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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SACRAMENTO

11  
12  
13 **TOWN OF ATHERTON, a Municipal  
14 Corporation, et al.,**

15 Plaintiffs and Petitioners,

16 v.

17 **CALIFORNIA HIGH-SPEED RAIL  
18 AUTHORITY, a public entity, and DOES 1-  
19 20,**

20 Defendants and  
21 Respondents.

Case No. 34-2008-80000022

[copy filed in 34-2010-8000679]

**CALIFORNIA HIGH-SPEED RAIL  
AUTHORITY'S BRIEF IN OPPOSITION  
TO PETITIONERS' OPENING BRIEF  
ON THE MERITS**

Date: August 12, 2011

Time: 9:00 a.m.

Dept: 31

Judge: Honorable Michael P. Kenny

Action Filed: August 8, 2008

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## INTRODUCTION

Respondent California High-Speed Rail Authority (Authority) has asked the Court to discharge the peremptory writ of mandate and find the Authority has complied with the California Environmental Quality Act (CEQA) for its Bay Area to Central Valley High-Speed Train Revised Final Program Environmental Impact Report (EIR). The writ directed the Authority to rescind its 2008 Final Program EIR certification and related approvals and to undertake specific actions to comply with CEQA prior to considering new decisions based on the corrected Program EIR. The Court retains jurisdiction until it determines the Authority has fully complied with the writ.

The Authority rescinded its earlier decisions and circulated a Revised Draft Program EIR in the spring of 2010 to address the issues the Court identified for additional CEQA compliance. After receiving extensive public comments, the Authority prepared and issued a Revised Final Program EIR in August 2010. The Authority exercised its independent judgment when it certified the Revised Final Program EIR and made new decisions in September 2010.

The Authority has taken all steps needed to address the issues identified in the final judgment. Nevertheless, the Authority faces objections to its request to discharge the writ of mandate by the Petitioners in this case, *Atherton 1*, and an entirely new CEQA challenge by new petitioners, *Atherton 2*. CEQA remedies are designed to address specific CEQA compliance needs, narrow disputes, and move parties forward, but here Petitioners seek to expand the issues.

Of the items identified in the final judgment for more CEQA work, Petitioners now contest only the Monterey Highway traffic analysis. Petitioners instead direct most of their case to new issues, claiming the Revised Final Program EIR should have included new noise, vibration, and safety analysis, as well as new analysis based on alleged changes to the programmatic project. Petitioners also claim the model used to develop forecasts of train ridership decades in the future was defective and rendered the EIR inadequate. In effect, Petitioners ask the Court to turn this programmatic CEQA process into the kind of endless rounds of revision and recirculation that the California Supreme Court has cautioned against. The record demonstrates the Authority has corrected the specific issues identified in the final judgment and writ and that the Revised Final Program EIR fully complies with CEQA. The Court should discharge the writ.

1 **STATEMENT OF FACTS**

2 On September 2, 2010, the Authority certified the Revised Final Program EIR for  
3 compliance with CEQA and selected the Pacheco Pass Network Alternative serving San  
4 Francisco via San Jose. (SAR000003-07.)<sup>1</sup> The Authority also committed to second-tier  
5 environmental review. (SAR000007.) These actions concluded more than a decade of study and  
6 consideration of the Altamont Pass and Pacheco Pass for the high-speed train system. The  
7 statement of facts in the Authority's April 6, 2009, Memorandum of Points and Authorities in  
8 Opposition to Petition for Writ of Mandate is incorporated here by this reference. For brevity,  
9 this statement of facts addresses pertinent facts and case developments only since 2008.

10 **I. 2008-2009: *ATHERTON I* LITIGATION AND FINAL JUDGMENT**

11 Petitioners filed a petition for writ of mandate on August 8, 2008, challenging the  
12 Authority's July 2008 decisions to certify the Bay Area to Central Valley High-Speed Train  
13 Program EIR and its approval of the Pacheco Pass network alternative for further study.  
14 Following record lodging, briefing on the merits, and a hearing, the Court issued a ruling in  
15 August 2009. (Ruling on Submitted Matter, August 26, 2009.) The Court held that much of the  
16 Program EIR complied with CEQA, but identified three EIR issues that required correction: (1) a  
17 more detailed project description between San Jose and Gilroy, along with analysis of impacts on  
18 surrounding businesses and residences which may be displaced, construction impacts on the  
19 Monterey Highway, and impacts on Union Pacific's use of its right-of-way and spurs and  
20 consequently its freight operations; (2) additional land use analysis; and (3) recirculate based on  
21 Union Pacific's (UPRR's) refusal to share its right of way. (*Id.*, at pp. 4-21.) The Court also held  
22 the vibration finding not supported by substantial evidence. (*Id.*, at p. 14.)

23 While litigation was pending, the Authority conducted planning and preliminary  
24 engineering for second-tier projects to implement the statewide high-speed train system.  
25 Petitioners moved for a stay of second-tier, project-level work for the San Francisco to San Jose

26 <sup>1</sup> The 2009 record citations are cited in this brief as "AR" followed by the bates page  
27 number. The Authority filed a disk for the AR on January 22, 2009, correcting some pagination  
28 errors. The Supplemental Administrative Record citations are cited in this brief as "SAR" and the  
Supplemental Administrative Record Addendum as (SARA) followed by the bates page number.



1 and San Jose to Merced second-tier projects. The Court denied the motion and issued the final  
2 judgment and peremptory writ of mandate on November 3, 2009. Between 2009 and September  
3 2010, the Authority continued planning and preliminary engineering for its San Francisco to San  
4 Jose, and San Jose to Merced second-tier projects. (SARA47-176, 177-352, 402-522.)

5 **II. 2009-2010: COMPLIANCE WITH *ATHERTON I* WRIT**

6 On December 3, 2009, the Authority rescinded its prior certification of the Final Program  
7 EIR and related approvals, and reported this action to the court on January 6, 2010, with its Initial  
8 Return to Peremptory Writ of Mandate. (SAR011135; SAR011139.) The Authority issued a  
9 Revised Draft Program EIR for a 45-day public comment period, from March 11, 2010, to April  
10 26, 2010. (SAR006303-04; SAR006056-6302.) In addition to accepting written comments, the  
11 Authority held two public meetings in San Jose on April 7, 2010, to receive verbal comments  
12 from dozens of individuals. (SAR011160; SAR011209-11, SAR011261-63 [listing commenters].)  
13 During the public comment period, the Authority received more than 500 written comment letters  
14 and extensive verbal statements containing more than 3,750 individual comments. (SAR000431.)

15 At the close of the public comment period, the Authority prepared a Revised Final Program  
16 EIR with revised main text [SAR000135-394] and responses to comments [SAR000395-2500].  
17 The volume of responses to comments alone contains more than 2,000 pages of comments and  
18 responses. (SAR000395-2500.) The Revised Final Program EIR was made available to the  
19 public on August 23, 2010. (SAR005946 [notice of availability].) The 3-volume 2008 Final  
20 Program EIR was considered part of the Revised Final Program EIR [SAR002501-5945].

21 Between the August 23, 2010, issuance of the Revised Final Program EIR and the  
22 Authority's September 1st and 2nd, 2010, meeting, the Authority received more than one hundred  
23 additional written comments on the Revised Final Program EIR. (See generally SAR011861-  
24 12453.) At the meeting on September 1, 2010, nineteen people provided further verbal comments.  
25 (SAR011309 [agenda]; SAR011589 to 91 [commenter list].) Seven people commented on  
26 September 2, 2010. (See SAR011642; SAR011659-670 [transcript].) The Authority Board then  
27 certified the Revised Final Program EIR for its compliance with CEQA, adopted CEQA findings  
28 of fact and a statement of overriding considerations, adopted a mitigation monitoring and

1 reporting program, and approved the Pacheco Pass Network Alternative serving San Francisco  
2 via San Jose for further environmental review at the project level. (SAR000003-07 [Res. 11-11];  
3 SAR0000008-115 [findings, overriding considerations]; SAR000116-34 [mitigation plan].)

4 The Authority filed a Supplemental Return on September 22, 2010, requesting discharge of  
5 the writ. Petitioners filed an initial set of objections on September 23, 2010. Petitioners filed  
6 further objections on October 4, 2010, as well as a new lawsuit, *Atherton 2*, with four new  
7 petitioners. By stipulation, Petitioners were dismissed from *Atherton 2*.

### 8 STANDARD OF REVIEW

9 The question for the Court is whether the Authority revised its program EIR “in accordance  
10 with CEQA, the Guidelines, and the Final Judgment entered in this case” prior to certifying it and  
11 making new decisions. (Writ of Mandate, ¶ 3.) This question is framed by the final judgment, as  
12 well as by the standard of review. (Pub. Resources Code, §§ 21168.9, subd. (a), 21005, subd. (c).)  
13 The Authority’s decisions on the high-speed train are quasi-legislative, reviewable under Public  
14 Resources Code section 21168.5. (Final Judgment, Ex. A, pp. 3-4; *Western States Petroleum*  
15 *Assn. v. Superior Court* (1995) 9 Cal.4th 559, 567 [*Western States*].) The Court’s inquiry is  
16 limited to whether there was a prejudicial abuse of discretion. (Pub. Resources Code, § 21168.5.)  
17 A prejudicial abuse of discretion is established, “if the agency has not proceeded in a manner  
18 required by law or if the determination or decision is not supported by substantial evidence.”  
19 (*Ibid.*; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564 [*Goleta II*].)

20 Petitioners’ challenge to the Revised Final Program EIR’s impacts analysis is subject to the  
21 deferential substantial evidence prong of the prejudicial abuse of discretion test. (*Goleta II, supra*,  
22 52 Cal.3d at pp. 565-567; *In re Bay-Delta Programmatic Environmental Impact Report Cases*  
23 (2008) 43 Cal.4th 1143, 1161-1162 [*Bay-Delta*]; *Rio Vista Farm Bureau Center v. County of*  
24 *Solano* (1992) 5 Cal.App.4th 351, 367-372 [*Rio Vista*].) The substantial evidence standard also  
25 applies to petitioners’ claims that the first-tier project changed, that the Authority failed to include  
26 analysis in the Revised Program EIR, and that the ridership model was defective. (*Barthelemy v.*  
27 *Chino Basin Mun. Water Dist.* (1995) 38 Cal.App.4th 1609, 1620; *City of Long Beach v. Los*  
28 *Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 898.)

