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EXEMPT FROM FEES PER
GOVERNMENT CODE §6103

7 Attorneys for Plaintiffs and Plaintiffs
8 JOHN TOS, AARON FUKUDA,
AND COUNTY OF KINGS
9

10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF SACRAMENTO**

12 JOHN TOS, AARON FUKUDA, and COUNTY
OF KINGS,
13 Plaintiffs
14 v.
CALIFORNIA HIGH-SPEED RAIL
15 AUTHORITY *et al.*,
16 Defendants

No. 34-2011-00113919 filed 11/14/2011
Judge Assigned for All Purposes:
HONORABLE MICHAEL P. KENNY
Department: 31 (to be handled as writ)
PLAINTIFFS' REQUEST FOR JUDICIAL
NOTICE IN OPPOSITION TO
DEFENDANTS' MOTION FOR
JUDGMENT ON THE PLEADINGS

17 Date: February 14, 2014
18 Time: 9:00 A.M.
19 Dept.: 31
Judge: Hon. Michael P. Kenny
Trial Date: Not yet set

20 Plaintiffs John Tos, Aaron Fukuda, and County of Kings ask that the Court take judicial
21 notice, under Evidence Code §452(d), of the Final Judgment and a portion of the Statement of
22 Decision in the case *Hayward Area Planning Association et al. v. Alameda County*
23 *Transportation Authority et al.*, Alameda County Superior Court case number 786768-6. True
24 and correct copies of those documents, as download from the court's official website, are
25 attached hereto as Exhibit A and B respectively. Plaintiffs also ask that the Court take judicial
26 notice under §452(d) of the fact that this judgment was affirmed on appeal in an unpublished
27

1 decision in case number A098051. In support of that fact, attached as Exhibit C are true and
2 correct copies of two pages from the First District Court of Appeal’s website showing this fact.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I. JUDICIAL NOTICE OF THE DOCUMENTS IS PROPER.**

5 Under Evidence Code §452(d), the court is entitled to take judicial notice of, “Records of
6 (1) any court of this state [California] ...” The attached Exhibits A and B, a Final Judgment and
7 a portion of the Statement of Decision for the case referenced above, are records of the Alameda
8 County Superior Court. The attached Exhibit C is a portion of the First District Court of
9 Appeal’s records as shown on that court’s official website showing that the judgment in the
10 above-referenced case was affirmed in full. All these documents are entitled to judicial notice
11 under §452(d). (*Estate of Hilton* (1988) 199 Cal.App.3d 1145, 1168 [court took judicial notice
12 of final judgment entered in a federal district court case].)

13 **II. THE REQUESTED DOCUMENTS ARE RELEVANT TO AN ISSUE IN THIS
14 CASE.**

15 In addition to being subject to judicial notice, it is also necessary that the document or
16 fact for which judicial notice is requested be relevant to an issue to be determined by the court.
17 (*People v. McKinzie* (2012) 54 Cal.4th 1302, 1326.) Here, the requested documents are relevant
18 to Defendants’ assertion that a claim under §526a may only be pursued under traditional
19 mandamus based on an administrative record, and no actual trial is allowed. The documents for
20 which judicial notice is requested show that in a case involving a claim of illegal expenditure of
21 public funds based on an informal legislative action, the trial court held a court trial and issued a
22 statement of decision based on that trial, and the judgment in the case was fully upheld on
23 appeal.

24 / / / /

25 / / / /

26 / / / /

27 / / / /

1 Dated: January 23, 2014

2 Respectfully submitted,

3 Michael J. Brady

4 Stuart M. Flashman

5 Attorneys for Plaintiffs John Tos,
6 Aaron Fukuda, and County of Kings

7 By: _____
8 Stuart M. Flashman

9 **DECLARATION OF AUTHENTICITY**


10 I, Stuart Flashman, declare as follows:

11 1. I am an attorney licensed to practice in the State of California. I am one of the attorneys
12 representing Plaintiffs John Tos et al. in this case. I have personal knowledge of the facts stated
13 in this declaration and am competent to testify as to them if called as a witness.

14 2. The attached Exhibits A and B are true and correct copies of court documents from the
15 case Hayward Area Planning Association et al. v. Alameda County Transportation Authority et
16 al., Alameda County Superior Court case number 786768-6 as downloaded directly from the
17 Alameda County Superior Court's official "Domainweb" internet website.

18 3. The attached Exhibit B are a true and correct copies of two pages from the official
19 internet website of the Court of Appeal for the First Appellate District showing the case
20 summary and disposition of the appeal of the judgment in the above-entitled case.

21 I declare under penalty of perjury pursuant to the laws of the State of California that the
22 foregoing is true and correct. Executed on this 23rd day of January, 2014, at Oakland,
23 California.

