295.)

In 2012, the PCJPB entered into a Memorandum of Understanding with the Authority and seven other area agencies ("2012 MOU"). (AR 204, 277, 295, 15652-15657.) The 2012 MOU outlines goals for the Blended System, including funding commitments toward an investment of approximately $1.5 billion in the corridor. (AR 204, 277, 295, 15656.) The 2012 MOU also identifies the necessary improvements in the corridor, including: (1) implementing an Advanced Signal System, also known as a Communications Based Overlay Signal System/Positive Train Control ("CBOSS PTC"); (2) electrification; and (3) blended service of Caltrain and HSR. (AR 204-205, 277-278, 298, 15654-15655.) The first improvement, the CBOSS PTC, includes implementation of safety improvements mandated by federal law and was scheduled to be operational by 2015 as required by the Federal Railroad Administration. (AR 204, 277, 298.) The second improvement, corridor electrification, is the subject of the EIR at issue here. (AR 205, 277-278, 298.) The third improvement, blended service, is in the conceptual planning phase. (AR 205, 278, 298-299.) In 2013, the PCJPB and the Authority entered into another Memorandum of Understanding which outlines the process for developing the Blended System concept. (AR 204, 295, 15639-15651.) Ultimately, the Authority, as the lead agency for an HSR system, will conduct a separate environmental review for this third, separate project. (AR 299, 15643-15644.)

The PCJPB circulated a draft EIR for the electrification project for a 60-day public review and comment period on February 28, 2014. (AR 16.) The Project serves five main purposes: (1) to provide electrical infrastructure compatible with HSR; (2) to improve train performance, increase ridership and increase service; (3) to increase revenue and reduce fuel cost; (4) to reduce environmental impacts by reducing noise emanating from trains; and (5) to reduce environmental impacts by improving regional air quality and reducing greenhouse gas emissions. (AR 208-209, 285.) The PCJPB received numerous public comments on the draft EIR, and released a final EIR containing responses to those comments on December 4, 2014. (AR 16.) After extensive and thorough environmental review, the PCJPB approved the Project on January 8, 2015. (AR 15-18; 52-199.)

The Project will install the same type of power supply and distribution system as that proposed for the HSR system, as well as for most other electrified systems throughout the world. (AR 217, 284, 2005, 2015, 2089.) The Project, however, is separate from the Authority's HSR project. (AR 284.) Additional improvements would be needed to enable Authority trains to operate in the corridor, blended with Caltrain trains, at speeds higher than Caltrain trains will operate. These improvements include but are not limited to straightening curves and constructing passing tracks. (AR 217, 285.) The Authority will conduct a separate environmental analysis of these additional improvements. (AR 217, 284, 15644.)

The Project will have a number of beneficial environmental effects. By 2020, approximately 234,000 VMT each day will be removed from roadways as a result of the Project. (AR 283.) By 2040, with fully electrified service, VMT will be reduced by approximately 618,000. (*Ibid.*) The Project will also substantially reduce diesel train emissions and result in a net decrease in criteria air pollutant emissions. (*Ibid.*) These reductions will help to improve regional air quality and reduce localized emissions of toxic air contaminants into surrounding communities, a substantial local health benefit. (*Ibid.*) The Project will also reduce noise and vibration, and greenhouse gas emissions. (AR 285.)

III. STANDARD OF REVIEW

A court's inquiry in a CEQA case concerns whether the public agency committed a prejudicial abuse of discretion. "Abuse of discretion" occurs if the agency has not proceeded in a manner required by law or if its conclusions are not supported by substantial evidence. (Pub. Resources Code, § 21168.5; *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 426 ("*Vineyard*").) Under this standard, a court "adjust[s] its scrutiny to the nature of the alleged defect, depending on whether the claim is predominantly one of improper procedure or a dispute over the facts." (*Vineyard*, *supra*, 40 Cal.4th at p. 435.) If the dispute concerns facts or conclusions, the court must uphold the agency's findings if they are supported by substantial evidence. (*Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1988) 47 Cal.3d 376, 392-393, 407 ("*Laurel Heights I*").) Petitioners' arguments here involve matters reviewed under the "substantial evidence" test. (See, e.g., *Laurel Heights I*, *supra*, 47 Cal.3d at pp. 407-408 [agency's conclusions regarding conflicting technical information and recirculation].)

An EIR is presumed adequate (Pub. Resources Code, § 21167.3), and "the party challenging the EIR has the burden of showing otherwise." (*Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2007)157 Cal.App.4th 149, 158.) A petitioner does not carry that burden by pointing only to record excerpts that favor its position. (*California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 626-627.) The petitioner must "lay out the evidence favorable to the other side and show why it is lacking. Failure to do so is fatal." (*Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1266 ("*Defend the Bay*").)

A. The court must uphold PCJPB's decisions based on substantial evidence; this is true even if an opposite conclusion would have been equally or more reasonable.

Importantly, the court's task "is not to weigh conflicting evidence and determine who has the better argument." (*Vineyard*, *supra*, 40 Cal.4th at p. 435; *Ebbetts Pass Forest Watch v. California Dept. of Forestry & Fire Protection* (2008) 43 Cal.4th 936, 944.) "The fact that different inferences or conclusions could be drawn, or that different methods of gathering and compiling statistics could have been employed, is not determinative in a substantial evidence review." (*North Coast Rivers Alliance v. Marin Municipal Water Dist. Bd. of Directors* (2013) 216 Cal.App.4th 614, 642 ("*NCRA*").) A court may not reconsider or reevaluate the evidence presented to the administrative agency. (Pub. Resources Code, § 21168.)

Instead, a court "must resolve reasonable doubts in favor of the administrative finding and decision," even though other conclusions might be reached from the same body of evidence. (*Laurel Heights I*, *supra*, 47 Cal.3d at p. 393; see also *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564 [a court "may not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable"].) The lead agency may rely on the judgment of experts, based on their review of the evidence, regarding the level of analysis that is appropriate for the assessment of an impact. (*National Parks & Conservation Assn. v. County of Riverside* (1999) 71 Cal.App.4th 1341, 1364–1365; Cal. Code Regs., tit. 14 ("CEQA Guidelines" or "Guidelines"), § 15151 [disagreements among experts does not make an EIR inadequate].) "This standard flows from the fact that 'the agency has the discretion to resolve factual issues and to make

policy decisions.' [Citation]." (*San Diego Citizens Group v. County of San Diego* (2013) 219 Cal.App.4th 1, 17.)

