

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOR THE THIRD APPELLATE DISTRICT**

Civil No. C070877

TOWN OF ATHERTON, *et al.*

Plaintiffs/Appellants

v.

CALIFORNIA HIGH SPEED RAIL AUTHORITY.

Defendant/Respondent

On Appeal from the Superior Court of the State of California
in and for the County of Sacramento
The Honorable Michael P. Kenny

Sacramento County Superior Court Case Numbers
34-2008-8000022CUWMGDS and 34-2010-80000679CUWMGDS

**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF
AMICUS CURIAE PRESERVE OUR HERITAGE'S
SUPPLEMENTAL BRIEF IN SUPPORT OF APPELLANTS**

Oliver W. Wanger, SBN 40331
John P. Kinsey, SBN 215916
Daren A. Stemwedel, SBN 285225
WANGER JONES HELSLEY PC
265 E. River Park Circle, Suite 310
Fresno, California 93720
Office: 559-233-4800
Facsimile: 559-233-9330

Attorneys for Amicus Curiae
PRESERVE OUR HERITAGE

Pursuant to Evidence Code Sections 451, subdivision (f), 452, subdivision (c), and 459; and Rule 8.252 of the California Rules of Court, Amicus Curiae Preserve Our Heritage hereby respectfully requests that this Court take judicial notice of the following, submitted in support of Preserve Our Heritage's Supplemental Brief in Support of Appellants.

1. The Senate Daily Journal for the 2011-2012 Regular Session, pages 4447-4448. Specifically, a letter dated August 9, 2012, from Senator Mark Leno, regarding the legislative intent of Stats. 2012, c. 152 (S.B. 1029) (Sts. & Hy. Code § 2704.08), a true and correct copy of which is attached hereto as **Exhibit "A"**.

This document may be judicially noticed pursuant to Evidence Code Section 452, subdivision (c), which provides that judicial notice may be taken of "[o]fficial acts of the legislative, executive, and judicial departments of . . . any state of the United States." (Evid. Code § 452, subd. (c); see also *Benson v. Workers' Comp. Appeals Bd.* (2009) 170 Cal.App.4th 1535, 1554 fn. 16 [legislative history].)

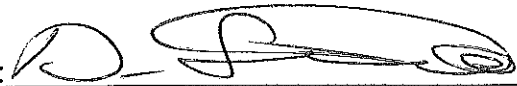
This document clarifies the legislature's intent with regard to Streets and Highways Code Section 2704.08, subdivision (c)(2)(K), which enumerates the requirement for the California High Speed Rail Authority (the "Authority") to "complete[] all necessary project level environmental clearances necessary to proceed to construction." Specifically, Senator Leno's letter of August 9, 2012, states the legislature's intent that the phrase "all necessary project level environmental clearances" refers to both CEQA and NEPA. This is relevant to the Court's July 8, 2013, Request for Supplemental Briefing because it demonstrates the Authority's argument, that federal preemption relieves it from any obligation to comply with CEQA, is contrary to the legislative intent of Section 2704.08. These documents were not presented to the trial court, because the preemption defense was not raised by the Authority at that time.

Accordingly, Amicus Curiae Preserve Our Heritage respectfully requests the Court take judicial notice of the attached document.

DATED: October 9, 2013

Respectfully submitted,

WANGER JONES HELSLEY PC

By: 

Daren A. Stemwedel
Attorneys for Amicus Curiae
Preserve Our Heritage

EXHIBIT "A"

TO THE REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF
AMICUS CURIAE PRESERVE OUR HERITAGE'S
SUPPLEMENTAL BRIEF IN SUPPORT OF APPELLANTS

CALIFORNIA LEGISLATURE

2011-12 REGULAR SESSION

SENATE DAILY JOURNAL

TWO HUNDRED THIRTY-FIFTH LEGISLATIVE DAY

IN SENATE

Senate Chamber, Sacramento
Thursday, August 9, 2012

The Senate met at 9 a.m.
Hon. S. Joseph Simitian, of the 11th District, presiding.
Secretary Greg Schmidt at the Desk.
Assistant Secretary Zachary L. Twilla reading.

