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HAND DELIVERED

April 26, 2010

Mr. Dan Leavitt, Deputy Director
California High-Speed Rail Authority,
925 L Street, Suite 1425
Sacramento, CA 95814

RE: Revised Draft Program EIR Material for Bay Area to Central Valley High-Speed Train Project.

Dear Mr. Leavitt:

Thank you for the opportunity to provide comments on the Revised Draft Program EIR Materials (“RDPEIRM”) for the above-referenced project. These comments are provided on behalf of my clients, the California Rail Foundation, the Transportation Solutions Defense and Education Fund, and the Planning and Conservation League. As the Notice of Availability (“NOA”) indicates, this material is being released pursuant to the peremptory writ of mandate served on the Authority in Sacramento County Superior Court case # 34-2008-80000022, in which my clients were plaintiffs.

The first comment my clients have concerning the RDPEIRM is regarding the denomination of the document released by the authority. The writ of mandate issued by the Court called for the Authority to, “revise the Environmental Impact Report/Environmental Impact Statement for the Bay Area to Central Valley High-Speed Train Project in accordance with CEQA, the CEQA Guidelines, and the Final Judgment entered in this case ...” Contrary to this order, the Authority has released, not a “Revised Draft Environmental Impact Report/Environmental Impact Statement”, or even a “Revised Draft Environmental Impact Report”, but revised draft “material.” CEQA makes no provision for release of draft “material”; nor did the Court’s writ of mandate. My clients presume that the document released by the Authority is intended to serve as a revised draft environmental impact report, and that, pursuant to CEQA Guidelines §15088.5(e), only those portions of the EIR that have been modified are being recirculated.

A related, but more substantial, concern with the form of the document comes from the NOA issued by the Authority, which indicates that the Authority will only respond to comments “that relate to the content of this Revised Draft Program EIR Material.” My clients believe that the authority’s duty to respond to comments received goes beyond the crabbed subject range identified in the NOA.¹

The Court’s judgment in the above-referenced case identified several specific flaws in the Final EIR/EIS (“FPEIR/EIS”) that the Authority had previously certified. The Court’s writ of mandate ordered the Authority to rescind its certification of the entire EIR, and to revise the EIR/EIS “in accordance with CEQA, the CEQA Guidelines, and the final judgment entered in this case,” prior to reconsidering certification of that EIR/EIS. In other words, it is the adequacy of the entire document, not just those portions the Authority has chosen to recirculate, that must be evaluated. The appropriate standard for determining what comments must be responded to

¹ The Authority is presumably relying on CEQA Guidelines §15088.5(f)(2) and (3). However, while the CEQA Guidelines should generally be afforded great weight (*Laurel Heights Improvement Association v. Regents of the University of California* (“*Laurel Heights II*”) (1993) 6 Cal.4th 1112, 1123 fn.4), deference is not called for if “a provision is clearly unauthorized or erroneous under CEQA.” (*Id.*; see also, *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98 [revisions to CEQA Guidelines held invalid when found to conflict with statute or case law].)

was laid out in *Laurel Heights II*. In that case, as here, a Final EIR had been certified and then challenged in court. As here, the court overturned the certification and remanded the EIR for revision in accordance with the court's judgment. (*Id.* at p. 1121.) In that case, unlike here, the Regents decided to prepare and release an entire new EIR. (*Id.*) The new EIR was recirculated in its entirety, receiving voluminous comments. In response, the Regents prepared a Final EIR consisting of six volumes containing more than two-thousand pages. (*Id.*) The Final EIR contained material that had not been included in either the previous Final EIR or the revised Draft EIR. However, the Regents did not recirculate this revised EIR, but instead certified it as adequate and re-approved the project. When the inevitable court challenge once again reached the California Supreme Court, the main issue before the court was when public comment on a revised EIR must be allowed and responded to when the revisions occur prior to the EIR's certification.

