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8 **(Exempt from filing fees – Gov. Code §6103)**

9 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **IN AND FOR THE COUNTY OF SAN MATEO**

11 TOWN OF ATHERTON, a Municipal
12 Corporation; TRANSPORTATION SOLUTIONS
13 DEFENSE AND EDUCATION FUND, a
14 California nonprofit corporation, and
15 COMMUNITY COALITION ON HIGH-SPEED
16 RAIL, a California nonprofit corporation,
17 Petitioners

18 v.

19 PENINSULA CORRIDOR JOINT POWERS
20 BOARD, a public entity, and DOES 1-20,
21 Respondents

No.

PETITION FOR PEREMPTORY WRIT OF
MANDATE

[Public Resources Code §§21168/21168.5]

ACTION UNDER THE CALIFORNIA
ENVIRONMENTAL QUALITY ACT

22 As causes of action against Respondent Peninsula Corridor Joint Powers Board
23 (“RESPONDENT”), Petitioners TOWN OF ATHERTON (“ATHERTON”),
24 TRANSPORTATION SOLUTIONS DEFENSE AND EDUCATION FUND (“TRANSDEF”)
25 AND COMMUNITY COALITION ON HIGH-SPEED-RAIL (“CC-HSR” and the foregoing,
26 collectively, “PETITIONERS”) allege as follows:

27 **INTRODUCTION**

- 28 1. This action challenges the certification by RESPONDENT of a Final Environmental Impact
29 Report (“FEIR”) for its Peninsula Corridor Electrification Project (“Project”) and the approval of
30 said Project.
- 31 2. PETITIONERS allege that RESPONDENT’s actions in certifying the FEIR and approving
32 the Project were in violation of provisions of the California Environmental Quality Act
33 (“CEQA”) and the CEQA Guidelines (California Code of Regulations, Title 14, §15000 et seq.),
34 and an abuse of RESPONDENT’s discretion.

1 3. PETITIONERS allege that RESPONDENT approved the Project based on a FEIR that did
2 not have an adequate project description, did not give adequate consideration to the Project's
3 impacts on the environment, including specifically cumulative impacts, failed to propose
4 adequate mitigation measures to address the Project's significant impacts, failed to provide a fair
5 and adequate consideration of feasible alternatives to the approved Project, and failed to provide
6 adequate responses to comments on the Draft Environmental Impact Report ("DEIR") submitted
7 by other public agencies, as well as by concerned organizations and individuals. PETITIONERS
8 further allege that RESPONDENT violated CEQA's requirements 1) for recirculation of a DEIR
9 after addition of significant new information, and 2) for mandatory findings, in that the findings
10 did not support approval of the Project and were not supported by substantial evidence in the
11 record.

12 4. PETITIONERS seek this Court's peremptory writ of mandate ordering RESPONDENT to
13 rescind its approvals, as well as the Court's Permanent Injunction prohibiting RESPONDENT
14 from moving forward to consider re-approving the Project until and unless it has first fully and
15 properly complied with CEQA. PETITIONERS also seek this Court's preliminary relief by way
16 of its Temporary Restraining Order and Preliminary Injunction to prevent RESPONDENT from
17 moving forward with implementing the PROJECT pending this Court's final determination on
18 the merits. Finally PETITIONERS, acting in the public interest, seek an award of costs and of
19 attorneys' fees under Code of Civil Procedure §1021.5 or other applicable authority.

20 **PARTIES**

21 5. Petitioner TOWN OF ATHERTON is a municipal corporation, formed and existing under
22 the general laws of the State of California. ATHERTON lies directly astride the Project and will
23 be both directly and cumulatively impacted by the PROJECT. ATHERTON and many of its
24 citizens submitted comments on the Project and its environmental impacts, which comments
25 were not adequately responded to. ATHERTON files this action on behalf of itself and its
26 citizens, who will be directly and adversely affected by RESPONDENT's decisions to certify the
27 FEIR for the Project and approve the Project.

28 6. Petitioner TRANSPORTATION SOLUTIONS DEFENSE AND EDUCATION FUND is a
29 California nonprofit public benefit corporation, headquartered in the Bay Area, established and

1 existing under the laws of the State of California as a regional advocate to promote transportation
2 solutions favoring transit over new highway capacity, development around transit stops rather
3 than sprawl into the Bay Area's open spaces, and more market-oriented pricing of private motor
4 vehicle travel. TRANSDEF advocates on behalf of its members and the public at large for
5 effective regional planning, smart growth, improved transit service, and cleaner air. TRANSDEF
6 has participated in the development of Bay Area Regional Transportation Plans and
7 Transportation Improvement Programs for more than twenty years. TRANSDEF has actively
8 engaged in numerous public agency proceedings involving transportation and air quality issues,
9 including specifically the administrative proceedings around the Project and its environmental
10 review under CEQA. TRANSDEF submitted comments on the Project and its environmental
11 impacts, which comments were not adequately responded to. The Project, as approved, will be
12 counter to TRANSDEF's interest in promoting efficient, cost-effective, and environmentally
13 sound public transportation projects and will therefore injure TRANSDEF's interests.

