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9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SACRAMENTO

12  
13 **TOWN OF ATHERTON, a Municipal**  
**Corporation, PLANNING AND**  
14 **CONSERVATION LEAGUE, a California**  
**nonprofit corporation, CITY OF MENLO**  
15 **PARK, a Municipal Corporation,**  
**TRANSPORTATION SOLUTIONS**  
16 **DEFENSE AND EDUCATION FUND, a**  
**California nonprofit corporation,**  
17 **CALIFORNIA RAIL FOUNDATION, a**  
**California nonprofit corporation, and**  
18 **BAYRAIL ALLIANCE, a California**  
**nonprofit corporation, and other similarly**  
19 **situated entities,**

20 Plaintiffs and Petitioners,

21 v.

22  
23 **CALIFORNIA HIGH-SPEED RAIL**  
**AUTHORITY, a public entity, and DOES 1-**  
24 **20,**

25 Defendants and  
26 Respondents.  
27  
28

Case No.: 4-2008-80000022

**CALIFORNIA HIGH-SPEED RAIL  
AUTHORITY'S MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
OPPOSITION TO PETITION FOR WRIT  
OF MANDATE**

Dept: 31  
Judge: Honorable Michael Kenny  
Trial Date: May 29, 2009  
Time: 9:00 a.m.  
Action Filed: August 8, 2008

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1 **INTRODUCTION**

2 Petitioners Town of Atherton, et al., challenge the California High-Speed Rail Authority's  
3 certification of the Final Program Environmental Impact Report (EIR) for the Bay Area to Central  
4 Valley piece of the statewide high-speed train system, a nearly 800-mile system stretching from  
5 San Francisco and Sacramento in the north to Los Angeles and San Diego in the south. Petitioners  
6 claim the EIR violates the California Environmental Quality Act (CEQA) in several ways ranging  
7 from its project description, to its impacts, mitigation, and alternatives. The underlying themes,  
8 however, are that the EIR was insufficiently detailed, and was biased to favor the Authority's  
9 choice, Pacheco Pass, over the alternative Petitioners prefer, Altamont Pass.

10 Two fundamental flaws permeate Petitioners' arguments. First, Petitioners largely ignore  
11 that the project, selection of a preferred alignment and station locations in the Bay Area to Central  
12 Valley study region, is general. The Authority used a first-tier, program EIR to focus on the  
13 broad differences between the Altamont Pass and Pacheco Pass in order to choose between them.  
14 Tiering allows a lead agency to tailor the level of detail in its EIR to the level of decision the  
15 agency will make. Petitioners, however, downplay the program EIR cases, and try to shoe-horn  
16 the Authority's decision and EIR into requirements for more detailed projects and EIRs.

17 Petitioners' second mistake is that they ignore the standard of review. They lay out their  
18 own theories and speculation about bias in the EIR, but only selectively present the EIR  
19 information and never explain why it is unsupported. Instead, Petitioners invite the Court to  
20 second guess the Authority's factual conclusions, rather than apply the substantial evidence  
21 standard of review and give the Authority deference. In doing so, however, Petitioners fail to  
22 carry their burden of showing the EIR's conclusions are not supported by substantial evidence.

23 The high-speed train system will have significant environmental impacts whether the train  
24 travels the Pacheco Pass or the Altamont Pass. The record shows the Final Program EIR provides  
25 a fair, even-handed, and appropriately detailed analysis of the environmental costs and benefits of  
26 both options. There are, certainly, strong and divergent views about the choice between the  
27 Altamont Pass and the Pacheco Pass. While Petitioners may disagree with the Authority's policy  
28 choice for the Pacheco Pass, their CEQA challenge to the Final Program EIR lacks merit.

1 **STATEMENT OF FACTS**

2 On July 9, 2008, the Authority certified the Final Program EIR and selected the Pacheco  
3 Pass Network Alternative with San Francisco and San Jose Termini. (A000001-04 [Res. 08-01].)  
4 These decisions culminated a nearly 3-year CEQA process to take a fresh look at alternative ways  
5 for the high-speed train (HST) system to connect the San Francisco Bay Area with the Central  
6 Valley. The Pacheco Pass Network Alternative with San Francisco and San Jose Termini  
7 provides the final link in the nearly 800-mile statewide HST system. (A000004.)

8 **I. 1993-1996: EARLY EFFORTS TO BRING HIGH-SPEED RAIL TO CALIFORNIA**

9 The State's high-speed rail endeavor began in March 1993 when Governor Wilson created  
10 an Intercity High Speed Ground Transportation Task Force. (D002187-88.) The Task Force was  
11 charged with designing a plan to develop a high-speed rail system in California. (D002188.) In  
12 July 1993, the Governor signed Senate Concurrent Resolution 6, creating a nine-member Intercity  
13 High-Speed Rail Commission to undertake this work. (D002189-91.)

14 The Intercity High-Speed Rail Commission was tasked with evaluating the feasibility of  
15 high-speed rail and developing a 20-year high-speed intercity ground transportation plan.  
16 (D002190.) The objective of the plan was to serve intermediate intercity travel, but to leave local  
17 and commute trips to urban transit systems and longer intercity trips to air carriers. (D002190.)  
18 The Commission completed five technical studies, including a Corridor Evaluation and  
19 Environmental Constraints Analysis in September 1996. (D001936-37; C001629 -878.) The  
20 Commission's public hearings revealed strong opinions about where a high-speed train system  
21 should go and where stations should be located. (D002204-09.) For the connection between the  
22 Central Valley and Bay Area, there was a clear difference of public opinion between the  
23 Altamont Pass and the Pacheco Pass. (D002208-09; see also D002150.)

24 The Commission's Final Report and Action Plan, issued in December 1996, concluded that  
25 high-speed rail was technically, environmentally, and economically feasible in California.  
26 (D001940, 2134-35.) The report made numerous recommendations to advance the HST system,  
27 including preliminary recommendations on an alignment to connect the Bay Area and the Central  
28 Valley via the Altamont Pass, reaching San Francisco by crossing the Bay on a new Dumbarton

1 Bridge. (D001942, 46.) The Final Report's recommendations were preliminary, subject to  
2 change based on additional study, and the final systemwide alignments would be determined by  
3 the new High-Speed Rail Authority. (D001941, 2157, 2177-79.) The Commission noted  
4 flexibility was needed to allow for change as the project moved forward and more detailed  
5 information became available. (D001955, 2157.)

6 **II. 1997-2000: THE HIGH-SPEED RAIL AUTHORITY AND THE FINAL BUSINESS PLAN**

7 In September 1996, the California High-Speed Rail Act was passed, creating the California  
8 High-Speed Rail Authority to continue the Commission's work. (Cal. Pub. Util. Code, § 185000  
9 et seq.) The Authority's main duty was to prepare a plan for construction, operation, and  
10 financing of a statewide, intercity high-speed train system. (*Id.*, §§ 185031, 185032.)

11 Between 1997 and June 2000, the Authority studied train technologies, alignment and  
12 station options, likely operational scenarios, ridership associated with different alternatives,  
13 financing, and the general scope of likely environmental impacts. (C000276-387 [corridor  
14 study]; C000393-455 [financial plan]; C000536-709 [ridership study].) The Authority's 1999  
15 Corridor Evaluation Final Report noted that Altamont Pass would generally have fewer  
16 environmental impacts than the Pacheco Pass, but the conclusion was based on the Altamont Pass  
17 area alone, without considering the impacts of crossing the San Francisco Bay at the Dumbarton  
18 Bridge. (C000339-41; C000251-52.) The report also noted the negative effect of having a branch  
19 to serve both San Francisco and San Jose with an Altamont Pass alignment, thereby reducing the  
20 number of trains serving each city. (C000339.) Ultimately, the Corridor Evaluation Final Report  
21 described that both and the Authority recommended Pacheco Pass for further study. (C000353.)

22 In June 2000, the Authority adopted the statutorily-mandated Final Business Plan  
23 (C000124-87), which recommended alignments for the statewide HST system to be studied in a  
24 programmatic environmental impact report in compliance with CEQA. (C000138.) It  
25 recommended the Pacheco Pass to connect the Bay Area and Central Valley. (C000141.) Like  
26 the Intercity High-Speed Rail Commission Final Report, the Final Business Plan recognized that  
27 further engineering and environmental work were needed to define the train technology, the  
28 alignments, and stations options for the HST system as a whole. (C000130, 182.)