The Court laid out specific criteria about when revisions to an uncertified EIR must be open for public comment and agency response. These criteria are relevant because they indicate when comments on a recirculated EIR must be responded to. Significantly, the criteria the court identified are considerably broader than those that would apply under Public Resources Code §21166, which would apply if the prior EIR had already been certified without challenge. Under *Laurel Heights II*, recirculation is required if new information indicates that: a) there will be a new, previously-identified significant impact, b) a previously-identified impact will be significantly increased, c) there is a previously-identified feasible mitigation measure or alternative that would reduce project impacts, but the project sponsor declines to adopt it, or d) the prior EIR was so defective that the failure to allow additional comment would deprive the public of the opportunity to comment meaningfully.

My clients believe that each of these factors apply in the current circumstances, and consequently comments must be accepted and responded to not only for those portions of the EIR that were revised and recirculated, but also on the portions of the prior FPEIR/EIS that have been retained and are implicated by the revisions. As will be discussed further below, there are previously unidentified impacts *even beyond those identified in the RDPEIRM*. There are also previously-identified impacts that will be significantly increased, and there are previously-identified feasible mitigation measures and alternatives that would reduce project impacts, but which the Authority has not only failed to adopt, but has failed to even study or discuss. This new information, both that contained in the revisions and information that the revisions fail to disclose, alters the balance of impacts between alternatives, requiring that the PEIR reconsider and re-evaluate that balance.

Further, as the Court's judgment suggested, the Union Pacific Railroad's ("UPRR") refusal to allow its right-of-way to be used has rendered both the primary Altamont and primary Pacheco alignment alternatives studied in the prior FPEIR/EIS infeasible. This should have required a full reopening of the range of alternatives to be studied. Instead, the Authority only considered one alternative for each of the two major alignments – an alternative directly adjoining the previously-considered alignment. Again, this does not comport with CEQA's mandate that an EIR consider a reasonable range of alternatives, especially when the "new" proposed Altamont alternative is identified as infeasible.

In addition, new information on the ridership/revenue modeling done for the prior FPEIR/EIS calls that modeling into question and indicates that, because of those defects, the prior FPEIR/EIS was so defective as to require reopening the modeling issues for restudy. The remainder of this letter will be a more detailed analysis of the RDPEIRM and specifically its deficiencies and how those deficiencies ought to be remedied.

THE RIDERSHIP AND REVENUE MODELING IN THE PEIR NEEDS TO BE RECONSIDERED.

While the Court's judgment did not address the ridership/revenue modeling included in the prior FPEIR/EIS for the Project, that is only because there was no evidence before the Court,

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or indeed before the public or my clients, to indicate any problem with the model used to analyze the ridership and revenue expected from different project alternatives.

It is worth noting that while the modeling of ridership and revenue did not, in itself, identify any environmental impacts, it was crucial to the overall environmental analysis of the project. There are two reasons for this. First, the project purpose, as identified in the Authority's original authorization by the legislature and specified in more detail subsequently by Streets and Highways Code §§2704 et seq (Proposition 1A on the November 2008 statewide ballot), required that the system be self-supporting. (Streets & Highways Code §2704.08(c)(2)(J).) Thus, system revenue needed to be sufficient to offset system costs. Otherwise, an alternative would have to be rejected as not meeting the legislatively-mandated Project purpose. Secondly, and equally importantly, because the Project will require extensive construction and mitigation expenses, the revenue generated must be sufficient to allow financing of those costs. Otherwise, proposed mitigation measures might have to be adjudged infeasible based on excessive cost, and the corresponding impact identified as significant and unavoidable. (See, *Citizens of Goleta Valley v. Board of Supervisors* (1988) 197 Cal.App.3d 1167, 1181 [infeasibility can be based on alternative's additional costs being so severe as to make its implementation impractical].)

The previously-certified FPEIR/EIS included ridership and revenue figures obtained through a study performed by Cambridge Systematics, Inc. ("CS") under a contract with the Metropolitan Transportation Commission ("MTC"). That study resulted in numerous reports, which were transmitted to the Authority and included in the administrative record for the FPEIR. However, what was apparently not transmitted to the Authority, and most definitely was not included in the administrative record was the actual final model used to derive the ridership/revenue results included in the FPEIR/EIS. Instead, the only actual model coefficients included in the administrative records were those contained in an earlier peer-reviewed version of the model. The public, and my clients, reasonably (but, it now turns out, incorrectly) assumed that it was that published model that was used to obtain the modeling results included in the FPEIR/EIS.