14 7. Petitioner COMMUNITY COALITION ON HIGH-SPEED RAIL is a California nonprofit
15 public benefit corporation, established and existing under the laws of the State of California.
16 CC-HSR seeks to inform the public about the benefits and potential pitfalls of high-speed rail,
17 and particularly its effects on residents of the San Francisco Peninsula, and to advocate for a rail
18 system that respects the rights and values of residents of the San Francisco Peninsula. CC-HSR
19 files this action on behalf of itself and its members who are citizens, residents, property owners,
20 and taxpayers within the State of California, and more specifically within the San Francisco
21 Peninsula in the general area through which RESPONDENT proposes to run the Project. CC-
22 HSR and its member will be directly injured by the Project and its direct and cumulative impacts.
23 CC-HSR and its members submitted comments on the Project and its environmental impacts,
24 which comments were not adequately responded to.

25 8. PETITIONERS and their members/citizens have a direct and beneficial interest in the
26 approval and implementation of a well-planned, cost-effective, efficient, and environmentally
27 sound rail system within the San Francisco Bay area, and more specifically in the fully-informed,
28 fair, and proper decision on the Project, in full compliance with CEQA and the CEQA
29 Guidelines.

1 9. Respondent PENINSULA CORRIDOR JOINT POWERS BOARD is a joint powers agency
2 established and operating under the laws of the State of California. Respondent was established
3 by agreement between the Santa Clara County Transit District, the San Mateo County Transit
4 District, and the City and County of San Francisco in 1996 for the purpose of owning and
5 operating a public commuter rail service (“Caltrain”) along the San Francisco Peninsula between
6 San Francisco and San Jose, with extended service to Gilroy. RESPONDENT, its staff, and
7 contractors and consultants working under its control and direction, prepared the FEIR for the
8 Project, and RESPONDENT’s governing board certified the FEIR for the Project and gave final
9 approval to the Project.

10 10. PETITIONERS are unaware of the true names and capacities of Respondents DOES 1
11 through 20, inclusive, and therefore sue those Respondents under fictitious names.
12 PETITIONERS will amend their Petition to show their true names and capacities when the
13 Respondents have been identified and their capacities ascertained. Each of the Respondents is
14 the agent, employee, or both of every other Respondent or is otherwise directly involved in the
15 Project and/or its approval, and each performed acts on which this action is based within the
16 course and scope of such Respondent’s agency, employment, or both, or has a direct and
17 immediate interest in the Project. PETITIONERS are informed and believe, and therefore allege,
18 that each Respondent is legally responsible in some manner for the events and happenings
19 referred to herein.

20 **PROJECT BACKGROUND**

21 11. RESPONDENT owns and operates the Caltrain commuter rail line, running between a
22 northern terminus in San Francisco and a southern terminus in Gilroy, with its major service
23 between San Francisco on the north and San Jose on the south. Caltrain operates on a right of
24 way and trackage which it purchased from the predecessor in interest of the Union Pacific
25 Railroad Company (“UP”), and in which UP continues to hold vested rights under the purchase
26 agreement by which RESPONDENT acquired the right of way and trackage, including the right
27 to continue to operate freight service on RESPONDENT’s trackage between San Jose and San
28 Francisco without interference by Caltrain operations. In addition, UP retains a right to approve

1 or disapprove any proposed intercity passenger rail operation along RESPONDENT's right-of-
2 way or trackage.

3 12. At the current time, RESPONDENT operates, at peak weekday commute hours, six trains
4 per hour, and during those hours many of the trains are already filled to or near their standing-
5 room capacity.

6 13. RESPONDENT has studied the expected future ridership for Caltrain. Those studies
7 indicate that Caltrain ridership will exceed Caltrain's rider capacity, especially during peak
8 weekday commute hours, in the near future. RESPONDENT therefore seeks to expand
9 Caltrain's passenger capacity.

10 14. The California High-Speed Rail Authority ("CHSRA"), a state agency under the State
11 Transportation Agency, plans to run high-speed rail service along the Caltrain corridor between
12 San Jose and San Francisco. In 2012, CHSRA certified a program-level FEIR for high-speed rail
13 service between San Francisco and Merced. That FEIR identified a preferred alignment through
14 Pacheco Pass south of Gilroy and then north through San Jose. CHSRA's April 2012 project
15 approval based on that EIR called for CHSRA to share RESPONDENT's corridor between San
16 Jose and San Francisco in what it called "blended" high-speed rail service, i.e., running both
17 Caltrain and high-speed rail trains on the same tracks with compatible supporting infrastructure,
18 and directed that the Project-level EIR for that segment focus solely on the blended system
19 approach.

20 15. Also in 2012, the California Legislature, at the request of CHSRA, appropriated 1.1 billion
21 dollars of bond funds authorized under the 2008 Proposition 1A state general obligation high-
22 speed rail bond measure towards construction of improvements in the "bookend" segments of
23 CHSRA's proposed Los Angeles – San Francisco high-speed rail line, specifically including
24 improvements to accommodate blended high-speed rail service on the San Francisco Peninsula.
25 ("Bookends HSR Appropriation")

26 16. In 2013, RESPONDENT and CHSRA entered into a Memorandum of Understanding
27 ("MOU") governing the proposed blended service under which RESPONDENT promised to
28 cooperate with CHSRA to achieve blended high-speed rail service between San Jose and San
29 Francisco.

1 17. The Caltrain HSR Appropriation is a major source of funding for the Project.