1     **III. 2000-2005: THE AUTHORITY STUDIES AND CHOOSES HIGH-SPEED RAIL**

2             In 2001, the Authority, in cooperation with the Federal Railroad Administration, undertook  
3 a programmatic environmental review process in compliance with CEQA and the National  
4 Environmental Policy Act (NEPA) to study a proposed HST system. (C021431-32.) The EIR  
5 process for the statewide HST resulted in a three-volume Final Program EIR in August 2005.  
6 (C021411 [NOP]; G000207 [res. 05-01]; C012384-22244 [Final Statewide HST EIR Vol. 1 w/o  
7 figures]; C022467-26963 [vol. 2]; C026964-035294 [vol. 3].) The 2005 Program EIR described  
8 the proposed HST system as linking the major metropolitan centers of Sacramento and the San  
9 Francisco Bay Area in the north, through the Central Valley, to Los Angeles and San Diego in the  
10 south. (C021431.) The technology included “state-of-the-art, electrically powered, high-speed  
11 steel-wheel-on-steel rail technology capable of speeds in excess of 200 mph.” (C021431.)  
12 Conceptual alignments for the system were described. (C022269-70.)

13             On November 2, 2005, the Authority certified its Final Program EIR for the statewide HST  
14 system. (G000207-209 [res. 05-01].) The Authority approved the steel-wheel-on-steel rail train  
15 technology, and adopted conceptual alignments and station location options for most of the  
16 statewide system. (G000207-09.) Due to strong public interest and varying opinions, the  
17 Authority did not select the northern mountain crossing segment of the system to connect the  
18 Central Valley with the Bay Area. (C022076-78; G000209.) The Authority directed staff to  
19 prepare a new program EIR focused on the northern mountain crossing. (G000209.)

20     **IV. 2005-2008: THE AUTHORITY STUDIES AND CHOOSES PACHECO PASS**

21             The Authority commenced its Bay Area to Central Valley program EIR process on  
22 November 14, 2005. (B000001-03.) The purpose of the new program EIR was to take a fresh  
23 look at potential alignments and station options within the broad corridor between the Bay Area  
24 and Central Valley, generally bounded by and including the Pacheco Pass to the south, the  
25 Altamont Pass to the north, the Burlington Northern/Santa Fe Railroad Corridor to the east, and  
26 the Caltrain Corridor to the west. (B000004-05.) The Authority held six scoping meetings in late  
27 2005, which involved over 500 participants. (B000903-4; B000831.) During scoping, the  
28 Authority received 48 letters and 93 comment cards addressing a wide array of issues. (See

1 generally B000835-62 [Scoping Rpt]; B000053-824 [scoping letters].) Major themes that  
2 emerged were the divergence in opinion over the Altamont Pass or the Pacheco Pass, concerns  
3 over a Bay crossing, and concerns over the Grasslands Ecological Area. (See G000200-202.)

4 Throughout the development of the Draft Program EIR, the Authority coordinated its effort  
5 with several related programs and studies. These included the San Francisco Bay Area Regional  
6 Rail Plan, a joint effort of the Metropolitan Transportation Commission, Bay Area Rapid Transit  
7 (BART), Caltrain, and the High-Speed Rail Authority (B003923-24); improvements to the  
8 Capitol Corridor Rail Service and Caltrain Corridor Commuter Rail Service (B003925); upgrades  
9 to Altamont Commuter Express Service (ACE) (B003926); and potential reconstruction of the  
10 out-of-service Dumbarton rail bridge. (B003926-27.)

11 The Authority released a two-volume Draft Program EIR on July 16, 2007. (B004967.)  
12 The initial public comment period was more than 70 days, until September 28, 2007. (B001049-  
13 50 [SCH Form]; B001076-2082 [Vol. 1]; B002083-3150 [Vol. 2]; B001079.) The Authority held  
14 eight public hearings on the Draft Program EIR at which more than 150 people participated.<sup>1</sup>  
15 Following public requests, the Authority extended the comment period to October 26, 2007.  
16 (B003793-94; B003756-57.) By the deadline, the Authority received more than 400 comment  
17 letters containing more than 1300 individual comments (B006307, 6322), had received hundreds  
18 of oral comments at the public hearings (see generally B006307, 6839-7216 [Final Program EIR  
19 Vol. 3, ch. 25]) and had accepted comments through its website from more than 100 individuals.  
20 (B006307, 7217-310 [Final Program EIR, Vol. 3, ch. 26].)

21 On May 30, 2008, the Authority released a three-volume Final Program EIR. The Final  
22 Program EIR included a revised environmental analysis and appendices, and a full volume of  
23 comments and responses. (B003835-5040 [vol. 1]; B005041-6306 [vol. 2]; B006307-8240 [vol.  
24 3].) The Authority provided notice of the availability of the Final Program EIR in ten newspapers  
25 on May 30, 2008 (B003808-817), and nine newspaper in early July 2008. (B003818-826; see

26  
27 <sup>1</sup> Hearings were held in San Francisco (B003173-242), San Jose (B003267-342),  
28 Livermore (B003350-384), Oakland (B003396-448), Gilroy (B003518-564), Merced (B003595-  
672), Stockton (B003684-741), and Sacramento (B003753-792).

1 also B003796-97.) In late June, the Authority issued an Addendum/ Errata to the Final Program  
2 EIR correcting information about anticipated environmental benefits of the HST system for  
3 vehicle miles traveled, air quality, and energy use. (B008242-304.)

4 In July 2008, the Authority held a two-day meeting to consider the Final Program EIR and  
5 proposed alternatives. (G001093, G001095.) On July 8th, the Authority received a presentation  
6 on the Final Program EIR and heard public comments. (G001339-49 [presentation]; G001373-  
7 1408 [transcript].) On July 9th, the Authority received a summary of the July 8th public comments,  
8 as well as letters it received on the Final Program EIR. (G001350-67.) The Authority certified  
9 that the Final Program EIR complied with CEQA, approved the Pacheco Pass Network  
10 Alternative with San Francisco and San Jose Termini, adopted CEQA findings of fact and a  
11 statement of overriding considerations, and adopted a mitigation monitoring and reporting  
12 program. (G001440- 84 [transcript]; C001441-42 [approval]; A000001-4 [res. 08-01]; A000005 -  
13 109 [findings].) The Authority filed a notice of determination the same day. (B008305.)

#### 14 **V. 2008 AND BEYOND: THE AUTHORITY MOVES FORWARD WITH PROJECT-LEVEL EIRS**

15 In certifying the Final Program EIR and approving the Pacheco Pass Network Alternative  
16 with San Francisco and San Jose Termini, the Authority completed its program-level decisions  
17 for the HST system. “Future tiered, site-specific project-level environmental documents will  
18 assess the impacts of constructing and implementing individual HST projects (i.e., portions of the  
19 HST system).” (B003868; see also A000013 [CEQA Findings].) The Authority will move  
20 forward with second-tier, project-level EIRs to make detailed decisions about the final footprint  
21 for the HST facilities along the nearly 800-mile system. (B003843 [Final Program EIR Preface].)

#### 22 **STANDARD OF REVIEW**

23 The question for this Court is whether the California High-Speed Rail Authority complied  
24 with CEQA when it certified the Final Program EIR and approved the Pacheco Pass Network  
25 Alternative with San Francisco and San Jose Termini. The Authority’s decision is quasi-  
26 legislative, reviewable under Public Resources Code section 21168.5. (*Western States Petroleum*  
27 *Assn. v. Superior Court* (1995) 9 Cal.4th 559, 567 [Western States].) This section limits the  
28 Court’s inquiry to whether there was a prejudicial abuse of discretion. (Pub. Resources Code, §

1 21168.5.) A prejudicial abuse of discretion is established if the agency has not proceeded in a  
2 manner required by law or if the decision is not supported by substantial evidence. (*Ibid.*;  
3 *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564 [Goleta II].)

4 Petitioners' challenges to the Final Program EIR's project description, impacts analysis and  
5 mitigation, alternatives analysis and overall level of detail are subject to the deferential substantial  
6 evidence prong of the prejudicial abuse of discretion test. (*Goleta II, supra*, 52 Cal.3d at pp. 565-  
7 567; *In re Bay Delta Programmatic Environmental Impact Report Cases* (2008) 43 Cal.4th 1143,  
8 1161-1162 [Bay Delta Cases]; *Rio Vista Farm Bureau Center v. County of Solano* (1992) 5  
9 Cal.App.4th 351, 367-372 [Rio Vista].) The claim that the Authority should have recirculated the  
10 Final Program EIR is likewise reviewed for substantial evidence. (*Laurel Heights Improvement*  
11 *Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1135 [Laurel Heights II].)