The issue is not whether substantial evidence in the record supports Petitioners' assertions, but whether substantial evidence supports the PCJPB's decision. (*Laurel Heights I*, *supra*, 47 Cal.3d at p. 409; *Defend the Bay*, *supra*, 119 Cal.App.4th at p. 1266.) A reviewing court does not decide upon the correctness of an EIR's environmental conclusions, but only upon the EIR's sufficiency as an informational document. (*Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1066–1067.) Courts look "not for perfection but for adequacy, completeness, and a good faith effort at full disclosure." (*Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 712; Guidelines, § 15151.)

Furthermore, as discussed below, an agency's decision not to recirculate a draft EIR for further public review and comment must be upheld if it is supported by substantial evidence. (Guidelines, § 15088.5, subd. (e); *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1993) 6 Cal.4th 1112, 1135 ("*Laurel Heights II*"); *California Oak Foundation v. Regents of Univ. of Cal.* (2010) 188 Cal.App.4th 227, 266 ("*California Oak*") ["We review an agency's decision not to revise and recirculate a DEIR only to ensure it is supported by substantial evidence"].) The court must resolve all reasonable doubts regarding the agency's decision in favor of upholding the administrative decision. (*California Oak*, *supra*, 6 Cal.th at p. 262, citing *Laurel Heights I*, *supra*, 47 Cal.3d at p. 393.)

IV. ARGUMENT

A. Substantial evidence demonstrates that the EIR accurately defines the Project in full compliance with CEQA.

Petitioners argue that the EIR does not adequately describe the Project because: (1) it fails to acknowledge the connection between the Project and the Blended System, and (2) the Project description did not change when the Authority indicated a possibility of an interim HSR train terminus at the Caltrain 4th and King Street station. (POB, pp. 5-6.) For the reasons demonstrated below, both of these arguments fail.

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1. The Electrification Project is separate from the Blended System; the projects have different proponents, serve different purposes, and will be implemented independently.

Petitioners argue that PCJPB illegally piecemealed the Project by "failing to acknowledge the inextricable connection between the [Project] and [the Authority's] implementation of its blended system." (POB, p. 5.) Petitioners are wrong—the two projects do not meet the test for piecemealing and, therefore, are appropriately analyzed in separate environmental reviews. What's more, this assertion entirely ignores the extensive discussion of the Blended System throughout the EIR, including the detailed analysis of the Blended System in the cumulative impacts section. (See AR 935-954.)

A 'project' is defined in CEQA as "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (Pub. Resources Code, § 21065.) The CEQA Guidelines further explain that a 'project' is "the whole of an action." (Guidelines, § 15378, subd. (a); *Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1220 ("*Banning Ranch*").) The Supreme Court set forth the relevant test for improper piecemealing of a project in *Laurel Heights I*, *supra*, 47 Cal.3d at p. 396 (italics added):

> [A]n EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a *reasonably foreseeable consequence* of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.

The Court noted that this is a project-by-project determination. (*Ibid.*)

In the recent *Banning Ranch* decision, the court explained that even where a future project is imminent and will likely change the "scope or nature of the initial project or its environmental effects," the second project may not be a 'consequence' of the first. (*Banning Ranch*, *supra*, 211 Cal.App.4th at p. 1225.) Thus, the court clarified the Supreme Court's *Laurel Heights I* test for piecemealing. "[T]wo projects may properly undergo separate environmental review (i.e., there is no piecemealing) when the projects have different proponents, serve different purposes, or can be implemented independently." (*Id.* at p. 1223.)

Here, the Blended System is not a "consequence" of the Caltrain Electrification Project; the Project meets the *Banning Ranch* test for separate environmental review. First, the HSR Blended

System and the Electrification Project have separate project proponents. The PCJPB is the proponent of the Electrification Project at issue here, while the Authority is the proponent of the Blended System. (See, e.g., AR 217, 284, 15644.) This is an important point, as even if Petitioners were correct that the two projects are linked, the PCJPB cannot conduct a project-level analysis of a project it did not propose, will not design, will not carry out, and cannot approve. (See Pub. Resources Code, § 21067; Guidelines, § 15051.)

Second, though both are rail projects, the Blended System serves a different purpose than the Electrification Project.[2] The Electrification Project is part of a program to modernize the existing operation of the Caltrain commuter rail service between San Francisco and San Jose by replacing diesel locomotives with electrified service. (AR 276.) It serves to address local traffic congestion and commuter challenges within the region. (AR 278-282.) What's more, the Project will reduce local noise and vibration and improve regional air quality. (AR 285.) The Blended System, on the other hand, is part of a state-wide intercity rail project with limited stops that will provide rapid rail service between distant cities, including San Francisco and Los Angeles, and complement the existing infrastructure of highways and airports. (Pub. Util. Code, § 185010; *Town of Atherton v. California High-Speed Rail Authority* (2014) 228 Cal.App.4th 314, 322.)

Third, the Blended System project has independent utility from the Electrification Project. There is nothing unique about the particular electrification system the Project will install, and the Authority could implement the same system itself if the PCJPB does not do so. (See AR 2005, 2015, 2089, 2210-2211, 11453-11454.) The converse is also true—operating the Caltrain electrified service does not require operation of the Blended System; if the Blended System never comes to fruition, the

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[2]/ The July 2, 2015 decision of the Surface Transportation Board (STB), cited by Petitioners, provides support for this point. There, the STB found that the Electrification Project "is intended only to benefit Caltrain's commuter operations.... [T]he Project is separate and distinct from future [HSR] operations." Thus, the STB found that it does not have jurisdiction over the Project. (Petitioners' Request for Judicial Notice, Exhibit A, pp. 3-4.) In contrast, the STB found in its April 1, 2013 decision that it *does* have jurisdiction over construction of the HSR, as that system "would be constructed as part of the interstate rail network." (*Town of Atherton v. California High-Speed Rail Authority* (2014) 228 Cal.App.4th 314, 328.)

Caltrain Electrification Project can and will fully function independently. (AR 286.) What's more, each element of the Project is required in order to provide the Caltrain electrified service. (AR 2005.)

Contrary to Petitioners' claims, the facts in *Banning Ranch* were similar to those here—in *Banning Ranch*, the court considered whether constructing an access road to serve two separate projects obligated both projects to be considered in the same EIR. The construction of the road as part of the first project could "reasonably be seen as easing the way" for the second project. (*Banning Ranch*, *supra*, 211 Cal.App.4th at p. 1225.) Similarly, here, Caltrain will install an electrification system that can be used by both the Caltrain Project and the Blended System project. But, like in *Banning Ranch*, Caltrain will install the Electrification Project regardless of whether the Blended System ever materializes. It would require a giant leap in logic to say that the Blended System is somehow an inevitable consequence of the Project (see *Banning Ranch*, *supra*, 211 Cal.App.4th at pp. 1225-1226), and the two projects are in no way inseparable as Petitioners assert.

