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Superior Court Of California,  
Sacramento  
06/05/2014  
emuniz  
By \_\_\_\_\_, Deputy  
Case Number:  
34-2014-80001859

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SACRAMENTO -- GORDON D. SCHABER COURTHOUSE

COFFEE-BRIMHALL LLC,  
  
Petitioner-Plaintiff,  
  
v.  
  
CALIFORNIA HIGH SPEED RAIL  
AUTHORITY, a public entity,  
CALIFORNIA HIGH SPEED RAIL  
AUTHORITY BOARD OF DIRECTORS,  
and DOES 1 through 20, inclusive,  
  
Respondents-Defendants.

CASE NO.

**VERIFIED PETITION FOR WRIT OF  
MANDATE FOR VIOLATIONS OF THE  
CALIFORNIA ENVIRONMENTAL  
QUALITY ACT; COMPLAINT FOR  
INJUNCTIVE AND DECLARATORY  
RELIEF**

[California Environmental Quality Act  
("CEQA"), Public Resources Code, sections  
21000 et seq.]

## INTRODUCTION

1. The California High Speed Rail Authority abused its discretion when it certified a legally inadequate environmental impact report and approved construction of a 114-mile segment from Fresno to Bakersfield of the proposed statewide high speed train project. The Authority's actions violated the California Environmental Quality Act and must be set aside.

2. The Authority's approval of the Fresno to Bakersfield segment prolongs a troubling trend regarding the statewide rail project's planning, design, and environmental review. Courts have repeatedly found that the Authority has cut corners, ignored inconvenient facts, and failed to disclose to decisionmakers and the public the full breadth and scope of the environmental impacts that this massive infrastructure project will cause.

3. Uncertainty continues to cloud the project's disparate and inadequate sources of funding and its purported benefits, even as the project's price tag soars. Regardless, the Authority charges full speed ahead in an apparent effort to stay one step ahead of budget cuts and closing windows of funding. The Authority's environmental review for the segment of the project running between Fresno and Bakersfield, which is the subject of this action, is the latest example of the Authority's determination to press forward no matter the costs.

4. The Fresno to Bakersfield segment is a 114-mile portion of the so-called high-speed train system from Los Angeles to San Francisco. This 114 miles of new tracks, tunnels, bridges, stations, and associated facilities would be built across a broad swath of the San Joaquin Valley between Fresno and Bakersfield. The segment would destroy and divide densely populated areas in the cities of Fresno and Bakersfield, some of the world's best agricultural land, and verdant landscapes. The alignment the Authority approved does not follow existing transportation corridors along Interstate 5 and State Route 99. Rather, the approved alignment deviates from existing corridors and would cut new paths across thousands of acres of farmland, residential neighborhoods, and fully developed commercial centers, and would disrupt existing roads, utility service facilities, and wildlife areas.

5. The Authority admits that this segment's construction and operation would cause extensive environmental impacts across 114 miles of the San Joaquin Valley. As just a few

1 examples, the segment would destroy prime farmland and historic resources, would cause severe  
2 noise and vibration impacts on residences and businesses adjacent to the tracks, would increase  
3 traffic that it is intended to reduce, and would conflict with local land use plans. Many of these  
4 impacts would fall disproportionately on minority and low-income populations in Fresno,  
5 Corcoran, Wasco, Shafter, and Bakersfield, as well as rural areas up and down the San Joaquin  
6 Valley.

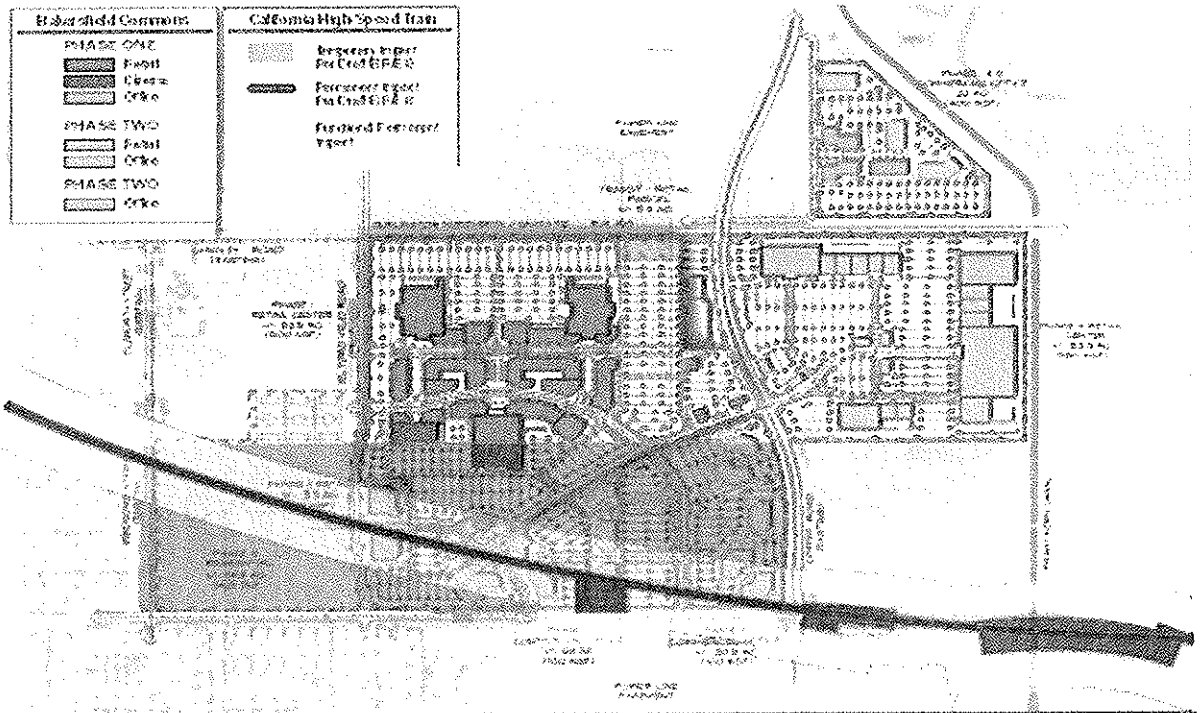
7         6.         Petitioner-Plaintiff Coffee-Brimhall LLC owns several parcels at the intersection  
8 of Coffee Road and Brimhall Road in Bakersfield, where it has entitlements to build a vibrant,  
9 community-oriented mixed-use development known as Bakersfield Commons. The proposed  
10 alignment for the segment would run directly through Bakersfield Commons and would  
11 significantly damage Petitioner-Plaintiff Coffee-Brimhall LLC's development plans. The  
12 Authority's environmental impact report for the segment fails to disclose and mitigate adequately  
13 the significant impacts that the project will have on Bakersfield Commons.

14         7.         Accordingly, Coffee-Brimhall LLC brings this action under the California  
15 Environmental Quality Act to set aside the Authority's approval of the Fresno to Bakersfield  
16 segment and certification of the environmental impact report, and respectfully petitions the Court  
17 to require the Authority to comply with the law.

#### 18                                 **PARTIES**

19         8.         Petitioner-Plaintiff Coffee-Brimhall LLC ("Petitioner") is a California limited  
20 liability corporation that owns approximately 255 acres of land at the intersection of Coffee Road  
21 and Brimhall Road in Bakersfield. Petitioner has received approvals from the City of  
22 Bakersfield to build a vibrant mixed-use development consisting of upscale retailers, parks and  
23 pedestrian paths, extensive landscaping, 425 dwelling units, and office space on the property (the  
24 "Bakersfield Commons Community"). The Fresno to Bakersfield segment of the high speed  
25 train project ("Fresno-to-Bakersfield Segment" or "Segment"), as analyzed in the final  
26 environmental impact report/environmental impact statement ("EIR"), would cross the  
27 Bakersfield Commons Community, as shown below. The approximate location of where the  
28 Segment would cut through the Bakersfield Commons Community is shown in red and yellow.