12 The substantial evidence standard is essentially the same as that used by appellate courts  
13 reviewing the factual findings of trial courts. (*Western States, supra*, 9 Cal.4th at pp. 572-573.)  
14 An EIR must be upheld if "there is *any* substantial evidence in light of the whole record to  
15 support the decision." (*Rio Vista, supra*, 5 Cal.App.4th at p. 369, emphasis added.) A court "may  
16 not set aside an agency's approval of an EIR on the ground that the opposite conclusion would  
17 have been equally or more reasonable." (*Goleta II, supra*, 52 Cal.3d at p. 564.) In judging the  
18 EIR, courts look for adequacy, completeness, and a good faith effort at full disclosure, not  
19 technical perfection. (*Berkeley Keep Jets Over the Bay Comm. v. Board of Port Commissioners*  
20 (2001) 91 Cal.App.4th 1344, 1355; Cal. Code Regs., tit. 14, § 15151 [CEQA Guidelines].) And  
21 reviewing courts assess whether substantial evidence supports the EIR, not whether a petitioner  
22 can compile substantial evidence to support its legal theories. (*Laurel Heights Improvement Assn.*  
23 *v. Regents of University of California* (1988) 47 Cal.3d 376, 407 [Laurel Heights I].)

24 Moreover, under CEQA an EIR is presumed adequate (Pub. Resources Code, § 21167.3)  
25 and the plaintiff in a CEQA case has the burden of proving otherwise. (*Al Larson Boat Shop v.*  
26 *Board of Harbor Commissioners* (1993) 18 Cal.App.4th 729, 740 [Al Larson].) A petitioner must  
27 set forth all the relevant evidence that might have a bearing on the administrative decision, not  
28 just the evidence favorable to its position. (*California Native Plant Society v. City of Rancho*

1 *Cordova* (2009) \_\_ Cal.App.4th \_\_ [2009 WL 755575],\* 15-16.) The failure to set forth all the  
2 relevant evidence, particularly the material evidence in the EIR, results in waiver of the argument.  
3 (*City of Lomita v. City of Torrance* (1983) 148 Cal.App.3d 1062, 1069.) And consistent with  
4 basic appellate practice, a petitioner cannot cure defects in its evidentiary presentation by  
5 including evidence in a reply brief that was missing from the opening brief. (*Opdyk v. California*  
6 *Horse Racing Board* (1995) 34 Cal.App.4th 1826, 1830.)

## 7 **ARGUMENT**

### 8 **I. THE FINAL PROGRAM EIR'S PROJECT DESCRIPTION COMPLIES WITH CEQA'S** 9 **REQUIREMENTS FOR A PROGRAM EIR ON A CONCEPTUAL PLANNING DECISION.**

10 Petitioners argue the Authority's Final Program EIR violates CEQA because it does not  
11 contain an adequate project description. (Petitioners' Brief, pp. 9-20.) According to Petitioners,  
12 the project description was not sufficiently detailed about the location of HST facilities, the  
13 discussion of project costs was inadequate, and the discussion of operating characteristics was  
14 unfairly skewed to favor the Pacheco Pass over the Altamont Pass. (*Ibid.*) Each argument is  
15 unfounded. The project description in the Final Program EIR complies with CEQA.

#### 16 **A. The EIR Adequately Describes The General Location Of HST Facilities** 17 **For A Program EIR On A Conceptual Planning Project.**

18 According to Petitioners, the EIR required more detailed descriptions of the Pacheco Pass  
19 and Altamont Pass alignments because the EIR is a "second tier programmatic EIR," narrowly  
20 focused, and deals with only two alternatives. (Petitioner's Brief, p. 10.) Each of these  
21 arguments is incorrect. The EIR's project description adequately defines the location of HST  
22 facilities in light of the Authority's general and conceptual level of planning.

#### 23 **1. First-Tier, Program EIRs Are More General Than Second-Tier,** 24 **Project EIRs And Have More General Project Descriptions.**

25 The foundation of any EIR is the description of the project that is subject to the EIR's  
26 impacts analysis, mitigation, and alternative analysis. (*Sierra Club v. City of Orange* (2008) 163  
27 Cal.App.4th 523, 533 citing *Save Round Valley Alliance v. County of Inyo* (2007) 157  
28 Cal.App.4th 1437, 1448.) Among other things, a project description must include information  
about the project's location and boundaries. (CEQA Guidelines, § 15124, subd. (b).) The



1 description should not, however, “supply extensive detail beyond that needed for evaluation and  
2 review of the environmental impact.” (*Id.*, § 15124, subd. (a).)

3 The degree of specificity required for an EIR, including its project description, is not one-  
4 size-fits-all. The requirements imposed on EIRs are sufficiently flexible to encompass vastly  
5 different projects with varying levels of detail. (*City of Antioch v. City Council* (1986) 187  
6 Cal.App.3d 1325, 1337.) An EIR’s level of detail is determined by the nature of the underlying  
7 project and the rule of reason. (*Laurel Heights I, supra*, 47 Cal.3d at p. 407; *Al Larson, supra*, 18  
8 Cal.App.4th at pp. 741-742; CEQA Guidelines, § 15146.) Also relevant is the EIR’s stage in the  
9 CEQA tiering process. (CEQA Guideline, § 15152, subds. (a), (b), (c).)

10 “Tiering” allows a lead agency to cover general projects in broader EIRs, followed by  
11 narrower project-level EIRs on more detailed projects. (CEQA Guidelines, §§ 15152, subds. (a),  
12 (b), 15168, 15161.) The level of detail “need not be greater than that of the programmatic project  
13 being analyzed.” (*Id.*, §§ 15152, subd. (b); 15146, 15152, subd. (a).) Later, when the lead agency  
14 considers a detailed site-specific project, the agency can prepare a more detailed, second-tier EIR.  
15 (*Id.*, § 15152, subds. (d), (f); *Bay Delta Cases, supra*, 43 Cal.4th at pp. 1169-70.)

16 CEQA’s tiering rules recognize that where a lead agency is undertaking a large-scale  
17 planning project, particularly one with a large geographic scope, it may not be feasible to develop  
18 highly detailed, site-specific information. (CEQA Guidelines, § 15152, subd. (c); *Bay Delta*  
19 *Cases, supra*, 43 Cal.4th at p. 1170.) Detailed information can be deferred until the lead agency  
20 prepares a later environmental document in connection with a more limited geographic scope,  
21 provided such deferral does not prevent an adequate analysis of the impacts of the planning  
22 project being considered. (CEQA Guidelines, § 15152, subd. (c); *Bay Delta Cases, supra*, 43  
23 Cal.4th at p. 1170.) A first-tier, programmatic EIR will therefore have a far more general project  
24 description, analysis, and mitigation than a typical project-level EIR. (*Bay Delta Cases, supra*, 43  
25 Cal.4th at pp. 1171-72; [discussing *Rio Vista, supra*, 5 Cal.App.4th 351].)

26 **2. The Final Program EIR Contains An Adequate Description Of The**  
27 **General Location Of HST Facilities.**

28 Petitioners wrongly suggest the EIR needed more detail on the location of HST tracks by

1 calling it a “second tier programmatic EIR.” (Petitioners’ Brief, p. 10.) There is no provision in  
2 CEQA for a “second tier programmatic EIR.” A program EIR is a first-tier EIR, used for broad  
3 and general planning projects. (CEQA Guidelines, § 15168.) A second-tier EIR is a project-level  
4 EIR, for a project that is far more detailed than in a first-tier EIR. (*Id.*, § 15161.)

5 The record shows beyond question that the Authority’s EIR is a first-tier, program EIR.  
6 (G000209 [Res. 05-01]; B000001 [NOP]; B003869 [Final EIR].) The EIR examines different  
7 alignments and station locations for the HST system in the study area. (B003839, 871.) Its  
8 purpose was to support the Authority’s conceptual level of planning for the HST system by  
9 identifying the broad differences between the alternatives for crossing from the Central Valley  
10 into the Bay Area. (B003868-69; B003898.) The EIR was expressly designed as a first-tier,  
11 program EIR. (B003871-72; A000013.) Future, project-specific EIRs will examine the detailed  
12 impacts of building pieces of the HST system. (B000372; A000013; B006326-27.)

13 Petitioners are also mistaken in calling the EIR narrowly focused. (Petitioners’ Brief, p.  
14 10.) The current EIR is narrower in scope than the Authority’s 2005 EIR for the statewide HST  
15 system, but with a study area of roughly 4500 square miles it can hardly be called narrow.  
16 (B003870 [Fig. 1.1-1].) Moreover, the Authority’s level of decision making here is the same as  
17 for the statewide EIR: selection of a conceptual alignment and general station locations for the  
18 HST system which would then proceed to project-level environmental review. (B003898 [level  
19 of detail is conceptual, not site-specific].) The EIR was intended to support the Authority in  
20 making “the fundamental choice of a preferred alignment” in the study area, but not select a  
21 precise footprint for HST facilities. (B006325.)