Petitioners attempt to analogize the Blended System to the situation in *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185 ("*County of Inyo*"). Of note, that case was decided eleven years before the Supreme Court decision in *Laurel Heights I*, and does not apply the Court's segmentation test. Instead, the court in *County of Inyo* addressed an EIR that initially described a small-scale groundwater project, but ultimately approved a significantly larger project without allowing for adequate public review of the approved project. The court found that this "frustrated CEQA's public information aims," and "[t]he defined project and not some different project must be the EIR's bona fide subject." (*County of Inyo*, *supra*, 71 Cal.App.3d at pp. 199-200.) Here, in contrast, the PCJPB clearly defined the Project at the outset of the EIR process, and ultimately approved the same project that was defined at all stages of the EIR development. The EIR explains in detail throughout that the Project can accommodate a future Blended System, and fully analyzes the potential cumulative impacts of both projects, as required by CEQA.

The Project is also not an earlier phase of the later Blended System, as Petitioners assert. Petitioners cite to *City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325 ("*City of Antioch*") to support this position, but that case is inapposite here. In *City of Antioch*, the lead agency approved a road and sewer project for "the sole reason" of providing infrastructure to catalyze further development.

(187 Cal.App.3d at p. 1337.) The court found that the EIR was required to consider the anticipated development in conjunction with the road and sewer project. In contrast, the Electrification Project and the Blended System are in no way dependent on one another. Neither is the first step toward the other, and both can operate regardless of the status of the other project.

Petitioners also assert that without "Prop 1A" funding provided by the Authority to support the Project, which is conditioned on the Project including electrification that is compatible with HSR, the Project would be financially infeasible. (POB, pp. 8-9.) This, however, is not true. The Project would likely be delayed without Prop 1A funds while the PCJPB secured alternate funding. (AR 2015.) But, the Project would not change in any material way without this funding. (*Ibid.*) The 25 kilovolt electrified system, which is one of the most common approaches to such systems and was analyzed in the PCJPB's 2004 EIR prior to the availability of Prop 1A funding, would remain the same. (*Ibid*, AR 11453-11454.) Put simply, with or without HSR, the Electrification Project is needed and will go on.

CEQA's prohibition on piecemealing importantly protects projects from the type of environmental "review in which 'environmental considerations ... become submerged by chopping a large project into many little ones—each with a minimal potential impact on the environment—which cumulatively may have disastrous consequences.' (Citations.)" (*City of Antioch*, *supra*, 187 Cal.App.3d at p. 1333.) This is not the situation here. The Authority will conduct its own separate environmental review of the Blended System project.[3] (See, e.g., AR 15644.) What's more, the EIR carefully evaluated the potential cumulative impacts of the Blended System and the Project. (AR 935-954.) Although the design for the Blended System on the Caltrain corridor was not yet completed and specifics were unavailable, the EIR analyzes all conceptual cumulative impacts from the projects, as required by CEQA. The Electrification Project and the Blended System satisfy the tests articulated in *Laurel Heights I* and *Banning Ranch*, and the EIR did not improperly segment the Project.

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[3]/ In fact, the Authority has already conducted environmental review for other sections of the HSR. For example, the Authority certified a final Environmental Impact Report/Environmental Impact Statement for the Merced to Fresno section of the High Speed Train project on May 3, 2012. The Authority has also conducted environmental review for the Fresno to Bakersfield section of the High Speed Train project. (See, generally, existence of SAR 262-270, 296-312.)

2. The PCJPB was not required to modify the project description in the EIR when the Authority indicated the possibility of an interim HSR terminus.

When the PCJPB circulated the draft EIR, the cumulative impacts analysis included a description and cumulative analysis of the Downtown Extension Project ("DTX"). (AR 939-940.) The DTX, approved by the Transbay Joint Powers Authority in 2004, will construct a 1.3-mile rail extension from the existing Caltrain terminal at 4th and King Streets to the San Francisco Transbay Transit Center (TTC). (AR 939-940.) At the time of the draft EIR, the PCJPB understood that HSR trains would not stop at the 4th and King station and instead would continue on to the TTC. (AR 940-941.) In its comment letter on the draft EIR, however, the Authority indicated for the first time that "prolonged delay of the [DTX] *may require an interim* high-speed rail terminal station at the 4th and King station." (AR 1226, italics added.) Other than this indication, the Authority did not provide any further information on a potential interim station.

Petitioners claim that this potential for a temporary change to the HSR project somehow required the PCJPB to change the description of its Electrification Project in the EIR. Again, Petitioners are wrong. As explained above, the HSR Blended System is properly not part of the project description in the first place, and the potential for a different interim HSR terminus does not change this fact.

Petitioners also assert that "the change was not even addressed in the cumulative impacts section of the EIR." Again, Petitioners cite to nothing more than a statement that there is a *potential* for an *interim* change to the HSR terminal station. The EIR does acknowledge this possibility where appropriate (see, e.g., AR 923, 940), but there simply was nothing new or different for the Project EIR to analyze. For a more detailed response to Petitioners' arguments regarding the cumulative impacts analysis in the EIR, see section IV.B.2, below.

B. Substantial evidence in the record supports the impact analyses in the EIR and CEQA does not require any additional mitigation measures.

As explained in detail below, the EIR adequately analyzes impacts from the Project. Because Petitioners' arguments with respect to significant impacts fail, Petitioners' arguments with respect to additional mitigation measures must also fail.

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1. The EIR adequately analyzes potential impacts to emergency vehicle access, and Petitioners failed to exhaust their administrative remedies on this issue.

Petitioners claim the EIR's analysis of impacts to emergency vehicle access is inadequate. As an initial matter, Petitioners failed to exhaust their administrative remedies on this issue. Exhaustion is a jurisdictional prerequisite to a CEQA action. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1199 ("*Bakersfield Citizens*").) "A party challenging an approved project under CEQA may litigate issues that were timely raised by others as long as the challenging party objected to project approval on any ground during the public comment period or prior to the close of the public hearing on the project." (*Gilroy Citizens for Responsible Planning v. City of Gilroy* (2006) 140 Cal.App.4th 911, 920 ("*Gilroy Citizens*").) Petitioners do not cite to any of their own comment letters raising issues related to the adequacy of the emergency vehicle impact analysis at the draft or final EIR stages. This is because Petitioners did not raise this issue. A few members of the public commented generally on operational emergency vehicle access, but none questioned the EIR's analysis or interpretation. (See, e.g., AR 1348 [comment acknowledging that the EIR found a "[p]otential increase in emergency response time for fire and police first responders"] and AR 1943 [general comment that trains may block emergency vehicles].) The final EIR adequately responded to each of these comments. (See AR 2132 [responding to comment at AR 1348] and AR 2390-2391 [responding to comment at AR 1943].) Because Petitioners did not exhaust their administrative remedies, the court does not have jurisdiction to decide on this issue.