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9. The Segment also proposes to take “temporarily” nearly the entirety of the Bakersfield Commons Community during the Segment’s construction. After construction, the Segment would permanently occupy a vast swath of the Bakersfield Commons Community with elevated tracks and supporting systems.

10. Respondent-Defendant California High Speed Rail Authority (“Authority”) is an independent state authority established by the California Legislature in 1996. The Authority is charged with planning, designing, building, and operating a high-speed train system between Los Angeles and San Francisco. The Authority is governed by a nine-member Board of Directors (the “Board”). The Authority, its staff, and its agents prepared the Segment’s EIR. The Authority is the Segment’s lead agency under the California Environmental Quality Act (“CEQA”). The Board certified the EIR and approved the Segment on May 7, 2014.

11. Respondent-Defendant California High Speed Rail Authority Board of Directors was established in 2003 by California Public Utilities Code section 185020. The Board consists of nine members. The Board is responsible for overseeing planning, construction, and operation of the statewide high speed train system. The Board is also responsible for development and approval of all of the Authority’s key policy documents, including the EIR.

1           12.     The true names or capacities, whether individual, corporate, associate, or  
2 otherwise, of Respondents-Defendants Does 1 through 20 are unknown to the Petitioner, who  
3 therefore sues those Respondents-Defendants by such fictitious names. Petitioner may amend  
4 this Petition to show their true names and capacities when ascertained.

5                                   **JURISDICTION AND VENUE**

6           13.     The Court has jurisdiction pursuant to sections 526, 1060, 1085 and 1094.5 of the  
7 Code of Civil Procedure, and sections 21168 and 21168.5 of the Public Resources Code.

8           14.     Venue is proper in the County of Sacramento under California Public Utilities  
9 Code section 185038, which requires actions against the Authority to be brought in this Court.

10          15.     Petitioner complied with the requirements of California Public Resources Code  
11 section 21167.5 by sending a Notice of Commencement of Action to Respondent-Defendant  
12 Authority by certified mail prior to filing the original Petition in this matter. A true and correct  
13 copy of this notice and proof of mailing, excluding the enclosed Petition, is attached as Exhibit  
14 A.

15          16.     Petitioner complied with the requirements of California Public Resources Code  
16 section 21167.7 and Code of Civil Procedure section 388 by sending a copy of the Petition to the  
17 California Attorney General by certified mail. A true and correct copy of this notice and proof of  
18 mailing, excluding the enclosed Petition, is attached as Exhibit B.

19                                   **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

20          17.     Petitioner participated fully in the Segment's administrative process. Petitioner  
21 objected to the Segment during the administrative process before the Authority, testified at  
22 public hearings, submitted expert evidence, and raised numerous issues in written comments,  
23 including all issues raised in this Petition. Petitioner fully exhausted its administrative remedies.

24          18.     Petitioner requests that Respondent-Defendant Authority prepare the  
25 administrative record.  
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1 STATEMENT OF FACTS

2 I. HIGH-SPEED RAIL AUTHORITY BACKGROUND AND HISTORY OF  
3 LITIGATION LOSSES

4 A. The Authority's Formation and the High Speed Rail Project Statewide  
5 Program EIR

6 19. The story of how the Authority got to this point is long and replete with CEQA  
7 violations.

8 20. The California Statewide High-Speed Rail Program started in 1996 with Senate  
9 Bill (SB) 1420 (Public Utilities Code, § 185000, *et seq.*), also known as the "High-Speed Rail  
10 Act." SB 1420 created the Authority and directed that it develop and implement an intercity  
11 high-speed rail service and formulate a financial plan to pay for construction of the high-speed  
12 rail network. Under the Act, the high-speed rail system was required to be "fully integrated with  
13 the state's existing intercity rail and bus network, consisting of interlinked conventional and  
14 high-speed rail lines and associated feeder buses. The intercity network in turn shall be fully  
15 coordinated and connected with commuter rail lines and urban rail transit lines developed by  
16 local agencies, as well as other transit services, through the use of common station facilities  
17 whenever possible."

18 21. Between 1997 and 2004, the Authority studied a variety of issues surrounding the  
19 implementation of a high-speed rail service in California. In 1999 the Authority published its  
20 1999 Corridor Evaluation Report and in the year 2000 the Authority published its 2000 Business  
21 Plan. In 2001, the Authority and the Federal Railroad Administration ("FRA"), the federal lead  
22 agency for the statewide high speed rail project under the National Environmental Policy Act  
23 ("NEPA"), began work on a joint programmatic Environmental Impact Statement/Environmental  
24 Impact Report for the statewide high speed rail project.

25 22. The Authority and FRA released a Draft Programmatic Environmental Impact  
26 Statement/Environmental Impact Report in January 2004. The Authority and FRA received  
27 hundreds of written comments on the document and received public commentary during hearings  
28 and meetings from hundreds more interested parties, including federal, state and local agencies,

1 organizations, businesses, and individuals. The commenters raised numerous concerns about the  
2 project, particularly with regard to the environmental impacts imposed by siting a new rail line  
3 through existing commercial, residential, and agricultural areas.

4       23. The Authority certified the Final Program Environmental Impact  
5 Report/Environmental Impact Statement for the statewide project ("Statewide Program EIR") in  
6 November 2005. At the same time, the Authority approved a high speed train system for  
7 intercity travel in California. This high speed train system was approximately 800 miles long  
8 and stretched from San Diego and Los Angeles in the south to the San Francisco Bay Area and  
9 Sacramento in the north. The system was to include electric propulsion and steel-wheel-on-steel-  
10 wheel technology. Trains capable of maximum operating speeds of approximately 220 miles per  
11 hour on mostly dedicated, fully grade-separated, access-controlled tracks, with safety, signaling,  
12 communication, and automated train control systems were proposed. The Statewide Program  
13 EIR described at a very general and vague level the types of impacts that would result from  
14 implementing the system. The Statewide Program EIR also included a very brief explanation  
15 regarding staff's consideration and ultimate rejection of an alignment along Interstate 5 through  
16 the San Joaquin Valley. The Statewide Program EIR deferred the decision concerning the  
17 project's route through the Central Valley to a later date.

18       **B. The Courts Set Aside the Authority's EIRs for Other Segments**

19       24. In July 2007, the Authority released the Draft Program EIR for the Bay Area to  
20 Central Valley segment of the statewide high speed rail project. A Final Program EIR was  
21 released by the Authority in May 2008 and was certified in June 2008.

22       25. The Final Program EIR for the Bay Area to Central Valley segment was  
23 challenged by public entities and private groups (*Town of Atherton, et al. v. California High*  
24 *Speed Rail Authority*, Sacramento Superior Court Action No. 34-2008-800000022 ("*Atherton*  
25 *I'*")). These parties alleged that the Authority violated CEQA because the Final Program EIR did  
26 not properly disclose environmental impacts and because the Authority arbitrarily selected the  
27 alignment for this segment.  
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1           26.     In August 2009, the Superior Court issued a writ of mandate commanding the  
2 Authority to set aside its certification and approval of the Final Program EIR for the Bay Area to  
3 Central Valley segment. (Ruling on Submitted Matter, Sacramento Superior Court Action No>  
4 34-2008-80000022, Aug. 26, 2009.)