In the Fall of 2009 (after the court case had already been filed, heard, and decided), the Authority released its revised business plan for the high-speed train system. That business plan included detailed ridership/revenue figures derived using the CS/MTC ridership/revenue model. Peculiarities in these results led some members of the public to seek the details of the model used to obtain the results. At the end of January 2010, after a considerable delay, the Authority released the final model coefficients. Upon review, those coefficients have turned out to be highly questionable. (See the report prepared by Mr. Norman Marshall of Smart Mobility, Inc., a professional transportation modeling consulting firm, a copy of which report is attached hereto as Exhibit A and is incorporated into this comment letter by this reference.) This, in turn, calls into question the ridership/revenue modeling results included in the prior FPEIR/EIS.

The new information about the major flaws in the ridership/revenue modeling included in the prior FPEIR/EIS requires, under *Laurel Heights II*, that the Authority reopen the ridership/revenue modeling included in the prior FPEIR/EIS for public comment and review. That is because, in the absence of the information exposing the flaws in the model used to obtain those results, the ridership/revenue information included in the prior FPEIR/EIS was so fundamentally defective as to make the public comments submitted at that time meaningless and deprived the public of its right to comment on this important aspect of the FPEIR/EIS.

ADDITIONAL FEASIBLE ALTERNATIVES FOR BOTH THE ALTAMONT AND PACHECO ALIGNMENTS ARE AVAILABLE AND SHOULD HAVE BEEN STUDIED IN THE RDPEIRM.

As noted above, the RDPEIRM considers only one alternative for each of the two major alignments, Altamont and Pacheco. In each case, the studied alignment is directly adjacent to the previously-considered alignment using the Union Pacific right-of-way. The RDPEIRM failed to even reconsider or compare other alternative alignments that had been identified in the prior

EIR/EIS for the Project. Further, the recirculation of the RDPEIRM is not occurring in a vacuum. During the period between the certification of the prior FPEIR/EIS and the present, the Authority has been moving forward on project-level environmental studies for both the San Francisco to San Jose and San Jose to Merced segments of the previously-approved Pacheco alignment². These studies have included consideration of additional alternative alignments. Pages 18 through 22 from the Authority's October 2009 presentation on San Jose to Merced project-level alternatives, a copy of which is attached hereto as Exhibit B, indicate a variety of alternative alignments for this segment of the Project. Yet the RDPEIRM addresses only one of these alternatives, the "East of UPRR alignment" alternative. The RDPEIRM does not even provide, as required by CEQA, any explanation of why the other alternatives might be infeasible. Similarly, the RDPEIRM considers only one possible alternative for the Altamont alignment, again an alignment running near and parallel to the already-considered UPRR alignment.³

Concerned about the need to reconsider the Altamont alignment in light of the inability to use UPRR right-of-way, my clients retained a highly knowledgeable independent consulting firm to look at alternate Altamont alignments that would avoid using the UPRR right-of-way. Their report is attached hereto as Exhibit C and incorporated herein by this reference. The report identifies a new Altamont routing option, including three variations for traversing the Fremont area, that is feasible and potentially viable and would avoid impinging on UPRR's primary right-of-way.⁴

An additional modification to the Altamont alternatives that the Authority needs to address in the RDPEIRM concerns the proposed Bay crossing at the Dumbarton rail bridge location. The prior FPEIR/EIS concluded that the existing rail bridge was unusable and that it would be infeasible to share a reconstructed/rebuilt rail bridge with the Peninsula Corridor Joint Powers Board ("PCJPB") for its proposed Transbay service⁵. Part of the reason for this was that the authority insisted that a high rail bridge was imperative to permit large ships to pass under the bridge and access ports south of the bridge. (See, FPEIR/EIS, Volume III, Responses to comments O007-22 and PH-L12-1.) The Authority assumed that the navigational channel under the Dumbarton rail bridge was in active use by large vessels, necessitating a high bridge or tunnel. However, while this may have been true at some point in the past (hence the existing high bridge for the Dumbarton highway bridge and the swing sections in the existing rail bridge), it no longer appears to be the case. As the attached email from the U.S. Coast Guard (Exhibit E hereto, incorporated herein by this reference) indicates, "very few VTS San Francisco Vessel Movement Reporting System Users (VMRS Users⁶) report transiting through the Dumbarton Bridge." It should be noted that even some vessels required to use VMRS (e.g., sightseeing tour boats) may not need a high bridge. Further, as my client's consultant points out, the existing rail bridge ship channel is 140 feet wide. The Authority's specifications for a new bridge require a

² It should be noted that the Authority strenuously insisted that the project-level environmental studies move forward while the flaws in the programmatic EIR were corrected. It cannot now pretend that the results of those studies do not exist.