2 18. The estimated cost of the Project, as approved is approximately \$1.5 billion.

3 19. Under an agreement with CHSRA, RESPONDENT would receive approximately \$600
4 million of Proposition 1A high-speed rail construction bond funds from the Bookends HSR
5 Appropriation for use in the Project.

6 20. Without the funding being provided to the Project by CHSRA, RESPONDENT would not
7 have sufficient funds available to make the Project, as approved, a feasible project.

8 **PROJECT HISTORY**

9 21. In or about April 2004, RESPONDENT issued an Environmental Assessment (“EA”) under
10 the National Environmental Policy Act (“NEPA”) and a DEIR for the Project. A revised EA and
11 FEIR were issued on or about July 2009. Based on the revised EA, the Federal Transit
12 Administration issued a Finding of No Significant Impact (“FONSI”) for the Project and
13 approved the Project in or about that same year; however RESPONDENT took no action on the
14 FEIR, pending resolution of issues around shared use of the Caltrain right of way from San
15 Francisco to San Jose between Caltrain and future high-speed rail service.

16 22. On or about January 31, 2013, RESPONDENT issued a Notice of Preparation (“NOP”) for a
17 new EIR for the Project, which had been revised to reflect agreements with CHSRA on use of
18 RESPONDENT’s right of way and trackage for blended high-speed rail service. A scoping
19 process for that EIR followed, ending on or about March 18, 2013.

20 23. On or about February 28, 2014, RESPONDENT issued its DEIR for the Project for a sixty-
21 day public review period, which closed on or about April 29, 2014.

22 24. PETITIONERS, their members and citizens, and other governmental agencies,
23 organizations, and members of the public submitted oral and written comments on the DEIR to
24 RESPONDENT prior to the close of the public comment period.

25 25. On or about December 4, 2014, RESPONDENT issued its FEIR for the Project. The FEIR
26 purported to provide responses to all comments received during the comment period on the
27 DEIR. PETITIONERS and other governmental agencies, organizations, and individuals
28 submitted oral and written comments on the FEIR prior to the close of RESPONDENT’s public
29 hearing to consider approving the Project.

1 26. On or about January 8, 2015, RESPONDENT voted to certify the FEIR and approve the
2 Project. A Notice of Determination was filed that same day.

3 **GENERAL ALLEGATIONS**

4 27. PETITIONERS have fully exhausted their administrative remedies to the extent required by
5 law. More specifically, PETITIONERS have fully satisfied the requirements of Public
6 Resources Code §21177. PETITIONERS and their members/citizens/elected officials submitted
7 oral and/or written comments to RESPONDENT, prior to the close of the public hearing before
8 the approval of the Project, objecting to the approval of the Project. PETITIONERS, their
9 members/citizens/elected officials, other public agencies, other organizations, and members of
10 the public raised each of the claims presented in this petition prior to the close of the public
11 hearing on the approval of the Project.

12 28. PETITIONERS have complied with the requirements of Public Resources Code section
13 21167.5 by mailing written notice of the commencement of this action to RESPONDENT before
14 filing this Petition and Complaint. A copy of that notice, with proof of service, is attached hereto
15 as Exhibit A.

16 29. Pursuant to Public Resources Code Section 21167.7, PETITIONERS have provided a copy
17 of this Petition and Complaint to the California Attorney General. A copy of the accompanying
18 notice and proof of service are attached hereto as Exhibit B.

19 30. PETITIONERS have no plain, speedy or adequate remedy in the ordinary course of law.
20 Unless this Court grants the requested writ of mandate to require RESPONDENT to rescind its
21 approval of the Project and certification of the FEIR, RESPONDENT's actions in violation of
22 CEQA will remain in effect.

23 31. If RESPONDENT is not enjoined from moving forward to implement the Project and from
24 undertaking acts in furtherance thereof, PETITIONERS will suffer irreparable harm for which
25 there is no adequate remedy at law in that RESPONDENT will move forward on implementing
26 the Project, with attendant significant environmental impacts, without having first conducted
27 adequate environmental review, which might have avoided or mitigated some or all of those
28 impacts.

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CHARGING ALLEGATIONS

FIRST CAUSE OF ACTION

Violation of CEQA and CEQA Guidelines – Certification of Legally Inadequate Environmental Impact Report.

32. PETITIONERS hereby reallege and incorporate by reference the preceding paragraphs 1 through 31 as though fully set forth herein.

33. The Project required discretionary approval by RESPONDENT and was therefore a project under CEQA.

34. The Project did not qualify for any CEQA exemption and therefore required environmental review under CEQA.

35. The Project, as a local commuter rail project that is located entirely within the State of California, is owned and operated by a local public transit agency and does not connect in any significant way with the national interstate rail network, is exempt from the jurisdiction of the Surface Transportation Board (“STB”). Based on this, RESPONDENT applied for and received a written exemption from the STB. That exemption was never challenged or rescinded.

36. RESPONDENT was the lead agency for environmental review of the Project under CEQA.

37. RESPONDENT determined that the Project had potential to cause significant adverse environmental impacts, and therefore determined to prepare an EIR for the Project.