Even if the court does consider the analysis of emergency vehicle access, the assumptions and methodology in the EIR are supported by substantial evidence, and Petitioners have failed to meet their burden to prove otherwise. (See *Gilroy Citizens*, *supra*, 140 Cal.App.4th at p. 919.) Petitioners argue that the EIR improperly uses the overall beneficial traffic effects from the Project to "neutralize or offset" impacts at specific grade crossings. (POB, p. 15.) This, however, leaves out an important link in the analysis.

The EIR compares gate-down times at grade crossings, as well as intersection delay and levels of service. (See, e.g., AR 885-889, 3125.) In Atherton, for example, the EIR identifies the length of delay at several specific intersections, as well as the gate-down time effects from the Project. (AR 3125 [showing that gate-down time at Watkins Avenue will be 42 seconds less in the a.m. peak hour and 51

seconds more in the p.m. peak hour, and at Fair Oaks Lane it will be 2 minutes and 15 seconds more and 3 minutes and 28 seconds more in the a.m. and p.m. peak hours, respectively]; AR 887 [showing that there will be a 3-to-4-second delay at El Camino Real/Fair Oaks Lane (#50), an 8-to-60 second delay at El Camino Real/Watkins (#51), a *reduced* delay by 60 seconds or more at Fair Oaks Lane/Middlefield (#52), a *reduced* delay by 3 to 30 seconds at Watkins/Middlefield (#53), a 50-to-60-second delay at Glenwood/Middlefield (#54), and a *reduced* delay by 1 to an increase of 2 seconds at Encinal/Middlefield (#87)]; 890-891 [showing that with mitigation impacts to intersections #51 and #54 will be less than significant].) Based on this detailed analysis, there will be no significant traffic impacts to intersections in Atherton, and volumes on El Camino Real will actually be 2 to 3 percent lower with the Project.

For the entire Project area, the analysis demonstrates that any delays will "not substantially differ from typical congestion that already occurs around at-grade crossing locations and [will] only affect the small number of emergency vehicles." (AR 904.) The Project will also result in a substantial reduction in VMT in every city along the corridor, and will have a beneficial impact on regional and city-level traffic overall. (AR 884; 904.) What's more, emergency responders identify and use multiple routes depending on the time of day and traffic conditions. (AR 904.) And, the EIR imposes Mitigation Measure TRA-1a, which requires the preparation of a traffic control plan to help ensure continued emergency access to Caltrain right-of-way, at-grade crossings, and all nearby properties. (AR 904, 882.) Given all of these factors, and because emergency response times "*are a function of travel along the entire path from their base to the incident location*," the EIR concludes that there will be an overall reduction in emergency vehicle response times. (AR 904, italics added.)

Unlike in *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, cited by Petitioners, the EIR here determines that there is no significant impact to emergency vehicle access in the first place. This is allowed under CEQA. There is no question that the PCJPB conducted a thorough analysis of potential impacts to emergency vehicle access from the Project (Petitioners concede this point at POB, p. 14), and the court must give deference to the agency's determinations.

The agency is entitled to make its own determination with respect to impacts; "the court's role is not to … 'substitute its judgment for that of the agency.'" (*NCRA*, *supra*, 216 Cal.App.4th at p. 643.)

Instead, the court reviews "the agency's exercise of its discretion … to … ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute … giving appropriate deference to the agency's authority and presumed expertise." (*Ibid.*) "The fact that different inferences or conclusions could be drawn, or that different methods … could have been employed, is not determinative in a substantial evidence review." (*Id.* at p. 642.) "The issue is not whether other methods might have been used, but whether the agency relied on evidence that a 'reasonable mind might accept as sufficient to support the conclusion reached' in the EIR." (*Ibid.*) Here, the PCJPB's reasonable conclusion that there will not be an adverse impact to emergency vehicle access is based on substantial evidence and that determination must be upheld by the court.

2. The EIR adequately analyzes cumulative impacts, including the HSR Blended System.

Under CEQA, an EIR must consider whether the "possible impacts of a project are individually limited but cumulatively considerable." (Pub. Resources Code, § 21083, subd. (b)(2); Guidelines, § 15130.) "Cumulative impacts" are "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." (Guidelines, § 15355.) Where a proposed project would add no incremental contribution whatsoever to a significant cumulative impact, the increment cannot be cumulatively considerable. (Guidelines, § 15130, subd. (a)(1).) The discussion of cumulative impacts need not provide as much detail as is provided for project-specific effects; exhaustive analysis is not required. (Guidelines, § 15130, subd. (b); *Association of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1404.)

Courts "review an agency's decision regarding the inclusion of information in the cumulative impacts analysis under an abuse of discretion standard." (*Environmental Protection Info. Ctr. v. Dept. of Forestry and Fire Protection* (2008) 44 Cal.4th 459, 525.) Aside from the general direction provided in Guidelines section 15130, CEQA provides agencies with substantial discretion to determine the most appropriate approach for analyzing a project's cumulative impacts, and whether to classify impacts as 'significant' depending on the circumstances and nature of the affected area. (Guidelines, §§ 15064, subd. (b), 15130, subd. (b)(3); *Mira Mar Mobile Community v. City of Oceanside* (2004) 119

Cal.App.4th 477, 492-493.) "A discussion of cumulative impacts should be guided by the standards of practicality and reasonableness." (Guidelines, § 15130, subd. (b); see also *City of Long Beach v. L.A. Unified School Dist.* (2009) 176 Cal.App.4th 889, 912.) Courts look "not for perfection but for adequacy, completeness, and a good faith effort at full disclosure." (*City of Maywood v. Los Angeles Unified School Dist.* (2012) 208 Cal.App.4th 362, 397.)