³ One of the three alignment options does require the use of a little-used minor right-of-way segment owned by UPRR. However, unlike the prior UPRR right-of-way options, which UPRR specifically rejected, the UPRR has, in the past, proved to be amenable to selling off such little-used right-of-way segments. Until this option is explored further, it cannot be assumed that UPRR will oppose such a sale here. Consequently, this alternative cannot be rejected out-of-hand as infeasible.

⁵ To the extent the infeasibility depends on the proposed Caltrain bridge being single-track, there is no structural impediment to constructing a two track bridge, so long as the Authority agreed to pay the upgrade costs for adding a second track. Further, as the attached letter from Anthony Waller (Exhibit D hereto) indicates, there is no technical reason why a two track bridge need be incompatible between Caltrain and high-speed rail equipment. To the extent incompatibility is based on current FRA regulations, Mr. Waller's letter points out that Caltrain already has a petition pending before the FRA for a waiver of that requirement, and indications are that the waiver will be granted, as has already happened for similar Southern California mixed diesel/electric rail traffic.

⁴ Coast Guard regulations require all large vessels (e.g., powered vessels more than 131 feet in length, towing vessels more than 26 feet in length, and commercial passenger ships carrying 50 or more passengers) report their position using the VMRS.

295 foot wide channel. No justification is provided for requiring a further widening beyond what is currently available, and the widening seems particularly inappropriate given the lack of large ship traffic through the channel. With a narrower, 140 foot wide channel, other bridge options would be available, including a swing bridge or simple draw bridge. If the 295 foot channel is found not to be necessary, these additional options, which would greatly reduce bridge costs, should be investigated. In any case, the high bridge proposed in the FPEIR/EIS (see FPEIR/EIS Figure 3.9-22 [AR B004295], copy attached as Exhibit F) appears far in excess of what is needed. My clients' consultant indicates that in their estimation the cost for a new high bridge of similar design to the existing Dumbarton highway bridge should not be such as to make the option problematic. The EIR needs to address this new information of changed circumstances and re-evaluate the cost and practicability of a new, two-track Dumbarton rail bridge.

It is all the more imperative that additional alternatives be examined because the one alternative picked by the Authority as its new preferred alternative, the East of UPRR Pacheco Pass alternative, is identified as having newly-identified significant traffic impacts. As the analysis below shows, even the significant and unavoidable impacts identified for this alternative in the RDPEIRM understate this alternative's actual significant impacts. Consequently, the revised EIR must give full consideration to other feasible alternatives that might avoid or lessen these significant impacts. (See CEQA Guidelines §15126.6(b).)

An additional reason for the Authority to consider additional alternatives is the pending lawsuit *Peterson v California High-Speed Rail Authority* (Sacramento County Superior Court case no. 2010-00069687). That case is based on the trackage agreement between the Peninsula Corridor Joint Powers Board ("PCJPB") –i.e., Caltrain, and UPRR⁷ governing the use of the Caltrain right-of-way between San Francisco and San Jose. A copy of that trackage agreement is attached hereto as Exhibit G. Under Section 2.1 of that agreement, UPRR retains the perpetual and exclusive right to conduct intercity passenger rail service over the Caltrain-owned trackage. The lawsuit contends that the PCJPB currently has no agreement with UPRR that would allow the Authority to conduct intercity passenger rail operations over the trackage covered by the agreement. Given UPRR's expressed concern about protecting its ability to maintain and expand its freight operations through the Peninsula (see letters from UPRR to the Authority, dated July 7, 2008 and February 23, 2009, copies of which have been included in the RDPEIRM as part of Appendix C), it seems unlikely that UPRR will agree to allow the Authority to run intercity passenger service on the Peninsula using the trackage rights UPRR controls. This raises an issue, the need for a non-Caltrain right-of-way alternative through the Peninsula, that is very similar to the issue addressed in the *Atherton* case which led to the need for the current RDPEIRM. Under these circumstances, it would seem imperative that the authority identify feasible alternatives not involving the use of Caltrain/UPRR right-of-way through the Peninsula.