22 Based on the Authority’s conceptual level of decision making, it prepared its EIR to comply  
23 with CEQA’s requirements for program EIRs. (B003869-70.) The project description is included  
24 in Chapters 1 and 2. Chapter 1 discusses the purpose and need for the HST both statewide and  
25 within the Bay Area to Central Valley study region, describes the CEQA project objectives, and  
26 depicts the boundaries of the study area on a map. (B003870, B003873-96.)

27 Chapter 2 summarizes the performance criteria and technology that the Authority selected  
28 in 2005, explaining that the HST system would consist of steel-wheel-on-steel-rail trains capable

1 of maximum speeds of 220 mph using an overhead catenary electric propulsion system.  
2 (B003911; B003912 [example trainsets].) The entire system would be fully grade separated.  
3 (B003911.) It would consist of dual tracks through its mainline, with additional tracks for  
4 stopping off-line at stations. (B003911.) Expected travel times and frequency of service, safety  
5 and security considerations, electrification, the potential for freight service, and design practices  
6 are summarized. (B003906-14.) The typical HST tracks at grade, on elevated structures, or in  
7 tunnel are depicted in cross sections which show an at-grade section would require a 100-foot  
8 wide right-of-way, an elevated structure would require 50 feet, and twin tunnels would require  
9 120 feet. (B003916-18.) In constrained areas, an at-grade section would need 50 feet. (B006400  
10 -401; see also C000292.) A map shows the relationship of the study area to the conceptual  
11 alignments selected in the statewide EIR. (B003870.)

12 The EIR explains that the “HST alignment alternatives” are the “[g]eneral location for HST  
13 tracks, structures, and systems for the HST system between logical points within study corridors;  
14 they are generally configured along or adjacent to existing rail transportation facilities.”  
15 (B003898; see also B003914, B003942.) “The station location options described in this section  
16 were identified generally. . . .” (B003942 emphasis added; see also B003898 emphasis added.)  
17 The potential alignment alternatives and station locations examined in the Bay Area to Central  
18 Valley Program EIR are depicted on a map of the study area, Figure 2.5-1. (B003940.)  
19 Additional maps provide the horizontal alignment with profile type (at grade, aerial, tunnel) and  
20 the relation to existing transportation facilities. (B003956, 57.) The EIR breaks down the very  
21 general maps into a table and more detailed maps showing how the alignment alternatives can be  
22 divided into segments, and how these segments can be combined in different ways. (B003942-53  
23 [table 2.5-3 showing corridors, alignment alternatives, and segments]; B003958-66 [Figures 2.5-5  
24 to 2.5-10].) A short narrative explains each alignment alternative analyzed and additional maps  
25 show profile characteristics and the relation to existing transportation corridors. (B003956-57.)

26 While the above information on its own would be sufficient for a programmatic project  
27 description (see *Rio Vista, supra*, 5 Cal.App.4th at p. 372), the EIR references more information  
28 in the appendices on conceptual designs for each alignment alternative and station location.

1 (B003953.) The plans and profiles in Appendix 2-D depict each proposed alignment alternative  
2 on an series of aerial maps, the first of which (for each alignment) shows the alignment  
3 alternative in relation to cities and other major facilities, followed by aerial maps at a higher  
4 resolution showing the general location of the track alignment relative to major streets and  
5 highways. (See generally B005071-230 [Appendix 2-D]; B005073-81 [Caltrain Corridor  
6 Alignment]; B005103-13 [Pacheco Pass Alignment].) The cross sections break down the general  
7 descriptions of the profiles for the HST tracks into more conceptual drawings for each alignment  
8 alternative. (B005231-384 [App. 2-E]; B005233-50 [Caltrain Corridor cross sections]; B005285-  
9 312 [San Jose/Central Valley cross sections].) The station fact sheets have aerial maps depicting  
10 the general station location in relation to city streets. (B005385-482.)

11 In light of the Authority's conceptual level of decision making, to choose the northern  
12 mountain crossing to connect the HST between the Bay Area and the Central Valley, the EIR's  
13 general description of the project and the project's location, supplemented by the conceptual  
14 plans in the appendices, complies with CEQA. (*Bay Delta Cases, supra*, 43 Cal.4th at pp. 1171-  
15 1174; *Rio Vista, supra*, 5 Cal.App.4th at pp. 370-373; CEQA Guidelines, § 15146.)

16 **B. The Final Program EIR Does Not Assume Use Of The Union Pacific Right-  
17 of-Way Between San Jose and Gilroy.**

18 Petitioners argue, however, that the EIR's project description required more detail on the  
19 location of tracks between San Jose and Gilroy to properly determine the impacts of displacing  
20 residents and businesses to build the HST in that area. (Petitioners' Brief, pp. 10-11.) Petitioners  
21 believe the EIR assumed the HST tracks between San Jose and Gilroy would be within Union  
22 Pacific's right-of-way, and because Union Pacific will allegedly not allow use of its right-of-way,  
23 the Final Program EIR has failed to identify the environmental impacts of obtaining new right-of-  
24 way. (*Id.* at p. 11.) Substantial evidence shows Petitioners are wrong.

25 **1. The HST Tracks Between San Jose and Gilroy Are Assumed To Be  
26 Adjacent To The Union Pacific Right-of-Way.**

27 Petitioners' arguments fail because the EIR does not assume that the alignment alternative  
28 between San Jose and Gilroy would be within the Union Pacific right-of-way. (Petitioners' Brief,

1 p. 11: 4-8.) Consistent with CEQA, the Authority has consistently tried to minimize the  
2 environmental impacts of the HST system by generally aligning the HST along or within existing  
3 transportation corridors and rights-of-way. (B003914, B003942; see also G001357-59 [response  
4 to 06/02/08 Flashman letter]; G001360-61 [response to 07/07/08 Union Pacific letter]; Pub.  
5 Resources Code, §§ 21000, subd. (g), 21006.) Chapter 2 therefore explains that, “[p]roposed  
6 HST Alignment Alternatives are generally configured along or adjacent to existing rail  
7 transportation facilities, instead of creating new transportation corridors.” (B003942 emphasis  
8 added.) The Pacheco Pass alignment alternative (i.e., the alignment alternative from San Jose to  
9 Gilroy over the Pacheco Pass) extends “south along the Caltrain/UPRR rail corridor through the  
10 Pacheco Pass . . . .” (B003955 emphasis added; see also B003944 [Figure 2.5-2].) Being along  
11 the rail corridor does not mean the alignment is within Union Pacific’s right-of-way, but rather  
12 that it could be within or adjacent to it.

13 The conceptual plans and profiles in the EIR appendices depict HST tracks adjacent to, not  
14 in, Union Pacific’s right-of-way. The alignment between San Jose and Gilroy is mostly at grade,  
15 with the exception of aerial structures at and near the potential stations in San Jose, Morgan Hill,  
16 and Gilroy. (See B005106-109 [aerial maps from San Jose to Gilroy noting applicable profile].)  
17 Figure PP-6 displays the typical at-grade cross section, expected to comprise nearly 80% of the  
18 alignment between San Jose and Gilroy. (B005292; B005993.) This cross section shows the  
19 conceptual at-grade HST tracks being adjacent to the Union Pacific right-of-way, not in it.  
20 (B005292.) The Union Pacific right-of-way is approximately 56 feet wide, which is consistent  
21 with Union Pacific’s own statements about the narrow width of its right-of-way between San Jose  
22 and Gilroy. (E000003.)<sup>2</sup> This figure shows there is room to place the HST tracks adjacent to  
23 Union Pacific’s right-of-way, making use of the Monterey Highway right-of-way. (B002592;  
24 see also G001361 [alignment assumed adjacent to UP right-of-way].)<sup>3</sup>

25  
26 <sup>2</sup> Figure PP-6 also depicts generally the space available for a typical at-grade section  
27 between San Jose and Gilroy as having sufficient room for Union Pacific to expand to two tracks,  
rather than its current capacity of having a single track. (B005292.)

28 <sup>3</sup> Petitioners’ own evidence illustrates there is space available for HST adjacent to the  
Union Pacific right-of-way. (Petitioners’ Brief, p. 11 and G001425 - 37.)