QUORUM CALL OF THE SENATE

Without objection, a quorum call was placed upon the Senate.
The President directed the Sergeant at Arms to close the doors and to bring in the absent Members.

PROCEEDINGS UNDER QUORUM CALL OF THE SENATE

ROLL CALL

The roll was called and the following Senators answered to their names:
Alquist, Anderson, Berryhill, Blakeslee, Calderon, Cannella, Corbett, Correa, De León, DeSaulnier, Dutton, Emmerson, Evans, Fuller, Gaines, Harman, Hernandez, Huff, Kehoe, La Malfa, Leno, Lieu, Liu, Lowenthal, Negrete McLeod, Padilla, Pavley, Price, Rubio, Runner, Simitian, Steinberg, Strickland, Vargas, Walters, Wolk, Wright, Wyland, and Yee—39.

Quorum present.

(NOTE: Senator Hancock will be excused this day due to illness.)

Assembly Concurrent Resolution 143—Relative to the American flag.

Resolution read, adopted, and ordered transmitted to the Assembly.

(NOTE: See Consent Calendar Roll Call)

Assembly Concurrent Resolution 150—Relative to Fire Safety and Disaster Preparedness Week.

Resolution read, adopted, and ordered transmitted to the Assembly.

(NOTE: See Consent Calendar Roll Call)

Assembly Concurrent Resolution 152—Relative to Dwarfism Awareness Month.

Resolution read, adopted, and ordered transmitted to the Assembly.

(NOTE: See Consent Calendar Roll Call)

Assembly Joint Resolution 37—Relative to F-35 aircraft and the F-35 Joint Strike Fighter Program.

Resolution read, adopted, and ordered transmitted to the Assembly.

(NOTE: See Consent Calendar Roll Call)

Consent Calendar Roll Call

The roll was called and the above measures on the Consent Calendar passed by the following vote:

AYES (36)—Senators Alquist, Anderson, Berryhill, Blakeslee, Cannella, Corbett, Correa, De León, DeSaulnier, Dutton, Emmerson, Evans, Fuller, Gaines, Huff, Kehoe, La Malfa, Leno, Lieu, Liu, Lowenthal, Negrete McLeod, Padilla, Pavley, Price, Rubio, Runner, Simitian, Steinberg, Strickland, Vargas, Walters, Wolk, Wright, Wyland, and Yee.

NOES (0)—None.

MOTION TO PRINT IN JOURNAL

Senator Leno moved that the following letter be printed in the Journal.
Motion carried.

August 9, 2012

Greg Schmidt
Secretary of the Senate

Dear Mr. Schmidt:

I respectfully submit this letter to the Journal in order to clarify certain matters addressed in SB 1029, amending the Budget Act of 2012, which was adopted by the Senate on July 6, 2012.

First, SEC. 1, Provision 4, SEC. 2, Provision 4, and SEC. 3, Provision 3, address the use of connectivity and bookends funds by the Department of Transportation and the High Speed Rail Authority in the San Francisco to San Jose corridor. With respect to this component of the high speed rail project, consistent with the California High-Speed Rail Revised 2012 Business Plan adopted in April 2012, the Authority will continue to

develop and construct a system on this segment that conforms to the following:

i. The Authority shall follow the terms and conditions included in the May 3, 2012 resolution by the Peninsula Corridors Joint Powers Board for high-speed rail and Caltrain electrification.

ii. The project-level environmental documents certified for this segment, and related construction and operation funded by the appropriation, shall be consistent with the blended approach of the Revised 2012 Business Plan, and shall not reflect the four-track system in the program-level environmental document.

iii. The system shall primarily consist of a two-track system of shared rail with the Peninsula Corridors Joint Powers Board, which will be substantially within the existing right of way used by Caltrain.

iv. The rail shall primarily be at grade, at current grade, or below grade level.

In finalizing environmental and preliminary design work, the Authority will also be guided by the provisions of Streets and Highways Code 2704.09, the requirements for environmental mitigation, and the need to address any design constraints caused by existing infrastructure.