1 The substantial evidence standard is the same as that used by appellate courts reviewing the  
2 factual findings of trial courts. (*Western States, supra*, 9 Cal.4th at pp. 572-573.) An EIR is  
3 presumed adequate (Pub. Resources Code, § 21167.3) and the plaintiff in a CEQA case has the  
4 burden of proving otherwise. (*Al Larson Boat Shop Inc. v. Board of Harbor Commissioners*  
5 (1993) 18 Cal.App.4th 729, 740 [*Al Larson*].) An EIR must be upheld if “there is *any* substantial  
6 evidence in light of the whole record to support the decision.” (*Rio Vista, supra*, 5 Cal.App.4th at  
7 p. 369, emphasis added.) A court “may not set aside an agency’s approval of an EIR on the  
8 ground that the opposite conclusion would have been equally or more reasonable.” (*Goleta II,*  
9 *supra*, 52 Cal.3d at p. 564.) In judging the EIR, courts look for adequacy, completeness, and a  
10 good faith effort at full disclosure, not technical perfection. (Cal. Code Regs., tit. 14, § 15151  
11 [CEQA Guidelines]; *Rio Vista, supra*, 5 Cal.App.4th at p. 368.)

12 Moreover, courts evaluate whether substantial evidence supports the EIR, not whether a  
13 petitioner has substantial evidence to support its legal theories. (*Laurel Heights Improvement*  
14 *Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 407 [*Laurel Heights I*].) A  
15 petitioner must set forth in its opening brief all evidence relevant to the challenged decision, not  
16 just evidence that favors its position. (*California Native Plant Society v. City of Rancho Cordova*  
17 (2009) 172 Cal.App.4th 603, 626.) Failure to do so waives the argument. (*City of Lomita v. City*  
18 *of Torrance* (1983) 148 Cal.App.3d 1062, 1069; *Opdyk v. California Horse Racing Board* (1995)  
19 34 Cal.App.4th 1826, 1830.)

## 20 ARGUMENT

### 21 I. THE AUTHORITY HAS FULLY COMPLIED WITH CEQA FOR EVERY ISSUE 22 SPECIFICALLY IDENTIFIED IN THE FINAL JUDGMENT.

23 Petitioners claim the Revised Final Program EIR violates CEQA because it fails to disclose  
24 new significant impacts and significantly increased impacts due to alleged changes in the project.  
25 Of the multitude of issues Petitioners address in their opening brief (OB), only the claim about  
26 Monterey Highway traffic impacts is an issue identified specifically in the final judgment for  
27 additional CEQA compliance. (OB, pp. 11-19.) Petitioners do not contest the Revised Final  
28 Program EIR on all other issues enumerated in the final judgment. For Monterey Highway traffic,

1 substantial evidence shows the Revised Final Program EIR contains an adequate programmatic  
2 discussion and that additional detail must await more refined, second-tier environmental analysis.

3 **A. Petitioners Do Not Contest the Revised Project Description for San Jose**  
4 **to Gilroy, or the Analyses of Land Use, the Need for Real Property, and**  
5 **Impacts on Union Pacific Freight Operations.**

6 Consistent with CEQA, the final judgment identified specific issues for the Authority to  
7 correct to bring the 2008 Final Program EIR into compliance with CEQA. (Pub. Resources Code,  
8 §§ 21168.9, subds. (a), (b), 21005, subd. (c).) The Revised Final Program EIR addresses these  
9 issues. (*Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40  
10 Cal.4th 412, 449 [*Vineyard*] [revised EIR may be limited by scope of revisions required].)

11 Petitioners do not contest that the following parts of the Revised Final Program EIR comply with  
12 the final judgment and with CEQA:

- 13 • Chapter 2 - revised project description for San Jose to Gilroy that clarifies that the  
14 alignment would be adjacent to, not in, UPRR right of way. (SAR006071;  
15 SAR000157.) The text includes corrected plans and profiles and cross sections.  
16 (SAR006091-114; SAR000178-201; Final Judgment, Ex. A, p. 6:17-25.)
- 17 • Chapter 2 - revised discussion of land use impacts and the need for real property for  
18 San Jose to Gilroy based on the clarified project description. (SAR006072-91;  
19 SAR000158-65; Final Judgment, p. 6:17-25.)
- 20 • Chapter 3 - new discussion of the anticipated effects on land use and the need for real  
21 property for all high-speed train alignments in the study area if UPRR right of way is  
22 not available. (SAR006116-142; SAR000202-28; Final Judgment, Ex. A p. 15:28-  
16:5, 19:27-20:7.)
- 23 • Chapter 4 – new discussion of the anticipated impacts on UPRR freight operations for  
24 all high-speed train alignments in the study area. (SAR006143-52; SAR000229-238;  
25 Final Judgment, Ex. A, p. 6:17-25.)
- 26 • Corrected CEQA finding on vibration. (SAR000152; SAR000028; Final Judgment,  
27 Ex. A, p. 14:15-20.)

28 Accordingly, the Court should find the Authority has fully complied with the final judgment and  
with CEQA for each of these issues.

29 **B. The Revised Final Program EIR Adequately Analyzes Monterey**  
30 **Highway Traffic Impacts.**

31 Petitioners complain the Monterey Highway traffic analysis in the Revised Final Program  
32 EIR did not identify *all* significant impacts. (OB, pp. 11-15.) They argue the Authority

1 improperly deferred a detailed analysis of traffic impacts on nearby roads. (*Id.* at pp. 11: 26-27,  
2 12-13.) These arguments are incorrect. The Revised Program EIR adequately discusses the  
3 Monterey Highway traffic impacts at a program level of detail.

4 **1. The high-speed train alignment did not shift to the east.**

5 Petitioners' first mistake is the erroneous claim that the Authority shifted the high-speed  
6 train alignment between San Jose and Gilroy to the east. This is not the case. The high-speed  
7 train alignment along Monterey Highway was never anticipated to be "in" the UPRR right of way  
8 because the freight right of way in this area is very narrow. (AR B002294; G001361; Authority  
9 Brief in Opposition to Petition for Writ of Mandate, pp. 12-15 (April 29, 2009).) The 2008 Final  
10 Program EIR materials were unclear, so the Court required more detail. (Final Judgment, Ex. A,  
11 pp. 4-6.) The Revised Final Program EIR clarifies that the high-speed train alignment would be  
12 adjacent to UPRR's right of way, between UPRR and Monterey Highway, and that for about 3.3  
13 miles it would utilize a portion of the Monterey Highway right of way by reducing Monterey  
14 Highway from six to four lanes, with no movement of the highway right of way. (SAR000167;  
15 SAR000182, 191.) For the area where Monterey Highway is currently four lanes, the high-speed  
16 train alignment would require moving Monterey Highway eastward by 0-60 feet, depending on  
17 location. (SAR000162; SAR000192; SAR000183.) The revised cross sections demonstrate that  
18 while the Monterey Highway will change, the high-speed train alignment did not move or shift.  
19 (Compare B002294 [old incorrect cross section] and SAR000191-92 [new correct cross sections];  
20 SAR000213 [fig. 3.2].) For traffic impacts, the issue is the narrowed highway.

21 **2. The Monterey Highway traffic impacts analysis is adequate for a first-tier,**  
22 **Program EIR on a first-tier planning project.**

23 Petitioners' second mistake is that they improperly seek a detailed, second-tier level  
24 analysis of traffic impacts in a first-tier, program EIR on a first-tier project. Tiering allows a lead  
25 agency to cover general matters in broader EIRs for general projects, to be followed by  
26 subsequent, more detailed EIRs for more detailed, site-specific projects. (CEQA Guidelines, §  
27 15385.) The level of detail in a first-tier EIR "need not be greater than that of the program, plan,  
28

1 policy, or ordinance being analyzed.” (*Id.*, §§ 15152, subd. (b), 15146.) Detailed analysis can be  
2 deferred to future, second-tier environmental documents, “as long as the deferral does not prevent  
3 adequate identification of significant effects of the planning approval at hand.” (*Id.* at § 15152,  
4 subd. (c); *Vineyard, supra*, 40 Cal.4th at p. 431.) “Tiering is properly used to defer analysis of  
5 environmental impacts and mitigation measures to later phases when the impacts or mitigation  
6 measures are not determined by the first-tier approval decision but are specific to later phases.  
7 (*Bay-Delta, supra*, 43 Cal.4th at p. 1170, internal citation omitted; see also *Rio Vista, supra*, 5  
8 Cal.App.4th at pp. 376-377 [program EIR is specific type of first-tier EIR].)

9           **a.       The discussion of Monterey Highway traffic impacts is programmatic**  
10           **and consistent with the level of traffic analysis in the 2008 Final**  
11           **Program EIR.**

12           The Revised Final Program EIR provides a traffic analysis appropriately tailored to the  
13 broad planning project at hand. The first-tier project is the general choice of the northern  
14 mountain crossing to connect the high-speed train between the Bay Area and the Central Valley,  
15 including alignments and station location options to be studied further in second-tier  
16 environmental documents. (AR B006325; SAR000155-56.) This first-tier project covers a study  
17 area of roughly 4500 square miles. (AR B003870 [Fig. 1.1-1].) Considering the region-wide  
18 study area, the discussion in the program EIR as a whole is conceptual, not site specific, yet  
19 sufficient for making “the fundamental choice of a preferred alignment” and general station  
20 locations to then proceed to second-tier environmental review. (AR B006325; B006326-27;  
21 B003898; B003872; SAR000155-156.) “[I]n selecting alignments and station locations, the  
22 Authority will not be selecting a precise footprint for improvements, but rather a conceptual  
23 corridor alignment subject to further refinement.” (AR B006325.)

24           The traffic analysis performed for the study area as a whole in the 2008 Final Program  
25 EIR involved a broad comparison of impacts for the HST alignment alternatives. (AR B003982.)  
26 The analysis was based on screenlines or cordons, rather than the type of detailed traffic analysis  
27 that would be typical for a more narrowly defined project. (See AR B003982.) To capture the  
28 effects of trips being diverted from automobile to high-speed train, the major intercity highway  
links in each transportation corridor, including US 101, were evaluated for traffic volumes and

1 capacities. (AR B003982; B003986, 88-89.) Localized capacity restrictions, such as bottlenecks  
2 at specific interchanges, are not well represented in the regional traffic models and are therefore  
3 not part of the analysis. (AR B003982.) The 2008 Program EIR identified significant traffic  
4 impacts and benefits, as well as mitigation strategies for consideration in future, second-tier EIRs.  
5 (AR B004020-22.) This analysis, including its methodology and regional focus, was never  
6 challenged and is deemed adequate now. (Pub. Resources Code, §§ 21167, 21167.2; *California*  
7 *Oak Foundation v. Regents of University of California* (2010) 188 Cal.App.4th 227, 279-80.)

