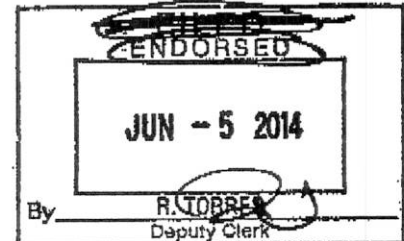


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EXEMPT FROM FILING FEE
[Govt. Code § 6103]



8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SACRAMENTO – GORDON D. SCHABER COURTHOUSE**

11 **CITY OF BAKERSFIELD,**
12 **a municipal corporation,**
13 **Plaintiff and Petitioner,**

14 **v.**

15 **CALIFORNIA HIGH-SPEED RAIL**
16 **AUTHORITY, a public entity; and**
17 **DOES 1 through 20,**
18 **Defendants and Respondents.**

Case No. 34-2014-8001866

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

VIOLATIONS OF CEQA:

1. **CERTIFICATION OF A LEGALLY INADEQUATE
ENVIRONMENTAL IMPACT REPORT**
2. **FAILURE TO RECIRCULATE REVISED DRAFT EIR**
3. **INADEQUATE CEQA REQUIRED FINDINGS;
UNSUPPORTED STATEMENT OF OVERRIDING
CONSIDERATIONS**

DECLARATORY RELIEF

INJUNCTIVE RELIEF

22 Plaintiff and Petitioner, CITY OF BAKERSFIELD ("Petitioner"), alleges, as follows:

23 **PARTIES**

24 1. Petitioner is, and at all times herein mentioned was, a municipal
25 corporation organized and existing under the laws of the State of California.
26 Petitioner's City Council is responsible for regulating land use in all incorporated
27 areas within its borders and is charged with protecting the public health and
28 safety and promoting the general welfare and quality of life of Petitioner's



1 citizens. Petitioner brings this action on its own behalf and on behalf of the
2 residents and businesses within its borders. The actions complained of herein
3 threaten Petitioner's interests and the interests of those whom Petitioner serves
4 and impair Petitioner's ability to carry out its governmental functions. These
5 interests and functions have been and will continue to be adversely affected by
6 Respondents' failure to comply with the applicable legal requirements prior to
7 making the Section Approvals described below. Petitioner itself and/or through
8 its representatives, members, and residents, participated to the extent possible
9 within the limited time allowed by Respondents in Respondents' process leading
10 up to the Section Approvals and opposed the Section Approvals.

11 2. CALIFORNIA HIGH-SPEED RAIL AUTHORITY ("CHSRA") is, and at all
12 times relevant to this proceeding was, an independent state authority
13 established by the Legislature in 1996. CHSRA is responsible for planning,
14 constructing, and operating a high-speed train system to serve the Los Angeles
15 to San Francisco mainline route as well as other major California cities. CHSRA is
16 governed by a nine-member policy board ("Board") and is the lead agency
17 under CEQA for the Section and the Project as a whole as described below.
18 CHSRA, its staff, and contractors and consultants working under its control and
19 direction, had a duty to prepare and prepared the Final Environmental Impact
20 Report ("FEIR") for the Section. The Board certified the FEIR and approved the
21 Section.

22 3. DOES 1 through 20 ("DOES"), inclusive, are sued under fictitious
23 names. Petitioner is ignorant of the true names and capacities, whether
24 individual, corporate, governmental, or otherwise, of DOES and therefore sues
25 DOES by these fictitious names. Petitioner will amend this Petition to allege their
26 true names and capacities when ascertained. Petitioner is informed and
27 believes, and based thereon alleges, that each of these fictitiously named DOES
28

1 is responsible in some manner for the acts or omissions alleged herein. CHSRA
2 and DOES are collectively referred to as "Respondents" herein.

3 **PROJECT**

4 4. The High-Speed Rail Project ("Project") is a proposed 800-mile public
5 transit project proposed to serve the Los Angeles to San Francisco mainline route
6 as well as other major California cities. Petitioner herein alleges that
7 Respondents violated the California Environmental Quality Act (Public Resources
8 Code §§ 21000 et seq., and CEQA Guidelines, 14 California Code of Regulations
9 §§ 15000 et seq.) ("CEQA"), and otherwise abused their discretion and violated
10 the law in taking actions related to the approval of the approximately 114-mile
11 Fresno to Bakersfield section ("Section") of the Project.

12 5. On or about August 15, 2011, Respondents issued their Draft
13 Environmental Impact Report ("DEIR") for the Section and provided a 60-day
14 comment period. Petitioner filed its comments in response to the DEIR on
15 October 13, 2011. In order to add route alternatives, including the Bakersfield
16 Hybrid Alternative, in response to feedback on the proposed alignments in the
17 DEIR, Respondents issued a Revised Draft Environmental Impact Report ("RDEIR")
18 on or about July 20, 2012 and provided a 90-day comment period. Petitioner
19 filed its comments in response to the RDEIR on October 19, 2012. On or about
20 April 18, 2014, Respondents issued their FEIR for the Section. Petitioner filed its
21 comments in response to the FEIR on May 1, 2014.

22 6. Respondents conducted a public hearing on the certification of the
23 FEIR on May 6, 2014. After the public hearing, Respondents certified the FEIR for
24 the Section and approved construction of a portion of the Section up to
25 Petitioner's northern boundary on May 7, 2014 ("Section Approvals"). On or
26 about May 8, 2014, the CHSRA filed a Notice of Determination with the Office of
27 Planning and Research, State Clearinghouse.