The Authority, in its prior FPEIR/EIS, considered and rejected two alternative alignments through the Peninsula: one along Highway 101 on the east side of the Peninsula, the other along Interstate Highway 280, a more westerly alignment. Given the need for an alternative to the Caltrain/UPRR right-of-way alignment, my clients also asked their consultant to evaluate having the alignment run along Highway 101. That evaluation is also included in the attached report (Exhibit C). The evaluation indicates, contrary to the authority's previous conclusion, that a Highway 101 alignment from the Dumbarton Bay crossing northward to San Francisco airport is in fact feasible and offers some significant benefits. My clients would therefore ask that the authority re-evaluate a Highway 101 alignment option for use with the Altamont alternative.

THE RDPEIRM FAILS TO FULLY DISCLOSE THE IMPACTS OF THE ONE PACHECO PASS ALTERNATIVE ANALYZED IN DETAIL.

As noted, the RDPEIRM analyzes in detail one Pacheco Pass alternative alignment, an alignment running just east of the UPRR right-of-way south of San Jose. This alignment avoids

⁷ The agreement was originally made between the PCJPA and Southern Pacific Transportation Company. Southern Pacific's interest in the agreement was subsequently transferred, along with other property interests, to UPRR.

using UPRR right-of-way, in part by displacing two lanes of the Monterey Highway, reducing that roadway from six lanes to four. The RDPEIRM identifies that this lane reduction results in a significant unavoidable traffic impact on that roadway. However, what the RDPEIRM fails to disclose are significant traffic impacts to other roadways to which traffic is displaced by the congestion on the Monterey Highway.

The RDPEIRM includes a traffic analysis prepared by the City of San Jose using its traffic modeling software. This software, like many such traffic models, includes an algorithm that automatically shifts traffic from areas of higher congestion to other routings with less congestion. The result of this shift is that congestion on the most congested roadway segment is decreased, but traffic on other alternative routings increases, potentially causing secondary congestion impacts. In fact, analysis of the modeling done for the RDPEIRM (see attached report, Exhibit H, incorporated herein by this reference) shows that the reduction in the width of the Monterey Highway from six lanes to four in order to accommodate the high-speed rail right-of-way outside of the UPRR right-of-way not only increases congestion on that highway, but also causes some of the excess traffic to leave the Monterey Highway in favor of other parallel alternative routes, overloading those routes and causing secondary congestion impacts. In particular, the following alternative routings experience significant secondary congestion impacts as a result of the lane removal on the Monterey Highway: the Bayshore Freeway, U.S. 101, The West Valley Freeway, SR 85, the Guadalupe Parkway, SAR 87, and I-280.

The RDPEIRM also provides an inconsistent project description for this portion of the project. At page 2-11, the RDPEIRM states: "For the HST project, segments of Monterey Highway from Umbarger Road to Metcalf Road (near Bailey Road) are proposed to be narrowed from six lanes to four lanes to provide a cost-effective right-of-way corridor for HST by minimizing property acquisition along the HST alignment." However, the immediately preceding sentence states: "As discussed above in the Affected Environment, Monterey Highway in the San Jose to Central Valley Corridor is six lanes wide from Southside Drive to Blossom Hill Road, and four lanes wide south of Blossom Hill Road." (RDPEIRM p. 2-11). Since Metcalf Road is south of Blossom Hill Road, the RDPEIRM appears to be calling for this roadway section to be reduced from six lanes to four, while also asserting that it is already four lanes.. This discrepancy must be resolved so that readers can have a clear and unambiguous project description that allows them to understand the nature and significance of project changes and resulting impacts.