8         The Revised Final Program EIR analyzes the Monterey Highway traffic impacts at a more  
9 localized, yet still programmatic, level. Monterey Highway was the original path of US 101, and  
10 currently carries less traffic than its capacity. (SAR000166; SAR006080.) The high-speed train  
11 would require narrowing the highway from six lanes to four lanes for about 3.3 miles, from  
12 Southside Drive to south of Blossom Hill Road, reducing the need for private property to build  
13 the train. (SAR000167; SAR000182, 191; SAR000341; 337; SAR000353-54; see also Sts. &  
14 Hwy. Code, § 382.) In 2035, Monterey Highway traffic congestion will increase slightly in both  
15 directions due to the lane reduction, as compared to without the high-speed train. (SAR000167.)  
16 This conclusion is based on data generated by the City of San Jose's traffic model, and is a very  
17 conservative analysis because it does not account for future auto trips diverted to high-speed train  
18 trips, reducing traffic congestion. (SAR000167.) The impact is significant for three northbound  
19 segments (between Southside Drive and Senter and between Blossom Hill and Bernal).  
20 (SAR000168.) Mitigation strategies are identified, as well as the need for a subsequent, more  
21 detailed traffic analysis in a second-tier EIR. (SAR000168-69.)

22         Petitioners complain that this analysis was not enough, and that the EIR improperly  
23 deferred identifying and mitigating additional significant traffic impacts from cars diverting onto  
24 nearby roadways such as I-280, Guadalupe Parkway, Bayshore Freeway, and West Valley  
25 Freeway. (OB, pp. 12-15; SAR000893-97.) This is not the case. Petitioners reach unsupported  
26 conclusions based on the traffic model that ignore the programmatic nature of the EIR and the  
27 context of future traffic *with* high-speed rail. The Revised Final Program acknowledges that the  
28 San Jose traffic model on its own shows traffic would be diverted onto other roads, but explains

1 that this model examines only localized effects of the existing transportation network, and does  
2 not predict future localized traffic conditions with high-speed trains. (SAR000564-65;  
3 SAR000167-69.) The City of San Jose traffic model cannot be viewed in isolation as an indicator  
4 of significant impacts on adjacent roadways. (SAR000565.)

5 At the same time, the statewide model used for the 2008 programmatic traffic impacts  
6 analysis can forecast future traffic conditions with high-speed trains, but only for major intercity  
7 highway links. (SAR000565; AR B003982, 86, 88-89; SAR010728-35.) The Revised Final  
8 Program EIR therefore amplified on the Monterey Highway traffic analysis in the Revised Draft  
9 Program EIR by discussing the major intercity highway links in the San Jose to Gilroy area for  
10 which quantitative data was available on the combined future with both automobile and high-  
11 speed trains. The anticipated shift from automobile trips to high-speed train trips would cause  
12 intercity highway conditions to improve. (B004008, 14.) On US 101, for example, a total of  
13 4948 trips over the six hour peak period, or 824 trips per peak hour in both directions, would be  
14 diverted off the highway and onto high-speed trains. (SAR000565; B003990.) San Jose's traffic  
15 model forecasts that the narrowed Monterey Highway would divert about 203 vehicles per peak  
16 hour in both directions onto US 101. (SAR000565.) Viewing these two pieces of information  
17 together shows that a narrowed Monterey Highway may reduce the traffic congestion benefits on  
18 US 101 from high-speed train, not that it would cause a significant impact. (SAR000565.)

19 For more localized roads, the Revised Final Program EIR appropriately declined to  
20 speculate. (CEQA Guidelines, §§ 15144, 15145.) "Based on the limitations of the current  
21 modeling tools, sufficient information, however, is not available at the program level to determine  
22 the level of adverse effects or benefits resulting from narrowing of Monterey Highway on local  
23 highways and streets." (SAR000565.) The Revised Final Program EIR therefore identifies the  
24 need for a project-level traffic impacts study to more specifically evaluate the effect of Monterey  
25 Highway lane narrowing on local roadways in conjunction with anticipated traffic benefits of  
26 high-speed trains, and to develop appropriate mitigation measures if necessary. (SAR000566; see  
27 also SAR000699 [RTC L025-1].) This was sufficient. (SAR009663 [ "generally advised to  
28 begin a [traffic] study focusing on more aggregated and large-scale impacts. . .".])



1                   **b.       The Monterey Highway traffic analysis was sufficient to inform the**  
2                   **public and decision makers that the alignment between San Jose and**  
3                   **Gilroy involves unique traffic impacts.**

4                   Petitioners cite to *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011  
5                   and *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296 to support their claim that the  
6                   Revised Final Program EIR improperly defers analysis and mitigation. (OB, pp. 13-14.) These  
7                   cases are off the mark because they do not involve first-tier or program EIRs. *Sacramento Old*  
8                   *City* involved a project-level EIR for expanding a convention center and building a new office  
9                   tower where the lead agency deferred developing specific mitigation measures for parking. (229  
10                  Cal.App.3d at p. 1016.) *Sundstrom* involved a sewage treatment plant where the lead agency  
11                  failed to prepare an EIR at all. (202 Cal.App.3d at p. 304.) These cases are not dispositive for  
12                  first-tier, program EIRs, which include general impacts analysis, and general mitigation strategies  
13                  a lead agency commits to refine in future, second-tier EIRs. (*Bay-Delta, supra*, 43 Cal.4th at p.  
14                  1169; CEQA Guidelines, §§ 15152, 15168; *Rio Vista, supra*, 5 Cal.App.4th at pp. 376-77.)

15                  More instructive is the California Supreme Court's discussion in *Bay-Delta*, which involved  
16                  a large planning project for the Sacramento-San Joaquin River Delta. (43 Cal.4th at p. 1151.) At  
17                  issue was whether the program EIR was required to identify specific sources of water for  
18                  implementing parts of the Delta plan, and analyze the impacts of accessing those specific sources  
19                  of water. (*Id.* at pp. 1169-1173.) The Supreme Court held the program EIR adequate because it  
20                  generally identified likely water sources (water transfers, new storage, more efficient water use),  
21                  and generally described their environmental impacts. (*Id.* at p. 1173.) General detail was  
22                  appropriate for the first-tier of the planning process, "with the understanding that additional detail  
23                  will be forthcoming when specific second-tier projects are under consideration." (*Id.* at p. 1172.)

24                  Here, the Revised Final Program EIR is consistent with the *Bay-Delta* holding because it  
25                  provides a reasonable, program-level discussion of potential traffic diversion from narrowing  
26                  Monterey Highway, prior to any specific design of the narrowed highway or the grade separations  
27                  that will be part of the project. The EIR acknowledges significant impacts from additional  
28                  congestion on the highway itself, as well as lower benefits to US 101 than previously understood.  
                    (SAR000166-69; SAR000563-67 [RTC L003-151].) The Revised Final Program EIR explains

1 the limits in the modeling tools available at the program level to characterize impacts on local  
2 roadways, and therefore appropriately declined to speculate about whether traffic diversion off  
3 Monterey Highway would adversely affect local roads. (CEQA Guidelines, §§ 15144, 15145.)  
4 More detail at this stage is neither practicable nor consistent with the level of analysis in the 2008  
5 Final Program EIR. (*Bay-Delta, supra*, 43 Cal.4th at p. 1173.)

6 Consistent with CEQA, the Revised Final Program EIR identified general mitigation  
7 strategies for Monterey Highway, including further study at the second-tier level. (SAR000168-  
8 69; *Rio Vista, supra*, 5 Cal.App.4th at pp. 376-77.) The Authority committed to the mitigation  
9 strategies and further study, as well as all the mitigation strategies from the 2008 EIR for traffic  
10 congestion in general. (SAR000016-22.) This discussion alerted the public and the decision  
11 makers that the high-speed train alignment along Monterey Highway, a component of the  
12 Pacheco Pass network alternatives, has unique significant traffic impacts not present for the  
13 Altamont Pass alternatives. This was enough. Requiring more at the first-tier “undermine[s] the  
14 purpose of tiering and burden[s] the program EIR with detail that would be more feasibly given  
15 and more useful at the second-tier stage.” (*Bay-Delta, supra*, 43 Cal.4th at p. 1173; SAR009663.)

16 **II. THE REVISED PROJECT DESCRIPTION FOR SAN JOSE TO GILROY DID NOT**  
17 **REQUIRE FURTHER ANALYSIS OF NOISE AND VIBRATION IMPACTS OR SAFETY.**

18 Petitioners argue the Revised Final Program EIR discussions of noise and vibration and  
19 safety for San Jose to Gilroy fail to comply with CEQA. (OB, pp. 15-18.) Petitioners again  
20 claim the high-speed train alignment shifted between San Jose and Gilroy, and they contend this  
21 resulted in higher noise impacts than discussed in the 2008 Final Program EIR. (OB, pp. 15-16.)  
22 They also claim the need for a safety barrier will make the right of way even larger, creating yet  
23 more impacts. (OB, pp. 17-18.) Petitioners are incorrect. The revised project description for San  
24 Jose to Gilroy did not result in a need to change the noise and vibration or safety discussion.

25 **A. The High-Speed Train Alignment Did Not Shift, and the Narrowed**  
26 **Monterey Highway Results in No Change to the Programmatic Noise**  
27 **and Vibration Analysis.**

28 Petitioners’ claim about increased noise and vibration impacts is based on the mistaken  
belief that the high-speed rail alignment shifted eastward from where it was described in the 2008

1 Final Program EIR. (OB, p. 15.) The high-speed train alignment between San Jose and Gilroy  
2 did not shift. (See *infra*, § I.B.1.) The high-speed train alignment remained where it was,  
3 adjacent to UPRR right of way, but the revised project description clarifies that the highway  
4 would be narrowed from six lanes to four lanes for about three miles. (SAR000167; SAR000182;  
5 see also B002294 [old cross section] and SAR000191 [new cross section showing narrowed  
6 Monterey Highway].) This clarified description of the alignment location was examined in light  
7 of the analysis in the 2008 Final Program EIR, and the only chapters requiring revision were land  
8 use, traffic, aesthetics, and cultural resources. (SAR000157; SAR006421-24.) In the area where  
9 neither the rail alignment nor the highway moved, but the highway would be narrowed, the noise  
10 and vibration analysis remained accurate. (SAR000537 [RTC L003-6]; SAR000926 [O012-19].)

11 **B. The Eastward Shift of Monterey Highway in a Rural Area Does Not**  
12 **Change the 2008 Final Program EIR Analysis.**

13 In the area where Monterey Highway is currently four lanes, the high-speed train  
14 alignment would require moving Monterey Highway eastward by 0-60 feet, depending on  
15 location. (SAR000162; SAR000192; SAR000183; compare B002294 [old cross section]; and  
16 SAR000191-92 [new cross sections]; SAR000213.) Petitioners contend this change makes the  
17 noise and vibration analysis inadequate because the highway would be closer to houses. (OB, pp.  
18 16-17.) Petitioners' argument is wrong. This Court previously upheld the 2008 Final Program  
19 EIR's use of a general, screening-level noise analysis and the minor shift of the highway for 0-60  
20 feet in a rural area is fully captured within that prior analysis.