Of note, "'[p]rophecy' is not required in an EIR." (*Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1031, citing *Laurel Heights I, supra*, 47 Cal.3d at p. 399.) "It is unnecessary to engage in 'sheer speculation as to future environmental consequences,' and it is unreasonable to expect an EIR to 'produce detailed information about the environmental impacts of a future regional facility whose scope is uncertain and which will in any case be subject to its own environmental review.'" (*Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018, 1032 ("*ECOS*".) "Until specific measures or projects are adopted and the details fleshed out, the environmental impacts remain 'abstract and speculative'.... Simply put, 'an EIR is not required to include speculation as to future environmental consequences of future development that is unspecified and uncertain.'" (*ECOS, supra*, 142 Cal.App.4th at p. 1032.)

Petitioners assert that the EIR ignores HSR project-level information, including frequency of service, expected speeds and main stations on the Peninsula, and areas of the Caltrain track that would need to be straightened to accommodate HSR trains. (POB, p. 16.) Petitioners are wrong. Initially, Petitioners do not cite to any specific information that is not included in the EIR. This is because there is no such information in the record; at the time of the EIR, the Authority had not yet designed the Blended System. (AR 2068.) Like in *ECOS*, "[a]n environmental analysis now of the unspecified and uncertain development that might be approved in the future ... would be speculative, wasteful, and of little value to the consumers of the EIR...." (*ECOS, supra*, 142 Cal.App.4th at p. 1032.) The EIR appropriately includes a conceptual analysis of the Blended System, and discusses the Blended System "at some length, accurately disclosing what was then known ... and what was not." (See, e.g., AR 2068, 935-948; see also *ECOS, supra*, 142 Cal.App.4th at p. 1032.) The PCJPB analyzed the cumulative effects of all past, present, and reasonably foreseeable future projects in compliance with CEQA and Petitioners have failed to prove otherwise.

a. The EIR adequately analyzes cumulative potential noise and safety impacts related to center platform stations, including in Atherton; Petitioners failed to exhaust their administrative remedies on the issue of noise.

Petitioners failed to exhaust their administrative remedies on the issue of noise. Petitioners did not discuss noise as it relates to transitioning center-platform stations in their comments. What's more, no other commenter described a concern that center platforms may have unique noise impacts on passengers. Petitioners point to no comments in the record on these issues, and therefore they did not exhaust their remedies. (See, e.g., *Bakersfield Citizens*, *supra*, 124 Cal.App.4th at p. 1199.)

Regardless, the EIR analyzes potential noise impacts in compliance with CEQA, including potential cumulative noise impacts in the Town of Atherton. (See, e.g., AR 1012, showing that sensitive receptors at Lloyden Drive and Fair Oaks Lane, and Felton Drive and Encinal Avenue in Atherton were included in the noise analysis.) The analysis utilizes the standard methodology established by the Federal Transit Administration, and considers noise from train horns, the wheel-rail interaction, locomotive engine or propulsion, and aerodynamic effects. (AR 2045, 2842-2844.)

Contrary to Petitioners' assertion, passengers at train station platforms are not "sensitive receptors" to potential noise impacts; there is no expectation of a quiet environment when standing at a train station platform. (SAR 53-54.[4]) Thus, noise from passing trains does not constitute a significant impact. (*Ibid.*) The EIR also explains that because EMUs emit lower noise decibels than diesel trains, the Project would in fact decrease overall cumulative noise levels, even with the Blended System and HSR. (AR 2046, 1016, 2916-2917.)

With respect to safety, the EIR analyzes all potential cumulative impacts from the Project and the Blended System. Petitioners, however, appear to be concerned with potential direct safety impacts from the HSR project. For example, Petitioners express concern that with HSR trains traveling at 110 miles per hour (mph), "even a train whistle unless extremely loud, will give only seconds of warning" at a station. (POB, p. 17.) Petitioners also express concern that "a train traveling at 110 mph will create a significant wind, which could pick up small twigs and pebbles and convert them into hazardous missiles." (*Ibid.*) As explained in detail herein, these potential impacts and associated mitigation

[4] Citations to the "SAR" refer to the Supplemental Administrative Record, provided pursuant to the parties' stipulation

measures will be analyzed by the Authority, the HSR lead agency, in a separate environmental document. Again, the PCJPB did not and will not design the HSR system, and it cannot engage in speculation regarding the specifics of the Blended System.

Notwithstanding these facts, however, the PCJPB responded to these concerns in the final EIR:

> [T]here is precedent in the U.S. and Europe for trains transitioning through stations at … speeds [of 110] and higher. In Germany, between Berlin and Hamburg trains pass stations platforms at over 140 mph, but these locations include warning announcements, signage, visual marking and partial fencing. [The Authority's] HST Station Platform Geometric Design Manual specifies a maximum speed through stations of 125 mph (as noted above, conceptually, blended service is presently only proposed up to 110 mph) and physical access control, and/or audible and visual warnings are to be provided for approaching trains (CHSRA 2010). Platform marking for people waiting for trains are required at a 5-foot minimum from the platform edge (CHSRA 2010).

(AR 2250.) Petitioners' comments then and now do not demonstrate any potentially significant platform safety impact caused by the *Electrification Project* that will not be or cannot be mitigated.

b. The EIR adequately analyzes cumulative impacts to emergency vehicle access.

Contrary to Petitioners' assertion, the EIR adequately analyzes cumulative impacts to emergency vehicle access, including the HSR Blended System. (AR 1056-1057.) The EIR explains that "[t]he increase of cumulative rail traffic … could result in increased gate down times at the at-grade crossings…. [D]ue to cumulative growth in traffic over time … traffic conditions are expected to substantially decline over the next few decades…. With this cumulative growth in traffic, emergency response times during peak hours may be adversely affected." (AR 1057.) As explained in section IV.B.1, above, however, "[e]mergency response times are [a] function of the conditions between the responder base location and the incident location overall, not only a function of conditions at any one point along the response path." (AR 995.) Thus, the EIR concludes, the Project will not have cumulatively significant adverse impacts on emergency vehicle access. (AR 1057.)

The EIR does not include an analysis of the *specific* emergency vehicle access impacts associated with HSR, however, because "the effect of increased rail service on gate-down time is highly site specific and is dependent on very specific assumptions about train schedules." (AR 1042.) Without specific schedule and service information about the HSR Blended System, which did not exist at the

time the EIR was certified, any such analysis of HSR impacts would be highly speculative. (*Ibid.*) CEQA does not require a lead agency to engage in such speculation.

Substantial evidence supports the PCJPB's conclusions regarding cumulative emergency vehicle access. It is unreasonable to expect the PCJPB to speculate regarding the future HSR train schedule when it does not and will not ever control such a schedule. What's more, the Authority will conduct an environmental analysis of the potential impacts from a Blended System at the appropriate time, as explained above.

c. The EIR properly describes the potential interim change to the HSR Blended System terminus; CEQA does not require the PCJPB to do more.