A related modeling issue is the lane capacities used in modeling the Monterey Highway traffic impacts. As the consultant report points out, the lane capacities appear to change abruptly south of Blossom Hill Road. North of Blossom Hill Road, the lane capacity appears to be 950 vehicles per lane per hour, for a total capacity of 2850 vehicles in each direction. South of that point, however, the apparent lane capacity abruptly increases to 1450 vehicles per lane per hour, or a total travel capacity of 2900 vehicles. No explanation is given for this change, which appears suspiciously convenient for the Authority's plans for lane removal. The RPEIR should either make the lane capacities consistent or provide an explanation for the change in lane capacity.

Another set of impacts not fully disclosed by the RDPEIRM is the increased noise and vibration impacts caused by moving the right-of-way east of the UPRR right-of-way. For portions of the San Jose to Gilroy segment of the alternative, and specifically those portions between Lick in San Jose and Gilroy, the new proposed alignment is shifted significantly closer to residences than was the prior alignment. (See RDPEIRM Figure PP-6B.) In addition, the new alignment also shifts portions of the Monterey Highway closer to residences. (See RDPEIRM Figure PP-6C.) It can only be expected that these shifts will increase the noise and vibrational impacts of the rail line and highway compared to the prior alignment proposal. However, the RDPEIRM fails to include any analysis of the noise and vibrational impacts of the revised alignment. By failing to do so, the RDPEIRM fails to consider or discuss the potentially significant increase in noise and vibrational impacts, and fails to consider whether mitigation measures might reduce those impacts.

A third set of impacts not fully disclosed in the RDPEIRM is the increased land use, noise, and property impacts associated with use of the Caltrain right-of-way alignment through the San Francisco Peninsula. The RDPEIRM notes that the addition of two high-speed rail tracks over the length of the Peninsula would require the acquisition of additional right-of-way in some areas. (RDPEIRM at p. 6-2.) However, the RDPEIRM fails to indicate that there will also be a need for acquisition of additional temporary right-of-way for “shoo-fly” or bypass tracks to accommodate rail traffic while existing trackage is worked on. The expansion to a full four-track system means that the high-speed rail tracks will be moved incrementally closer to adjoining residences and businesses, increasing the severity of noise and vibrational impacts. It also means that there will be times when there will be cumulative noise impacts, where a high-speed rail trainset passes on one set of tracks while a Caltrain trainset is passing on the other. However, the RDPEIRM fails to include any analysis of the effect of these changes on the noise or vibrational impacts of the project. It also fails to evaluate the impact of this acquisition of additional temporary right-of-way on historic trees, both in terms of visual impacts, biological impacts, and the likely extremely high severance costs (i.e., property impact) associated with such acquisition.

The RDPEIRM takes an ambiguous stance towards impacts on UPRR’s freight operations. On the one hand, the RDPEIRM asserts that, the application of proposed mitigation strategies, along with negotiations with UPRR, “are expected to ensure that HST alignment alternatives will not result in adverse impacts to UPRR freight operations.” (RDPEIRM at p. 4-9.) On the other hand, on the preceding page the RDPEIRM states that the impact on UPRR freight operations, “must be considered potentially significant out of an abundance of caution.”

The RDPEIRM asserts, without any detailed analysis or explanation, that there would be no impact on UPRR freight operations along the Caltrain corridor between San Francisco and San Jose. (RDPEIRM at p. 4-4.) While the RDPEIRM includes “mitigation strategies” intended to address project impacts, it provides no explanation about how these strategies will avoid impacting UPRR freight operations, and specifically UPRR customer spurs, between San Francisco and San Jose. For the San Jose to Gilroy segment, the RDPEIRM admits that for at least one spur north of Gilroy, the high-speed rail alignment would run at grade, cutting off an existing UPRR spur. (*Id.*) Despite identifying this specific impact, the RDPEIRM provides no corresponding specific mitigation measure.