38. RESPONDENT had a duty under CEQA to certify that the FEIR for the Project satisfied all requirements under CEQA. RESPONDENT violated this duty by certifying the FEIR for the Project where the FEIR was deficient in the following respects:

Count One: Inadequate Project Description

39. An EIR is required to include an adequate and stable description of the Project being considered. The description must be accurate and must contain sufficient detail to allow the reader of the EIR to understand the nature of the Project and its salient characteristics.

40. The project description in the FEIR was inadequate because it failed to accurately describe the relationship between the Project and the blended system proposed by CHSRA. Further, the project description varied between the DEIR and the FEIR.

1 41. In the DEIR, Caltrain and high-speed rail operations were proposed to diverge in the
2 northern direction south of the 4th and King Caltrain station, with Caltrain trains continuing north
3 and east to stop at the 4th and King station, with some then continuing further north to the new
4 Transbay Transit Center (“TTC”). All high-speed rail trains, by contrast, would continue
5 directly to the TTC without stopping at the 4th and King station. However, in the FEIR the
6 project description was revised to indicate that the 4th and King station would be the northern
7 terminal for all Caltrain trains and all high-speed rail trains for an indefinite future period of time
8 because funding for a Downtown Tunnel Extension (“DTX”) connecting to the TTC was not
9 available. This change in the Project also required a redesign of the 4th and King station.
10 Accordingly, the inaccurate and unstable project description requires that the approval of the
11 Project and the certification of the FEIR be set aside.

12 42. More fundamentally, the project description is inadequate and misleading in that it describes
13 the Project as a “stand-alone” project independent of CHSRA’s “blended system.” Yet the
14 Project Purpose places front and center the need for the project to “Provide electrical
15 infrastructure compatible with high-speed rail.” In fact, this criterion is used as a basis, and in
16 the DEIR, the primary basis, for rejecting as “infeasible” all of the project alternatives identified
17 in the EIR except for the Project.

18 43. If the project is truly a “stand-alone” project – independent of serving as a precursor to the
19 blended system – it is hard to understand why providing electrical infrastructure compatible with
20 the blended system should be a major project purpose. On the other hand, given that this is one
21 of, and perhaps the main purposes of the Project, and given that CHSRA is providing close to
22 half of the funding for the Project with Proposition 1A funds, which are specifically restricted to
23 planning and construction of a state high-speed rail system, RESPONDENT’s position that the
24 Project is unconnected to construction of the blended system is untenable.

25 44. PETITIONERS therefore allege that the Project is not an independent stand-alone project,
26 but is, in fact, a significant and necessary component of CHSRA’s blended high-speed rail
27 project.

1 45. As such, PETITIONERS allege that the EIR’s project description is defective and
2 misleading in failing to describe the entirety of the project as including the construction of the
3 full blended system extending at least from San Jose to San Francisco.

4 **Count Two: Failure to Fully Disclose and Adequately Analyze the Project’s**
5 **Significant Environmental Impacts.**

6 46. The FEIR fails to fully disclose or adequately analyze the Project’s significant impacts.
7 These include, more specifically, the following:

8 47. The significant safety impact from expanding service to or through center platform Caltrain
9 stations whose safety for station patrons is already deficient and will be made more so by the
10 increase in service;

11 48. The significant safety impact of expanding service through grade crossings, such as that at
12 Watkins Avenue in Atherton, which are already unsafe and whose safety will be significantly
13 and adversely affected by the increase in service.

14 49. The significant cumulative impacts of the Project combined with the extension of CHSRA’s
15 high-speed rail line along the Caltrain corridor (and other projects), and particularly the
16 following:

17 a. Impacts, including but not limited to both construction and operational noise, tree
18 removal/pruning, displacement, visual/aesthetic, and property impacts from having to
19 straighten curved portions of the Caltrain trackage so that high-speed rail trains can
20 run at the expected 110 miles per hour, including, but not limited to, the Caltrain track
21 sections: 1) at Visitation Point in Brisbane; 2) adjacent to Sierra Point; 3) northwest
22 of the San Francisco International Airport (Colma Creek to South Linden Ave. and at
23 San Bruno Ave.); 4) just south of that same airport at Trousdale Drive; and 5) just
24 north of Highway 92 in San Mateo. All of these curvatures are too extreme to meet
25 the well-defined minimum curvature radius standards for 110 mph trains and are
26 readily identified from standard US Geological Survey maps of the route area.

27 b. Other impacts from the “Core Capacity Projects” agreed to in the MOU between
28 RESPONDENT and CHSRA and required to be implemented to allow blended
29

1 system high-speed rail trains to use the Caltrain system, including upgrades to
2 stations, grade crossings, tracks, bridges, and tunnels and the addition of passing
3 tracks.