24 

25 _____
26 Stuart M. Flashman

Exhibit A



FILED
ALAMEDA COUNTY

JAN - 7 2002

CLERK OF THE SUPERIOR COURT
By Patricia Morrison
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

HAYWARD AREA PLANNING
ASSOCIATION, INC., *et al.*,

Petitioners and Plaintiff,

vs.

ALAMEDA COUNTY TRANSPORTATION
AUTHORITY, *et al.*,

Respondents and Defendants.

No. 786768-6

FINAL JUDGMENT

This action came on regularly for trial on May 16, 21, 22, 23 and 24, 2001 in Department 15 of the Superior Court, the Honorable Gordon Baranco presiding. Petitioners and Plaintiffs Hayward Area Planning Association and Citizens for Alternative Transportation Solutions appeared by counsel Stuart M. Flashman. Respondents and Defendants Alameda County Transportation Authority appeared by counsel Steven Morger, Esq. and Pamela Schock Mintzer, Esq. of the firm Wendel, Rosen, Black & Dean, LLP. Respondent and Defendant State of California, Department of Transportation appeared by Antonio Anziano, Assistant Chief Counsel. The Court having heard oral

1 testimony and reviewed the evidence submitted, issued its Notice of Intended Decision on
2 August 22, 2001.

3 On September 6, 2001, Respondents and Defendants Alameda County
4 Transportation Authority and State of California, Department of Transportations submitted
5 timely requests for a Statement of Decision. On that same date, the Court issued its Notice
6 to Prepare Statement of Decision, requesting that counsel for both Respondents/
7 Defendants and Petitioners/Plaintiffs prepare, serve and file their respective Proposed
8 Statements of Decision and Proposed Judgments. Pursuant to the Court's Statement of
9 Decision and based upon the pleadings, evidence and testimony submitted in this case, it is
10 ordered, adjudged and decreed as follows:
11

12 1. On the First Cause of Action, Petitioners and Plaintiffs HAYWARD
13 AREA PLANNING ASSOCIATION and CITIZENS FOR ALTERNATIVE
14 TRANSPORTATION SOLUTIONS shall have judgment against Respondent and
15 Defendant ALAMEDA COUNTY TRANSPORTATION AUTHORITY. A
16 Peremptory Writ of Mandate shall issue under seal of the Court, ordering
17 Respondent and Defendant ALAMEDA COUNTY TRANSPORTATION
18 AUTHORITY to rescind its determinations to approve its Route 238 "Hayward
19 Bypass Project" and to use revenues collected under the 1986 Alameda County
20 Transportation Sales and Use Tax for said project. Respondent and Defendant
21 ALAMEDA COUNTY TRANSPORTATION AUTHORITY shall file a written
22 return to said writ demonstrating its compliance on or before March 8, 2002.
23

24 2. On the Second Cause of Action, Petitioners and Plaintiffs HAYWARD
25
26

1 AREA PLANNING ASSOCIATION and CITIZENS FOR ALTERNATIVE
2 TRANSPORTATION SOLUTIONS shall have judgment against Respondent and
3 Defendant ALAMEDA COUNTY TRANSPORTATION AUTHORITY. A
4 Peremptory Writ of Mandate shall issue under seal of the Court, ordering
5 Respondent and Defendant ALAMEDA COUNTY TRANSPORTATION
6 AUTHORITY to rescind its determination to amend the 1986 Alameda County
7 Transportation Expenditure Plan to substitute its Rout 238 "Hayward Bypass
8 Project" for a portion of the Route 238/84 Project as originally set forth in said
9 Expenditure Plan. Respondent and Defendant ALAMEDA COUNTY
10 TRANSPORTATION AUTHORITY shall file a written return to said writ
11 demonstrating its compliance on or before March 8, 2002.
12

13 3. On the Third Cause of Action, Petitioners and Plaintiffs HAYWARD
14 AREA PLANNING ASSOCIATION and CITIZENS FOR ALTERNATIVE
15 TRANSPORTATION SOLUTIONS shall have judgment against Respondent and
16 Defendant ALAMEDA COUNTY TRANSPORTATION AUTHORITY.
17 Respondents and Defendants ALAMEDA COUNTY TRANSPORTATION
18 AUTHORITY and STATE OF CALIFORNIA, DEPARTMENT OF
19 TRANSPORTATION, their agents, employees, assigns, and all those acting in
20 concert with them, are hereby permanently enjoined and prohibited from
21 expending any revenues collected under the 1986 Alameda County Transportation
22 Sales and Use Tax on or towards the Route 238 "Hayward Bypass Project".
23

24 4. On the Fourth Cause of Action, Respondent and Defendant ALAMEDA
25
26

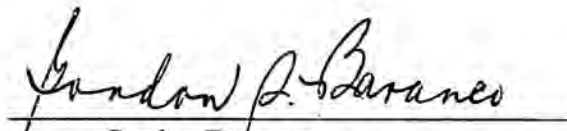
1 COUNTY TRANSPORTATION AUTHORITY shall have judgment against
2 Petitioners and Plaintiffs HAYWARD AREA PLANNING ASSOCIATION and
3 CITIZENS FOR ALTERNATIVE TRANSPORTATION SOLUTIONS.