5           27.     The court found that the Authority violated CEQA in several respects. Most  
6 egregiously, the court found that the Authority erred by ignoring multiple letters from Union  
7 Pacific Railroad informing the Authority that Union Pacific would not permit the Authority to  
8 share its right-of-way in the vicinity of San Jose and Gilroy. (*Id.* at 19-20.) These letters were  
9 received before publication of the Final Program EIR and then again before the document was  
10 certified. The Authority ignored them despite the Final Program EIR's admission that the  
11 segment was dependent on shared track with Union Pacific. The Final Program EIR also  
12 misstated or underestimated impacts in numerous areas, including the potential that the Authority  
13 would need to use eminent domain to acquire additional property for the new high speed train  
14 line. (*Id.*) The court also found stark inconsistencies between the Final Program EIR's impact  
15 analysis related to significant and unavoidable vibration impacts from the proposed train line and  
16 the findings adopted by the Board, which asserted, without support, that vibration impacts would  
17 be less than significant. This lack of attention to detail and willingness to overlook analytical  
18 inconsistencies would come back to plague the Authority in the coming years.

19           28.     The Authority did not appeal the court's ruling. Rather, the Authority released  
20 and certified a Revised EIR for the Bay Area to Central Valley segment. This action was  
21 challenged again (*Town of Atherton, et al. v. California High Speed Rail Authority*, Sacramento  
22 Superior Court Action No. 34-2010-80000679 ("*Atherton II*") in October 2010. Again the  
23 Superior Court found that the Authority violated CEQA. (Ruling on Submitted Matter,  
24 Sacramento Superior Court Action No. 34-2010-80000679, Nov. 10, 2011.)

25           29.     As in *Atherton I*, the court found that the Authority had rushed to certify its  
26 revised Final EIR, and in the process had failed to account adequately for new information which  
27 emerged during the EIR process which proved fatal to the impact conclusions in the document.  
28 In this case, the new information the Authority ignored related to traffic changes and shifts in the



1 vicinity of the proposed train right-of-way. The Authority's haste once again violated CEQA.

2 30. Again the Authority did not appeal. The Authority prepared a Partially Revised  
3 Draft EIR for the Bay Area to Central Valley segment in January 2012 that addressed only the  
4 defects identified in *Atherton II*. The Authority certified the Final Partially Revised EIR in April  
5 2012. The Authority's action was not challenged.

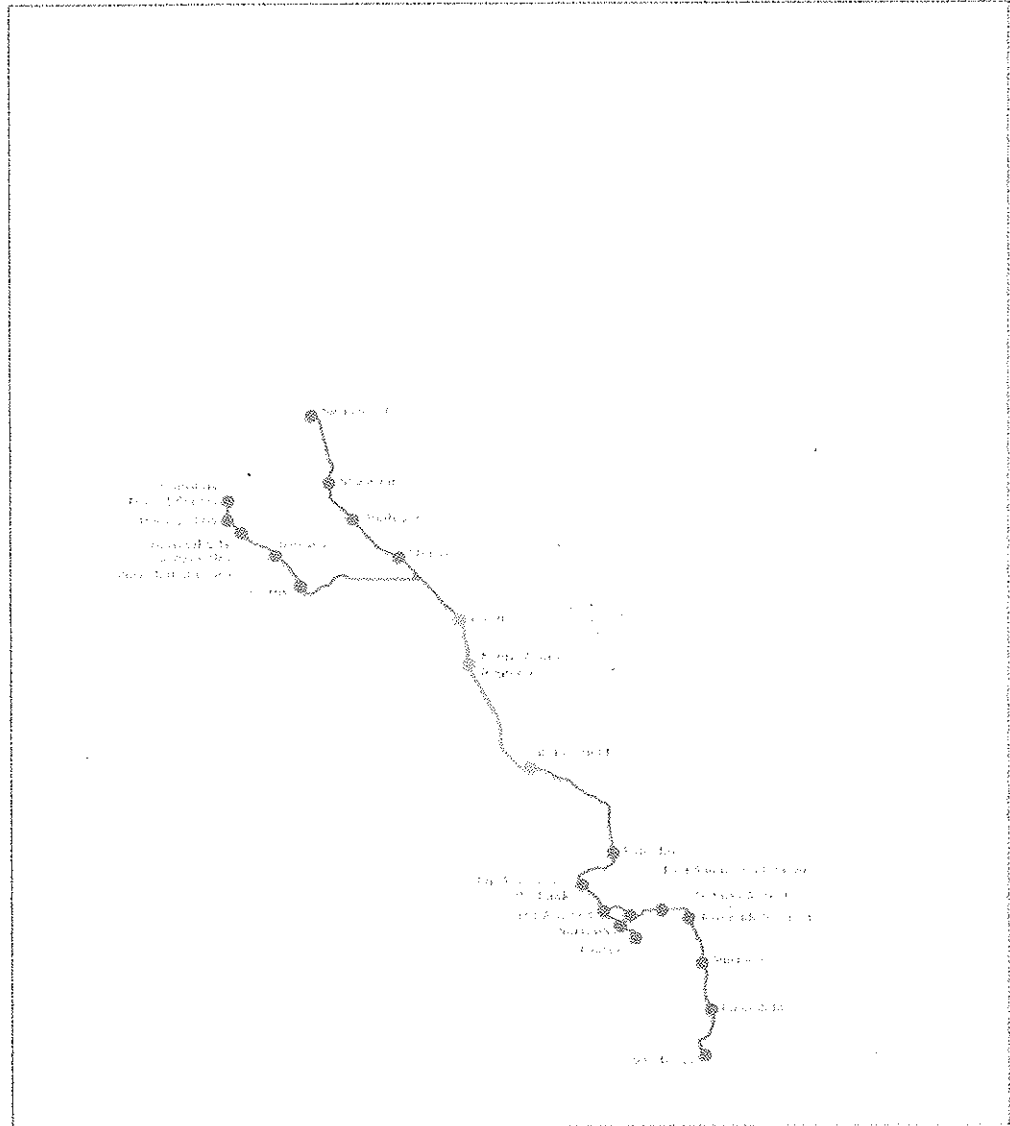
6 31. In August 2011, the Authority and FRA released the Draft EIR for the Merced to  
7 Fresno section of the statewide high-speed train system. Following public comment and input,  
8 the Final EIR for this segment was released in April 2012. The Authority certified the Final EIR  
9 for this segment and approved this segment of the statewide project in May 2012. These actions  
10 were immediately challenged by a coalition of petitioners including the Madera County Board of  
11 Supervisors, Farm Bureaus in Madera and Merced counties, Preserve Our Heritage, Chowchilla  
12 Water District, and the Fagundes farming family in Madera and Merced counties. In April 2013,  
13 and following months of negotiations, these groups settled their lawsuit with the Authority. The  
14 terms of the settlement agreement required the Authority to purchase agricultural easements in  
15 the San Joaquin Valley to compensate for the loss of farmland caused by construction of the rail  
16 line and, further, to create an agricultural land mitigation fund of \$5,000,000 to purchase  
17 additional conservation easements beyond those required to compensate for farmland directly  
18 affected. In addition, among other provisions, the Authority agreed to consult with landowners  
19 along the project route regarding acquisition of properties and to pay the legal fees of the parties  
20 that brought the lawsuit, totaling nearly \$1,000,000.