- 4 c. Impacts from construction and operation of “interim” high-speed rail station facilities
5 at the 4th & King Caltrain station as the “interim” northern terminus of the high-speed
6 train line in San Francisco, due to there being insufficient funding to complete the
7 Downtown Tunnel Extension (“DTX”) between the 4th & King Caltrain station of the
8 TTC. These impacts would include increased traffic in the areas surrounding the 4th
9 & King Station, with resultant congestion, decreased pedestrian and bicycle safety,
10 and local air quality impacts, none of which were addressed in the FEIR;
- 11 d. Failure to consider the potential impacts if UP’s unwillingness to agree to allow
12 blended service, or a court decision declaring that blended service violates the
13 requirements of Streets & Highways Code §2704.04 or §2704.09, requires CHSRA to
14 pursue a dedicated four-track system up the Peninsula within or outside of the
15 Caltrain right of way;
- 16 e. Failure to consider the cumulative traffic impacts of the Project in conjunction with
17 the blended high-speed rail system; more specifically, the EIR fails to identify and
18 analyze the cumulatively significant traffic impact on roadways crossing the Caltrain
19 alignment at grade crossings from the disruptions caused by safety gate closings at
20 grade crossings for Caltrain trains combined with gate closings at those same grade
21 crossings for blended system high-speed rail trains, and even more specifically for
22 gate closings at grade crossings when high-speed rail trains are using passing tracks
23 to overtake and pass one or more Caltrain trains;
- 24 f. Failure to consider impacts associated with Caltrain stations, and particularly to
25 Caltrain stations that will not also be high-speed rail stations, having to accommodate
26 high-speed rail trains and especially high-speed rail passing tracks, particularly
27 impacts, including noise and safety impacts on patrons at those stations waiting for
28 Caltrain trains;

- 1 g. Failure to consider the impact of limitations on expansion of future Caltrain service
2 because of the schedule space occupied by blended system HSR trains, with the
3 consequent limitation on ridership and resort of would-be Caltrain riders to private
4 automobile use, with consequent secondary impacts, including increased freeway
5 congestion, increased petroleum and energy consumption, and increased air pollution;
- 6 h. Failure to consider the impact of increased electrical power use from the combination
7 of Caltrain electrical demand plus blended system high-speed rail electrical demand,
8 coupled to other reasonably foreseeable increases in electrical demand, particularly in
9 terms of placing stress on the electric power generation and transmission system on
10 the Peninsula. More specifically, given that summer peak evening commute hours,
11 which will involve maximum power draw for both Caltrain and HSR service, are also
12 within the peak summer electrical load hours for other energy-intensive uses
13 including commercial and industrial uses and air conditioning uses, the cumulative
14 increase in electrical power use can be expected to exceed available renewable energy
15 power sources and require the construction and/or operation of additional natural gas-
16 powered “peaker” power generation plants, which will significantly increase the
17 cumulative GHG production and air quality impacts, a potentially significant impact
18 that was not properly discussed;

19 50. All of the impacts from blended system high-speed rail identified in paragraph 49 would
20 result from, and would not occur but for RESPONDENT’s approval of the Project, making them,
21 in addition, secondary impacts of the Project’s approval.

22 **Count Three: Failure to Adequately Mitigate Project Impacts**

23 51. Under CEQA, an EIR must identify all feasible mitigation measures with the potential to
24 significantly reduce a potentially significant project impact, and specifically must identify any
25 and all feasible mitigation measures that would reduce the potential impact to a less than
26 significant level.

27 52. The FEIR asserts that tree removal and pruning impacts could be partially mitigated by
28 repositioning the installation locations for some catenary support poles to a center position and

1 planting replacement trees, but asserts that the impacts would remain significant and
2 unavoidable. However, while the FEIR considered and rejected as proposed mitigation
3 separating the tracks over the entire project length to allow for a global repositioning of the
4 installation locations of all catenary support poles to a center position, and rejected moving
5 tracks further apart when it would result in increased noise and vibration impacts on sensitive
6 receptors, it did not consider or analyze the potential for selective track movement and center
7 pole positioning where tree removal/pruning impacts would be particularly severe, could be
8 mitigated by repositioning the installation locations of catenary support poles to a center
9 position, and where sensitive receptors would not be impacted by the change. The failure to
10 consider this mitigation, which could have reduced an impact identified as significant and
11 unavoidable without causing a significant secondary impact, violated CEQA's mandate and was
12 an abuse of discretion

13 53. As noted above, the EIR does not identify numerous potentially significant impacts –
14 particularly impacts associated with changes to the EIR after the DEIR had been circulated for
15 public comment. Because these potentially significant impacts were not identified or analyzed,
16 feasible mitigation measures were not proposed to mitigate these impacts. This represents a
17 violation of CEQA requiring that the EIR be revised to identify and discuss feasible mitigation
18 measures for the additional new or increased impacts and then recirculated for public comment.

19 **Count Four: The FEIR Failed to Include an Adequate Analysis of Project
20 Alternatives.**

21 54. Under CEQA, an EIR must identify and discuss a reasonable range of feasible alternatives
22 to the proposed project. What constitutes a feasible range of alternatives depends on the specific
23 fact of the project under consideration and surrounding circumstances.

24 55. If a project's feasibility is less than certain, the range of feasible alternatives that must be
25 considered increases.

26 56. The Project is not part of the high-speed rail system described in Proposition 1A and for
27 which Proposition 1A bond funds were approved by California voters. It does not meet the
28 intent of the Legislature in writing Proposition 1A and of the voters in approving it because it is
29 not consistent with the EIRs for the high-speed rail system that were certified in 2005 and 2008.

1 (Streets & Highways Code §2704.04 subd. (a).) Further, it cannot be part of the high-speed rail
2 system described in Proposition 1A because the blended system cannot meet the maximum five-
3 minute headway capability required by Streets and Highways Code §2704.09 subd. (c).

4 57. The \$600 million contribution from CHSRA towards the Project's funding is subject to legal
5 challenge because it was not authorized by California voters as a permissible use of those
6 Proposition 1A bond funds.