21 The noise and vibration methodology, which the Court found adequate, started with a  
22 broad study area that extended 1000 feet on either side of the high-speed rail alignment  
23 centerline. (AR B004109.) The analysis assessed the number of people and noise-sensitive land  
24 uses within a defined screening distance. (AR B004101-03.) For noise, the screening distances  
25 ranged from 375-900 feet on either side of the track centerline, depending on anticipated train  
26 speeds, the type of corridor, and ambient land uses. (AR C027433 [screening distances].) For  
27 vibration, the screening distances ranged from 120-750 feet on either side of the track centerline.  
28 (AR C027433.) The screening method is recognized by the Federal Railroad Administration as

1 appropriate for early phases of a project where alignments are still conceptual. (SAR009775-76  
2 [FRA Manual].) It is also conservative at the programmatic level, because it disregards the  
3 presence of structures or land forms that block the path of noise to a receptor. (AR B004101;  
4 B004114.) The screening analyses were combined to develop an overall impact rating for each  
5 alignment of low, medium or high as an indication of the potential for noise and vibration  
6 impacts. (AR B004101-02; see B004119-23].)

7 Following the screening, the analysis examined typologies derived from representative  
8 high-speed train locations. (AR B004101, 03-04.) This confirmed that the screening method was  
9 an appropriate indicator of the potential for noise and vibration impacts. (AR B004103-04.) The  
10 process also considered the noise reduction benefits from eliminating at-grade crossings on  
11 existing rail lines and the potential for noise barriers to reduce impacts. (AR B004103-05.)

12 Based on this methodology, the 2008 Revised Final Program EIR identified noise and  
13 vibration impacts for each alignment in the Bay Area to Central Valley study area. (AR  
14 B004118-28.) Figures 3.4-6 and 3.4-7 depict the noise and vibration impact rankings on maps,  
15 showing the area between San Jose and Gilroy ranking medium for noise and vibration. (AR  
16 B004124; B004132.) Noise and vibration impacts were considered significant under CEQA at  
17 the program level. (AR B004129.) The 2008 Final Program EIR included design practices and  
18 mitigation strategies to reduce the impacts. (AR B004109-116 [noise & vibration source-path-  
19 receiver discussion]; B004117-27, 32 [impact ratings]; B004128-135 [design practices and  
20 mitigation strategies].) The Court held that at a program level, this analysis complied with  
21 CEQA. (Final Judgment, Ex. A, pp. 12-14.)

22 Petitioners' argument that moving the highway closer to homes would increase the  
23 programmatic noise and vibration impacts fails because the shift of 0-60 feet is well within the  
24 broad study area and screening distances applied. (AR B004101-05; AR C027433.) The impact  
25 ratings are based on population densities and sensitive land uses within the screening distances.  
26 (AR B004101-03.) The eastward shift within this large screening distance envelope, and within a  
27 sparsely populated area, does not change the analysis or "medium" conclusions in the 2008 Final  
28 Program EIR. (SAR000024; C029739; see also SAR000162-63 [noting area is largely

1 agricultural]; SAR000183 [showing rural nature of area where highway would shift to east];  
2 SAR000157; SAR006421-24.)

3 Petitioners' argument also fails because it focuses solely on distance, ignoring the multi-  
4 faceted impact metric used in the 2008 Final Program EIR, which incorporates population  
5 density, mixed use population, and the number of hospitals and schools in the impact ranking, not  
6 just distance. (AR B004102.) Petitioners cite the Federal Railroad Administration guidance to  
7 suggest distance is determinative, noting that noise levels decrease by 6 decibels with each  
8 doubling of distance between a source and receiver. (OB, p. 15:22-23.) This selective reference  
9 is out of context of the larger discussion, which explains that while sound levels attenuate with  
10 distance, multiple complex factors affect noise levels. (SAR009755; see also SAR009755-59  
11 [describing absorption/diffusion and shielding, natural and constructed]; AR C008050-53; AR  
12 B004104, 11, 16 [2008 Final Program EIR].) Indeed, the impact rankings for this area were  
13 influenced by the elimination of up to 24 grade crossings, which reduces noise. (AR B004126.)  
14 Based on the methodology the Court previously upheld, distance alone is simply not  
15 determinative of the outcome of the noise analysis at the program level.

16 **C. Second-Tier Analysis Will Address Noise and Vibration in Detail.**

17 Since the analysis of noise and vibration in the 2008 Final Program EIR did not change  
18 for the area along Monterey Highway based on the revised project description, no additional  
19 study is required at the program level. (SAR 000537 [RTC L003-6].) A lead agency is not  
20 required to conduct every study requested in comments to evaluate the impact of a project, let  
21 alone a first-tier, programmatic project. (*Association of Irrigated Residents v. County of Madera*  
22 (2003) 107 Cal.App.4th 1383, 1396.) The Court held the programmatic analysis of noise and  
23 vibration complied with CEQA previously, and should so hold again. (Final Judgment, Ex. A,  
24 pp. 12-14.)

25 Petitioners acknowledge that more detailed study for noise and vibration impacts will be  
26 needed (OB, p. 15:20) and the very source Petitioners cite confirms the complexities involved in  
27 such studies. (SAR009756; see also AR C008051.) The Authority has committed to this  
28 additional study as part of second-tier, project-level EIRs. (SAR000007; SAR000013-14;

1 SAR000024-30.) Among the factors to be considered, consistent with the FRA and FTA  
2 guidance, are project design details [trainsets, track specifications, track-bed design] and project  
3 profile [elevated, at grade or below grade], adjacent terrain and vegetation, intervening noise  
4 sources [highways, other trains, etc.] and structures built in the adjacent area, all of which will  
5 contribute to more precise noise and vibration conclusions. (SAR000450-52 [standard response  
6 5]; AR B004129-38; *Rio Vista, supra*, 5 Cal.App.4th at pp. 376-77 [general mitigation strategies  
7 can be refined, applied in more detailed, second-tier EIRs]; *Wollmer v. City of Berkeley* (2011)  
8 193 Cal.App.4th 1329, 1353 [noting that development of project elements may reduce impacts].)

9 **D. The Revised Final Program EIR Adequately Addresses Safety.**

10 Petitioners claim that locating the high-speed train between UPRR and Monterey Highway  
11 creates a new safety concern that should be analyzed in the Program EIR, and that safety barriers  
12 will cause the high-speed train right-of-way to be wider than disclosed, creating more impacts.  
13 (OB at p. 17.) Petitioners are incorrect. There is no new safety issue, any safety barrier fits  
14 within the right of way, and safety was analyzed, never challenged, and is now deemed adequate.

15 The Revised Final Program EIR does not implicate a new safety concern because the high-  
16 speed train has consistently been depicted as adjacent to UPRR, between UPRR and Monterey  
17 Highway. (Compare B005292 [incorrect cross section PP-6], SAR000191-92 [corrected cross  
18 sections PP-6B, PP-6C].) Petitioners argued that the train, “is sandwiched between the Union  
19 Pacific right-of-way and Monterey Road/Highway . . .” and the centerpiece of their case was that  
20 there was no room. (Petitioners’ 2009 OB, p. 5:10-12.) While the 2008 Final Program EIR was  
21 unclear about whether the high-speed train would share UPRR right of way, there was no dispute  
22 it was between UPRR and Monterey Highway. (See Final Judgment, Ex. A, p. 4:18 to p. 5:17.)

23 The 2008 Final Program EIR analyzed safety and high-speed trains generally, based on the  
24 alignments being configured along existing transportation corridors such as highways and freight  
25 railroads. (AR B003942; B003957; AR B004046-49.) Safety and security is a crucial part of the  
26 project itself, which incorporates full grade separation, access control, and special monitoring  
27 systems, and which would conform to all federal requirements for transportation security. (AR  
28 B003907.) At the program level, the high-speed train alignments were not distinguishable from a

1 safety perspective, so the text broadly compares the safety of high-speed trains, cars, and  
2 airplanes. (AR B004024.) High-speed trains would provide a safety benefit. (AR B004047-48;  
3 SAR001176 [RTC I063-3].) This analysis was not challenged, and is presumed adequate. (Pub.  
4 Resources Code, §§ 21167, subd. (c), 21167.2; *California Oak Foundation, supra*, 188  
5 Cal.App.4th at pp. 279-80.)

6 In response to Petitioners' 2010 comment about the alleged need to expand the high-speed  
7 train right of way to accommodate a safety barrier, the Revised Final Program EIR explained that  
8 the typical cross section accommodates space for a safety barrier. (SAR000928.) Corrected cross  
9 sections PP-6B and PP-6C depict a barrier between the high-speed train right of way and the  
10 Monterey Highway right of way. (SAR006104-05; SAR00191-92.) There is no basis for  
11 Petitioners' conjecture that the right of way will need to expand to accommodate safety barriers.

12 Petitioners cite a Caltrain preliminary hazard analysis worksheet dated December 2009,  
13 claiming it shows more analysis should be done at the program level. (SAR000897-908.) The  
14 worksheet is related to a project-level safety evaluation for Caltrain's electrification project; it is  
15 not an example of a programmatic safety evaluation. (SAR010774-82 [describing project, hazard  
16 assessment].) The worksheet is also distinguishable because it addresses safety in a mixed  
17 freight/electrified commuter railway, *without* the benefit of full grade separation and intrusion  
18 control that the high-speed train project would include. (See generally SAR010307-97 [Caltrain  
19 Petition]; see also SAR010314 [petition applies to San Fran. to San Jose]; SAR010314-16, 18  
20 [proposed safety improvements do not have full grade separation or intrusion control, but allow  
21 continued grade crossings of right of way]; SAR010348-50 [existing grade crossings]; AR  
22 B003907 [high-speed train with full grade separation]; SAR000579 [RTC L004-24].)

23 "Safety is the Authority's highest priority in designing the HST." (SAR000458.) The  
24 Federal Railroad Administration is developing nationwide safety guidance for high-speed trains  
25 and will address the separation between high-speed rail lines and adjacent highways and freight  
26 rail. (SAR000458; see also SAR009991-SAR01021; SAR009998-99; SAR010009.) As system  
27 design progresses at the second-tier, it will be done in accordance with these developing laws and  
28 regulations. (SAR000458.) However, more detailed engineering and site specific detail is

1 needed in conjunction with the new regulations, to identify where safety barriers would be  
2 required and how they would be designed. (SAR000459 [barrier locations and intrusion detection  
3 devices part of Rule of Particular Applicability from FRA]; SAR000973 [RTC O023-20 & 21];  
4 SAR001430 [RTC I156-11].) It is reasonable that this detailed design, and related impacts, be  
5 addressed as the second-tier project develops, after alternatives have been narrowed. (*Bay-Delta*,  
6 *supra*, 43 Cal.4th at pp. 1175-77; *No Oil v. City of Los Angeles* (1987) 196 Cal.App.3d 223, 237  
7 [EIR for multi-stage project properly deferred detailed study of future stage until time future stage  
8 proposed]; *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428, 1448 [accord].)