## 21 **II. THE FRESNO TO BAKERSFIELD SEGMENT'S ENVIRONMENTAL REVIEW** 22 **PROCESS**

### 23 **A. Preparation of the Segment's Draft EIR**

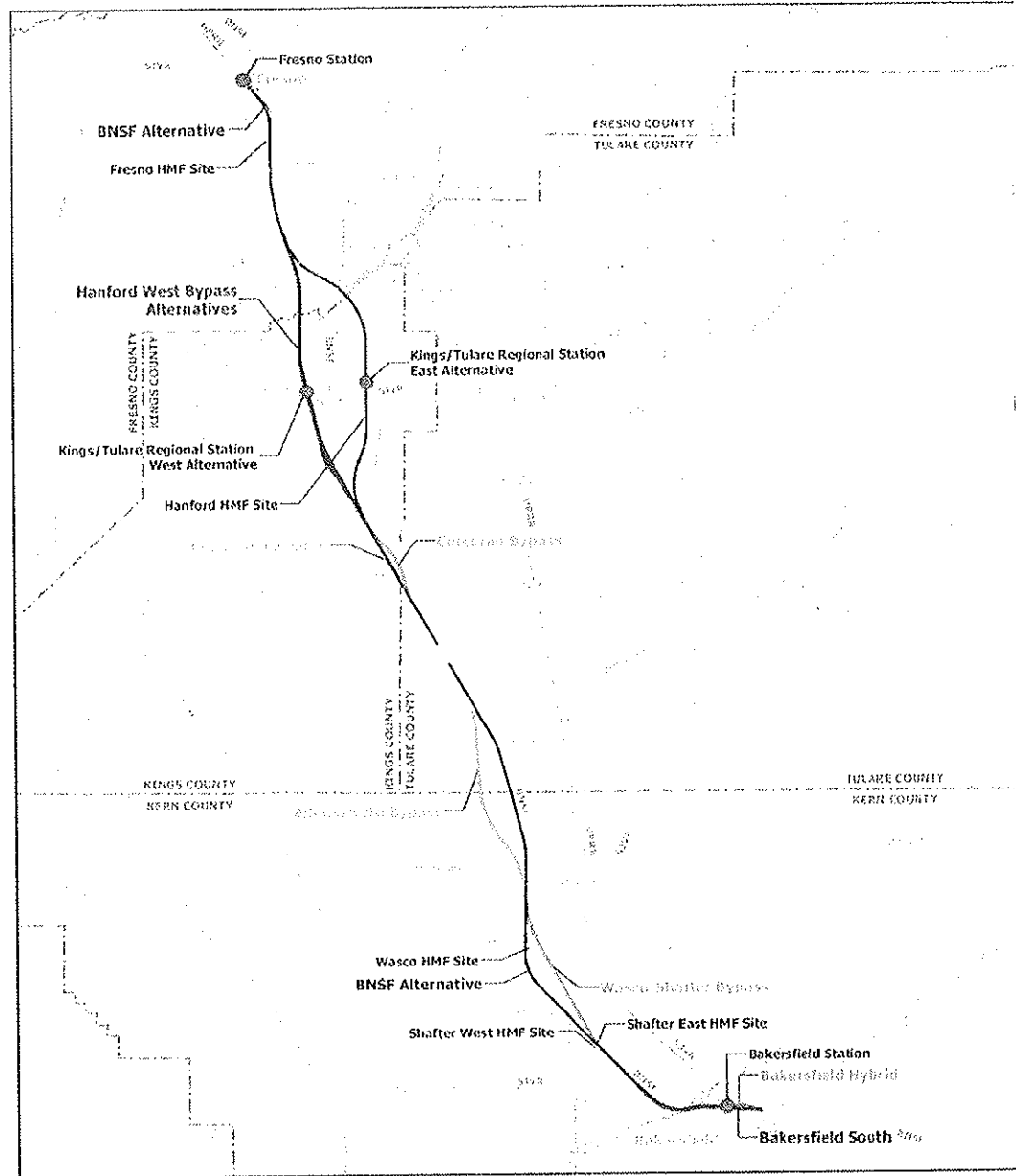
24 32. In August 2011, the Authority and FRA released the Draft EIR for the Fresno-to-  
25 Bakersfield Segment for a 60-day public comment period. The Fresno-to-Bakersfield Segment  
26 is the portion of the proposed statewide system shown in green below.  
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33. After the close of the Draft EIR's initial comment period, the Authority announced that it would issue a revised environmental document for the Segment, conceding that the Segment-wide alignment alternatives and the station location alternatives in the Kings/Tulare area analyzed in the Draft EIR were not adequate. The Authority also cited the need for "additional time to review the information contained in" the Draft EIR. (California High Speed Rail Authority Press Release, "High-Speed Rail Authority to Issue Revised Environmental Report for Fresno-Bakersfield Section," October 5, 2011.) The Authority took this action because the Draft EIR was not consistent with the Statewide Program EIR and to add another alignment alternative in the Bakersfield area. The jumble of alignment alternatives studied in the Draft EIR are shown below.



34. The Authority prepared and released a Revised Draft EIR/Supplemental Draft EIS ("Revised DEIR") in July 2012. After the public objected to a 60-day comment period on a 17,000-page document, the Authority extended the public comment period for only 30 more days. That public comment period closed in October 2012.

35. The Revised DEIR identified the following potentially significant adverse environmental impacts, among others:

- a. Transportation impacts related to congestion in Fresno and Bakersfield, as well as cumulative construction-related and operational impacts on circulation and

1 access;

2 b. Air quality impacts related to the emission of criteria pollutants during  
3 construction that would conflict with the attainment of regional air quality attainment  
4 plans and would exceed CEQA thresholds;

5 c. Noise and vibration impacts during both construction and operation on  
6 residences and businesses in the immediate vicinity of the proposed train track;

7 d. Potential electromagnetic interference with medical equipment at  
8 hospitals;

9 e. Disruption and relocation of public utilities during construction, including  
10 electrical substations and power lines;

11 f. Extensive potential impacts on biological resources and wetlands,  
12 including removal of habitat for special-status species, introduction of noxious weeds,  
13 reduction in the functionality of wildlife corridors and linkages, removal of protected  
14 trees, and impacts to U.S. Fish and Wildlife Service recovery plans for threatened or  
15 protected species, among others;

16 g. Potential impacts relating to spills of hazardous materials and wastes;

17 h. Increased demand and reduction in availability of safety and security  
18 services during construction and operation;

19 i. Division of existing communities and disproportionate impacts on  
20 minority and low-income communities;

21 j. Land use impacts, including permanent conversion of land to transit-  
22 related uses, conflict with existing local and regional land use plans, and temporary loss  
23 of the use of land during construction, among others;

24 k. Permanent conversion of agricultural land to non-agricultural uses;

25 l. Temporary and permanent impacts to parks, schools, and open space,  
26 including permanent closure of some parks;

27 m. Aesthetic impacts in the vicinity of the train line, including new sources of  
28 light and glare, and permanent disruption of existing vistas and visual resources; and

n. Impacts to historic resources and cultural and paleontological resources.

**B. The Metro Bakersfield Portion of the Segment Would Slice Through Downtown Bakersfield and the Bakersfield Commons Community**

36. The Revised DEIR analyzed three potential alignment alternatives for the metro Bakersfield area: (i) the BNSF Alternative; (ii) the Bakersfield Hybrid Alternative; and (iii) the Bakersfield South Alternative. In addition, the Revised DEIR proposed three locations for a new high speed train station in Downtown Bakersfield: (i) the North Alternative, located at the corner of Truxtun Avenue and Union Avenue on the BNSF Alternative alignment; (ii) the South Alternative, situated along Union Avenue and California Avenue on the Bakersfield South Alternative alignment; and (iii) the Hybrid Alternative, located at the corner of Truxtun Avenue and Union Avenue on the Bakersfield Hybrid Alternative alignment.