28

FIRST CAUSE OF ACTION

(VIOLATION OF CEQA: CERTIFICATION OF A

LEGALLY INADEQUATE ENVIRONMENTAL IMPACT REPORT)

7. Petitioner re-alleges and incorporates by reference the preceding paragraphs in their entirety, as though fully set forth herein.

8. The Section required discretionary approval by Respondents and was therefore a project subject to CEQA. The Section did not qualify for an exemption under CEQA, and the lead agency, CHSRA, determined that the Section may have significant environmental impacts. Therefore, CHSRA ordered the preparation of an Environmental Impact Report ("EIR") for this Section of the Project pursuant to CEQA.

9. CEQA requires a lead agency for a project to prepare an EIR that complies with the requirements of the statute. The lead agency must also provide for public review and comment on the project and associated environmental documentation. An environmental impact report must provide sufficient environmental analysis such that decision makers can intelligently consider environmental consequences when acting on proposed projects and the public can meaningfully participate in the environmental review process.

10. Respondents' actions in certifying the FEIR and adopting findings constitute a prejudicial abuse of discretion in that Respondents failed to proceed in the manner required by law and their decision is not supported by substantial evidence as follows:

a. The Project includes significant construction and operational impacts on Petitioner's facilities, freeway projects, businesses, and residents including, but not limited to, Petitioner's Municipal Services Corporation Yard, Rabobank Arena, McMurtrey Aquatic Center, the Mill Creek redevelopment projects, local streets, and the West Beltway/Centennial Corridor, in addition to private residences, businesses, schools, churches, and medical facilities, that will

1 permanently affect the physical environment and quality of life in the region. The
2 FEIR does not provide sufficient analysis under CEQA to provide the level of detail
3 necessary to mitigate these impacts.

4 b. The FEIR fails to evaluate all environmental direct and proximity
5 effects to Department of Transportation Act of 1966 Section 4(f) (49 U.S.C. §303;
6 23 U.S.C. §138) ("4(f)"), and Section 6(f) of the Land and Water Conservation Act
7 ("6(f)") resources. Further, appropriate circulation of findings of the 6(f) analysis
8 has not been made, specific environmental reviews are not complete, nor have
9 final examinations/determinations related to impacts and specific mitigation
10 been finalized. For example, the Section alignment would run through Petitioner's
11 Central Park at Mill Creek and the Kern River Parkway, recreational and wildlife
12 areas protected by 4(f). The RDEIR failed to disclose that the Section would
13 require takings of resources protected by 4(f). The RDEIR also failed to incorporate
14 an alternative alignment that would have avoided impacts to Mill Creek and the
15 Kern River Parkway. Section 6(f) of the Land and Water Conservation Act requires
16 that the conversion of lands or facilities acquired with Land and Water
17 Conservation Act funds be coordinated with the Department of the Interior.
18 Replacement in kind is typically required. The Kern River Parkway was acquired
19 with Land and Water Conservation Act funds; however, the RDEIR failed to
20 disclose that the Section would require conversion of resources protected by 6(f).
21 The RDEIR also failed to avoid impacts to the Kern River Parkway by selecting an
22 alternative route through Petitioner's jurisdiction. The necessary takings of 6(f)
23 resources was not disclosed or sufficiently mitigated by selection of an alternative
24 route through Petitioner's jurisdiction.

25 c. Respondents did not adequately consult with Petitioner and
26 other public agencies when Respondents prepared the FEIR, as is required by
27 Public Resources Code section 21092.4, CEQA Guidelines sections 15086(a)(5)
28 and 15206, and the National Environmental Protections Act. Respondents have

1 never worked with Petitioner to alter routes or explore alternatives to address
2 impacts on Petitioner's resources or other public facilities including, but not limited
3 to, significant adverse impacts on Petitioner's Municipal Services Corporation
4 Yard, Bakersfield High School, Mercy Hospital, the Bakersfield Homeless Center,
5 East Bakersfield, the Rabobank Arena and Convention Center, and current road
6 construction projects. Though invited numerous times to address Petitioner's
7 Planning Commission and City Council to provide public dialog and the
8 consultation required by law, Respondents never accepted.

9 d. Respondents have also failed to provide relevant information,
10 including all supporting technical analysis and reports, to Petitioner and the
11 public in a timely manner pursuant to Public Resources Code section 21003.1,
12 which requires that information relevant to the significant effects of a project be
13 made available as soon as possible to the general public and other public
14 agencies. For example, the computer disc provided by Respondents to Petitioner
15 containing the RDEIR did not contain all of the information necessary for Petitioner
16 to review the analysis of Section impacts.

17 e. The FEIR fails to fulfill CEQA's fundamental objective of
18 informing the public and the decision makers of the significant environmental
19 effects of the Project and either omits or defers the information and analysis
20 necessary to mitigate the Project's devastating significant impacts.

21 f. The FEIR fails to adequately describe the Section, fails to
22 analyze the Section's significant impacts to air quality, noise, energy, and other
23 resources and impact categories, and fails to formulate mitigation measures for
24 Section impacts and develop Section alternatives that could meet Project
25 objectives while avoiding or reducing its impacts.

26 g. Despite Respondents' claims to the contrary, the FEIR fails to
27 address or respond in a meaningful way to many of the substantive comments
28 raised by Petitioner in its comments to the RDEIR.