1 The other cross sections that comprise the alignment between San Jose and Gilroy are  
2 consistent. The very short at-grade part of the alignment near Morgan Hill, depicted conceptually  
3 in Figure PP-13 (B005299) and the short retained fill section near San Jose depicted conceptually  
4 in Figure PP-9 (B005295) show HST tracks adjacent to Union Pacific's right-of-way. The short  
5 stretches of aerial structures south of San Jose in Figures PP-7 and PP-11 show HST adjacent to  
6 the Union Pacific right-of-way on an aerial structure (B005293 [PP-7]), or having no proximity to  
7 the Union Pacific right-of-way. (B005297 [PP-11].) The two other aerial structures south of  
8 Morgan Hill in Figure PP-12, and slightly north of the station in Gilroy in Figure PP-14, also  
9 show the HST tracks adjacent to the Union Pacific right-of-way. (B005298; B005300.)

10 On reply, Petitioners may argue Figures PP-12 and PP-14 show HST tracks are in the  
11 Union Pacific right-of-way, because the figures depict an aerial overhang. (B005298; B005300.)  
12 Encroachment into Union Pacific's right-of-way is not anticipated, however because HST will  
13 require just two tracks, not four. Figure PP-6, for example, correctly shows two inner tracks for  
14 HST, and shows they would be well outside Union Pacific's right-of-way. (B005292.) The  
15 entire HST alignment would be two tracks and is expected to need 50' of right-of-way to  
16 accommodate the HST, with the exception of the Gilroy station. (B0039111 [two tracks for HST  
17 except at stations]; B005292 [showing interior two-tracks not shared with Caltrain as requiring 50  
18 feet].) The depiction of a total of four tracks in Figures PP-6 (B005292), PP-9 (B005295), and  
19 PP-11, PP-12, PP-13, and PP-14 (B005297-300) is intended to show the potential for future  
20 regional overlay rail services, consistent with efforts to coordinate HST with the Metropolitan  
21 Transportation Commission's Regional Rail Plan. (B003923-24; B004934-35; B004578-79.)  
22 The proposed HST project, however, is for two tracks between San Jose and Gilroy, except at the  
23 Gilroy station. Accordingly all the conceptual cross sections between San Jose and Gilroy depict  
24 HST as being completely adjacent to the Union Pacific right-of-way, not in it. (B005303.)<sup>4</sup>

25 Because the EIR does not assume the HST tracks will be in Union Pacific's right-of-way  
26 between San Jose and Gilroy, Petitioners overstate the effect of Union Pacific's letters. In a May

27 <sup>4</sup> The cost figures for this section assumed two tracks between San Jose and Gilroy except  
28 at stations. (See B005993 [track]; B004627 and B004640.)

1 13, 2008, letter, received just before the Final Program EIR was released, Union Pacific requests  
2 that the Authority prepare a final design “in such a way as to not require the use of Union  
3 Pacific’s operating rights-of-way or interfere with Union Pacific operations.” (E000027.) In a  
4 July 7, 2008, letter, Union Pacific states it is not opposed to implementation of high-speed rail,  
5 but that, “[o]ur concern is that the project should not be designed to utilize or occupy any of our  
6 rights of way.” (E000027.) “We could not give up a 50-foot exclusive width right-of-way to  
7 high-speed rail and remain in business.” (E000027.) The Final Program EIR demonstrates that  
8 the HST can be designed in a manner that will not intrude on Union Pacific’s right-of-way or  
9 interfere with its operations between San Jose and Gilroy.

10 **2. The EIR Discloses The Impacts Of HST Whether The Alignment Is**  
11 **Within Or Adjacent To Union Pacific’s Right-of-Way.**

12 Finally, because the EIR’s project description is general, and does not assume HST tracks  
13 will be in the Union Pacific right-of-way between San Jose and Gilroy, the EIR analyzes the  
14 potential for environmental impacts as if the HST were either within or adjacent to this existing  
15 right-of-way. (G001360.) At a programmatic level, the EIR analyzes the impacts of constructing  
16 and operating the HST along the different alignments conservatively, by evaluating direct and  
17 indirect impacts within a wide band that exceeds the maximum proposed HST right-of-way.  
18 (G001360.) For example, the study area for biological impacts is 50 feet on either side of the  
19 alignment for direct impacts, and 1000 feet for indirect impacts in urban areas or .25 mile in rural  
20 areas. (B004473.) For agricultural lands, the study area is 100-feet from the edge of the existing  
21 rail or transportation right-of-way on the side anticipated for the alignment. (B004214.) The  
22 wide study area ensures disclosure of environmental impacts in general terms whether the  
23 alignment is placed within an existing rail right-of-way or adjacent to it. (G001360; *Bay-Delta*  
24 *Cases, supra*, 43 Cal.4th at p. 1171.)

25 Even the chapter on land use compatibility, which Petitioners claim fails to disclose  
26 extensive taking of residential property between San Jose and Gilroy, properly analyzed the  
27 potential for property impacts as if the alignment were either within or adjacent to the existing  
28 Union Pacific right-of-way. The study area for property impacts was 50 feet on either side of an

1 existing corridor. (B004167.) Property impacts were ranked as low, medium, or high depending  
2 on the types of adjacent land uses, the need for additional right-of-way, and the potential  
3 sensitivity of adjacent land uses. (B004166.) For the area between San Jose and Gilroy, the EIR  
4 describes the property impact as low because the alignment would be within the transportation  
5 corridor, adjacent to the Union Pacific right-of-way, and potentially making use of some  
6 Monterey Highway right-of-way, with redesign of portions of this highway as necessary (e.g., use  
7 of the median strip). (B004187, B004199.) The EIR concludes, however, that land use  
8 compatibility impacts could be significant, and incorporates mitigation strategies, even though  
9 displacement of residents between San Jose and Gilroy is not expected. (B004187; B004207-  
10 210.) More detail on track location is not required to adequately assess impacts. (*Bay-Delta*  
11 *Cases, supra*, 43 Cal.4th at p. 1171.)

12 **C. CEQA Does Not Require Project Cost Information in an EIR; Nonetheless,**  
13 **The EIR's Cost Information Is Supported by Substantial Evidence.**

14 Petitioners argue that the EIR's project description was flawed because it failed to provide  
15 an adequate discussion of project costs, but instead included cost estimates that were inaccurate  
16 and biased in favor of the Pacheco Pass alignment alternative. (Petitioners' Brief, pp. 12-13.)  
17 Petitioners are wrong for two reasons: (1) CEQA does not require project cost information in an  
18 EIR; and (2) substantial evidence supports the cost information the EIR provided.

19 **1. Cost Information Is Not Required In An EIR.**

20 Under CEQA, project cost information is not required in an EIR and Petitioners have cited  
21 no authority for this premise. CEQA Guidelines section 15124 does require a brief and general  
22 description of the project's economic characteristics, but no court has interpreted this to mean  
23 project costs, let alone the kind of detailed project cost information Petitioners demand. (Cf. *Dry*  
24 *Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 34-36 ["general  
25 description" of project technical characteristics in Guidelines § 15124 does not involve detail].)

26 Petitioners' case authority does not hold CEQA requires project cost information in an EIR.  
27 Both *Uphold our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587 and *Citizens of*  
28 *Goleta Valley v. Board of Supervisors* (1988) 197 Cal.App.3d 1167 hold that cost information is



1 required to support a lead agency's CEQA findings when an agency reject alternatives as  
2 economically infeasible. Neither case, however, requires such information in an EIR.

3 The lack of any CEQA requirement for project cost information in an EIR makes sense  
4 because the purpose of an EIR is to disclose a project's environmental impacts, not its economic  
5 costs or effects. (Pub. Resources Code, § 21100, subd. (b)(1); CEQA Guidelines, §§ 15126,  
6 subd. (a), 15126.2.) Where a project's economic effect does not itself result in an adverse impact  
7 to the physical environment, there is no requirement to address the economic issues in an EIR.  
8 (*Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1120-1121.) And even if project cost  
9 becomes a factor in a lead agency's findings, the CEQA Guidelines allow for such information to  
10 be in the record, not in the EIR itself. (CEQA Guidelines, § 15131, subd. (c).) Consequently, the  
11 Final Program EIR's cost information cannot violate CEQA and cannot form the basis for a writ  
12 of mandate. (Pub. Resources Code, § 21083.1 [courts shall not interpret CEQA or Guidelines to  
13 impose requirements beyond those explicitly stated]. )

## 14 **2. The EIR's Cost Information Is Supported By Substantial Evidence.**

15 Even though the Court need not consider Petitioners' arguments about project costs, the  
16 record shows the EIR's cost information is fair and supported by substantial evidence. Chapter 4  
17 presents average costs for HST alignment alternatives and individual segments per kilometer and  
18 per mile. (B004624-647.) The text references Appendices 4A and 4B for more detail.  
19 (B004624.) Appendix 4A includes construction costs for each alignment alternative, broken  
20 down by costs for track, earthwork, structures, grade separation, rail and utility relocation, right-  
21 of-way, contingencies, and other elements. (B005971-6086.) Appendix 4B includes more  
22 information about station construction costs. (B006087-6180.) Appendix 4D defines the cost  
23 elements and notes that many were previously peer reviewed by German, Japanese, and French  
24 HST technical teams during the Authority's Corridor Evaluation. (B004637; B004646; B006243.)