37. All three alignment alternatives and station location alternatives would impose significant, unavoidable environmental impacts on the residents of Bakersfield.

38. The Revised DEIR failed to analyze alignment and station alternatives that would avoid Downtown Bakersfield even though such an alternative would avoid or minimize many of the significant environmental impacts created by a Downtown station.

39. The EIR admits that the Bakersfield alignment alternatives would divide existing communities in northeast and northwest Bakersfield and that this impact would be significant and unmitigated. The Segment would erect an 80-foot to 90-foot tall barrier between and immediately next to residential communities and commercial areas. These elevated tracks, which would be nearly ten stories tall, would destroy neighborhoods' identities and inhibit growth in commercial areas. These impacts would be permanent and irreversible, and would fundamentally change Bakersfield's character.

40. The Segment would also conflict directly with established land use plans and policies in Bakersfield. Bakersfield's civic leaders vocally opposed the Authority's alternatives and the proposed siting of a station in Downtown Bakersfield. The stated preferences of local communities through their elected leaders were of no consequence to the Authority, and it refused to consider a feasible alignment outside of Bakersfield that would avoid these

1 unmitigated impacts in the Segment's EIR.

2 41. As to Petitioner's Bakersfield Commons Community, all three of the alignments  
3 proposed in the Revised DEIR would bisect it.

4 42. Though specific information on the Segment's design and operational plans is  
5 incomplete, the Segment appears to propose constructing an elevated train track running across  
6 the Bakersfield Commons Community at heights ranging from 30 to 90 feet in the air (See  
7 Revised DEIR, p. 2-68).

8 43. The Segment also proposes a schedule that would have trains running across the  
9 Bakersfield Commons Community 22 times per hour during peak hours (11 trains in each  
10 direction per hour). This would mean that one train would pass throexhibitugh the Bakersfield  
11 Commons Community every 2 minutes, 43 seconds during peak hours. (See Revised DEIR,  
12 Appendix 2-C, p. 5.) Even during off-peak hours, there would be 14 trains per hour (7 in each  
13 direction), or one every 4 minutes, 17 seconds. (*Id.*) The Segment proposes an undefined  
14 "temporary" taking of the entire Bakersfield Commons Community during construction, and a  
15 permanent taking consisting of the right-of-way of the proposed train track.

16 **C. Public Review and Comment on the Revised DEIR and Final EIR**  
17 **Certification and Approval**

18 44. The Revised DEIR contained a wholly inadequate disclosure and analysis of  
19 potential impacts of the Segment on the Bakersfield Commons Community. The Revised DEIR  
20 failed to describe meaningfully the nature and extent of the temporary and permanent takings of  
21 land the Segment proposed and failed entirely to discuss impacts including, but not limited to,  
22 noise and vibration impacts on adjacent properties, impacts to aesthetics and visual resources  
23 from construction of a permanent new elevated train line, criteria pollutant emissions impacts on  
24 air quality, impacts on habitats and movement corridors of protected species, removal of  
25 protected plants and trees, permanent removal of historic resources, impacts to archeological and  
26 paleontological resources, impacts related to electromagnetic interference with sensitive  
27 receptors, geology and soils impacts, potential spills of hazards and hazardous materials, impacts  
28 to water sources and hydrology, disruption and relocation of public utilities infrastructure

1 including electric substations and power lines, and impacts related to decreased availability of  
2 safety and security services.

3 45. Members of the public and public agencies submitted over 2,250 written  
4 comments during the Draft EIR process and lodged nearly 8,000 individual comments at public  
5 hearings. Nearly all of these comments expressed opposition to the Segment and to the  
6 environmental review process.

7 46. Petitioner submitted detailed comments on the Revised DEIR. In addition,  
8 because Petitioner was gravely concerned about the Segment's impacts on the Bakersfield  
9 Commons Community, Petitioner retained the highly regarded and experienced environmental  
10 impact assessment firm Matrix Environmental to provide an independent analysis of the key  
11 issues identified in the Revised DEIR. The comments submitted by Petitioner and Matrix  
12 Environmental identified the many ways that the Revised DEIR violated CEQA. These  
13 included: (1) improperly tiering from the Statewide Program EIR; (2) improperly piecemealing  
14 consideration of Segment impacts; (3) failing to provide a project description that satisfies  
15 CEQA and NEPA requirements; (4) improperly connecting the Segment Purpose and Need and  
16 the range of alternatives studied in the Revised DEIR; (5) failing to clarify project alternatives in  
17 accordance with CEQA and NEPA, and failing to analyze alternatives according to the statutes;  
18 (6) providing a flawed description of the environmental setting of the Segment; (7) failing to  
19 analyze the environmental effects of mitigation measures; (8) impermissibly deferring  
20 mitigation; (9) providing an inadequate and flawed analysis of the no project alternative; (10)  
21 improperly analyzing greenhouse gas emissions impacts; and (11) improperly analyzing  
22 cumulative impacts.

23 47. The Final EIR for the Fresno-to-Bakersfield Segment was released on April 18,  
24 2014. The Final EIR did not contain a response to an important comment letter.

25 48. On April 29, 2014, the Authority sent Petitioner a letter stating that a response to  
26 one of Petitioner's comment letters was omitted from the Final EIR. The Authority did not  
27 publish its response to Petitioner's letter, though it provided a cursory response in its April 29,  
28 2014, letter.

1           49.     On May 7, 2014, the Board certified the EIR (Resolution #HSRA 14-09). The  
2 Board also adopted CEQA Findings of Fact and a Statement of Overriding Considerations,  
3 adopted a Mitigation Monitoring and Reporting Plan, and approved an alignment and station  
4 plan (Resolution #HSRA 14-10), without so much as considering the overwhelming evidence  
5 that the Final EIR was inadequate, and by blithely acknowledging and then disregarding the  
6 Segment's major environmental impacts.

7           50.     The alignment approved by the Board consists of a high-speed only rail track  
8 stretching between downtown Fresno in the north and 7<sup>th</sup> Standard Road northwest of  
9 Bakersfield in the south. Rather than approving a single alignment studied in the EIR, the Board  
10 approved bits and pieces of various alignments. The approved route combines parts of the  
11 Burlington Northern Santa Fe (BNSF) Alternative, the Corcoran Bypass Alternative, the  
12 Allensworth Bypass Alternative, and the Bakersfield Hybrid Alternative. As a result, the public  
13 and the Board was never fully informed of the magnitude of the Segment's impacts. Presenting  
14 the analysis in a piecemeal fashion avoided an analysis of the Segment's full impacts.

15           51.     On May 8, 2014, the Authority filed a Notice of Determination ("NOD") with the  
16 Office of Planning and Research State Clearinghouse.

17           52.     Federal Railroad Administration review of the EIR is ongoing. The Federal  
18 Railroad Administration has not issued a Record of Decision on the Segment.