7 58. Under the terms of Streets & Highways Code §2704.08 subd. (d) and of SB 1029, the 2012
8 legislative appropriation that appropriated Proposition 1A bond funding for the high-speed rail
9 system, including the \$600 million proposed to be used in the Project, the \$600 million
10 contribution of Proposition 1A bond funds for the Project from CHSRA may not be expended
11 towards construction of the Project until and unless CHSRA has approved and submitted and the
12 California Director of Finance has approved a final Funding Plan for the Project.

13 59. The final Funding Plan for the Project submitted to the Director of Finance must be
14 accompanied by a report prepared by an independent consultant that indicates that specific
15 requirements of §2704.08 subd. (d) have been met. Among the requirements that the
16 consultant's report must address is that the Project, upon completion, would be suitable and
17 ready for high-speed train operation. Based on the nature of the Project as approved, the
18 consultant's report would be unable to indicate that this requirement would be met because the
19 Project would not meet the maximum curvature, positive train control, headway, and other
20 requirements for high-speed train operation on the Project.

21 60. Because the independent consultant's report would not be able to support the requirements
22 of §2704.08 subd. (d), the final Funding Plan for the Project, even if approved, would be subject
23 to legal challenge.

24 61. For all of the above reasons, because the availability of the \$600 million in funding from
25 CHSRA is highly questionable, the feasibility of the Project as approved is open to question.

26 62. Because of the nature of the Project, it would not be possible to implement the Project on an
27 incremental or reduced scale basis if full funding for the Project was not available. This was
28 improperly not taken into account by RESPONDENT in evaluating the feasibility of different
29 alternatives.

1 63. Other project alternatives identified as feasible in the EIR for the Project could be
2 implemented on an incremental basis (i.e., they are scalable projects whose scope and timing can
3 be adjusted to available funding). In particular, the Dual-Mode Multiple Unit (“DMMU”)
4 alternative is acknowledged in the FEIR to meet many of the Project’s objectives, while it would
5 have lower overall cost and could be implemented on an incremental basis. Further, while the
6 FEIR presumed that ridership for the DMMU alternative would be less than ridership for the
7 Project, there is no evidence or analysis in the record to support this presumption.

8 64. An additional alternative that would achieve even more of the Project objectives would be a
9 DMMU alternative with partial electrification. This would provide for electrification for
10 portions of the route, while on other portions of the route, the units would use diesel power.
11 Because the electrified portion would be shorter, costs would be less and this alternative, unlike
12 the Project, could be incrementally implemented, allowing its completion even if the \$600
13 million of CHSRA funding was unavailable. While this alternative was mentioned in the FEIR,
14 and would achieve almost all of the project purposes identified in the EIR other than providing
15 an electric power source compatible with use by high-speed rail, it was not fully analyzed and
16 was rejected by RESPONDENT as infeasible, even though it would have fewer significant
17 impacts, would achieve almost of the identified project purposes, would have a far lower cost
18 than the Project, and, unlike the PROJECT, would be scalable and could be implemented
19 incrementally – an important criterion that RESPONDENT refused to consider.

20 65. The FEIR’s inaccurate and incomplete analysis of project alternatives violated CEQA’s
21 requirements that an EIR include analysis of a reasonable range of feasible project alternatives
22 that might avoid one or more of the project’s significant impacts and that the discussion of
23 project alternatives provide the decision makers and the public the information needed to make
24 an informed decision. Accordingly, the approval of the Project and the certification of the FEIR
25 must be set aside.

26 **Count Five: Failure to Adequately Respond to Comments on the DEIR**

27 66. An EIR must include adequate written responses to all comments, both oral and written,
28 received by the lead agency during the public comment period. The FEIR was inadequate
29 because the responses to many of the comments received by the lead agency during the public

1 comment period were inadequate. In many cases, the responses were perfunctory or conclusory,
2 and in other cases the responses were not supported by substantial evidence. Specific comments
3 not adequately responded to included comments on mitigation of tree removal/pruning impacts,
4 comments on the failure to adequately address the impacts of the blended high-speed rail service
5 and its connection to and facilitation by the Project, comments on the cumulative impacts of the
6 Project in conjunction with implementing the blended high-speed rail system, comments on
7 feasible alternatives, comments on safety impacts of the project at grade crossings, and other
8 comments on issues identified in this petition. Accordingly, the approval of the Project and the
9 certification of the FEIR must be set aside.

10 **SECOND CAUSE OF ACTION**

11 **Violation of CEQA and CEQA Guidelines – Failure to recirculate DEIR in response to new 12 information and/or changed circumstances**

13 67. PETITIONERS hereby reallege and incorporate by reference the allegations in the preceding
14 paragraphs 1 through 66 inclusive as though fully set forth herein.

15 68. CEQA requires that a draft EIR be recirculated for an additional round of public comment if
16 changes to the document after the close of the previous comment period result in the addition of
17 significant new information. In addition, recirculation is required if new circumstances have
18 arisen after the close of the previous public comment period that would require substantial
19 revision to the EIR.