25 Contrary to Petitioners' claim, the EIR was not biased in favor of Pacheco Pass by  
26 downplaying the potential for costs associated with condemning new right-of-way in the area  
27 between San Jose and Gilroy. (Petitioners' Brief, p. 13.) Appendix 4A includes right-of-way  
28 acquisition costs for urban, suburban, and rural lands between San Jose and Gilroy. (B005993-

1 94.) These cost figures were estimated in the event that a strip of 50' right-of-way is required to  
2 accommodate the HST adjacent to the Union Pacific right-of-way. (B006247 [50' min ROW  
3 assumed in congested areas].) The types of costs were also developed for alignments that  
4 comprise the Altamont Pass in the same manner. (B006008-20 [UPRR Altamont segments].)

5 For the alignment between San Jose and San Francisco, Petitioners seem surprised to find  
6 no right-of-way acquisition costs (Petitioners' Brief, p. 13), but no permanent right-of-way  
7 acquisition is anticipated. (B005973-80 [Caltrain Corridor costs].) This alignment alternative is  
8 described as having HST share tracks with commuter rail. (B003953.) The existing Caltrain  
9 right-of-way is predominately wide enough to accommodate four tracks (allowing shared use),  
10 without the need for additional permanent right-of-way, providing two tracks for local Caltrain  
11 commuter and freight rail, and two tracks for HST and Caltrain express. (B005242 [Figure CC8];  
12 B006516 [RTC L021-11]; B007301 [W090-7].) Caltrain has indicated its willingness to share its  
13 right-of-way with HST and has signed an MOU for cooperative development of the corridor.  
14 (B000770-73; B006541-46.)<sup>5</sup>

15 While Petitioners question the EIR's lack of cost figures for temporary right-of-way and  
16 severance along the Peninsula, these costs were not estimated for either Altamont or Pacheco, but  
17 anticipated to be part of the 25% contingency. (Petitioners' Brief, pp. 14-15; B006530, B006537  
18 [comment L025-7 and response].) The use of three land cost figures (urban, suburban, rural) and  
19 a uniform right-of-way width was consistent for both Altamont and Pacheco. (B006246-47 [50'  
20 minimum ROW (15.2 meters) used to develop cost figures]; B005994, B000614 [three land costs  
21 used for both Pacheco and Altamont segments].) The cost figures, when divided, also show that a  
22 uniform right-of-way was used for Altamont and Pacheco. (B006246-47, B005933-36 [Pacheco  
23 ROW costs]; B006007-20 [Altamont ROW costs].) There is simply no bias in the cost figures;  
24 nor is more detail required here. (*Bay-Delta Cases, supra*, 43 Cal.3d at pp. 1172-1173.)

25 <sup>5</sup> Petitioners may try to characterize the treatment of the Caltrain Corridor alignment  
26 alternative as biased, but the Caltrain corridor between San Francisco and San Jose is unique. It  
27 is one of the few publicly owned alignments in the study area. (B003953; B006703.) In addition,  
28 it has an existing commuter rail service, which allows planning for shared use along the in a  
manner that would provide mutual benefits to both Caltrain and HST, as recognized by the  
cooperative agreement between these agencies. (B006541-46; B003925-26.)

1           **D. The EIR's Discussion of Project Operations Is Supported By Substantial**  
2           **Evidence.**

3           Petitioners also claim the Final Program EIR failed to provide accurate and impartial  
4 information on the project's operating characteristics, resulting in an inadequate project  
5 description. (Petitioners' Brief, pp. 16-20.) Petitioners contend that the information on frequency  
6 of service wrongly assumed a trainset had to travel its entire route as a single unit without  
7 allowing for splitting or merging of train subcomponents, and resulted in bias against the  
8 Altamont Pass network alternatives. (*Id.* at p. 16.) Petitioners also contend the ridership  
9 information was biased against the Altamont alternatives by concluding there would be high  
10 recreational ridership between San Jose and San Francisco in the Pacheco alternatives, where  
11 Caltrain already provides a similar service. (*Id.* at pp. 18-20.) Petitioners ignore the standard of  
12 review. Substantial evidence supports the EIR's discussion of HST operating characteristics.

13                   **1. The EIR Provides An Adequate Description of HST Operations.**

14           Contrary to Petitioners' claim, the EIR provides an adequate and appropriate description of  
15 HST operations. Chapter 2 explains that Cambridge Systematics developed a new intercity travel  
16 demand model for the Metropolitan Transportation Commission (MTC) and the Authority, and  
17 then developed new ridership and revenue forecasts for the Draft Program EIR. (B003920.) The  
18 ridership forecasts estimated a base or low case for HST of 88 million passengers annually by  
19 2030, and a high case of 117 million passengers annually. (B003920.) The EIR uses the high  
20 ridership to assess environmental impacts, thereby providing a worst case evaluation. (B003921.)  
21 The EIR uses the base (low) ridership to assess environmental benefits (reductions in energy use,  
22 traffic, air pollution), to ensure a conservative estimate of benefits. (B003921.)

23           A conceptual service plan was developed that would serve the base and high ridership  
24 scenarios. (B003921.) The conceptual service plan is a tool to determine generally how to satisfy  
25 the travel time, service quality, and expected ridership of the HST with a wide variety of HST  
26 service options that would serve both intercity and long-distance trip. (B00392.) The 2030  
27 operating plan developed for the EIR identified that a total of 124-139 weekday trains in each  
28 direction would be provided for the HST system statewide. (B003921.) Of these, 91-96 trains

1 would serve the long distance market between southern and northern California, and 33-43 would  
2 serve the shorter distance markets. (B003921.)<sup>6</sup> To serve multiple city endpoints, service  
3 frequency would be reduced to each city. (B003921.)

4 Based on the conceptual operating plan, the EIR provides ridership and revenue forecasts  
5 for each of the 21 network alternatives. For example, ridership for the Altamont Pass Network  
6 Alternative with San Francisco and San Jose Termini was estimated at 78.9 to 116 million with  
7 revenues ranging from \$ 2.84 billion to \$ 3.8 billion annually by 2030. (B004702.) For the  
8 Pacheco Pass Network Alternative with San Francisco and San Jose Termini, ridership was  
9 estimated at 93.9 to 117 million people and about \$ 3.1 billion in revenue. (B004768; B003920.)

10 The ridership and revenue forecasts resulted from a multi-year technical effort, undertaken  
11 by experts in the field of transportation modeling. (C001886-88 [describing development of new  
12 integrated, interregional and intraregional models]; see also C001879-964 [Ridership and Revenue  
13 Forecasting Study Final Report].) The modeling assumptions, methodology, data, and results  
14 were subject to three independent peer review panels including transportation planning experts  
15 from academia, public agencies, and the private sector. (C001954-60 [summary of peer review];  
16 E004118-148 [first peer review]; E004149-187 [second peer review]; E004188-97 [third peer  
17 review].) The modeling and the resulting ridership and revenue forecasts are the type of expert  
18 technical work upon which the EIR, and the Authority, are entitled to rely. (CEQA Guidelines, §  
19 15151; *Greenbaum v. City of Los Angeles* (1983) 153 Cal.App.3d 391, 413-14.)

20 **2. The EIR Correctly Assumes That Trains Should Not Be Split On The**  
21 **Main Trunk Line of The HST System.**

22 Petitioners claim, however, that the EIR's operational assumptions about frequency of  
23 service were biased against the Altamont Pass network alternatives because they did not assume  
24 the ability to split a single trainset in two parts to allow the train to serve more than one city

25 <sup>6</sup> The EIR describes the following service types: 16 trains per day would provide express  
26 service between northern and southern California without intermediate stops; 17-26 trains per day  
27 would provide semi-express service between northern and southern California with intermediate  
28 stops at major Central Valley cities; 30-35 trains per day would provide suburban-express service  
between northern and southern California and locally within the Bay Area and Los Angeles, with  
no intermediate Central Valley stops; 19-25 trains per day would provide local service stopping at  
all stations; and 33-43 trains daily would provide regional service. (B003922.)