19                           **IRREPARABLE HARM**

20           53.     Absent injunctive relief, Petitioner will suffer irreparable harm from the  
21 significant environmental impacts that the Authority has failed to avoid or mitigate through  
22 feasible alternatives or mitigation measures. These impacts include, but are not limited to: (i)  
23 the "temporary" taking of Bakersfield Commons Community during the construction period; (ii)  
24 the permanent taking of Bakersfield Commons Community during the operation of the Segment;  
25 and (iii) the operational impacts related to noise and vibration, aesthetics and visual resources, air  
26 quality, biological resources, cultural and paleontological resources, electromagnetic fields and  
27 electromagnetic interference, geology and soils, hazards and hazardous materials, hydrology and  
28



1 water resources, public utilities and energy, and safety and security. The Segment's EIR does  
2 not fully disclose much less analyze these potential impacts.

3 54. Damages are not adequate to compensate Petitioner for the Authority's violations  
4 of law and the significant impacts to health, safety, and the environment that the Segment will  
5 have on Petitioner's property.

6 **FIRST CAUSE OF ACTION**

7 **(WRIT OF MANDATE – VIOLATION OF CEQA: CERTIFICATION OF**  
8 **INADEQUATE ENVIRONMENTAL IMPACT REPORT)**

9 55. Petitioner realleges and incorporates in full all preceding paragraphs by this  
10 reference.

11 56. In enacting CEQA, the California Legislature sought to require all public agencies  
12 to give careful, deliberate consideration to preventing environmental damage. (CEQA  
13 Guidelines, § 15021, subd. (a)(1).) Public agencies must give due consideration to both short-  
14 term and long-term impacts. Decision-makers must have enough information to enable them to  
15 make an informed decision with full knowledge of the likely consequences of their actions.  
16 Members of the public must have enough information to participate meaningfully in the project  
17 environmental review and approval process. Whenever a public agency is required to issue a  
18 discretionary approval for a proposed project, the CEQA process is triggered to ensure that the  
19 project's significant environmental impacts are avoided or mitigated where feasible. (Pub. Res.  
20 Code, § 21080.) CEQA mandates that the analyses contained in an environmental impact report  
21 and all decisions of the lead agency based on the report be supported by substantial evidence.

22 57. The Authority was the lead agency for the Segment's EIR. The Authority  
23 determined that the Segment had the potential to cause significant adverse environmental  
24 impacts. The Authority prepared an environmental impact report for the Segment.

25 58. The Authority had a mandatory duty under CEQA to certify the EIR for the  
26 Segment only if the EIR complied with all of CEQA's requirements. The Authority violated this  
27 duty. The Authority certified an EIR for the Segment without substantial evidence to support its  
28 conclusion that the EIR met all of the requirements of CEQA. The EIR is deficient in many

1 respects, including but not limited to the following.

2       59.     **Failure to Analyze Impacts.** The EIR fails to provide adequate identification  
3 and analysis of the significant adverse impacts of the Segment, including, but not limited to: (i)  
4 air quality; (ii) biological resources; (iii) cultural and paleontological resources; (iv)  
5 electromagnetic fields and electromagnetic interference; (v) geology and soils; (vi) hazards and  
6 hazardous materials; (vii) hydrology and water resources; (viii) noise and vibration; (ix) public  
7 utilities and energy; (x) safety and security; (xi) land use; and (xii) aesthetics and visual  
8 resources. Further, neither the analysis of impacts in the EIR nor Respondents-Defendants'  
9 certification of the EIR in this respect is supported by substantial evidence in the record.

10       60.     Additionally and alternatively, the EIR fails to explain adequately the nature and  
11 extent of proposed temporary and permanent impacts to the Bakersfield Commons Community.  
12 Neither the analysis of impacts to the Bakersfield Commons Community in the EIR nor  
13 Respondents-Defendants' certification of the EIR is supported by substantial evidence.

14       61.     **Defective and Misleading Impact Analysis.** Where the EIR does analyze  
15 impacts, its impact analysis is misleading and its conclusions are not supported by substantial  
16 evidence. The Authority analyzed the Fresno-to-Bakersfield Segment's *impacts* in isolation (i.e.,  
17 focusing on the segment only) while, at the same time, taking credit for presumed and  
18 unsupported statewide benefits of a state-wide high speed train project to offset the impacts of a  
19 this single segment.

20       62.     **Inadequate Project Description.** The Project Description in the EIR failed to  
21 provide sufficient detail and accurate information to permit informed decisionmaking by the  
22 public and their representatives. (CEQA Guidelines, § 15124.) The Project Description's  
23 deficiencies include, but are not limited to, the following:

- 24               • The Project Description failed to adequately identify the proposed routes for the  
25               Segment, including relevant information on the location of the proposed rail right-  
26               of-way and station locations, so that environmental impacts related to the choice  
27               of a proposed route could be evaluated.
- 28               • The Project Description failed to include essential information about the Segment,

- 1 including the methods of intersection with existing roads, waterways, utilities, and  
2 other obstacles, and operational characteristics such as tunnels, undercrossings,  
3 overcrossings, and bridges.
- 4 • The Project Description fails to explain the nature and extent of temporary and  
5 permanent impacts to the Bakersfield Commons Community. The EIR appears to  
6 propose both temporary and permanent impacts to the Bakersfield Commons  
7 Community, including temporary impacts to the entire property during  
8 construction and permanent impacts along the right of way of the proposed rail  
9 line during operation, but no explanation is provided in the EIR as to the nature or  
10 extent of either of these impacts.
  - 11 • The May 7, 2014 action by the Authority to adopt Resolution # HSRA 14-10,  
12 adopting the CEQA Findings of Fact and Statement of Overriding Considerations  
13 for the Segment, adopting the Mitigation Monitoring and Reporting Plan, and  
14 approving the alignment and station locations, approved the alignment only as far  
15 south as 7<sup>th</sup> Standard Road in Bakersfield. Approving the Segment only to 7<sup>th</sup>  
16 Standard Road leaves substantial questions as to the intentions of the Authority  
17 with respect to that portion of the Segment alignment between 7<sup>th</sup> Standard Road  
18 and the Bakersfield Truxtun Street HST Station in Downtown Bakersfield.  
19 Without clear expressions of intent as to alignment and station planning and  
20 construction in this portion of the Segment, the Project Description is legally  
21 inadequate.

22 63. **Inadequate Discussion and Analysis of Alternatives.** The EIR failed to provide  
23 adequate identification and analysis of a reasonable range of alternatives to the Segment.  
24 Further, neither the analysis of alternatives in the EIR nor Respondents' certification of the EIR  
25 in this respect is supported by substantial evidence in the record. The EIR's comparison of  
26 project alternatives is also confusing and difficult to follow.

27 64. The EIR failed to identify and analyze adequately the no project alternative to the  
28 Segment, in violation of CEQA. The EIR concludes without any substantial evidence that the no

1 project alternative is not the “environmentally superior alternative.” Neither the analysis of the  
2 no project alternative in the EIR nor Respondents-Defendants’ EIR certification is supported by  
3 substantial evidence.

4       65.     **Inadequate Discussion of the Environmental Setting.** The EIR failed to  
5 investigate and portray accurately the existing environmental conditions across the Segment and  
6 in the surrounding areas. This violated CEQA and undercuts the legitimacy of the impact  
7 analyses contained in the EIR.

8       66.     **Inadequate Cumulative Impact Analysis.** The EIR used unreasonable and  
9 unrealistic assumptions in formulating the cumulative impacts base against which the Segment’s  
10 incremental contributions are measured, rendering the entire analysis of cumulative impacts of  
11 the Segment inadequate under CEQA. Neither the analysis of cumulative impacts in the EIR nor  
12 Respondents-Defendants’ certification of the EIR in this respect is supported by substantial  
13 evidence in the record.