20 69. RESPONDENT violated its duty under CEQA by not recirculating the DEIR for public
21 comment after changes to the EIR resulted in addition of significant new information. This new
22 information included:

- 23 a. A new alternative proposal (DMMU with partial electrification) that could
24 substantially reduce Project impacts, but which RESPONDENT chose not to
25 adopt.
- 26 b. Identification of the need to provide interim high-speed rail terminal facilities at
27 the 4th & King Street Caltrain station, with associated significantly increased
28 construction, noise, and traffic impacts.

1 70. RESPONDENT violated its duty under CEQA by failing to recirculate the DEIR for public
2 comment after this new information was made available. Accordingly, the approval of the
3 Project and the certification of the FEIR must be set aside.

4 **THIRD CAUSE OF ACTION**

5 Violation of CEQA and CEQA Guidelines – CEQA Findings did not support Project approval
6 and were not supported by substantial evidence.

7 71. PETITIONERS hereby reallege and incorporate by reference the preceding paragraphs 1
8 through 70 inclusive as though fully set forth herein.

9 72. CEQA requires that an agency approving a Project for which an EIR was prepared and
10 significant impacts were identified adopt findings explaining and justifying its actions. (Public
11 Resources Code §21081.) Those findings must be supported by substantial evidence in the
12 record.

13 73. RESPONDENT violated this duty to prepare and approve adequate CEQA findings in
14 support of its decision to approve the Project in the following ways:

15 74. The findings did not support the Project approval. More specifically:

- 16 a. The findings on rejection of alternatives were inadequate in that they failed to
17 consider the significant risk that the \$600 million in Proposition 1A bond funds
18 being provided by CHSRA might not, for legal reasons, be available. As a result,
19 the findings improperly assumed that full funding would be available to complete
20 the Project as approved and that the Project was therefore fully feasible as
21 approved;
- 22 b. The findings on rejection of alternatives failed to consider that, if the \$600 million
23 of Proposition 1A bond funding was not available, less money would be available
24 to implement a project, and therefore the analysis and findings should have
25 considered the benefit of adopting a project that either had a lower total cost,
26 could be implemented incrementally, or was scalable.
- 27 c. Because did not properly consider factors influencing a proper decision, the
28 findings did not support the decision made by RESPONDENT and were therefor
29 an abuse of discretion.

1 75. The findings were not supported by substantial evidence. In particular:

- 2 a. The findings rejected various project alternatives as infeasible when the evidence
3 in the record did not support that conclusion and, to the contrary, indicated that
4 the Project was less feasible than the rejected alternatives;
- 5 b. The findings determined that the Project's tree removal/pruning impacts were
6 significant and unavoidable when mitigation measures that RESPONDENT
7 refused to adopt might have reduced the impact to a less than significant level;
- 8 c. The findings improperly found that numerous cumulative impacts from the
9 Project in conjunction with the blended high-speed rail project were either
10 insignificant or potentially significant but capable of mitigation when the
11 evidence in the record did not support these conclusions

12 76. Accordingly, the approval of the Project must be set aside.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, PETITIONERS pray for relief as follows:

- 15 1. For this Court's peremptory writ of mandate ordering CHSRA to:
- 16 (a) vacate and set aside its determinations approving the Project;
- 17 (b) vacate and set aside its certification of the FEIR for the Project; remanding the
18 Project and its environmental review under CEQA to RESPONDENT for
19 reconsideration in accordance with this Court's determination and final judgment.
- 20 2. For this Court's temporary restraining order and preliminary injunction restraining
21 RESPONDENT, its agents, servants and employees, and all others acting in concert with it or in
22 its behalf, from taking any action to move forward on implementing the Project pending a final
23 decision on the merits by this Court.
- 24 3. For this Court's permanent injunction restraining RESPONDENT, its agents, servants and
25 employees, and all others acting in concert with it or in its behalf, from undertaking any activity
26 or activities in furtherance of the Project until RESPONDENT has fully complied with this
27 Court's writ of mandate and judgment and taken all required actions that may be necessary to
28 bring the FEIR and all project approvals into compliance with CEQA.
- 29 4. For costs of suit;

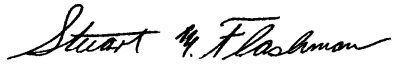
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- 5. For an award of attorneys' fees under C.C.P. §1021.5 or other applicable basis; and
- 6. For such other equitable and/or legal relief as the Court considers just and proper.

DATE: February 9, 2015

LAW OFFICES OF STUART M. FLASHMAN
STUART M. FLASHMAN

Attorneys for Petitioners

by: 
STUART M. FLASHMAN

VERIFICATION

1 I, David Schonbrunn, am the President of the Transportation Solutions Defense and
2 Education Fund, which is a petitioner in the above petition, and I make this verification on its
3 behalf and with its authorization. I have read the foregoing Petition and am familiar with the
4 matters alleged therein. All facts alleged in this complaint are true of my own personal
5 knowledge except as to facts that are alleged on information and belief, and as to them I am
6 informed and believe they are true. I declare under penalty of perjury under the laws of the State
7 of California that the foregoing is true and correct and that this Verification was executed on
8 February 8, 2015 at Sausalito, California.

9 
10 David Schonbrunn

Exhibit A

Law Offices of
Stuart M. Flashman
5626 Ocean View Drive
Oakland, CA 94618-1533
(510) 652-5373 (voice and FAX)
e-mail: stu@stufash.com

February 5, 2015

Ms. Martha Martinez, District
Secretary
Peninsula Corridor Joint
Powers Board
P.O. Box 3006
1250 San Carlos Ave.
San Carlos, CA 94070-1306

RE: Notice of Intent to Initiate Litigation (Peninsula Corridor
Electrification Project).