1 without reducing frequency of service to each city. (Petitioners' Brief, pp. 16-28.) Petitioners  
2 believe that if a single trainset traveling from Los Angeles over an Altamont Pass network  
3 alternative could be split to allow that trainset to serve both San Jose and San Francisco, then the  
4 ridership and frequency of service for the Altamont alternatives would have been much more  
5 favorable than for the Pacheco alternatives. (*Id.* at pp. 17-18.) However, substantial evidence  
6 supports the Authority's approach to HST system operations and the discussion in the EIR.

7 Train splitting and coupling is operationally disruptive and is not used for HST service on a  
8 main trunk line. (B004716; B006694.) While some HST systems worldwide use splitting and  
9 coupling of trainsets in their operations, the use is very limited. (B006694.) Evidence gathered  
10 for the Final Program EIR reveals that in France, only about 10 percent of TGV trainsets are split  
11 and coupled to allow branch service. (B006694.) In Japan, an even smaller percentage of  
12 Shinkansen trainsets are split and coupled. (B006694.) In both countries, trainsets are split and  
13 coupled only in minor markets and in off peak periods, not on their main trunk service.  
14 (B006694.) For example, the French TGV splits only after serving the major market between  
15 Paris and Bordeaux. (B006994.) The Japanese Mini-Shinkansen that splits to Yamagata does so  
16 only after the major stations in Fukushima and Sendai. (B006944.) This substantial evidence  
17 supports the EIR's assumption that trains would not split for the HST system's main trunk service  
18 between northern and southern California. (B004716.)<sup>7</sup>

19 Petitioners' own evidence confirms that the splitting and coupling of trainsets does not form  
20 the basis for main trunk line HST service. Petitioners' German ICE service timetable shows that  
21 a train split occurs, but for only 12 days (Oct. 30 to Nov. 11) for a single train in what appears to  
22 be a three or six-month train schedule. (B008032.) For the Thalys, a split and coupling occurs on  
23 the Paris-Koln-Amsterdam line only after the major station at Brussels, and only in off-peak  
24 periods. (B008035-36.) For the TGV, Petitioners admit the splitting and coupling occurs in off-  
25 peak periods. (B008037.) These examples confirm that "HST splits are generally done in places

26  
27 <sup>7</sup> Petitioners claim a cross-platform timed transfer would be feasible, but substantial  
28 evidence shows this operational technique would in significant delays on an HST system, in  
contrast to the short delays it causes on commuter systems. (B007282; C035946-54; C035960.)

1 where the traffic demands are low – not on the main trunk line between major markets.”  
2 (B006694.) The EIR’s operational assumptions are therefore supported by substantial evidence.

3 **3. The Modeling Correctly Found Pacheco Pass Would Have Higher**  
4 **“Recreational and Other” Ridership Than Altamont Pass.**

5 Petitioners also claim that the ridership information in the EIR was flawed and biased in  
6 favor of the Pacheco Pass network alternatives because the EIR incorrectly states there would be  
7 significant recreational ridership between San Francisco and San Jose that would not occur with  
8 the Altamont Pass network alternatives. (Petitioners’ Brief, pp. 18-20.) Petitioners contend this  
9 is wrong because HST service would duplicate the existing Caltrain “baby bullet” route. (*Id.* at p.  
10 19.) Thus, Petitioners believe this recreational ridership is overstated in the EIR. (*Id.*, p. 20.)  
11 Substantial evidence supports the EIR’s discussion of ridership.

12 The ridership forecasts performed for the Authority and the MTC concluded that if you  
13 implement HST service using either a Pacheco Pass network alternative or an Altamont Pass  
14 network alternative, total train ridership will increase in the study area. (C001944.) What  
15 Petitioners fail to disclose, however, is that ridership analysis concluded that the Pacheco Pass  
16 taps into a very wide market for intraregional ridership in Santa Clara County, yielding more than  
17 a million more “recreational and other” trips than the Altamont Pass base case. (B006696.) In  
18 addition, the Pacheco Pass base creates a sizeable HST market to/from the Monterey Bay area, a  
19 market virtually non-existent for the Altamont Pass base case alternative. (B006695.)

20 While the EIR recognizes that HST would compete with Caltrain between San Francisco  
21 and San Jose, the ridership analysis suggests that some individuals will choose to pay a premium  
22 to ride the HST in this corridor rather than Caltrain based on the service being faster and more  
23 reliable. (B006696.) This is particularly true for recreational riders, who often travel in off-peak  
24 periods, when HST’s travel time (30 mins versus 57 mins for Caltrain), frequency, and reliability  
25 outweigh Caltrain’s lower cost. (B006696.)

26 To show a CEQA defect in the EIR’s project description based on the ridership and revenue  
27 forecasts summarized in the EIR, Petitioners’ burden is to demonstrate that the forecasting and  
28 the modeling assumptions underlying it are so inadequate that they are entitled to no judicial

1 deference. (*Laurel Heights I, supra*, 47 Cal.3d at p. 409, fn.12.) Petitioners have failed to meet  
2 this burden. Even giving Petitioners the benefit of the doubt, and characterizing their arguments  
3 as substantial evidence of a different and valid approach to modeling HST operations, the  
4 difference of opinion between experts does not render the EIR invalid or unsupported by  
5 substantial evidence. (CEQA Guidelines, § 15151; *Save Round Valley, supra*, 157 Cal.App.4th at  
6 p. 1468.) The EIR's project description complies with CEQA.

7 **II. THE FINAL PROGRAM EIR'S DISCUSSION OF IMPACTS AND MITIGATION IS**  
8 **APPROPRIATE FOR A PROGRAM EIR.**

9 Petitioners' next claim that the EIR's discussion of impacts and mitigation violates CEQA.  
10 (Petitioners' Brief, pp. 20-34.) Specifically, Petitioners claim that the EIR's discussion of  
11 impacts and mitigation in the areas of biology, growth, and local impacts along the Peninsula was  
12 inadequate, biased, and lacking in detail. (*Ibid.*) Petitioners also attack the Authority's CEQA  
13 findings on impacts and mitigation in these areas. (*Ibid.*) Petitioners cannot maintain their  
14 challenge to the CEQA findings on impacts and mitigation because they failed to exhaust their  
15 administrative remedies. Substantial evidence in the record, much of which Petitioners fail to  
16 disclose or discuss, shows the EIR's impacts and mitigation discussion complies with CEQA.

17 **A. Petitioners Failed to Exhaust Their Administrative Remedies As To Any**  
18 **Defect In The Authority's CEQA Findings On Impacts and Mitigation.**

19 To seek judicial relief under CEQA, a party first must exhaust its administrative remedies;  
20 if a party fails to do so, the court must deny relief due to lack of jurisdiction. (Pub. Resources  
21 Code, § 21177; *Sea & Sage Audubon Society, Inc v. Planning Com.* (1983) 34 Cal.3d 412, 417-  
22 420.) Project opponents must voice their grievances with specificity during the CEQA  
23 administrative process so that the lead agency has an opportunity to respond. (*Coalition for*  
24 *Student Action v. City of Fullerton* (1984) 153 Cal.App.3d 1194, 1197.) Indeed, the lead agency  
25 "is entitled to learn the contentions of interested parties before litigation is instituted." (*State*  
26 *Water Resources Control Board Cases* (2006) 136 Cal.App.4th 674, 794, emphasis added,  
27 internal citations omitted.)  
28

1 The exhaustion of administrative remedies doctrine bars Petitioners' claim that the  
2 Authority's CEQA findings on impacts and mitigation are not supported by substantial evidence.  
3 (Petitioners' Brief, pp. 20-34.) The adequacy of the Authority's CEQA findings is a separate  
4 legal issue from the adequacy of the Final Program EIR. (Pub. Resources Code, § 21081; CEQA  
5 Guidelines, § 15091; see *Mira Mar Mobile Community v. City of Oceanside* (2004) 119  
6 Cal.App.4th 477, 487 to 498 [treating EIR and CEQA findings separately].) The Authority made  
7 a proposed set of CEQA Findings of Fact available to the public in advance of its July 8, 2008,  
8 meeting, and at the meeting itself. (G001093-94 [agenda]; G001096 [showing Board received  
9 draft findings]; B008319-26, B008241 [draft findings posted on Authority's web site].) The  
10 Authority accepted public comments on the Final Program EIR on July 8th, and on the proposed  
11 CEQA findings on July 9th, but no speaker raised a concern about the proposed CEQA findings.  
12 (G001361-67; G001473 [07/09 opp. for comment].) The Authority adopted the findings without  
13 change. (G0001473, 1481-82.) Since no one exhausted administrative remedies on the adequacy  
14 of the CEQA findings, the claim is barred. (Pub. Resources Code, § 21177)

15 **B. Substantial Evidence Supports The EIR's Discussion Of Biological Impacts**  
16 **From Don Edwards National Wildlife Refuge Or Grasslands Ecological Area.**

17 Petitioners claim the EIR's biological impacts analysis violates CEQA because the EIR  
18 gives unequal treatment to the Grasslands Ecological Area and the Don Edwards National  
19 Wildlife Refuge. (Petitioners' Brief, pp. 21-24.) According to Petitioners, the impacts of  
20 crossing the Bay at Dumbarton were overstated because these impacts could be avoided by use of  
21 the Dumbarton Rail Bridge. (*Id.* at pp. 22-24.) Petitioners claim the mitigation strategies were  
22 biased because they include a strategy specific to the Grasslands Ecological Area, but not one  
23 specific to the Don Edwards National Wildlife Refuge. (*Id.* at p. 23.) These arguments are  
24 unfounded. The record shows the EIR provides an unbiased discussion of biological impacts.