14       67.     **Failure to Recirculate EIR.** “Significant new information” requires an EIR to  
15 be recirculated when (1) a new significant environmental impact would result from the project  
16 or from a new mitigation measure proposed to be implemented; (2) a substantial increase in the  
17 severity of an environmental impact would result unless mitigation measures are adopted that  
18 reduce the impact to a level of insignificance; or (3) a feasible project alternative or mitigation  
19 measure considerably different from others previously analyzed would clearly lessen the  
20 environmental impacts of the project, but the project's proponents decline to adopt it. (CEQA  
21 Guidelines, § 15088.5.)

22       68.     The Authority violated CEQA by failing to recirculate the Draft EIR for further  
23 public review and comment after disclosing new significant impacts and a substantial increase in  
24 severity of the already identified significant impacts as a result of project modifications, the  
25 failure to analyze impacts from new mitigation measures, and the failure to consider feasible  
26 alternatives and mitigation measures that would have avoided significant and unmitigated  
27 Segment impacts.  
28

69. Respondents-Defendants' failure to provide adequate identification and analysis of the significant adverse impacts, the impacts to Petitioner's property, a reasonable range of alternatives, the environmental setting, and cumulative Segment impacts, as well as the failure to define a stable and accurate project description and to recirculate the EIR, violated CEQA.

70. Respondents-Defendants' violations of CEQA have harmed Petitioner because neither it nor the Board were fully informed about the impacts of, mitigation measures for, and alternatives to the Segment. Petitioner has also been harmed because it will have to endure significant, avoidable, unmitigated adverse environmental impacts.

## SECOND CAUSE OF ACTION

**(WRIT OF MANDATE – VIOLATION OF CEQA: IMPROPER TIERING OF THE EIR)**

71. Petitioner realleges and incorporates in full all preceding paragraphs by this reference.

72. Public agencies may only “tier” from prior EIRs in very limited circumstances. Tiering is defined as “the coverage of general matters and environmental effects in an environmental impact report prepared for a policy, plan, program or ordinance followed by narrower or site-specific environmental impact reports which incorporate by reference the discussion in any prior environmental impact report and which concentrate on the environmental effects which (a) are capable of being mitigated, or (b) were not analyzed as significant effects on the environment in the prior environmental impact report.” (Pub. Res. Code, § 21068.5.) To qualify for the use of tiering, later projects must (1) be consistent with the program, plan, policy or ordinance for which an EIR has been prepared and certified, (2) be consistent with applicable land use plans and zoning of the city, county, or city and county in which the later project would be located, and (3) not trigger the need for a subsequent EIR or supplement to an EIR. (Pub. Res. Code, § 21094(b).)

73. The Authority violated CEQA when it tiered the Segment's EIR from the 2005 Statewide Program EIR. The Segment's EIR states that it is a second-tier EIR that tiers off the 2005 Statewide Program EIR, the 2008 Bay Area to Central Valley Program EIR, and the 2010 Revised Final Program EIR for the Bay Area to Central Valley HST. (Final EIR, p. S-4.)

1 However, the EIR does not clearly or consistently explain how its analysis relies up on any of  
2 these previously prepared documents. With thousands of pages of background analysis to digest,  
3 and thousands of pages of project-level analysis, technical reports, and appendices to review, the  
4 public is left wondering how this project-level document fits into the overall analytical structure  
5 of this complicated tiering scheme.

6 74. The EIR must be compatible with applicable land use plans of each jurisdiction in  
7 which it will be located in order to qualify for tiering under CEQA. The EIR asserts that the  
8 Segment would be compatible with some elements of the Metropolitan Bakersfield General Plan  
9 and other land use plans without any evidence. The Authority violated CEQA when it relied on  
10 prior EIRs to support the EIR for the Segment.

11 **THIRD CAUSE OF ACTION**

12 **(WRIT OF MANDATE – VIOLATION OF CEQA: IMPERMISSIBLE DEFERRAL OF**  
13 **MITIGATION AND FAILURE TO ANALYZE IMPACTS OF MITIGATION**  
14 **MEASURES)**

15 75. Petitioner realleges and incorporates in full all preceding paragraphs by this  
16 reference.

17 76. CEQA requires that the “[f]ormulation of mitigation measures should not be  
18 deferred until some future time.” (CEQA Guidelines, § 15126.4(a)(1)(B).) “[I]t is improper to  
19 defer the formulation of mitigation measures until after project approval; instead, the  
20 determination of whether a project will have significant environmental impacts, and the  
21 formulation of measures to mitigate those impacts, must occur before the project is approved.”  
22 (*City of Long Beach v. Los Angeles Unified Sch. Dist.* (2009) 176 Cal.App.4th 889, 915-16.)

23 77. Numerous mitigation measures in the EIR impermissibly defer mitigation and  
24 analysis to some future time without providing specific performance criteria that must be  
25 satisfied. These mitigation measures are also vague and uncertain, and fail to demonstrate that  
26 the measures will reduce the Segment’s significant impacts.

27 78. An EIR is also required to “discuss the impacts of mitigation measures.” (*Save*  
28 *Our Peninsula Com. v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 130;

1 CEQA Guidelines, § 15126.4(a)(1)(D).) The EIR fails to analyze the environmental impacts of:  
2 traffic mitigation measures; proposals to reconfigure or relocate existing electrical substations;  
3 proposals to construct sound barriers in sensitive areas; proposals to use herbicides as a means of  
4 weed abatement during construction; and proposals to relocate existing structures.

5 79. Respondents-Defendants' deferral of mitigation and failure to analyze the  
6 environmental impacts of mitigation measures violated CEQA.

7 **FOURTH CAUSE OF ACTION**

8 **(WRIT OF MANDATE – VIOLATION OF CEQA: CEQA FINDINGS OF FACT AND**  
9 **STATEMENT OF OVERRIDING CONSIDERATIONS ARE NOT SUPPORTED BY**  
10 **SUBSTANTIAL EVIDENCE)**

11 80. Petitioner realleges and incorporates in full all preceding paragraphs by this  
12 reference.

13 81. CEQA requires that for any project for which an EIR has been certified that  
14 identifies one or more significant effects on the environment that would occur if the project is  
15 approved or carried out, the agency must make certain findings of fact as to each effect. (Pub.  
16 Res. Code, § 21081.) With respect to any such impacts that cannot feasibly be avoided or  
17 mitigated, the lead agency must make at least one written finding that there are specific  
18 overriding economic, legal, social, technological, or other benefits of the proposed project that  
19 outweigh the impacts.

20 82. The Authority's May 7, 2014, findings of fact are not supported by substantial  
21 evidence. The Authority's statement of overriding considerations is also not supported by  
22 substantial evidence. For example, the purported Segment benefits are entirely illusory. The  
23 Authority claims that the Segment would reduce highway, airport, and rail congestion. But there  
24 is no evidence of congestion at any of these facilities.

1 FIFTH CAUSE OF ACTION

2 (WRIT OF MANDATE – VIOLATION OF CEQA: FAILURE TO RESPOND TO  
3 WRITTEN PUBLIC COMMENTS IN FINAL EIR)

4 83. Petitioner realleges and incorporates in full all preceding paragraphs by this  
5 reference.

6 84. A lead agency shall “evaluate comments on environmental issues received from  
7 persons who reviewed the draft EIR and shall prepare a written response.” (CEQA Guidelines, §  
8 15088.) The Authority violated CEQA by failing to provide good faith, reasoned responses to all  
9 comments raised during the public comment period concerning the Revised Draft EIR. Many of  
10 the responses were perfunctory or conclusory and, in other cases, the responses were not  
11 supported by substantial evidence.