9 **III. THE NEED FOR ADDITIONAL PROPERTY BETWEEN SAN FRANCISCO AND SAN JOSE**  
10 **RESULTS IN NO CHANGE TO THE NOISE AND VIBRATION ANALYSIS.**

11 Petitioners next argue that the need for a limited amount of additional property for the high-  
12 speed train alignment between San Francisco and San Jose would result in new or increased noise  
13 and vibration impacts that have not been analyzed. (OB, p. 18:22-19.) This is incorrect. Just as  
14 for the area along the Monterey Highway, the clarification of real property needs between San  
15 Francisco and San Jose does not change the location of the high-speed train alignment, and  
16 therefore does not change the noise and vibration analysis in the 2008 Final Program EIR.

17 The 2008 Final Program EIR indicated that the high-speed rail alignment between San  
18 Francisco and San Jose would be constructed primarily within the existing publicly owned rail  
19 right of way. (AR B004194-95.) Property impacts were ranked “low.” (AR B004195.) The rail  
20 alignment between San Francisco and San Jose is still predominantly within the existing rail right  
21 of way. (SAR000204.) The Revised Final Program EIR explains, however, that “[t]he  
22 information now available indicates a need for limited property acquisition along the right-of-way  
23 in narrow areas to allow for a four-track alignment that will accommodate UPRR freight  
24 operations. Accordingly, property impacts in this corridor are now ranked between low and  
25 medium, rather than low.” (SAR000204.)

26 This clarification of the need for additional property in limited areas between San Francisco  
27 and San Jose did not shift the location of the high-speed rail alignment, or the centerline from  
28 which noise impacts are screened, and therefore results in no change to the prior noise and



1 vibration analysis at the program level. (See *supra*, § II.) The screening level of analysis already  
2 included and addressed areas adjacent to the existing right of way within a very broad envelope of  
3 analysis. (AR B004101-05 [discussing methodology].) The 2008 Final Program EIR  
4 acknowledges this corridor as “densely populated,” which was a major basis for the corridor  
5 having a medium noise and high vibration rank. (AR B004118; B004124; B004132.) Under the  
6 methodology the Court has already deemed adequate at the program level, the need to acquire  
7 limited additional property would not change the impacts analysis. (AR B004102 [describing  
8 multifaceted impact metric]; SAR000926 [RTC O012-20].)

9 **IV. TIERING PERMITTED THE AUTHORITY TO FOCUS ITS FIRST-TIER EIR ON ITS FIRST-**  
10 **TIER PROJECT, AND TO DEFER DETAILS ABOUT ITS FUTURE, SECOND-TIER PROJECTS**  
11 **TO SECOND-TIER, PROJECT-LEVEL EIRs.**

12 Petitioners allege that information on the Authority’s more detailed, second-tier project for  
13 the San Francisco Peninsula changed the first-tier project and rendered the Revised Final Program  
14 EIR inadequate. (OB, pp. 19-23.) They claim details about the potential for elevated structures  
15 along a seven-mile stretch between Redwood City and Belmont constituted a “dramatic change,”  
16 “approved” by the Board, resulting in previously unidentified visual, noise, and other impacts.  
17 (*Id.* at p. 21.) Petitioners also allege new information about street closures should have been  
18 analyzed in the program EIR. (*Id.*, pp. 22-23.) These arguments are incorrect. Under CEQA,  
19 first-tier projects and second-tier projects are separate, and detailed information about second-tier  
20 projects does not change the first-tier project, but can be addressed in second-tier EIRs.

21 **A. The Authority Exercised its Discretion to Keep Its First-Tier Project**  
22 **and Its Future, Second-Tier Projects Separate.**

23 The fundamental flaw in Petitioners’ argument that the project changed is that it blurs the  
24 distinction between the Authority’s general, first-tier project for the Bay Area to Central Valley  
25 and its future second-tier project for the more geographically limited area between San Francisco  
26 and San Jose. This case involves a first-tier, program EIR on a first-tier project. As discussed  
27 above, first-tier projects and second-tier projects are different, as are first-tier and second-tier  
28 EIRs. (*Bay-Delta, supra*, 43 Cal.4th at p. 1169 [general plan distinct from second-tier  
implementation projects]; *Al Larson, supra*, 18 Cal.App.4th at p. 744 [same].)

1           Petitioners ignore the authorities on tiering and program EIRs and disregard the holding in  
2 *Bay-Delta*. The lead agency in that case was developing information about its second-tier  
3 environmental water account project while it was still completing its first-tier planning project for  
4 the San Francisco Bay-Delta Estuary and related program EIR. (*Id.* at p. 1177.) The petitioner  
5 claimed that details about the second-tier project should have been evaluated in a recirculated  
6 program EIR for the first-tier project. (*Id.* at pp. 1173-77.) Rejecting the argument, the  
7 California Supreme Court emphasized that under CEQA, “it is proper for a lead agency to use its  
8 discretion to focus a first-tier EIR on only the general plan or program, leaving project-level  
9 details to subsequent EIRs when specific projects are being considered.” (*Id.* at pp. 1174-75.)  
10 The program EIR included a general analysis of the component parts of an environmental water  
11 account, such as water transfers and new water storage, so the program EIR fulfilled its function  
12 as a first-tier EIR. (*Id.* at p. 1175.) Details about the second-tier projects did not change the first  
13 tier project, but were appropriately addressed in subsequent second-tier EIRs. (*Id.* at p. 1177.)

14           The Authority, like the lead agency in *Bay-Delta*, has properly used tiering by focusing its  
15 first-tier, program EIR on its first-tier planning project and committing to address second-tier  
16 project details in future, second-tier EIRs. The first-tier project involves the fundamental choice  
17 between Altamont Pass, Pacheco Pass, or both passes, but not specific locations or vertical  
18 profiles for the rail alignments. (AR B006325; SAR000155-56.) The Program EIR is intended to  
19 identify the broad distinctions between these options so the Authority can make a choice, and  
20 then devote more detailed study to the route it actually selects. (AR B006325; B006326-28;  
21 B003898; B0003872; SAR000155-156.)

22           Consistent with its tiering strategy, the Authority continued to focus the Revised Draft and  
23 Final Program EIRs on its first-tier project, and plainly identified that its second-tier projects were  
24 separate undertakings. (SAR000150 [revised chapters correcting *program* EIR]; SAR000155-56  
25 [revised EIR to be used in programmatic decisions only]; SAR000435-36 [std. resp. on role of  
26 revised EIR]; SAR000437-39 [std. resp. on tiering and revised EIR].) The Authority approved  
27 only the first-tier project involving the conceptual rail alignment; it has not approved a more  
28 detailed project than what was described in the Program EIR. (SAR000003-7, 11-14.) The

1 Program EIR is the first step in an incremental, ongoing environmental review process, not the  
2 last step, and the Authority committed to further CEQA analysis at the second tier. (SAR000005-  
3 7, 13-14; SAR000438 [noting further environmental review].)

4 **B. Second-Tier Information on Aerial Viaducts Did Not Change the First-Tier**  
5 **Project.**

6 Moreover, the second-tier project information did not change the first-tier project; it is  
7 consistent with it. The Authority committed in 2008 to explore vertical profile alternatives for  
8 San Francisco to San Jose as part of the second-tier project for this area, and has done so even  
9 though it rescinded its 2008 decisions. (SAR000468; SARA 216-350.) This more geographically  
10 limited, second-tier evaluation considers elevated, at-grade, and below grade profiles for the  
11 entire corridor, including Belmont, San Carlos, and Redwood City. (SARA226-27, 29, 50.)

12 Much of the northern portion of the Belmont/San Carlos/Redwood City area is already  
13 above grade, with the existing rail line on a raised embankment over cross streets. (SARA250;  
14 B006539.) City staff in Redwood City requested consideration of elevated structures to explore  
15 restoring the original street network. (SARA256.) In addition, "[t]he Belmont/San Carlos cities  
16 requested that a below-grade vertical option (for the HST) be studied in addition to converting the  
17 existing berm configuration to a higher viaduct configuration such that the existing grade-  
18 separated road profiles could be flattened and allow for increased site lines." (SARA256.) "In  
19 general, the cities expressed a strong desire to eliminate the berm/embankment option in favor of  
20 a viaduct option should an elevated alignment be studied." (SARA256; see also SARA301, 304.)  
21 The analysis recommended eliminating the berm from further study in certain areas because it  
22 does not enhance connectivity as well as an aerial viaduct or trench. (SARA295 [shows elevated  
23 in blue, at grade in green, below grade in yellow, and comparison to program alignment in red];  
24 SARA298-304 [overview of vertical profile alternatives]; SARA296; SARA345; SARA 346-47.)  
25 In selectively presenting second-tier information and arguing it changed the first-tier  
26 project, Petitioners ignore the broader context and fail to recognize that the Authority's first-tier  
27 project includes the design flexibility to consider vertical profile alternatives at the second tier,  
28 both above and below grade. The Authority consistently stated that while it would select a

1 general alignment and station locations at the first tier, the precise footprint location *and vertical*  
2 *profile* of the alignment would be refined at the second tier based on more detailed engineering  
3 and planning. (AR B006325 [2008 Std. Resp. 1]; B006326-28 [2008 Std. Resp. 2]; B006480  
4 [2008 RTC LO14-3]; SAR000989 [RTC I002-3].) Indeed, Atherton urged the Authority to  
5 explore vertical profile alternatives for the rail alignment at the second tier. (AR B006478 & 80  
6 [2008 L014-3 and response]; B006533 & 540 [Atherton LO25-25 request for trench/tunnel at  
7 second tier and response].) Petitioners cannot have it both ways, arguing on the one hand that  
8 vertical profile alternatives should be studied at the second-tier, and on the other hand that this  
9 violates CEQA for the first-tier EIR. The Authority's focus on its first-tier project in the Program  
10 EIR and its commitment to examine vertical profile alternatives at the second tier, including  
11 above *and* below grade, is fully consistent with CEQA's tiering rules. (*Bay-Delta, supra*, 43  
12 Cal.4th at pp. 1174-75; CEQA Guidelines, § 15152.)