Dear Ms. Martinez,

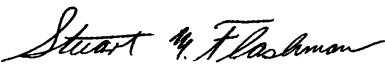
Please take notice that the Town of Atherton, the Transportation Solutions Defense and Education Fund, and the Community Coalition on High-Speed Rail (the foregoing, collectively, "Petitioners") intend to file suit against the Peninsula Corridor Joint Powers Authority ("PCJPB") challenging its approvals for the above-referenced project and its associated environmental review. The lawsuit will allege violations of the California Environmental Quality Act in connection with those approvals.

Petitioners would be willing to engage in negotiations with PCJPB to attempt to address their concerns without the need for litigation if PCJPB would be willing to enter into an agreement with Petitioners to toll the statute of limitations for filing legal action. Please contact the undersigned immediately if you wish to enter into such an agreement.

Most sincerely,

Stuart M. Flashman
Law Offices of Stuart M. Flashman

Attorneys for the Town of
Atherton, the Transportation
Solutions Defense and Education
Fund, and Community Coalition on
High-Speed Rail

By: 
Stuart M. Flashman

PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of Alameda County. I am over the age of eighteen years and not a party to the within above titled action. My business address is 5626 Ocean View Drive, Oakland, CA 94618-1533.

On February 5, 2015, I served the within NOTICE OF INTENT TO INITIATE LITIGATION on the party listed below by placing a true copy thereof enclosed in a sealed envelope with first class postage thereon fully prepaid, in a United States Postal Service mailbox at Oakland, California, addressed as follows:

Ms. Martha Martinez, District Secretary
Peninsula Corridor Joint Powers Board
P.O. Box 3006
1250 San Carlos Ave.
San Carlos, CA 94070-1306

On the above-same day, at 1:50 PM, I also served the above-same document on the above-same party via electronic mail as a pdf-formatted electronic document at the address MartinezM@Samtrans.com. I received an e-mail receipt that same day at 1:52 PM indicating that the e-mail had been received and read.

I, Stuart M. Flashman, hereby declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Oakland, California on February 8, 2015.



Stuart M. Flashman

Exhibit B

1 LAW OFFICES OF STUART M. FLASHMAN
2 STUART M. FLASHMAN (SBN 148396)
3 5626 Ocean View Drive
4 Oakland, CA 94618-1533
5 TEL/FAX (510) 652-5373
6 e-mail: stu@stuf flash.com

7 Attorneys for Petitioners Town of Atherton *et al.*
8 **(Exempt from filing fees – Gov. Code §6103)**

9 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **IN AND FOR THE COUNTY OF SAN MATEO**

11 TOWN OF ATHERTON, a Municipal
12 Corporation; TRANSPORTATION SOLUTIONS
13 DEFENSE AND EDUCATION FUND, a
14 California nonprofit corporation, AND
15 COMMUNITY COALITION ON HIGH-SPEED
16 RAIL, a California nonprofit corporation,
17 Petitioners

18 v.

19 PENINSULA CORRIDOR JOINT POWERS
20 BOARD, a public entity, and DOES 1-20,
21 Respondents

No.

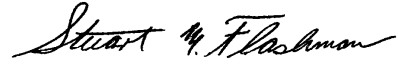
22 NOTICE TO ATTORNEY GENERAL
23 [Public Resources Code § 21167.7; CCP
24 §388]

25 TO THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA:

26 PLEASE TAKE NOTICE under Public Resources Code §21167.7 and Code of Civil
27 Procedure section 388 that, on February 9, 2015, Petitioners TOWN OF ATHERTON,
28 COMMUNITY COALITION ON HIGH-SPEED RAIL and TRANSPORTATION
29 SOLUTIONS DEFENSE AND EDUCATION FUND are filing a petition for peremptory writ of
mandate against Respondent PENINSULA CORRIDOR JOINT POWERS BOARD
("Respondent") in San Mateo County Superior Court. The petition alleges that Respondent
violated provisions of the California Environmental Quality Act (CEQA in granting approval to
the Peninsula Corridor Electrification Project and its associated Environmental Impact Report.
A copy of the petition is enclosed herewith for your reference.

Please provide a letter acknowledging receipt of this notice.

DATE: February 8, 2015



STUART M. FLASHMAN
Attorneys for Petitioner and Plaintiff

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PROOF OF SERVICE BY MAIL

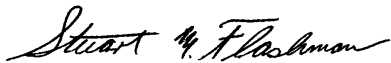
I am a citizen of the United States and a resident of Alameda County. I am over the age of eighteen years and not a party to the action involved herein. My business address is 5626 Ocean View Drive, Oakland, CA 94618-1533.

On February 9, 2015, I served the within NOTICE OF FILING OF LEGAL ACTION on the party listed below by placing a true copy thereof enclosed in a sealed envelope with first class postage thereon fully prepaid, in a United States Postal Service mailbox at Oakland, California, addressed as follows:

Office of the Attorney General
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550

I, Stuart M. Flashman, hereby declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Oakland, California on February 9, 2015.

A handwritten signature in cursive script that reads "Stuart M. Flashman".

Stuart M. Flashman