1 h. The initial period of time allowed for public review and
2 comment was so unreasonably short that it precluded effective public and
3 agency participation. The RDEIR, including the appendices, reference material
4 and previous environmental documents from which it purportedly tiered,
5 comprised many thousands of pages of material. In the revisions alone, over 900
6 pages of text and nearly 1,200 pages of maps and drawings were added to an
7 already voluminous DEIR. Despite the large volume of material and the enormous
8 public interest in the Project and its potential impacts on the environment,
9 Respondents allowed only 90 days for public review and comment, which was
10 clearly unreasonable and effectively precluded any meaningful opportunity for
11 informed public and agency participation. Although the time allowed exhibited
12 facial compliance with CEQA's minimum requirements, it clearly violated
13 Respondents' duty to provide an adequate opportunity for public review and
14 comment and to ensure informed public participation in the environmental
15 review process. (CEQA Guidelines §§ 15086, 15087, 15201.)

16 i. The FEIR does not adequately tier off or incorporate by
17 reference the first-tier statewide and Bay Area Preliminary Environmental Impact
18 Report/Environmental Impact Statement ("PEIR/EIS") documents. The FEIR does
19 not clearly explain how the original and two revised Bay Area PEIR/EIS documents
20 update or modify the Statewide PEIR/EIS document, nor does the FEIR consistently
21 or clearly explain how its analysis relies upon or differs from these previously
22 prepared documents. With thousands of pages of background analysis to sift
23 through, and thousands of pages of project-level analysis and technical reports
24 to review, the public is left to wonder how this document fits into the overall
25 analytical structure of this complicated and muddled tiering approach. This
26 attempt at incorporation by reference and tiering fails to satisfy CEQA's
27 requirements. "When an EIR uses tiering or incorporation, it must give the reader
28 a better road map to the information it intends to convey." (*Vineyard Area*

1 *Citizens for Responsible Growth, etc. v. City of Rancho Cordova* (2007) 40 Cal.4th
2 412, 443, citing CEQA Guidelines, § 15150, 15153.) The data in an EIR must not
3 only be sufficient in quantity, it must be presented in a manner calculated to
4 adequately inform the public and decision makers, who may not be previously
5 familiar with the details of the project. "[I]nformation 'scattered here and there in
6 EIR appendices,' or a report 'buried in an appendix,' is not a substitute for 'a
7 good faith reasoned analysis'...." (*Id.* at p. 442, quoting *California Oak*
8 *Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1239.) The FEIR
9 does not provide the required summary of issues discussed in the first-tier PEIR/EIS,
10 nor does it adequately incorporate by reference the analysis from these
11 documents.

12 j. The FEIR also failed to acknowledge that Respondents
13 previously found the Project as a whole would cause significant and unavoidable
14 impacts, requiring a Statement of Overriding Considerations. CEQA requires
15 Respondents to squarely address the Project's contribution to these significant
16 and unavoidable impacts. (*Communities for a Better Environment v. California*
17 *Resources Agency* (2002) 103 Cal.App.4th 98, 124-125.) By concluding that many
18 impacts will be mitigated to less-than-significant levels, without acknowledging
19 and addressing the significant and unavoidable impacts associated with the
20 Project, the FEIR obscures impacts rather than reveals them.

21 k. Respondents have improperly segmented or piecemealed its
22 environmental review. According to the Revised 2012 Business Plan and
23 "Construction Package 1" Request for Proposal documents, the Section is a part
24 of the "Initial Construction Segment" ("ICS") that the Authority intends to build
25 first, using federal and Proposition 1a funding. The 130-mile long ICS will be used
26 to test high speed trains and may be used for Amtrak service. Respondents
27 improperly piecemealed their environmental review for the ICS by preparing two
28 EIRs to analyze its impacts. Instead, the entire ICS should have been analyzed in

1 a single EIR. Respondents also piecemealed environmental review for the Section
2 and ICS by failing to analyze the impacts of train testing and possible Amtrak
3 service on the ICS. The FEIR acknowledges that the first use will occur and that
4 the second use may occur, and yet it does not analyze the unique impacts
5 associated with these foreseeable future actions. This improper segmentation
6 and piecemealing has also rendered the RDEIR's project description ambiguous.

7 I. The RDEIR's project description was also uncertain and
8 incomplete because it failed to identify a "proposed project" and instead
9 identified not less than 72 possible high speed train alignment combination
10 alternatives and five heavy maintenance facility alternatives, only one of which
11 was identified in the FEIR as the preferred alternative. This approach is contrary to
12 CEQA, which considers an accurate, stable, and fixed project description to be
13 the sine qua non of a legally sufficient EIR and contemplates the analysis of a
14 "proposed project" and a reasonable range of project alternatives. (*San Joaquin*
15 *Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 655-656;
16 Pub. Resources Code §§ 21100(b)(1), (b)(4); CEQA Guidelines § 15124(a).) The
17 RDEIR's consideration of these alternatives, without identifying which was the
18 proposed project, resulted in an ambiguous and unstable project description
19 which precluded informed public participation. Although the multiple alignment
20 alternatives gave Respondents several options from which to choose, they
21 prevent the public and responsible agencies from knowing which alternative is
22 the "proposed project" to which they should devote substantive attention. By
23 deferring identification of the preferred alternative until the FEIR was prepared,
24 Respondents effectively precluded informed public review and comment on the
25 RDEIR. The use of multiple alternatives with no designated project also obscured
26 and frustrated the fundamental purpose of alternatives, which is to avoid or
27 substantially reduce the proposed project's significant environmental impacts.