12 85. The Authority did not include responses in the Segment’s Final EIR to many  
13 public comments that were submitted during the Draft EIR’s public comment period.  
14 Accordingly, the Authority violated its mandatory duty to respond to all comments received on  
15 the Draft EIR in the Final EIR.

16 SIXTH CAUSE OF ACTION

17 (DECLARATORY RELIEF – CODE OF CIVIL PROCEDURE § 1060)

18 86. Petitioner realleges and reincorporates in full all preceding paragraphs by this  
19 reference.

20 87. An actual controversy exists regarding whether the Authority’s certification of the  
21 EIR and approval of the Segment contravened the requirements of CEQA.

22 88. Petitioner is accordingly entitled to declaratory relief to establish its rights with  
23 respect to the law governing the Authority’s approval of the Segment, and in particular a  
24 declaration that the Authority violated CEQA by certifying the EIR and approving the Segment.

25 PRAYER FOR RELIEF

26 WHEREFORE, Petitioner prays for relief as follows:

27 1. For an alternative and peremptory writ of mandate commanding Respondent-  
28 Defendant California High Speed Rail Authority and its Board to:



- 1           a.       Vacate and set aside the certification of the Fresno-to-Bakersfield  
2       Segment EIR, Findings of Fact, and Statement of Overriding Considerations; and  
3           b.       Vacate and set aside any and all approvals for the Segment based on the  
4       EIR, Findings of Fact, and Statement of Overriding Considerations; and  
5       2.       For a declaratory judgment declaring that Respondent-Defendant California High  
6       Speed Rail Authority's and its Board's certification of the EIR and approval of the Segment  
7       violated CEQA.  
8       3.       For a stay, temporary restraining order, preliminary injunction and permanent  
9       injunction prohibiting Respondents-Defendants, their agents, servants, and employees, and all  
10      others acting in concert with or on their behalf, from undertaking any action in furtherance of the  
11      Segment unless and until Respondents-Defendants have fully complied with all CEQA  
12      requirements and all other applicable state and local laws, policies, ordinances and regulations or  
13      pending a final decision on the merits by this Court.  
14      4.       For costs of suit and for attorney's fees; and  
15      5.       For such other and further relief as the Court deems just and proper.

16  
17      Dated: June 4, 2014

Respectfully submitted,  
  
LATHAM & WATKINS LLP  
James L. Arnone  
Benjamin J. Hanelin  
David B. Amerikaner

21      By   
22      Benjamin J. Hanelin  
23      Attorneys for Petitioner-Plaintiff  
24      Coffee-Brimhall LLC

**VERIFICATION**

I, John Hundley, declare that:

I am vice-president of Coffee-Brimhall LLC and am making this verification on its behalf. I have read the foregoing Petition and Complaint and am familiar with its contents. All facts alleged in the Petition and Complaint are either true of my own knowledge, or I am informed and believe them to be true, and on that basis allege 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.

Executed this 4<sup>th</sup> day of June, 2014, at South Gate, California.



JOHN HUNDLEY  
VICE-PRESIDENT  
COFFEE-BRIMHALL LLC



355 South Grand Avenue  
Los Angeles, California 90071-1560  
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# LATHAM & WATKINS<sup>LLP</sup>

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June 4, 2014

### VIA CERTIFIED U.S. MAIL

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

Re: Coffee-Brimhall LLC v. California High Speed Rail Authority, et al.

Dear Mr. Morales:

We represent Coffee-Brimhall LLC, a California limited liability corporation, with respect to the California High Speed Train Project Fresno to Bakersfield Section ("Project") and certification of the Final Environmental Impact Statement/Environmental Impact Report ("Final EIS/EIR") for the Project.

Notice is hereby given that Coffee-Brimhall LLC intends to file a Verified Petition for a Writ of Mandate for Violations of the California Environmental Quality Act and a Complaint for Declaratory and Injunctive Relief and Attorney's Fees ("Petition") against the California High-Speed Rail Authority ("Authority") in Sacramento County Superior Court. Among other matters, the Petition alleges that the Authority's certification of the Final EIS/EIR for the Project and approval of the Project violated the California Environmental Quality Act (Public Resources Code §§ 21000 et seq.). The Petition seeks issuance of a writ of mandate, and declaratory and injunctive relief, as well as an award of attorney's fees and costs. A copy of the Petition is enclosed with this letter, for your reference.

Very truly yours,



Benjamin J. Hanelin  
of LATHAM & WATKINS LLP

Enclosure

**PROOF OF SERVICE**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to this action. My business address is Latham & Watkins LLP, 355 South Grand Avenue, Los Angeles, CA 90071-1560.

On **June 5, 2014**, I served the following document described as:

**COFFEE-BRIMHALL LLC v. CALIFORNIA HIGH SPEED RAIL AUTHORITY, ET AL.**

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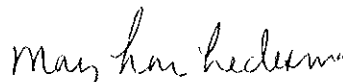
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Attn: Jeff Morales, Chief Executive Officer  
770 L Street, Suite 800  
Sacramento, CA 95814

I declare that I am employed in the office of a member of the Bar of, or permitted to practice before, this Court at whose direction the service was made and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **June 5, 2014**, at Los Angeles, California.



Mary Lou Ledesma

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June 4, 2014

### VIA CERTIFIED U.S. MAIL

The Honorable Kamala Harris  
Attorney General of the State of California  
Office of the Attorney General  
1300 "I" Street  
Sacramento, CA 95814-2919

Re: Coffee-Brimhall LLC v. California High Speed Rail Authority, et al.

Dear Madam Attorney General Harris:

We represent Coffee-Brimhall LLC, a California limited liability corporation, with respect to the California High-Speed Train Project Fresno to Bakersfield Section ("Project") and certification of the Final Environmental Impact Statement/Environmental Impact Report ("Final EIS/EIR") for the Project.

Notice is hereby given pursuant to Code of Civil Procedure section 388 and Public Resources Code section 21167.7, that Coffee-Brimhall LLC has filed a Verified Petition for Writ of Mandate for Violations of the California Environmental Quality Act and a Complaint for Injunctive and Declaratory Relief and Attorney's Fees ("Petition") against the California High Speed Rail Authority ("Authority") in Sacramento County Superior Court. Among other matters, the Petition alleges that the Authority's certification of the Final EIS/EIR and approval of the Project violated the California Environmental Quality Act (Public Resources Code §§ 21000 et seq.). The Petition seeks the issuance of a writ of mandate, and declaratory and injunctive relief, as well as an award of attorney's fees and costs. A copy of the Petition is enclosed with this letter, for your reference.

Very truly yours,



Benjamin J. Hanelin  
of LATHAM & WATKINS LLP

Enclosure



**PROOF OF SERVICE**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to this action. My business address is Latham & Watkins LLP, 355 South Grand Avenue, Los Angeles, CA 90071-1560.

On **June 5, 2014**, I served the following document described as:

**COFFEE-BRIMHALL LLC v. CALIFORNIA HIGH SPEED RAIL AUTHORITY, ET AL.**

by serving a true copy of the above-described document in the following manner:

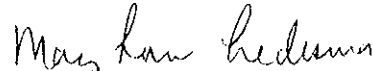
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The Honorable Kamala Harris  
Attorney General of the State of California Office of the Attorney  
General  
1300 "I" Street  
Sacramento, CA 95814-2919

I declare that I am employed in the office of a member of the Bar of, or permitted to practice before, this Court at whose direction the service was made and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **June 5, 2014**, at Los Angeles, California.

  
\_\_\_\_\_  
Mary Lou Ledesma

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