13         Petitioners claim, however, that the Authority went too far when its supplemental work on  
14 San Francisco to San Jose second-tier alternatives recommended eliminating all options but the  
15 aerial viaduct in Belmont, San Carlos, and Redwood City. (OB, p. 21.) The August 2010 report  
16 did make this recommendation (SARA510), but this simply represents the way that more  
17 geographically defined second-tier projects evolve, based on far more detailed design and study.  
18 (See SAR412-521.) It neither changes the first-tier project nor undermines the adequacy of the  
19 first-tier EIR since the Authority has made no decisions about vertical profile variations. (CEQA  
20 Guidelines, § 15152; *Rio Vista, supra*, 5 Cal.App.4th at pp. 372-73.) The second-tier EIR process  
21 is still at the beginning, and the Authority is far from even releasing a second-tier draft EIR with a  
22 defined range of alternatives, let alone approving a second-tier project. If the Authority has  
23 overly constrained second-tier alternatives, that can be addressed within the second-tier process.

24         **C.         The Second-Tier Information on Road Closures Did Not Change the First-**  
25         **Tier Project.**

26         The preliminary, second-tier information on potential road closures likewise did not  
27 change the first-tier project. The 2008 Final Program EIR explained that the high-speed train  
28 would be fully grade separated. (AR B003907, B003911, 14.) This means that crossing roads

1 would have to be reconfigured over or under the high-speed rail line, or the rail line could go over  
2 or under the crossing roads, or a combination of both. (SAR000984 [RTC O025-17]; see AR  
3 B004260-61.) The 2008 Final Program EIR explained that as part of second-tier project design,  
4 “[a]t times, street closures at the right-of-way will also be proposed.” (AR B006402 [RTC S008-  
5 10]; B004251 [noting smaller street crossings may be closed]; SAR000611 [RTC L012-18].)

6 Grade separations will be more fully defined in second-tier projects, and second-tier EIRs.  
7 (AR B006402; SAR000540 [RTC L003-17]; SAR000643 [RTC L017-9]; SAR000773 [RTC  
8 O010-15].) The potential for road closures is a detailed design issue that must necessarily be  
9 addressed as part of the second-tier project, with further planning, preliminary engineering, and as  
10 consultation with the local governments involved takes place. (AR B006402; *Riverwatch, supra*,  
11 76 Cal.App.4th at p. 1448; *No Oil, supra*, 196 Cal.App.3d at pp. 236-37.) Addressing this issue  
12 in more detail at the program level would lead to inappropriate speculation, and overwhelm an  
13 already voluminous program EIR with detailed information that belongs at the second tier.  
14 (CEQA Guidelines, § 15145; *Bay-Delta, supra*, 43 Cal.4th at p. 1173.)

15 **D. The Revised Final Program EIR Served Its Function as a First-Tier,**  
16 **Program EIR and the Second-Tier Information Is Appropriately**  
17 **Addressed in the Second-Tier EIR.**

18 Finally, the Program EIR served its function as a first-tier EIR on aesthetics and noise and  
19 plainly indicated that more analysis would occur at the second tier. The 2008 Final Program EIR  
20 describes the alignment for San Francisco to San Jose as mostly at grade (AR B003953), however,  
21 the EIR explains that in certain areas of the Caltrain corridor, the existing rail corridor is already  
22 elevated. (AR B006539 [rails higher in some locations].) For this reason, maps in the 2008 Final  
23 Program EIR indicate that portions of the high-speed train alignment north of Redwood City were  
24 anticipated to be both cut & fill/at grade *and* on retained fill, which means above the existing  
25 grade. (B003956; B003958.) The cross sections applicable to these areas likewise indicate that  
26 these areas would be above grade, on a berm, or that they would potentially be raised above an  
27 underpassing roadway. (B005237; B005238; SAR000516 [RTCs L002-23, L002-24].)

28 The aesthetics analysis reflects that portions of the existing Caltrain rail line are already  
raised above grade. (See AR B006539.) In San Carlos, for example, improvements have been

1 undertaken to grade separate the Caltrain station. (AR B004254.) The same is true for stations at  
2 Bayshore and Lawrence, which the EIR describes as representative of improvements that would  
3 be expected to other Caltrain stations along the line with no high-speed train stop. (AR B004254.)  
4 The possibility of a grade separation with the rail line raised on a structure to go over streets is  
5 identified and a representative photo simulation provided showing the possibility of an elevated  
6 structure on piers. (AR B004251-53.) In Redwood City, the text identifies that a potential aerial  
7 profile in conjunction with a potential elevated station. (AR B004254; B004256.) Aesthetics  
8 impacts are significant, and the text provides mitigation strategies the Authority adopted.  
9 (B004307-07; SAR000040-45; see also SAR000683-84 [RTC L022-6].)

10 The programmatic noise analysis assessed impacts based on estimates of the number of  
11 potentially impacted land uses in noise sensitive settings within a set screening distance. (AR  
12 B004101; B004109; C027433.) Noise impacts for the San Francisco to San Jose corridor were  
13 ranked medium, and significant under CEQA, due to several factors. (AR B004119; B004129.)  
14 The high-speed train would be traveling through a heavily urbanized area, but at relatively lower  
15 speeds, thereby lowering its noise impact. (AR B004110-11; B004117-18.) The existing noise  
16 environment is dominated by Caltrain heavy diesel commuter trains with train horns and grade  
17 crossing guard noise. (AR B004116.) Grade separation of the existing railroad and its  
18 electrification, combined with lower train speeds, would reduce noise by eliminating horns at  
19 crossings and the noise of heavy diesel trains. (AR B004104; B004110; B004118.) Nevertheless,  
20 impacts were higher than elsewhere in the study area, including areas with proposed aerial  
21 structures, except one alignment through Fremont. (See AR B004124; see also B004120-21.)

22 Petitioners speculate that a stretch of aerial structure would increase the programmatic  
23 impact conclusion, but this is not the case due to the existing noise conditions, the multifaceted  
24 noise metric, and the fact that the analysis looks at the corridor broadly. (OB, p. 21; B004101-05;  
25 SAR009776-76 [screening useful for making broad-brush comparison of impacts for different  
26 corridors].) For example, even though a train on an elevated structure may result in higher noise  
27 levels than a train at grade in the generic sense (B004111), it is not indicative of a higher  
28 programmatic noise ranking for San Francisco to San Jose, an active commuter rail corridor with

1 substantial existing noise from heavy diesel trains and train horns, which the high-speed train  
2 project would eliminate. (AR B004111 [horns]; B004116, 17 [existing conditions, benefits of  
3 grade separation].) Through Fremont, for example, both alignment alternatives studied in the EIR  
4 include aerial structure and low speeds (125 mph or less), but one is high and the other medium  
5 (the same as the San Francisco to San Jose corridor). (Compare B003956 [profile characteristics],  
6 B004113 [speed characteristics], B004124 [noise impact rankings]; B005574 [Don Edwards to  
7 Shinn (Centerville Line)]; B005575-76 [Don Edwards to Nilas (E) via Fremont Central Park].)

8 The rule that Petitioners advocate, where preliminary information about second-tier projects  
9 necessitates revision of the first-tier project and EIR, would make tiering impossible. The whole  
10 point of tiering is to analyze first-tier projects and second-tier projects separately, when each is  
11 ripe for decision. (Pub. Resources Code, § 21093.) CEQA requires an agency to address in a  
12 second-tier document any significant impacts of a later project that were not adequately addressed  
13 in the first-tier document. (CEQA Guidelines, § 15152, subds. (d), (f).) A lead agency engaging  
14 in broad planning would never be able to finish a program EIR if it were required to constantly  
15 amend and recirculate it to include the latest information on the more detailed projects it is  
16 developing. (SAR000438 [std. resp. 2]; cf. *Laurel Heights Improvement Assn. v. Regents of*  
17 *University of California* (1993) 6 Cal.4th 1112, 1132 [Legislature did not intend to require  
18 “endless rounds of revision and recirculation of EIRs”].)

19 **V. SUBSTANTIAL EVIDENCE SUPPORTS THE RIDERSHIP MODEL AND THE REVISED**  
20 **FINAL PROGRAM EIR’S DISCUSSION OF THE MODEL.**

21 Petitioners’ last claim is that the Revised Final Program EIR violates CEQA because it is  
22 based on high-speed train ridership forecasts generated by a flawed model. (OB, pp. 23-29.)  
23 They argue that the model was modified in a manner not previously available to the public, and  
24 when experts scrutinized the model, it was unanimously deemed inadequate. (*Id.* at pp. 24:4-  
25 25:7.) Petitioners raise three specific issues: (1) the headway coefficient was improperly inflated;  
26 (2) mode-specific constants were unsubstantiated; and (3) the model was based on biased data.  
27 (*Id.* at pp. 25-28.) Petitioners are incorrect. Substantial evidence supports the model and the  
28 Court should decline Petitioners’ invitation to reweigh the technical evidence.

1           **A.     A Disagreement among Experts Does Not Make an EIR Inadequate.**

2           The adequacy of the ridership model is a highly technical factual issue that the Court  
3 reviews to determine if it is supported by substantial evidence. (*City of Long Beach, supra*, 176  
4 Cal.App.4th at p. 898.) The standard of review is deferential, and the Court does not reweigh the  
5 evidence to determine who has the better technical or scientific argument. (*Laurel Heights I,*  
6 *supra*, 47 Cal.3d at p. 393.) A disagreement among experts is therefore not grounds for finding  
7 an EIR inadequate. (*Fort Mojave Indian Tribe v. Department of Health Services* (1995) 38  
8 Cal.App.4th 1574, 1600; *No Slo Transit, Inc. v. City of Long Beach* (1987) 197 Cal.App.3d 241,  
9 251.) “When experts in a subject area dispute the conclusions reached by other experts whose  
10 studies were used in drafting the EIR, the EIR need only summarize the main points of  
11 disagreement and explain the agency's reasons for accepting one set of judgments instead of  
12 another.” (*Association of Irrigated Residents, supra*, 107 Cal.App.4th at p. 1391.)

13           **B.     The Revised Final Program EIR Ridership Discussion and the Authority’s**  
14           **Decision Are Supported by Substantial Evidence.**

15           Petitioners contend there is no substantial evidence to support certain aspects of the  
16 ridership model. (OB, pp. 25-28.) This is not the case. Substantial evidence supports each  
17 aspect of the model that Petitioners claim is deficient.