28

1 This flawed approach violates CEQA's substantive, procedural, and informational
2 requirements.

3 m. The FEIR also failed to provide an adequate project
4 description, which accurately identifies all Project characteristics, as required.
5 The FEIR provides only such limited information concerning the Section that is
6 available at the 30% design stage, which is insufficient to inform the public and
7 the decision-makers of the site-specific environmental impacts of the Section and
8 results in a premature and general analysis of potential impacts rather than the
9 site-specific analysis required by CEQA for a project-level EIR. Project
10 characteristics not sufficiently described and considered in the FEIR/EIS include,
11 but are not limited to:

12 (1) The design of the proposed downtown Bakersfield
13 station and all associated facilities, including parking facilities;

14 (2) New or modified transmission lines and substations that
15 will be necessary, in some areas that lack existing or sufficient electric
16 infrastructure, to provide power to this Section of the high speed train
17 system and associated new or modified access roads and spur roads;

18 (3) New or modified wells and irrigation and drainage
19 facilities along this Section of the high speed train system that would be
20 necessary to accommodate the Project;

21 (4) New or modified bridges over streams and rivers
22 necessary for high speed train line crossings;

23 (5) Road closures that would be required for each
24 alternative, and any modifications to existing roadways that would be
25 required as a consequence of road closures; and

26 (6) New or modified roadway overpasses, modified freeway
27 interchanges, ramps, and approaches, and modified frontage roads along
28

1 this segment of the high speed train system that would be necessary to
2 accommodate the Section.

3 This lack of detail denies meaningful public participation and compromises
4 responsible decision-making by public agencies.

5 n. A number of critical studies in the FEIR are incomplete and the
6 analysis of several significant impacts has been impermissibly deferred. Many
7 mitigation measures are in only the early stages of formulation. In many places in
8 the FEIR, mitigation is vague and undefined (e.g., measures call for working with
9 the community at the time of construction or mitigating at an area or regional
10 level rather than site specific mitigation), violating CEQA's requirements for a
11 project-level EIR. This approach did not provide Petitioner, other responsible and
12 trustee agencies, property owners, affected businesses, and tens of thousands of
13 residents with any sense of how mitigation will address their specific concerns nor
14 is it clear the mitigation will be effective.

15 o. The environmental baseline in the FEIR is inadequate for a
16 complete, detailed analysis of section impacts. Respondents failed to conduct
17 adequate surveys to identify the environmental baseline for Section alternatives.
18 Without this baseline information, Respondents could not conduct meaningful
19 analysis of Section impacts, as required. The FEIR also fails to provide an accurate
20 description of the affected environment, which is an essential prerequisite for an
21 adequate analysis of Section impacts. CEQA, however, prohibits a lead agency
22 from relying on a future study for this critical baseline information. (See, e.g., *San*
23 *Joaquin Raptor, supra*, 149 Cal.App.4th at 669 [invalidating EIR for lack of baseline
24 information on the ground that mitigation measure calling for protocol surveys did
25 not make up for this deficiency].)

26 p. The baseline information used for traffic impact analysis in the
27 FEIR is deficient in an additional respect – it is inconsistent as between the types of
28 traffic impacts. With respect to the negative effects that would be caused by

1 road closures, the analysis relies on lower existing levels of traffic to conclude that
2 closures would not have significant impacts. But when it comes to analyzing the
3 Section's future traffic impacts, the analysis relies on higher projected future
4 baseline traffic levels to conclude that additional traffic caused by the Section
5 would not be significant. Either the analysis of road closure impacts should take
6 into account higher projected regional traffic or the analysis of Section impacts
7 should use existing traffic baseline conditions. Instead, the analysis improperly
8 uses a shifting baseline, attempting to have it both ways.

9 q. Further, the FEIR's analysis of the Section's environmental
10 impacts is inadequate. CEQA requires the analysis of potential impacts to be
11 "reasonably thorough" and specific at the project level. (*City of Carmel-by-the-*
12 *Sea v. US Dept. of Transportation* (9th Cir. 1993) 123 F.3d 1142, 1150; see also
13 CEQA Guidelines, § 15146 ["The degree of specificity required in an EIR will
14 correspond to the degree of specificity involved in the underlying activity which is
15 described in an EIR"].) The FEIR is inadequate because it frequently discusses
16 environmental effects in only general terms and fails to quantify the extent of the
17 Project's potential impacts. The FEIR purports to be a project-level EIR that
18 provides "site specific detailed analysis" but instead deals largely in generalities
19 and frequently fails to quantify the extent of the anticipated impacts. Without
20 such specific information, the public and the decision makers can neither assess
21 the severity of potential impacts nor determine the adequacy and effectiveness
22 of proposed mitigation measures.

23 r. The FEIR is also inadequate because many of the assumptions,
24 analyses, and conclusions regarding potential impacts are not supported by
25 facts, data, or other substantial evidence. CEQA requires a lead agency to
26 explicitly reference the scientific and other sources which support the discussions,
27 analyses, and conclusions in an EIR. The discussion of many potential
28

1 environmental impacts within the FEIR consists of conclusory statements which are
2 not supported by any scientific data or other facts.