4 5. Petitioners and Plaintiffs HAYWARD AREA PLANNING
5 ASSOCIATION and CITIZENS FOR ALTERNATIVE TRANSPORTATION
6 SOLUTIONS, as the prevailing parties, shall recover their costs of suit jointly and
7 severally against Respondents and Defendants ALAMEDA COUNTY
8 TRANSPORTATION AUTHORITY and STATE OF CALIFORNIA,
9 DEPARTMENT OF TRANSPORTATION in an amount to be determined.

10 6. The right of Petitioners and Plaintiffs HAYWARD AREA PLANNING
11 ASSOCIATION and CITIZENS FOR ALTERNATIVE TRANSPORTATION
12 SOLUTIONS to recover their attorneys' fees from Respondent and Defendants
13 ALAMEDA COUNTY TRANSPORTATION AUTHORITY and STATE OF
14 CALIFORNIA, DEPARTMENT OF TRANSPORTATION under Code of Civil
15 Procedure 1021.5 is hereby reserved for later determination in accordance with
16 California Rule of Court 870.2.
17
18

19
20 IT IS SO ORDERED.

21
22 Date: January 7, 2002

23 
24 _____
25 Gordon Baranco
26 Judge of the Superior Court

**Superior Court of California. County of Alameda
Rene C. Davidson Alameda County Courthouse**

Case Number C-786768-6

DECLARATION OF MAILING

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Stuart M. Flashman, Esq.
5626 Ocean View Drive
Oakland, CA 94618-1533

Steven M. Morger, Esq.
Pamela Schock Mintzer, Esq.
WENDEL, ROSEN, BLACK & DEAN, LLP
1111 Broadway, 24th Floor
Oakland, CA 94607-4036

Antonio R. Anziano, Asst. Chief Counsel
STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION
595 Market Street, Suite 1700
San Francisco, CA 94120-7444

I declare under penalty of perjury that the same is true and correct.
Executed on January 7, 2002

By: Patricia Morrison
Patricia Morrison, Deputy Clerk
Department 15

Exhibit B



0901401

FILED
ALAMEDA COUNTY

JAN - 7 2002

CLERK OF THE SUPERIOR COURT

By *Patricia Morrison*
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

No. 786768-6

HAYWARD AREA PLANNING
ASSOCIATION, INC., *et al.*,

Plaintiff,

vs.

ALAMEDA COUNTY TRANSPORTATION
AUTHORITY, *et al.*,

Defendants.

STATEMENT OF DECISION
AND ORDER

The above-captioned matter came on regularly for court trial on May 16, 21, 22, 23 and 24, 2001 in Department 15 of the above-entitled court, before the Honorable Gordon S. Baranco, Judge of the Superior Court. Stuart Flashman, Esq. appeared as counsel for Petitioners and Plaintiffs Hayward Area Planning Association and Citizens for Alternative Transportation Solutions (hereinafter collectively, "Petitioners"). Steven Morger, Esq. and Pamela Schock Mintzer, Esq. of the firm Wendel, Rosen, Black & Dean, LLP appeared as counsel for Respondent and Defendant Alameda County Transportation Authority. Antonio Anziano, Esq., Assistant Chief Counsel, appeared as counsel for Respondent and Defendant State of California Department of Transportation.

Exhibit C

1st Appellate District

Change court ▾

Court data last updated: 01/23/2014 05:05 PM

Case Summary

Trial Court Case: 7867686
Court of Appeal Case: **A098051**
Division: 2
Case Caption: Hayward Area Planning Association et al. v. Alameda
County Transportation Authority et al.
Case Type: CV
Filing Date: 03/05/2002
Oral Argument 03/16/2004 01:30 PM
Date/Time:

Cross Referenced Cases:

[A082685](#) Hayward Area Planning Association, Inc. et al. v. Alameda County

[Click here](#) to request automatic e-mail notifications about this case.

1st Appellate District

Change court ▾

Court data last updated: 01/23/2014 04:05 PM

Disposition

**Hayward Area Planning Association et al. v. Alameda County
Transportation Authority et al.**

Division 2

Case Number [A098051](#)

Description:	Voluntary dismissal
Date:	02/24/2003
Status:	Partial
Publication Status:	
Author:	
Participants:	
Case Citation:	none

Description:	Affirmed in full
Date:	04/29/2004
Status:	Final
Publication Status:	Signed Unpublished
Author:	Ruvolo, Ignazio J.
Participants:	Kline, J. Anthony (Concur) Haerle, Paul R. (Concur)
Case Citation:	none

[Click here](#) to request automatic e-mail notifications about this case.