18           **1.     The ridership model is a state-of-the-practice travel demand**  
19           **model appropriate for high-speed rail planning purposes.**

20           Cambridge Systematics (Cambridge), an expert in the field of transportation modeling,  
21 developed the model that generated the ridership forecasts used in the 2008 Final Program EIR.  
22 (B001153; SAR000442; SAR009066; SAR009075-76.) Cambridge performed the work under  
23 contract to the Metropolitan Transportation Commission (MTC) over a period of two years.  
24 (SAR000442.) The objective of the work was to develop a new statewide network-based travel  
25 demand model that would assist in planning and environmental review, by portraying future  
26 conditions in California with and without a high-speed train. (SAR000442; SAR010623.) The  
27 model development process was documented in a series of public reports, which the Authority  
28 has had posted on its website since 2007. (SAR000449; AR B006684 [RTC O007-9]; B006692-



1 93 [RTC O007-44].)<sup>2</sup> Although the final constants and coefficients used in the model were not  
2 documented in the published reports, when members of the public asked the Authority for this  
3 information, it obtained it from Cambridge and provided it to the requesters. (SAR013604-05;  
4 SAR011124-30; SAR011576.)<sup>3</sup>

5 The ridership model is a series of mathematical equations that provides a tool for making  
6 predictions about how people will travel in the future. (SAR010628.) It consists of separate, yet  
7 integrated, models for forecasting long-distance interregional travel and intraregional travel  
8 within urban areas. (SAR000442, SAR010624; AR F004867-68 [Cambridge Final Report].) The  
9 interregional model is itself comprised of four sets of models: trip frequency, destination choice,  
10 main mode choice, and access/egress mode choice. (AR F004868-72.) The intraregional models  
11 include trip generation, trip distribution, and modified existing mode choice models. (F004872-  
12 73.) The model as a whole forecasts future travel patterns and demand as a function of variables,  
13 such as population and employment, travel time and cost, fuel costs, and rail and airline schedules.  
14 (SAR000442.) The model is developed through a process of estimation, calibration, and  
15 validation based on historical observations of the variables, combined with new survey data of  
16 travelers and their travel choices in response to variables. (SAR010624; SAR000443.)

17 During the model development process, the ridership model was peer reviewed on three  
18 occasions. (SAR000444.) The peer review panel included high-speed rail and modeling experts  
19 from the United States and abroad. (SAR000444; AR F004125-26.) Documentation of these  
20 peer reviews was publicly available. (AR F004118-48; F004149-87; F004188-97.) The model  
21 was refined as a result of comments from the peer review panel. (SAR000444; SAR010628.)

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22  
23 <sup>2</sup> These reports included: work plan (F004075-117); first peer review (F004118-48);  
24 second peer review (F004149-87); third peer review (F004188-97); survey documentation  
25 (F004198-364); socioeconomic data (F004365-476); interregional model system development  
(F004477-554); statewide model validation (F004555-631); level of service assumptions  
(F004632-703); statewide model networks F004704-62); final forecasts (F004763-850); and final  
study report (F004851-939.)

26 <sup>3</sup> The mathematical equations that comprise a model, including the constants and co-  
27 efficients, typically reside in computer software files that are used to apply the model.  
28 (SAR010628.) The model has been publicly available from MTC since 2007. (SAR000911-12;  
SAR010625-26; SAR010629-30; SAR010631; SAR010608; SAR010622.)

1 In 2010, the Senate Transportation and Housing Committee requested an additional peer  
2 review of the model development process by the UC Berkeley Institute for Transportation Studies  
3 (ITS). (SAR013899-901.) The peer review delved into complex questions about the model over  
4 several months, with questions and answers sent between ITS and Cambridge. (SAR009014-36  
5 [app. A]; SAR009037-43 [app. B]; SAR009044-58 [app. C]; SAR009059-63 [app. D].) ITS  
6 issued a peer review report on June 30, 2010. (See SAR009005-63.) Many of ITS's questions  
7 about the model were resolved to their satisfaction, and the report indicated that Cambridge's  
8 work on the ridership model "meets generally accepted standards for travel demand modeling."  
9 (SAR009008.) Nevertheless, ITS criticized the model as having "significant problems" that  
10 render the model "unreliable for policy analysis." (SAR009005.)

11 The Authority invited ITS to present its findings to the Authority Board in July 2010, and  
12 invited Cambridge to present as well. (SAR009086-144 [trnsept].) Professor Brownstone of the  
13 ITS team emphasized the lack of error bands in the analysis, an issue he described as "very  
14 technical." (SAR009086-92.) Cambridge defended its work on the ridership model and offered  
15 explanations for each issue ITS identified in its report. (SAR009101-115.) The Board listened to  
16 both presentations and asked questions. (SAR009090-101; SAR009115-118.)

17 During the presentation, Professor Brownstone acknowledged that inclusion of error bands,  
18 or measures of statistical accuracy, is not standard practice in either industry or academia, while  
19 indicating it was needed. (SAR009091; SAR009100 ["this is a problem with almost all existing  
20 work"].) Cambridge depicted the disagreement over the model as a dispute between academics  
21 versus industry practitioners. (SAR009102-06, 115.) At the meeting, several members of the  
22 public expressed their continuing lack of confidence in the model. (SAR009126-28, 34-36.) The  
23 Metropolitan Transportation Commission, on the other hand, affirmed that agency's confidence in  
24 the model. (SAR009123-26.) A modeling expert from Los Angeles Metropolitan Transportation  
25 Agency who had served on the original ridership peer review panel endorsed the model and called  
26 it, "the most advanced model of its kind in the nation." (SAR009130-32). Informed by both  
27 sides of the highly technical dispute, the Authority concluded Cambridge's discussion of the  
28 model was persuasive and that the model was a sufficient tool for the environmental and planning

1 purposes for which it had been used. (SAR000446; SAR000090-91 [CEQA findings].)

2 **2. The headway coefficient is supported by substantial evidence.**

3 Petitioners claim, however, that the ridership model is overly sensitive to frequency of  
4 service of a particular travel mode. (OB, pp. 25-26.) They improperly invite the Court to engage  
5 in its own scientific critique, arguing there is no substantial evidence for Cambridge changing the  
6 frequency (headway) co-efficient from 0.2 to 1.0 in the final model, making the time between  
7 trains as important as the time a person spends on a train. (OB, pp. 25-26.) Petitioners are wrong  
8 because the headway coefficient is supported by substantial evidence. (*Laurel Heights I, supra*,  
9 47 Cal.3d at p. 409 [Court of Appeal incorrectly performed its own scientific critique of studies].)

10 The constraining of the headway coefficient in the mode choice model was the subject of  
11 specific criticism by ITS, which contended that it was constrained in a manner valid only for an  
12 urban travel demand model, not for an inter-regional travel demand model. (SAR009009-10;  
13 SAR000780, 86-87 [Petitioners' EIR comments].) As Cambridge explained in response to ITS,  
14 constraining of coefficients is frequently done in practical applications of transportation  
15 modeling. (SAR009035-36 [constraining coefficients in transportation models recommended in  
16 federal "New Starts" program].) ITS acknowledged as much. (SAR009006 [changes to key  
17 model parameters "frequently done"].) Cambridge constrained the headway coefficient to match  
18 in vehicle time (1.0) because the original value (0.2) did not replicate observed conditions in the  
19 base year. (SAR009035, 36.) The value of 1.0 was based on the professional judgment of the  
20 model development team, which deemed this to be a more reasonable approach than using larger  
21 mode specific constants, which may have affected the model's sensitivity. (SAR009035-36;  
22 SAR009152 [expert opinion of Mark Bradley that model parameters must be considered as a  
23 whole, not in isolation].) Potential values of the headway coefficient were also discussed with the  
24 original peer review panel, and the resulting value of 1.0 was within the range of values the panel  
25 considered. (SAR009036; SAR009053-54.)

26 While ITS considered the 1.0 value too high, this value reflects the unique situation of  
27 high-speed rail, a mode that does not currently exist in the United States, but that offers far more  
28 frequent interregional service than is currently available by air and conventional rail.

1 (SAR009070; SAR009053-54.) In fact, the headways of high-speed rail are often as short as on  
2 some of the best commuter rail systems in operation, a point identified by the original peer review  
3 panel. (See SAR009080 [Cambridge Systematics response]; AR F004144 [high frequency of  
4 Japanese high-speed rail].) ITS acknowledged that this was the case for high-speed rail, although  
5 it continued to dispute that a value of 1.0 coefficient was valid for air travel. (SAR009010.) The  
6 Revised Final Program EIR standard response on the ridership model summarized these points  
7 about the headway coefficient, explaining: “The decision to constrain certain coefficients in the  
8 model was made neither unilaterally nor arbitrarily, but was based on the best available data,  
9 published literature, and accepted practice.” (SAR000444-45.)

10 While Petitioners claim the headway coefficient value of 1.0 was wrong, Cambridge is an  
11 expert in the field of travel demand forecasting, and has performed high-speed rail ridership  
12 forecasting work in the United States and abroad. (SAR009066, 67.) Cambridge affirmed its  
13 expert opinion that the adjustment to the frequency coefficient was appropriate. (SAR009109-10  
14 [discussion of headway coefficient]; SAR000444-45 [standard response 4].) The determination  
15 was based on the professional judgment of an expert, supported by the facts identified above.  
16 The Authority was entitled to select the expert to rely on and the disagreement does not render the  
17 EIR in adequate. (*Association of Irrigated Residents, supra*, 107 Cal.App.4th at p. 1391.)<sup>4</sup>

### 18 3. The mode specific constants are supported by substantial evidence.

19 Petitioners also claim the model is flawed because “mode-specific” constants unjustifiably  
20 changed between model validation and finalization. (OB, pp. 27-28.) Citing their own expert,  
21 Petitioners claim the final mode-specific constants “make absolutely no sense and cannot be  
22 justified by the model development process.” (*Id.*, p. 27:17-18.) Again, Petitioners are incorrect.

23 Cambridge developed the ridership model through a standard procedure of model  
24 estimation, calibration, and validation. (SAR000444.) The procedure for calibrating mode-  
25 specific constants is described in the Statewide Model Validation Report. (AR F004597-606.)

26 <sup>4</sup> Petitioners submit a Declaration of Elizabeth Alexis, attaching 16 spreadsheets.  
27 Petitioners correctly state that the spreadsheets were not accurately reproduced in the Revised  
28 Final Program EIR. The spreadsheets were, however, received by the Authority and the  
Authority does not dispute that they are part of the record.

1 During the model validation, the constants for existing modes (auto, air, conventional rail) were  
2 calibrated to reflect existing market shares and levels of service of these modes. (SAR009040.)  
3 The high-speed rail constants were calibrated based on analysis of the high-speed rail constants in  
4 the earlier model estimation, reflected in the Interregional Model System Development Report,  
5 and the relationship to the air and rail constants by mode and purpose from the calibrated models.  
6 (See AR F004599 [calibration]; F004550-51 [estimation results]; see also SAR009040-43.)

7 In response to queries from ITS about the mode-specific constants, Cambridge explained  
8 that within this process, the high-speed rail constants were also assessed to avoid what is called  
9 “optimism bias,” which may be present in forecasts of entirely new travel modes. (SAR009040.)  
10 Large constants for new rail modes can reflect a high degree of anticipated adoption by travelers  
11 which is too optimistic, leading to overly optimistic forecasts. (SAR009040.) To minimize the  
12 negative impacts of optimism bias, the high-speed rail constants for the long distance business  
13 market and the long-distance recreation/other market were positioned between the air and  
14 conventional rail constants. (SAR009042-43.) ITS accepted this explanation and did not  
15 question the mode-specific constants its final report. (See SAR009008-13; SAR011577.) While  
16 Petitioners disagree, the mode-specific constants are supported by substantial evidence. (*Laurel*  
17 *Heights I, supra*, 47 Cal.3d at p. 393; CEQA Guidelines, § 15151.)