As explained in section IV.A.2, above, the Authority indicated to the PCJPB after circulation of the draft EIR that due to funding issues the HSR may need to terminate temporarily at the 4th and King Streets station. The Authority, however, did not provide any further information and the PCJPB had no specific details, such as ridership or service schedules, about this potential interim change. Petitioners allege, though, that the PCJPB should have engaged in speculation and fabricated its own assumptions about how the HSR Blended System will work. This is not required by CEQA. Petitioners do not cite to anything in the record to support their claims, and their argument must fail.

Importantly, the EIR does disclose all information that was then known about the Blended System, including the potential interim station. The analysis explains that cumulative traffic levels will be higher with implementation of the Blended System, and acknowledges that traffic impacts would be worse with the addition of traffic generated by the Blended System. In addition, the EIR concludes that the Project will contribute to cumulative traffic levels and associated significant impacts. (AR 1042-1047.) What's more, the EIR requires mitigation measures for these impacts. (AR 1047-1048.) If the Authority does eventually utilize the station at 4th and King Streets as an interim stop for HSR, the analysis and mitigation measures in the EIR will apply equally to that station, as they do to all other stations. Again, Petitioners have failed to meet their burden to show that the PCJPB abused its discretion; the conclusions in the EIR are supported by substantial evidence.

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d. CEQA does not require speculation regarding the future HSR project and altering the alignment, and Petitioners did not exhaust their administrative remedies on this issue.

Petitioners did not exhaust their administrative remedies on the issue of potential cumulative impacts resulting from track re-alignment. Petitioners cite no comments in the record raising these points because none exist, and thus the court does not have jurisdiction to decide on this issue.

Even if the court did have jurisdiction, however, Petitioners' claim fails. Like above, Petitioners' argument relies on the false assertion that the Electrification Project and the Blended System meet the test under *Laurel Heights I*. But, as explained in detail in section IV.A.1, above, the Blended System is not part of the Electrification Project and does not meet that test.

As in their earlier arguments, Petitioners do not cite to any evidence in the record to support their assertions. Instead, Petitioners argue based on "simple physics" to support their claim that "the general locations of the sharp curves needing realignment … are already determined" for the Blended System. (POB, p. 21.) This is simply not true. At the time of creation of the EIR, the Authority had not identified locations or the extent of alignment changes or curve straightening necessary for the HSR Blended System. It would have been highly speculative for the EIR to assess specific impacts of alignment changes, which vary substantially depending on location and character of the changes. This is not "simple physics"; the alignment could be adjusted in any number of ways along any number of sections of the corridor. Without knowing where and how the rail line would be re-aligned, the PCJPB simply could not guess about the resultant impacts. What's more, it would not make sense for the PCJPB to attempt to engineer *the Authority's project* as part of the cumulative analysis in the EIR for the Electrification Project.

The EIR discloses the fact that the HSR would likely involve track work and/or curve straightening (AR 944-945), and discloses the potential impacts of constructing passing track. (AR 942-944.) This analysis provided the public and the decisionmakers with the necessary information to address cumulative impacts as required by CEQA. The PCJPB was required to do no more. (See, e.g., *ECOS*, *supra*, at p. 1032.)

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C. The EIR properly considers and analyzes Project alternatives.

Petitioners argue that the EIR fails to analyze and consider the "potential effect of failing to obtain full funding for the proposed project." (POB, p. 22.) Petitioners also express concern with the legality of the $705 million from Prop 1A HSR funds for the Project. (POB, p. 23.) Since Petitioners filed their Opening Brief with this Court, the Authority's administration of Prop 1A funds for the Blended System was upheld by the Sacramento County Superior Court. (See Respondent's Request for Judicial Notice and Exhibit A to Declaration of Sabrina V. Teller in support thereof [*John Tos et al. v. California High Speed Rail Authority*, Case No. 34-2011-00113919-CU-WM-GDS, March 4, 2016].) Of course the petitioners in the *Tos* case may appeal, but it is far from certain that their arguments would prevail. Thus, Petitioners' argument regarding the legality of funding fails at the outset.

Regardless of whether or not Prop 1A and other funds will be available for the Project, Petitioners entirely misconstrue CEQA on the issue of whether the PCJPB was required to consider the legality or availability of Prop 1A funds. Nowhere does CEQA require a lead agency to consider the feasibility of a proposed project or alternatives on the basis of legal arguments related to funding sources. Instead, a lead agency must consider "a reasonable range of potentially feasible alternatives." (Guidelines, § 15126.6, subd. (a); see also *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 565-566 ("*Citizens of Goleta*").) The analysis may take into account economic, environmental, social, and technological factors. (Pub. Resources Code, § 21061.1; *Citizens of Goleta*, *supra*, 52 Cal.3d at p. 565.) The nature and scope of alternatives is governed by the "rule of reason." (Guidelines, § 15126.6, subd. (a); *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1163 ("*In re Bay-Delta*").) Furthermore, "[t]he process of selecting the alternatives to be included in the EIR begins with the establishment of project objectives...." (*In re Bay-Delta*, *supra*, 43 Cal.4th at p. 1163.)

Here, the EIR includes a careful comparison of the alternatives and the Project, including the costs of each. (See, e.g., AR 1085; see also AR 5537-5548.) Ultimately, the EIR eliminates the Bay Area Rapid Transit (BART) extension and a Caltrain third-rail alternative from further consideration based on financial infeasibility. (AR 1152.) These alternatives would cost between $3.8 billion and $7.7

billion more than the Project. (*Ibid.*) This determination of infeasibility by the PCJPB is supported by substantial evidence in the record, and Petitioners have failed to meet their burden to prove otherwise.

Petitioners also assert that the EIR "flatly rejected all non-electrified options precisely because they would not be compatible with CHSRA's electrification plans." (POB, p. 10.) Again, Petitioners are wrong. As explained above, electrified trains have long been a goal of the PCJPB, since many years before the concept of a Blended System arose. (AR 11501, 295.) The 25kv 60 HZ system is a common design for electrical railways, and this system was also contemplated prior to the creation of the Blended System concept. (AR 2005, 2015, 2089, 2210-2211, 11453-11454.)