3 s. Except with respect to construction air quality impacts, the FEIR
4 completely fails to consider the cumulative impacts of the Section in combination
5 with the neighboring Bakersfield to Palmdale section, which will continue the
6 Project's alignment through Petitioner's jurisdiction. By splitting the route through
7 Petitioner's jurisdiction, Respondents' analysis splits the disclosure of impacts,
8 thereby making those impacts appear less severe. Respondents also failed to
9 adequately address the potential dispersion of spores in the soil that cause Valley
10 Fever that may be disrupted during the construction process and operation of
11 the Project or the source of the construction water that will be necessary for dust
12 control.

13 t. Additionally, the proposed mitigation measures are incomplete
14 and ineffective. CEQA requires an EIR to identify specific mitigation measures
15 that will avoid or reduce the significant impacts of a proposed project. (CEQA
16 Guidelines § 15126.4.) Proposed mitigation measures must be sufficiently specific
17 to ensure they are enforceable and effective. (*Vineyard Area Citizens, supra*, 40
18 Cal.4th at 444.) Vague, incomplete, or speculative mitigation measures are
19 insufficient under CEQA. (*Federation of Hillside & Canyons Assn. v. City of Los*
20 *Angeles* (2000) 83 Cal.App.4th 1252, 1260.) The discussion of mitigation measures
21 in each section of the FEIR fails to identify mitigation measures with sufficient
22 specificity to gauge their effectiveness and enforceability. Few, if any, of the
23 recommended measures identify who is to perform the mitigation, what action is
24 required, when the mitigation must be performed, or how it is to be
25 accomplished. Respondents also did not discuss or disclose how their approval of
26 only a portion of the proposed Section evaluated in the FEIR, stopping the Section
27 at Petitioner's northern boundary, affected the mitigation measures identified in
28 the FEIR for the entire Section. Further, under CEQA, an essential component of

1 an adequate discussion of mitigation measures is an assessment of whether the
2 proposed measures would be effective. (*South Fork Band Council of Western*
3 *Shoshone of Nevada v. U.S. Dept. of Interior* (9th Cir. 2009) 588 F.3d 718, 727;
4 *Vineyard Area Citizens, supra*, 40 Cal.4th at 444.) The FEIR is inadequate because
5 it improperly defers the formulation of necessary mitigation measures. (CEQA
6 Guidelines § 15126.4(a)(1)(B).) In many critical areas, necessary mitigation
7 measures or critical components of the measures are left for future determination.
8 Where the mitigation measures are not identified and agreed on, the conclusion
9 that impacts will be mitigated is unsupportable. (*Communities for a Better*
10 *Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 95-96.)

11 u. In addition, the FEIR repeatedly conditions the implementation
12 of necessary mitigation measures with the words "where possible" or "to the extent
13 feasible," which violates CEQA by improperly delegating the determination of
14 whether or what mitigation will be performed to unnamed persons and making it
15 uncertain whether the significant impact will or will not be mitigated to a level
16 below significance. In other instances there are statements made "implement
17 measures to..." but there are no specific measures mentioned, which implies
18 those details will be resolved at a later date. Indeed, the typical discussion
19 concerning impact mitigation identifies the possibility of significant impacts,
20 mentions an array of undefined and generalized mitigation measures that "may"
21 or "could" be implemented and then states the conclusion that the identified
22 potential impacts would not be significant with mitigation. The FEIR, however, fails
23 to specifically explain how and to what extent the poorly defined mitigation
24 measures will effectively reduce impacts. As a result, it is impossible for public and
25 the decision makers to know whether the measures will be effective and
26 enforceable.

27 v. Further, impacts caused by mitigation are inadequately
28 analyzed, or not analyzed at all in the FEIR. Examples include:

1 (1) The FEIR fails to analyze impacts caused by mitigation
2 measures calling for freeway and roadway modifications. The FEIR
3 describes many traffic mitigation measures that would themselves cause
4 impacts. Widening roadways and adding lanes at many intersections
5 throughout the region will certainly cause traffic, air quality, noise, and
6 other impacts that must be analyzed.

7 (2) The FEIR fails to analyze impacts caused by sound walls.
8 To address noise impacts, the FEIR includes a mitigation measure that
9 allows the construction of sound barriers/walls as a possible measure. The
10 FEIR includes maps that identify "potential mitigation noise locations" but
11 does not specify where such sound walls would likely be built, or identify
12 criteria to determine the location and characteristics of sound walls. While
13 the FEIR acknowledges that sound walls may have visual impacts, it fails to
14 analyze such impacts at a site-specific level or suggest any measures that
15 could reduce those impacts.

16 (3) The FEIR fails to analyze impacts caused by habitat
17 restoration activities. Some mitigation measures for impacts to biological
18 resources call for habitat restoration and enhancement activities. While
19 these activities may be considered benign, they can have adverse
20 environmental impacts that the Authority must analyze.