The RDPEIRM argues that the project would have no impact on UPRR’s ability to add new spurs in the future; this in spite of the fact that the project will likely physically cut off the UPRR mainline from businesses it might want to serve at a future time. The RDPEIRM’s argument against the significance of this change is that, “there is currently no prohibition to acquiring property adjacent to existing privately-owned railroad right-of-way.” In other words, since UPRR doesn’t yet own the land that might contain the spur, it has no protection against losing the ability to later add a spur. That may be true, but there is an enormous difference between there being the *potential* for a spur to be blocked and approving a project that will *very likely* block the potential spur site. In view of the UPRR’s stated intention of expanding its freight service in the future and adding new spurs, and the potential of these blockages preventing businesses from being served by the rail line, forcing them to rely on more energy-intensive truck transport for delivery of goods and supplies, this change should be identified as a potentially significant impact.

Finally, the potential for UPRR freight trainsets and high-speed rail trainsets to be operating on adjacent tracks (See, e.g., RDPEIRM Figures PP-6A through 6C) may require the installation of crashwalls to separate the two operations and protect against impacts from derailments or similar upsets. The figures in the RDPEIRM do not show any crash walls, nor does the text indicate that provisions have been made for their inclusion. Further, the alignment descriptions do not discuss such walls or indicate how much space they would occupy. If crashwalls have not already been provided for, they should be added, and their costs included in project cost estimates or an explanation given for why they are not needed to avoid impacts from derailments or other upsets. (See PCJPB report on failure modes and their mitigation, attached

hereto as Exhibit I⁸.) If crashwalls are already part of the proposed alignment alternatives, they need to be shown on the diagrams, cross-sections, and descriptions, including adjusting the needed right-of-way requirements, property impacts, and project costs.

THE NEED TO RE-EVALUATE ALTAMONT VS PACHECO ALIGNMENT ALTERNATIVES FOR THEIR POTENTIAL IMPACTS REOPENS THE RECORD FOR ADDITIONAL INFORMATION ON THOSE IMPACTS

The prior FPEIR/EIS evaluated a variety of potential impacts from the previously-considered Altamont and Pacheco alignment alternatives. The Court evaluated the evidence on those impacts and concluded that, for many of them, the Authority's determination to certify the FPEIR/EIS was supported by substantial evidence. However, at this point the certification of the prior FPEIR/EIS has been rescinded *in its entirety*, as have the Authority's findings in support of that certification. Further, the Authority now has before it different alternatives to be evaluated. Consequently, the Authority must consider the adequacy of the PEIR and its supporting evidence *de novo*, and it is appropriate in making that determination that the Authority consider all of the evidence in the record, including evidence submitted after the prior FPEIR/EIS certification. In that regard, my clients are submitting herewith additional evidence that bears on the analysis of impacts and the characteristics of project alternatives in regards to biological impacts and operational characteristics of different alternatives.

THE ANALYSIS OF BIOLOGICAL IMPACTS IN THE PEIR, AS REVISED, IS INADEQUATE AND MUST BE REVISED.

The RDPEIRM contains no additional information on the biological impacts of any of the alternatives examined. Presumably, that is because the Authority intends to continue to rely on the analysis of biological impacts contained in the prior FPEIR/EIS. Presumably, the Authority's reliance is based on the fact that the new alternatives closely follow the alignment of previously-analyzed alternatives. As my clients have already pointed out, the Authority's approach violates CEQA in failing to consider other feasible alternatives that might reduce or avoid significant project impacts. Even looking at the limited range of alternatives included in the RDPEIRM, however, the Authority must reconsider whether the analysis of biological impacts in the prior FPEIR/EIS remains adequate. My clients' position is that it does not.

Attached hereto as Exhibit J and incorporated herein by this reference is a report prepared by a qualified biological consultant evaluating the analysis of biological impacts contained in the prior FPEIR/EIS. As the report notes, there are a wide variety of protocols that can provide an adequate evaluation of biological and ecological values and, based on that, the potential impacts of a project on those values. Such protocols can be applied at the programmatic, as well as the project level. Unfortunately, the prior FPEIR/EIS applied none of these standard protocols. Instead, the FPEIR/EIS conducted an extremely cursory summary review of some of the available information on biological resources located along the various alternatives. The prior FPEIR/EIS did not even attempt to standardize the information it presented to assure that it was "comparing apples to apples." The FPEIR/EIS justified its cursory evaluation on the fact that this was a programmatic analysis, and promised more detailed study at the project level, *after a final alignment had been chosen*. The fallacy is that deferring a full analysis of biological resources and biological impacts to the project level meant that the choice of alignments was made without the necessary pertinent information about the impact of different alternatives. As the consultant's report points out, the cursory analysis performed by the Authority essentially amounted to no analysis at all, and provided no meaningful information on the nature or extent of project impacts or the feasibility of their mitigation. Without this baseline level of