What's more, Petitioners ignore that non-electrification alternatives were rejected for reasons other than the fact that they are not compatible with HSR. The EIR includes a full analysis of five alternatives to the Project, including the no-project alternative. (AR 1082.) Three alternatives and the no-project alternative would not electrify the rail line: the Diesel Multiple Unit (DMU) Alternative, Dual-Mode Multiple Unit (DEMU) Alternative, and Tier 4 Diesel Locomotive (T4DL) Alternative. (*Ibid.*) The DMU and DEMU Alternatives would only partially meet the project objectives. Both would increase diesel fuel consumption, thereby increasing operating fuel costs; have slower acceleration and thus inferior service, resulting in lower ridership levels than the Project; and have greater impacts on air quality and greenhouse gas emissions than the Project. (AR 1084, 1094, 1096, 1098-1099, 1102, 1110-1111, 1116-1117, 1164.) The T4DL Alternative would increase diesel fuel consumption and associated operating fuel costs, would have lower ridership levels, and would have substantially higher air quality impacts and greenhouse gas emissions than the Project. (AR 1084, 1121, 1123, 1164.) Electrification, on the other hand, will have numerous environmental benefits, and compatibility with HSR is just one of many project objectives.

The EIR appropriately considers a reasonable range of feasible alternatives and the PCJPB properly rejected those that did not meet the project objectives. All of these determinations are supported by substantial evidence in the record and the PCJPB is entitled to deference on these decisions. Thus, Petitioners' arguments in this regard fail.

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D. The final EIR provides adequate responses to all substantive comments on the draft EIR.

CEQA requires lead agencies to "evaluate any comments on environmental issues," and "prepare a written response" describing "the disposition of each significant environmental issue that is raised by commenters." (Pub. Resources Code, § 21091, subds. (d)(2)(A) & (B).) In responses to comments, courts look not for perfection, but for adequacy, completeness, and a good faith effort at full disclosure. (*Twain Harte Homeowners Assn. v. County of Tuolumne* (1982) 138 Cal.App.3d 664, 673.) Responses "need not be exhaustive; they need only demonstrate a 'good faith, reasoned analysis.'" (*Paulek v. California Department of Water Resources* (2014) 231 Cal.App.4th 35, 48 ("*Paulek*"), quoting *Gilroy Citizens*, *supra*, 140 Cal.App.4th at p. 937; Guidelines, § 15088, subd. (c).) An agency is required only to respond at the same level of detail as was included in the comment; "[w]here a general comment is made, a general response is sufficient." (*Paulek*, *supra*, 231 Cal.App.4th at p. 48, quoting *Gilroy Citizens*, *supra*, 140 Cal.App.4th 937.) The burden rests on Petitioners to prove that the PCJPB did not comply with these requirements. (*Gilroy Citizens*, *supra*, 140 Cal.App.4th at p. 937.)

The PCJPB's responses adequately serve CEQA's disclosure purpose. Approximately 230 commenters submitted thousands of comments on the draft EIR. (AR 1216-1221.) The PCJPB made a good faith effort to respond to all significant environmental issues and structured its extensive responses in an easy-to-navigate format.[5] The responses fully comply with CEQA.

Petitioners point to four comment letters as "examples," and assert that the PCJPB failed to adequately respond to these comments. First, Petitioners point to their own comment letters at AR 1256 and 1449-1451. These comments assert in part that, "the current DEIR does not analyze all of the issues related to anticipated HSR service; the environmental impacts associated with HSR … have not been fully analyzed…." (AR 1256.) In response to these comments, PCJPB refers to Master Response 1 on Segmentation and Independent Utility, which explains in substantial detail why the HSR is not part of

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[5]/ Due to duplication in some comments received, the final EIR does not respond to every individual comment separately. Rather, the PCJPB relies on the standard practice of using "Master Responses" to comprehensively address recurring comments. (See, e.g., AR 2005.) This is permitted. (*City of Long Beach*, *supra*, 176 Cal.App.4th at p. 901.) Many individual responses then refer the commenter to the applicable Master Response, but also provide separate additional responses if the comment also includes less common assertions or information that was not already covered by a Master Response.

the Project, and therefore it does not need to be fully analyzed in this EIR. (AR 2095, 2005-2008, 2216, 2217.)

Second, Petitioners cite to a comment from Mary B. Smith stating in part, " I wonder how long it will be before [the street crossing from El Camino to Alma] is so blocked that when a train comes through, the effect will keep cars piled up in the intersection, blocking any emergency vehicles, etc." (AR 1943.) Petitioners complain that this comment was "totally ignored." (POB, p. 24.) This is simply not true. In the response to this comment, the EIR explains how the intersection functions, and how the proposed mitigation at this location will be implemented. (AR 2390-2391.) Petitioners may be alluding to the fact that the PCJPB did not discuss the assumption applied in the EIR regarding offsetting impacts from increased gate time with the reduction in VMT. But, as explained above, neither this comment (at AR 1943) nor any other comment ever brought up that issue, and the PCJPB cannot be expected to read minds when responding to comments. What's more, general comments only require general responses. (*Paulek*, *supra*, 231 Cal.App.4th at p. 48.)

Third, Petitioners point to the comment discussed earlier regarding the Authority's station design guidelines. (AR 1544.) The EIR fully responds to this comment by providing all available information, including reference to the Authority's High Speed Train Station Platform Geometric Design Manual and an explanation of the future design and separate environmental process for the Blended System. (AR 2250.)

Fourth and finally, Petitioners cite to comments stating that: (1) "[m]isleading the public into believing that this transportation corridor will be able to operate higher-speed trains without the necessary capital investment to the track and to straighten out its many curves-and-bends is wrong public policy" (AR 1963, comment I161-45); and (2) the commenter believes Caltrain inappropriately deferred other improvements needed along the corridor (AR 1963, comment I161-46). In response to the first comment, the PCJPB explains that the EIR does not mislead the public, and describes where the EIR discloses the relevant information. (AR 2402.) In response to the second comment, the PCJPB explains that "Core Capacity projects have not yet been defined but they are not necessary to the [Project]; they are necessary for blended service," which is subject to separate environmental review. (AR 2402.)

The comments and responses to which the Petitioners cite show more than a good faith effort at full disclosure; the PCJPB carefully describes the disposition of every environmental issue that was raised. It seems that Petitioners simply have a difference of opinion from the PCJPB, often based on speculation, and thus they do not like the fact that the responses in the final EIR do not agree with them. Obviously, CEQA does not require a lead agency to agree with all commenters. Instead, the PCJPB put forth a good faith, reasoned analysis in responding to all comments received on the Project in compliance with CEQA, and Petitioners have failed to meet their burden to show otherwise.

E. PCJPB was not required to recirculate the EIR; the EIR does not contain significant new information that the Project will have a substantially more severe significant impact, nor was there a new feasible alternative that would substantially reduce new Project impacts.