In adopting the blended approach, the Authority recognizes that this project will only get built by partnering with local and regional governments and transit operators, and like in every other corridor, the Authority will work closely with those partners to implement improvements that benefit mobility locally and across the state.

Second, Provision 6 of SEC. 3 includes a provision relating to environmental clearances and California Environmental Quality Act (CEQA) notices of decision. It is the intent of this provision that no funds appropriated under this item shall be encumbered for construction of a project prior to compliance with CEQA and the National Environmental Policy Act.

Third, SEC. 3, Provisions 1 and 2 address, respectively, the use of funds for the blended system or bookends and the transfer, under certain conditions, of those funds. It is the intent of this legislation that funds appropriated under this item only be used for bookend investments. Any funds appropriated under this item approved for transfer by Department of Finance is for account management purposes, is not authorized for use in other project segments, and does not affect their directed use for bookend investments.

Thank you for the opportunity to clarify these matters.

Sincerely,

MARK LENO, Chair
Senate Budget and Fiscal Review Committee

PROOF OF SERVICE

My business address is 265 East River Park Circle, Suite 310, Post Office Box 28340, Fresno, California 93729. I am employed in Fresno County, California. I am over the age of 18 years and am not a party to this case.

On the date indicated below, I served the foregoing document(s) described as **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF AMICUS CURIAE PRESERVE OUR HERITAGE'S SUPPLEMENTAL BRIEF IN SUPPORT OF APPELLANTS** on all interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as noted below.

SEE ATTACHED MAILING LIST :

 X (BY MAIL) I am readily familiar with the business' practice for collection and processing of correspondence for mailing, and that correspondence, with postage thereon fully prepaid, will be deposited with the United States Postal Service on the date noted below in the ordinary course of business, at Fresno, California.

_____ (BY ELECTRONIC MAIL) I caused delivery of such document(s) to be made to the electronic mail addresses listed below.

_____ (BY OVERNIGHT COURIER) I caused the above-referenced envelope(s) to be delivered to an overnight courier service for delivery to the addressee(s).

EXECUTED ON October ⁹, 2013, at Fresno, California.

 X (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


Deborah Pell

MAILING LIST

Party	Attorney
Jessica Eileen Tucker-Mohl, Esq. OFFICE OF THE STATE ATTORNEY GENERAL P. O. Box 944255 Sacramento, CA 94244-2550 (1 copy)	Attorney for Respondent
Stuart M. Flashman, Esq. LAW OFFICES OF STUART M. FLASHMAN 5626 Ocean View Drive Oakland, CA 94618-1533 (1 copy)	Attorney for Petitioners/Appellants Town of Atherton, et al.
Hon. Michael Kenny SACRAMENTO COUNTY SUPERIOR COURT 720 Ninth Street, Dept. 31 Sacramento, CA 95814 (1 copy per CRC 8.212(c)(1))	Trial Judge
SUPREME COURT STATE OF CALIFORNIA 350 McAllister Street, Room 1295 San Francisco, CA 94102 (4 copies per CRC 8.212(c)(2))	
Raymond L. Carlson, Esq. GRISWOLD, LaSALLE, COBB, DOWD & GIN, LLP 111 E. Seventh Street Hanford, CA 93230 (1 copy)	Attorneys for Citizens for California High Speed Rail Authority Accountability; Amicus Curiae for Appellant
Colleen J. Carlson, Esq. KINGS COUNTY COUNSEL'S OFFICE 1400 W. Lacey Blvd., Bldg. No. 4 Hanford, CA 93230 (1 copy)	Attorneys for County of Kings; Amicus Curiae for Appellant
Andrew Michael Heglund, Esq. OFFICE OF THE CITY ATTORNEY 1600 Truxtun Ave., 4th Flr. Bakersfield, CA 93301	Attorneys for City of Bakersfield, a Charter City and Political Subdivision of the State of California; Amicus Curiae for Appellant

(1 copy)	
Douglas P. Carstens, Esq. CHATTEN-BROWN & CARSTENS 2200 Pacific Coast Highway Suite 318 Hermosa Beach, CA 90254 (1 copy)	Attorneys for John Van De Kamp, et al.; Amicus Curiae for Appellant