21 (4) The FEIR does not consider a reasonable range of
22 alternatives. An EIR is required to analyze a reasonable range of
23 alternatives that will fulfill the fundamental objectives of a proposed project
24 and will avoid or substantially reduce any of its significant environmental
25 effects. (40 CFR § 1502.14; CEQA Guidelines § 15126.6.) Under CEQA, it is
26 the lead agency's responsibility, not the public's or responsible agencies'
27 duty to identify feasible alternatives. (*Laurel Heights Improvement Assn. v.*
28 *Regents of University of California* (1988) 47 Cal.3d 376, 405.) The range of

1 alternatives discussed in an EIR must be sufficiently broad that it "will foster
2 informed decision making and public participation." (CEQA Guidelines §
3 15126.6(a); *Center for Biological Diversity v. U.S. Dept. of Interior* (9th Cir.
4 2010) 623 F.3d 633, 642-643.) The existence of reasonable but unexamined
5 alternatives renders an EIR inadequate. (*Ibid.*) The FEIR fails to comply with
6 CEQA because it did not consider a reasonable range of alternatives and
7 instead, except for the mandatory "no project" alternative, examined only
8 minor variations in portions of the proposed alignment. The FEIR's failure to
9 consider other alternatives that could avoid or substantially reduce any of
10 the Project's significant impacts, such as an alignment that follows
11 established transportation corridors or an alternative technology that would
12 avoid or minimize one or more significant impacts (e.g., maglev), renders
13 the analysis inadequate and incomplete.

14 (5) Also, Respondents failed to provide meaningful
15 responses in the FEIR to Petitioner's and others' comments. CEQA requires
16 a lead agency to provide meaningful responses to public and agency
17 comments. (Pub. Resources Code § 21091(d)(2); CEQA Guidelines §
18 15088.) "Comment noted" is not a meaningful response. If a comment
19 does not warrant further response, the lead agency is required to explain
20 why, "citing the sources, authorities, or reasons which support the agency's
21 position and, if appropriate, indicate those circumstances which would
22 trigger agency reappraisal or further response." (40 CFR § 1503.4(a)(5).)
23 The lead agency's responses to comments must describe the disposition of
24 all significant environmental issues raised in the comments and must
25 provide detailed, reasoned, good-faith analysis of the issues raised. (CEQA
26 Guidelines § 15088(c); see also *Santa Clarita Organization for Planning the*
27 *Environment v. County of Los Angeles* (2003) 106 Cal.App.4th 715, 722-723
28

1 (SCOPE).) Conclusory statements unsupported by factual information are
2 not an adequate response. (Ibid.)

3 w. Petitioner further incorporates herein its comment letters to the
4 DEIR, RDEIR, and FEIR and its April 1, 2014 letter to Melissa DuMond of the US
5 Department of Transportation, and the objections contained therein, all of which
6 are part of the record related to the FEIR, as though fully set forth herein.

7 11. As a result of the foregoing defects, Respondents prejudicially
8 abused their discretion by certifying a FEIR that does not comply with CEQA and
9 by approving a portion of the Section in reliance thereon. Accordingly, the
10 Section Approvals must be set aside and declared void. Respondents must be
11 prohibited from taking any further actions with respect to the Section until they
12 have complied with the applicable legal requirements.

13 **SECOND CAUSE OF ACTION**

14 **(VIOLATION OF CEQA: FAILURE TO RECIRCULATE FEIR)**

15 12. Petitioner re-alleges and incorporates by reference the preceding
16 paragraphs in their entirety, as though fully set forth herein.

17 13. Under CEQA, a lead agency has a duty to recirculate a draft EIR for
18 public review when any significant new information is added to the draft EIR after
19 its previous circulation for public review and comments. In addition, recirculation
20 is required if new circumstances have arisen after the close of the previous public
21 comment period that would require substantial revisions to the draft EIR.

22 14. On May 2, 2014, CHSRA issued errata to the FEIR, which significantly
23 altered the FEIR.

24 15. Respondents did not recirculate the FEIR for public comment after
25 inserting the significant new information. In failing to recirculate the FEIR for public
26 comment after inserting significant new information, Respondents violated CEQA,
27 specifically Public Resources Code section 21092.1 and CEQA Guidelines section
28 15088.5.

1 16. By failing to recirculate the FEIR, Respondents deprived members of
2 the public and other public agencies, including responsible and trustee agencies,
3 the opportunity to review and comment on the new impact analysis, the
4 significance of the Section's various impacts under the FEIR's new analysis,
5 possible mitigation measures for the newly disclosed impacts, the cumulative
6 impacts of the Section under the new impact analysis, and alternatives that
7 could lessen the newly disclosed impacts.

8 17. By failing to recirculate the FEIR for public review and comment,
9 Respondents abused their discretion. Accordingly, the Section Approvals must be
10 set aside and declared void. Respondents must be prohibited from taking any
11 further actions with respect to the Section until they have complied with the
12 applicable legal requirements.

13 **THIRD CAUSE OF ACTION**

14 **(VIOLATIONS OF CEQA: INADEQUATE CEQA REQUIRED FINDINGS;**
15 **UNSUPPORTED STATEMENT OF OVERRIDING CONSIDERATIONS)**

16 18. Petitioner re-alleges and incorporates by reference the preceding
17 paragraphs in their entirety, as though fully set forth herein.

18 19. Prior to approving a project for which an EIR has been certified,
19 CEQA requires the lead agency to adopt one of three possible findings
20 concerning each significant impact identified in the EIR ("CEQA Findings"). The
21 CEQA Findings must be supported by substantial evidence in the administrative
22 record of proceedings.

23 20. Respondents prejudicially abused their discretion by failing to
24 proceed in the manner required by law by adopting CEQA Findings that are not
25 supported by substantial evidence. For example, Respondents failed to provide
26 substantial evidence of the efficacy of mitigation proposed for numerous Section
27 impacts, thereby precluding accurate conclusions concerning the minimization
28 of such impacts.