CEQA requires recirculation of an EIR when, after a draft is circulated but prior to certification, "significant new information is added to an environmental impact report." (Pub. Resources Code, § 21092.1; see also *Vineyard*, *supra*, 40 Cal.4th at p. 447.) "New information added to an EIR is not 'significant' unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement." (Guidelines, § 15088.5, subd. (a); see also *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1120 ("*Laurel Heights II*").) Recirculation is "an exception, rather than the general rule," and reasonable doubts regarding the agency's decision not to recirculate must be resolved in the agency's favor. (*Laurel Heights II*, *supra,* 6 Cal.4th at pp. 1132, 1133, 1135.) "A decision not to recirculate an EIR must be supported by substantial evidence." (Guidelines, § 15088.5, subd. (e); *Vineyard*, *supra*, 40 Cal.4th at p. 447; *Laurel Heights II*, *supra*, 6 Cal.4th at p. 1120.) Petitioners bear the burden to show that no substantial evidence supports the PCJPB's decision not to recirculate the draft EIR. (See *Western Placer Citizens for an Agricultural and Rural Environment v. County of Placer* (2006) 144 Cal.App.4th 890, 903.)

"Significant new information" includes "[a] substantial increase in the severity of an environmental impact … unless mitigation measures are adopted that reduce the impact to a level of insignificance." "Significant new information" also includes "[a] feasible project alternative or

mitigation measure considerably different from others previously analyzed [that] would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it." (Guidelines, § 15088.5, subds. (a)(2) & (3); *Laurel Heights II*, *supra*, 6 Cal.4th at p. 1129.)

Petitioners allege that the Authority "announced that, because there was inadequate funding to complete the DTX within the time when the Blended System would become operational, at least initially and for an indefinite period the San Francisco terminus for all HSR trains would be the 4th and King St. Caltrain station…." (POB, p. 25.) Petitioners, however, do not cite to anything in the record to support this proposition. In reality, as described above, the Authority commented after the draft EIR that "prolonged delay of the [DTX] *may* require an interim high-speed rail terminal station…." (AR 1226, emphasis added.) The potential for this change *to the HSR project* was just that—a *potential* change. (AR 1226.) Furthermore, even if this change does occur, it is a change to HSR and not to the Electrification Project.

Petitioners also claim that "the new information showed that the project's traffic impacts would be substantially more severe than had been disclosed in the DEIR." (POB, p. 25.) As Petitioners point out, the draft EIR already determined that traffic congestion in the area would constitute a significant and unavoidable cumulative impact. (AR 1042-1048.) Again, Petitioners do not cite to any new information regarding the Project's traffic impacts, much less information demonstrating a substantial increase in the severity of those impacts. Petitioners' statement is entirely unsupported by the record and CEQA does not require recirculation of the EIR.

Petitioners argue that the T4DL alternative, which was added to the EIR in response to comments on the draft, constituted a new feasible alternative that required recirculation of the EIR. (POB, pp. 25-26.) The PCJPB, however, found that the T4DL alternative is *infeasible* because it does not meet most of the project objectives. (AR 122-123.) T4DL would not provide electrification compatible with HSR, reduce operating fuel costs, or lower engine noise. (AR 122, 1121.) An agency's determination that an alternative is infeasible is subject to the substantial evidence standard of review. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 559.) As explained above, the PCJPB's alternatives analysis and determination that the T4DL alternative is infeasible are supported

by substantial evidence in the record. Thus, the addition of the T4DL alternative to the final EIR does not trigger the requirement for recirculation of the EIR.

Again, the substantial evidence standard applies to the PCJPB's decision not to recirculate and courts must resolve reasonable doubts in favor of the agency's determination. (*Laurel Heights II*, *supra*, 6 Cal.4th at p. 1135.) New information added in the final EIR does not identify any new significant impacts or substantially more severe significant impacts, and there are no new feasible alternatives. Thus, the PCJPB was not required to recirculate the EIR prior to approving the Project.

V. CONCLUSION

In their opening brief, Petitioners attempt to convince this Court that the PCJPB's extensive review of the Project violates CEQA. Substantial evidence in the administrative record, however, supports the analysis, methodology and conclusions in the EIR, and the PCJPB's decision to approve the Project. Although Petitioners may strongly disagree with the PCJPB's policy decisions and clearly hope to thwart HSR through this misdirected attack on a separate project with substantial environmental benefits for the Bay Area, Petitioners' disagreement with the analysis and crusade against HSR cannot be a basis to interfere with the PCJPB's decision. For each of the reasons presented herein, the court should deny the Petition for Writ of Mandate.

DATED: May 2, 2016

Respectfully submitted,

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By: _____

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PENINSULA CORRIDOR JOINT POWERS BOARD

Town of Atherton, et al. v. Peninsula Corridor Joint Powers Board
Contra Costa County Superior Court Case No. MSN15-0573

PROOF OF SERVICE

I, Rachel N. Jackson, am a citizen of the United States, employed in the City and County of Sacramento. My business address is 555 Capitol Mall, Suite 800, Sacramento, California 95814. My email address is rjackson@rmmenvirolaw.com. I am over the age of 18 years and not a party to the above-entitled action.

I am familiar with Remy Moose Manley, LLP's practice whereby the mail is sealed, given the appropriate postage and placed in a designated mail collection area. Each day's mail is collected and deposited in a U.S. mailbox after the close of each day's business.

On May 2, 2016, I served the following:

RESPONDENT'S OPPOSITION TO PETITION FOR WRIT OF MANDATE

☑ On the parties in this action by causing a true copy thereof to be placed in a sealed envelope with postage thereon fully prepaid in the designated area for outgoing mail addressed as indicated below

☐ On the parties in this action by causing a true copy thereof to be delivered via Federal Express to the following person(s) or their representative at the address(es) listed below

☐ On the parties in this action by causing a true copy thereof to be delivered via facsimile from (916) 443-9017, to the following person(s) or representative at the facsimile number(s) listed below, with a facsimile transmission reported as complete and without error

☑ On the parties in this action by causing a true copy thereof to be electronically delivered via the internet to the following person(s) or representative at the email address(es) listed below

☐ On the parties in this action by causing a true copy thereof to be hand-delivered to the following person(s) or representative at the address(es) listed below

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct and that this Proof of Service was executed on this 2nd day of May, 2016, at Sacramento, California.

Rachel N. Jackson

Town of Atherton, et al. v. Peninsula Corridor Joint Powers Board
Contra Costa County Superior Court Case No. MSN15-0573

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