⁸ The report notes that while a crash involving one or more Caltrain cars and a derailed freight car is unlikely, the consequences of such a crash would be catastrophic. The potential for such crashes cannot, therefore, be ignored. While Caltrain and UPRR freight operations are currently temporally separated, the expansion of HSR operations would make that mitigation option far less feasible, and increasingly unattractive to UPRR.

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information and analysis, the Authority's choice of the Pacheco Pass alignment was, in terms of biological impacts, no more than a "shot in the dark," in violation of CEQA's mandate that evaluation of project impacts include "alterations to ecological systems." (CEQA Guidelines §15126.2.) In order to evaluate such alterations, it is first necessary to adequately characterize the existing ecological conditions. (See, CEQA Guidelines §15125(c).) The analysis in the prior FPEIR/EIS failed to do this. It is therefore imperative that the PEIR be revised to include an adequate study and analysis of biological and ecological resources, how they would be impacted by the various alternatives, and feasible mitigation measures to reduce any significant impacts that are identified. Given that this is a programmatic document, the analysis need not include excessive detail, but it must include sufficient evidence and analysis to allow the identification of significant impacts and potential mitigation measures.

THE PEIR'S ANALYSIS OF OPERATIONAL CHARACTERISTICS FOR THE ALTAMONT ALIGNMENT ALTERNATIVE NEEDS TO BE REVISED TO REFLECT THE REALITY OF CURRENT HIGH-SPEED TRAIN OPERATIONS PRACTICES.

The prior FPEIR/EIS analyzed the Altamont alignment alternatives under the assumption that a single train could only go to one destination. As a consequence, train frequencies to/from San Francisco and San Jose were reduced by roughly ½ with concomitant reduction in projected ridership⁹. While my clients stated, in comments on the DPEIR/EIS, that European train operations allowed multiple trainsets to travel in tandem over large segments of a route with coupling/decoupling allowing multiple origins or destinations, the Authority's response was that such operations would have highly negative impacts on travel time and were therefore highly disfavored and rarely used in existing high-speed rail systems.

My clients asked their consultants, who are experts on European high-speed rail operations, to address this question. Their response, included in the already-referenced Exhibit C, indicates that, to the contrary such operations are accomplished quickly and efficiently, and therefore are commonly used under precisely the type of circumstance that would occur during access to the Bay Area – where trains travel a relatively long distance on a common routing, but start or end their journey at two separate locations. Because the coupling/decoupling is done electronically, there is little time lost doing the process¹⁰, while there is a great benefit from being able to simultaneously run trainsets with differing origins or destinations along the same track with reduced operator costs and increased frequency and passenger capacity. Based on this evidence, the operational analysis for the Altamont alternatives should be revised to adjust train frequencies based on allowing train splitting and joining, and the ridership and revenue figures recalculated under the new operational parameters.

Thank you for considering these comments on the RDPEIRM. Please keep me, and my clients, informed of future developments on this project.

Most sincerely,



Stuart M. Flashman

⁹ As explained earlier in this letter, this was compounded by the flawed ridership modeling, which gave undue influence to frequency of service.

¹⁰ The coupling process takes approximately five minutes, while decoupling takes only roughly three minutes.

Mr Dan Leavitt, CAHSRA

4/26/10

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Attached Exhibits:

- A: Revenue and Ridership Modeling Report
- B: CAHSRA October 2009 presentation on alternative alignments
- C: Altamont alternatives report
- D: Letter from A. Waller re: Caltrain/HSR operations on a Dumbarton rail bridge
- E: Coast Guard e-mail concerning Dumbarton ship traffic
- F: Photosimulation showing Authority's proposed Dumbarton high rail bridge
- G: PCJPB – UPRR Trackage Agreement
- H. Monterey Highway Narrowing Traffic Analysis
- I: PCJPB analysis of potential passenger train accidents
- J: Evaluation of Biological Values and Impacts Analysis