1 21. Where a significant impact cannot be mitigated to a less-than-
2 significant level, CEQA allows a lead agency to adopt what is known as a
3 "statement of overriding considerations." (Public Resources Code § 21081, subd.
4 (b).)

5 22. Respondents prejudicially abused their discretion by failing to
6 proceed in the manner required by law by adopting a Statement of Overriding
7 Considerations that is not supported by substantial evidence. Respondents have
8 downplayed the Section's impacts and have overstated its anticipated benefits.

9 23. Accordingly, the Section Approvals must be set aside and declared
10 void. Respondents must be prohibited from taking any further actions with
11 respect to the Section until they have complied with the applicable legal
12 requirements.

13 **FOURTH CAUSE OF ACTION**

14 **(DECLARATORY RELIEF)**

15 24. Petitioner re-alleges and incorporates by reference the preceding
16 paragraphs in their entirety, as though fully set forth herein.

17 25. Petitioner seeks a judicial declaration that Respondents' certification
18 of the FEIR and approval of the Section failed to comply with the requirements of
19 CEQA.

20 26. Respondents have a mandatory duty to comply with CEQA and
21 other legal requirements applicable to the Section and the Project as a whole.

22 27. Petitioner has the right to enforce these mandatory duties.

23 28. Petitioner has no other plain, speedy, and adequate remedy at law,
24 and will suffer irreparable injury unless it receives the relief requested in this
25 Petition.

26 29. An actual controversy exists between Petitioner and Respondents as
27 to whether the actions and conduct of Respondents alleged in this Petition have
28 violated CEQA and other laws as identified herein. This controversy implicates the

1 legality of the manner in which Respondents have proceeded in giving the
2 Section Approvals, the validity of the Respondents' actions with respect thereto
3 and, consequently, the legal ability of Respondents to take further actions to
4 develop the Section based upon the Section Approvals. The Petitioner contends
5 that each and all such actions and conduct have violated and will violate these
6 laws. Petitioner is informed and believes, and based thereon alleges, that
7 Respondents dispute these contentions. A judicial resolution of that controversy is
8 now required pursuant to California Code of Civil Procedure section 1060.

9 30. Petitioner requests a judicial declaration that Respondents' actions
10 and conduct alleged in this Petition have violated and will violate CEQA and
11 other laws identified herein. Such declaration is necessary and appropriate at
12 this time under the circumstances in order that Petitioner and Respondents may
13 ascertain their rights and duties.

14 31. Petitioner has no plain, speedy, or adequate remedy in the ordinary
15 course of law. No money damages or other legal remedy could adequately
16 compensate Petitioner for the harms described in the preceding paragraphs.

17 **FIFTH CAUSE OF ACTION**

18 **(INJUNCTIVE RELIEF)**

19 32. Petitioner re-alleges and incorporates by reference the preceding
20 paragraphs in their entirety, as though fully set forth herein.

21 33. Respondents are threatening to proceed with development and
22 construction of the Section in the near future. This action will bring irreparable
23 harm to Petitioner and all others who reside, work, or own property within
24 Petitioner's jurisdiction and will cause significant environmental impacts, as set
25 forth above, that will not be avoided or fully mitigated to the extent feasible. A
26 temporary restraining order and preliminary and permanent injunction should
27 issue restraining Respondents from taking any further action related to the
28 Section.

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1 3. That the Court determine and declare that the FEIR for the Section is
2 inadequate as a matter of law;

3 4. That the Court determine and declare that the CEQA Findings and
4 Statement of Overriding Considerations are inadequate and not supported by
5 substantial evidence and, as such, are void;

6 5. That the Court issue a temporary restraining order, preliminary
7 injunction, and permanent injunction restraining Respondents from taking any
8 further action related to the Section pending trial;

9 6. That, upon motion of Petitioner pursuant to Code of Civil Procedure
10 section 1021.5, the Court award and order Respondents to pay Petitioner's
11 reasonable attorneys' fees in connection with this proceeding;

12 7. That the Court order Respondents to pay Petitioner's costs of suit; and

13 8. That the Court order such other and further relief as may be just and
14 reasonable.

15 DATED: June 3, 2014

VIRGINIA GENNARO
City Attorney

16
17
18 By: 


ANDREW HEGLUND
Deputy City Attorney
Attorneys for Plaintiff and Petitioner,
City of Bakersfield

VERIFICATION

I, Alan Tandy, declare:

I am the City Manager for the City of Bakersfield, the Petitioner in this action, and I have been authorized to make this verification on its behalf. I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief, and know its contents thereof; the statements made in the document are true of my own knowledge except as to matters therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed at Bakersfield, California on June 3rd, 2014.