#### 18 **4. The approach to survey data is supported by substantial evidence.**

19 Petitioners’ claim that the surveys done in support of the model were biased because rail  
20 users were overrepresented is similarly unavailing. (OB, p. 28.) ITS, in its 2010 peer review,  
21 criticized the survey data as not representative of California interregional travelers. (SAR009005-  
22 06.) The group CARRD raised the same the point in comments on the Revised Draft Program  
23 EIR. (SAR000750.) ITS also criticized the method Cambridge used to adjust the model  
24 parameters. (SAR009005-06; see also SAR009010-11.) Substantial evidence in the record,  
25 however, supports the survey approach for the model and how it was adjusted.

26 The model development process involved new surveys of intercity travel because existing  
27 data, the Caltrans California Statewide Household Travel Survey, of 17,000 households randomly  
28 surveyed, resulted in only 25 interregional trips made by air and rail riders combined. (AR

1 F004093-94; SAR009072.) This meager result on intercity air and rail travel was insufficient to  
2 reliably develop the model, so model development included new surveys to enrich the data. (AR  
3 F004134, 36; F004093-94; SAR000443.) The original ridership peer review panel affirmed the  
4 need for new data. (AR F004118-48; F004125 [purpose of first peer review panel was to provide  
5 technical guidance on survey data collection plan].)

6 Cambridge proposed to conduct choice-based sampling by obtaining completed surveys of  
7 600 airline, 450 rail, and 600 automobile users, with a recruitment of 900 airline, 600 rail, and  
8 720 automobile users. (F004142.) The peer review panel suggested increasing the sample size  
9 overall, and increasing the automobile surveys, with the number of air and rail surveys remaining  
10 the same. (F004143; F004148; SAR010629 [survey plan extensively debated by peer review  
11 panel].) Consistent with the peer review panel's recommendation, the data collection effort  
12 resulted in 3172 completed surveys. (F004201.) Of this total, 1234 airline surveys were  
13 completed, 431 passenger rail surveys, and 1507 automobile surveys. (F004201.) The published  
14 report describes how and where the surveys were performed and includes the actual survey  
15 questionnaires, which the peer review panel reviewed. (See generally F004198-364; F004148.)

16 Petitioners say this survey approach was biased, but Cambridge explained that  
17 oversampling of air and rail markets was necessary for reliable model estimation. (SAR009071.)  
18 A purely random sample is not realistic or cost effective for a study of interregional travel and  
19 high-speed rail ridership, and could result in a potentially misleading sample from air and rail  
20 travelers. (SAR009071-72.) The California Statewide Household Travel Survey, while very  
21 large, underreported air and rail trips significantly. (SAR009072; SAR000443.) As explained in  
22 the Revised Final Program EIR, the targeted sampling procedure used for the ridership model  
23 addressed the difficulty and cost of collecting sufficient data for model estimation using simple  
24 random sampling, citing two academic articles in support. (SAR000443; SAR007317-40;  
25 SAR010162-74.) The survey data collection approach is thus supported by substantial evidence.

26 On the issue of the proper adjustment of the survey data, called "calibration of mode  
27 constants," Cambridge explained that it adjusted the travel market shares in the surveys to reflect  
28 true market shares in the population. (SAR009072; SAR000443.) Cambridge used a calibration

1 method that was well-proven, used widely and consistently to calibrate models, and well  
2 established in both academic literature and practice at the time the work was done. (SAR009072;  
3 SAR010162-74; SAR007317-40.) Substantial evidence thus supports the method Cambridge  
4 used. (*Laurel Heights I, supra*, 47 Cal.3d at p. 393.) While ITS indicated the method Cambridge  
5 used was superseded in 2008 by a new method, this development happened after the model was  
6 complete, it has not been widely tested or used in practice, and is not a “reasonably feasible”  
7 method under these facts. (SAR009011; SAR009072-73; SAR000443; SAR009087 CEQA  
8 Guidelines, § 15151 [sufficiency of EIR must be viewed in light of what is reasonably feasible].)

9 **C. The Revised Final Program EIR Served Its Role as an Informational**  
10 **Document on Expert Disagreement over the Ridership Model.**

11 Finally, the Revised Final Program EIR served its informational role by identifying the  
12 critiques of the ridership model and explaining the Authority’s disagreement with those critiques.  
13 The Authority received many comments on the Revised Draft Program EIR alleging that the  
14 ridership model was flawed. (SAR000442.) The comments range from simple declarations to  
15 more technical criticism. (See, e.g., SAR00052 [L003-4]; SAR000658 [L020-66]; SAR001016  
16 [I009-24]; SAR001140 [I051-5]; SAR000747-57 [CARRD]; SAR00779-80 & 84-92 [Flashman].)

17 The Authority included an eight-page standard response on the ridership model and  
18 forecasts in the Revised Final Program EIR, offering background information on the model, the  
19 peer review process, and how the model evolved from 2005 to 2007. (SAR000442-45.) The  
20 standard response addressed criticism of the travel surveys, the effect of changing economic  
21 conditions, how the ridership forecasts compare to international experience, and the public  
22 availability of the model since 2007. (SAR000444-49.) The response also addressed why the  
23 EIR forecasts were different than the forecasts included in the Authority’s 2009 Business Plan, an  
24 issue that received considerable public comment. (SAR000445.) The ITS report is identified in  
25 the standard response, as well as cited in the reference list of sources considered. (SAR000446;  
26 SAR002500.) The response notes that the Authority Board had received a presentation from  
27 Cambridge and ITS in July 2010, and that the Board would have the full record before it when it  
28

1 made a new program EIR decision. (SAR000446.) The Revised Final Program EIR also  
2 included individual responses to comments on ridership. (See, e.g. SAR000758-61; SAR001305.)

3 Authority staff emphasized criticism of the ridership model in a September 1, 2010,  
4 presentation to the Authority Board for the Revised Final Program EIR. (SAR011553, 55-56;  
5 SAR011600-02.) Many individuals supplied further comments on September 1 and 2, 2010,  
6 claiming the ridership model was flawed and that the Authority should in essence start the  
7 program EIR over with a new model. (See, e.g., SAR012322-24 [Flashman]; SAR012425-53  
8 [CARRD]; SAR001346, 47 [I128-3, I128-13].) Staff provided the Board with an additional  
9 summary on the ridership model issues on September 2, 2010, collating the many comments  
10 received on the issue in the days before the Board meeting. (SAR011574-78.) This summary  
11 acknowledges “very strong differences in professional opinion” that had been offered and  
12 explains the staff perspective that Cambridge, an industry practitioner with extensive practical  
13 experience, carried more weight in the context of the high-speed rail project. (SAR011574-78.)

14 In making its final decisions, the Authority adopted findings confirming that it had  
15 considered all of the evidence before it regarding the ridership model, and acknowledging the  
16 points of disagreement between Cambridge and ITS. (SAR000090.) The findings recognize the  
17 issues identified by ITS, but conclude that Cambridge provided a thorough response to each  
18 technical issue. (SAR000091.) In conclusion, the Authority found “that the ridership model and  
19 the resulting forecasts used in the Program EIR have been and continue to be appropriate for he  
20 broad programmatic level of planning and environmental review for which they are being used in  
21 the Revised Final Program EIR.” (SAR000091.)

22 This process complied with CEQA. The Revised Final Program EIR acknowledged and  
23 summarized the expert criticism of the ridership model and explained the staff perspective.  
24 (SAR000442-48; CEQA Guidelines, § 15151; *Association of Irrigated Residents, supra*, 107  
25 Cal.App.4th at p. 1398.) Criticism of the ridership model was highlighted for the Board and the  
26 public, not swept under the rug. (SAR011553, 55-56; SAR011600-02.) The Authority Board  
27 weighed the conflicting evidence and reached a conclusion. (SAR000090-91.) In contrast to  
28 cases where an EIR is inadequate because it fails to even acknowledge the opinions of experts



1 that cast doubt on an EIR's analysis, the Revised Final Program EIR, and the Authority Board,  
2 addressed this issue with candor, and in compliance with CEQA. (See *Berkeley Keep Jets Over*  
3 *the Bay Com. v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1371 [EIR failed to  
4 acknowledge expert opinion questioning EIR analysis of toxic air contaminants]; *Communities*  
5 *for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 88 [EIR inadequate  
6 because information on expert dispute not included].)

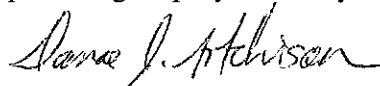
### 7 CONCLUSION

8 As they did in 2009, Petitioners raise a multitude of alleged defects in the Authority's first-  
9 tier, program EIR for the Bay Area to Central Valley High-Speed Train. Petitioners do not  
10 contest most issues the Court identified for further CEQA compliance, but instead spin this case  
11 off on a series of purported "new issues" that they claim require yet another round of revision and  
12 recirculation of the program EIR. In doing so, Petitioners ask the Court to engage in its own  
13 technical critique of the evidence and second guess the Authority, and to burden a program EIR  
14 with a level of detail appropriate at the second tier. This is the opposite of what CEQA requires  
15 here. The Authority has taken all steps necessary to comply with the final judgment and with  
16 CEQA. Substantial evidence supports the analysis in the Revised Final Program EIR, which  
17 provided a sufficient basis for the Authority to make the broad, first-tier decision about the  
18 Pacheco Pass and the Altamont Pass. Having made that determination, the details Petitioners  
19 seek belong in more focused, second-tier environmental documents. The Authority therefore  
20 respectfully requests that the Court discharge the writ.

21 Dated: June 23, 2011

Respectfully Submitted,

22 KAMALA D. HARRIS  
23 Attorney General of California  
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**DECLARATION OF SERVICE BY U.S. MAIL AND ELECTRONIC MAIL**

Case Name: *Town of Atherton, et al. v. California High-Speed Rail Authority*

Case No.: **Sacramento County Superior Court No. 34-2008-8000022**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On June 24, 2011, I served the attached

**CALIFORNIA HIGH-SPEED RAIL AUTHORITY'S BRIEF IN OPPOSITION TO PETITIONERS' OPENING BRIEF ON THE MERITS**


by transmitting a true copy via electronic mail, and by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 24, 2011, at Sacramento, California.

\_\_\_\_\_  
Robyn Baldwin  
Declarant

  
\_\_\_\_\_  
Signature