ALAN TANDY

AH:lsc

S:\Litigation\CHSRA (CEQA)\Pldgs\PetitionWritMandate.docx

EXHIBIT A

CITY ATTORNEY
VIRGINIA GENNARO

DEPUTY CITY ATTORNEY
Joshua H. Rudnick
Andrew Heglund

ASSOCIATE ATTORNEY
Richard Iger
Thomas Geddes



CITY OF BAKERSFIELD
OFFICE OF THE CITY ATTORNEY

1600 TRUXTUN AVENUE
FOURTH FLOOR
BAKERSFIELD, CA 93301

TELEPHONE: 661-326-3721
FACSIMILE: 661-852-2020

May 29, 2014

Via Facsimile & U.S. Mail

Jeff Morales, Chief Executive Officer
California High Speed Rail Authority
770 L Street, Suite 800
Sacramento, CA 95814

(916-654-2630)

Thomas Fellenz, Chief Counsel
California High-Speed Rail Authority
1415 11th Street, Room 1315
Sacramento, CA 95814

(916-322-0827)

Re: Notice of Intent to Commence CEQA Action and Proceeding

Gentlemen:

PLEASE TAKE NOTICE, under California Public Resources Code section 21167.5, that Petitioner, City of Bakersfield, intends to immediately file a Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief ("Petition") under the provisions of the California Environmental Quality Act ("CEQA"), inter alia, against the California High Speed Rail Authority ("CHSRA"). The Petition will be filed in Sacramento County Superior Court and will allege, inter alia, that the Environmental Impact Report/Environmental Impact Statement prepared and certified in connection with the approval of the proposed Fresno to Bakersfield section of the High-Speed Rail Project at the meeting of the CHSRA Board on May 6 and 7, 2014, and referenced in the Notice of Determination filed May 8, 2014, does not comply with CEQA.

Very truly yours,

ANDREW HEGLUND
Deputy City Attorney

PROOF OF SERVICE

I am over the age of eighteen years and not a party of the within action; my business address is 1600 Truxtun Avenue, 4th Floor, Bakersfield, California 93301.

On the date last written below, I served the attached **NOTICE OF INTENT TO COMMENCE CEQA ACTION AND PROCEEDING** on the party(ies) listed below, through their attorneys of record, if any, by facsimile transmission, by personal delivery or by placing true copies/originals thereof in sealed envelope(s) addressed/designated as shown below:

A. BY MAIL - I enclosed such document in a sealed envelope(s) with the name(s) and address(es) of the person(s) served as shown on the envelope(s) and caused such envelope(s) to be deposited in the mail at Bakersfield, California. The envelope(s) was/were mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

B. BY OVERNIGHT SERVICE - I caused each such envelope to be delivered by overnight service to the addressee(s) noted below.

C. BY FACSIMILE SERVICE - I placed such document in a facsimile machine (pursuant to *California Rules of Court*, Rule 2.306 with the fax number of (661) 852-2020. Upon facsimile transmission of the document, I obtained a report from the transmitting facsimile machine stating that the facsimile transmission was complete and without error. A copy of the transmission report is attached to this Proof of Service pursuant to *California Rules of Court*, Rule 2.306(h)(4).

D. BY PERSONAL SERVICE - I caused such envelope(s) to be delivered by hand to the addressee(s) below listed.

<u>TYPE OF SERVICE</u>	<u>ADDRESSEE</u>	<u>FAX NO.</u>
A, C	California High Speed Rail Authority Attn: Jeff Morales, Chief Executive Officer 770 L Street, Suite 800 Sacramento, CA 95814	916-654-2630
A, C	California High Speed Rail Authority Attn: Thomas Fellenz, Chief Counsel 1415 11 th Street, Room 1315 Sacramento, CA 95814	916-322-0827

X **(STATE)** I declare under penalty of perjury under the laws of the state of California that the above is true and correct.

 (FEDERAL) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on May 29, 2014, at Bakersfield, California.


LINDA COHEN



SUPERIOR COURT OF CALIFORNIA

**County of Sacramento
720 Ninth Street Room 102
Sacramento, CA 95814-1380
(916) 874-5522
www.saccourt.ca.gov**

**NOTICE OF CASE ASSIGNMENT
Proceeding for Writ of Mandate and/or Prohibition**

Case Number : 34-2014-80001866-CU-WM-GDS

This case has been assigned for all purposes to the judicial officer indicated below pursuant to rule 3.734 of the California Rules of Court and Sacramento Superior Court Local Rule 2.01; it is exempt from the requirements of the Trial Court Delay Reduction Act and the Case Management Program under Chapter 11 of the Sacramento Superior Court Local Rules.

JUDGE	COURT LOCATION	DEPT.
Shelleyanne W L Chang	Gordon D. Schaber Courthouse	24

The petitioner shall serve all parties with a copy of this order and a copy of the Sacramento Superior Court Guide to the Procedures for Prosecuting Petitions for Prerogative Writs. The Guide is available in Room 102 of the courthouse, from the clerk of the department to which this matter has been assigned, and on the "Civil" page of the Sacramento Superior Court internet website (www.saccourt.ca.gov).

Scheduling

Contact the clerk in the assigned department to schedule any judicial proceedings in this matter, including hearings on ex parte applications and noticed motions.

JUDGE	DEPT.	PHONE
Hon. Shelleyanne W.L. Chang	24	(916) 874-6687
Hon. Timothy M. Frawley	29	(916) 874-5684
Hon. Michael P. Kenny	31	(916) 874-6353
Hon. Allen H. Sumner	42	(916) 874-5672

Other Information

Pursuant to Local Rule 2.01, all documents submitted for filing in this case shall be filed in person at the Civil Front Counter (Room 102) or by mail addressed to the Clerk of the Sacramento Superior Court, Attn: Civil Division-Room 102, with the exception of certain documents filed on the day of the hearing. For specific requirements, please see the Sacramento Superior Court Guide to the Procedures for Prosecuting Petitions for Prerogative Writs.

Any administrative record must be lodged with the assigned department.

Date: 06/09/2014

Signed: /s/ R. Torres

Rudy Torres, Deputy Clerk