25 **1. The EIR Assesses Impacts To Resources In The Don Edwards National**  
26 **Wildlife Refuge and The Grasslands Ecological Area Equally.**

27 The EIR discusses the biological values of the Grasslands Ecological Area and the Don  
28 Edwards National Wildlife Refuge equally. The EIR recognizes both areas as "special



1 management areas” and briefly describes their legal status, extent, and habitat types. (B004484;  
2 B004488.) The EIR discusses the data sources used for the biological analysis, including a  
3 variety of existing geographic information systems (GIS) data sets on biotic communities, as well  
4 as aerial surveys along the alignments to verify landcover. (B004469-71.) More than a dozen  
5 other resources were used to gather species and habitat information, including the California  
6 Natural Diversity Database. (B004471.) The impacts analysis was performed consistently across  
7 all the alternatives following the same methodology. (B006587; G000808.)<sup>8</sup>

8 The EIR concludes that the Altamont Pass network alternatives that cross the San Francisco  
9 Bay at Dumbarton would have greater impacts on wetlands in general, and on the San Francisco  
10 Bay, than the selected Pacheco Pass network alternative. For example, the Altamont Pass  
11 network alternatives with a Bay crossing at Dumbarton would impact 33.9 acres of wetlands on  
12 the east and west shores of San Francisco Bay, whereas the selected Pacheco Pass network  
13 alternative would not cross the Bay and would therefore cause no similar Bay impacts.

14 (B004497; B004494.) The Altamont Pass network alternatives that cross the Bay at Dumbarton  
15 would have higher impacts than the selected Pacheco Pass network alternative on waterbodies  
16 (39.6 ac vs. 3.8 ac), wetlands (about 45 ac vs. 15.6 ac), and non-wetland waters (15,947 to 16,773  
17 linear feet vs. 14,395 linear feet). (B004933; see also G000811.) The impacts to wetlands are  
18 lower for the Pacheco alignment because a large portion of the alignment is aerial through the  
19 southern portion of Grasslands Ecological Area, avoiding many wetland impacts. (B006585.)

20 The EIR does not overstate impacts from a Bay crossing at Dumbarton, as Petitioners  
21 contend. All the Altamont Pass network alternatives that would cross the Bay at Dumbarton  
22 would impact 33.9 acres of wetlands on the east and west shores of San Francisco Bay, within the  
23 Don Edwards National Wildlife Refuge. (B004497.) These impacts are associated with  
24 construction of a new high or low bridge or a tunnel, each of which would cause these wetland  
25 impacts within the refuge. (B004497; B004524.) As discussed in more detail below, the

26 <sup>8</sup> Petitioners suggest that the lack of site-specific surveys somehow compromised the  
27 EIR’s biological impacts analysis (Petitioners’ Brief, p. 22), but the general data and information  
28 developed for the EIR was sufficient for distinguishing between alternatives. (B006326 to 28;  
B006394; B006587; B006707; B006708; *Bay Delta Cases, supra*, 43 Cal.3d at pp. 1172-73.)

1 wetlands impacts of a new Bay crossing cannot be avoided by putting the HST across the Bay on  
2 a rehabilitated Dumbarton Rail Bridge. (See *infra* § III.B.3.) Substantial evidence discussed in  
3 section III.B.3 demonstrates that a new bridge would be required for HST tracks to cross the Bay  
4 at Dumbarton, requiring major construction that would adversely impact Bay wetlands. (*Infra* §  
5 III.B.3.) In contrast, the selected Pacheco Pass network alternative does not include a Bay  
6 crossing, and therefore causes no impacts to the Bay or to the Don Edwards National Wildlife  
7 Refuge. (B004494; B004933.)

8         Conversely, the EIR does not understate impacts to the Grasslands Ecological Area. The  
9 EIR explains that the Grasslands Ecological Area is approximately 240,000 acres, the largest  
10 wetland complex in California, and the largest block of contiguous wetlands remaining in the  
11 Central Valley. (B004484.) Yet, this 240,000 acre boundary does not represent a fully protected  
12 area, but rather a general, non-regulatory boundary used by the U.S. Fish and Wildlife Service to  
13 identify areas of priority to purchase conservation easements. (B004484; B006582, B006587.)  
14 Large expanses of acreage within the Grasslands Ecological Area boundary is privately held, with  
15 some land protected by conservation easements managed for waterfowl hunting, cattle grazing,  
16 and agriculture. (B004484; D001884; G000811; G000821 [showing protected areas of GEA in  
17 yellow and green]; see, e.g., G000825-860 [showing agricultural nature of area].) The selected  
18 Pacheco Pass network alternative would cut through two southern portions of the GEA adjacent  
19 to Henry Miller Road, and between, but not across, areas managed by public agencies. (B006585-  
20 86; G000813; G000813.) It would have fewer wetland impacts than the Altamont Pass network  
21 alternatives that cross the Bay. (B004494; B004933; G000807-08; G000811.)

## 22                   **2. The EIR Recognizes The Differences Between The Don Edwards** 23                   **National Wildlife Refuge and the Grasslands Ecological Area.**

24         While the EIR provides a fair and equal analysis of the Grasslands Ecological Area and the  
25 Don Edwards National Wildlife Refuge, it also recognizes important distinctions between these  
26 two areas. For example, while the Don Edwards National Wildlife Refuge is 30,000 acres, and  
27 obviously smaller than the 240,000 acres of the Grasslands Ecological Area, its 30,000 acres are  
28 permanently protected as a National Wildlife Refuge, established by an act of Congress, that the

1 HST alignment would bisect. (B003944; Pub. Law No. 92-330 (June 30, 1972), 86 Stat. 399;  
2 G000861-65.) The Grasslands Ecological Area, on the other hand, is larger in acreage, but  
3 significant acreage within the boundary has no permanent protection. (B006582; B006587;  
4 B004484; D001878-82; B006389.) And the HST alignment through the GEA is along an existing  
5 road, more than 2 miles for the San Luis National Wildlife Refuge, 1/2 mile south of the Volta  
6 Wildlife Area and adjacent to the Los Banos Wildlife Area. (B004509-10, B006346, B006388-  
7 90; B006584-86; B006598, B006591; D001884; see also G000811-13.)

8 In addition, different limitations apply to the two areas. Uses within the Don Edwards  
9 National Wildlife Refuge must be compatible with its refuge status. (B006366; 16 U.S.C., §  
10 668dd.) The open bay, salt marsh, mud flats, vernal pools, and upland habitats in the Don  
11 Edwards National Wildlife Refuge are also under the jurisdiction of the Bay Conservation and  
12 Development Commission (BCDC). (G000809; B004488; see G000862-74 [photographs  
13 illustrating wetlands, marsh, and mudflats].) BCDC is a state agency charged with regulating  
14 and severely limiting new fill in the Bay, and it therefore imposes major legal constraints on new  
15 construction in the Bay that would accompany a Dumbarton crossing. (B006366; B006620.)  
16 Uses within the Grasslands Ecological Area have limitations, but they are not as severe as in the  
17 Don Edwards National Wildlife Refuge. (See, e.g., B004484; D001878-82; G000815.)

18 **3. The EIR Appropriately Recognizes The Unique Mitigation**  
19 **Opportunity In The Grasslands Ecological Area.**

20 Petitioners claim, however, that the EIR was biased in favor of Pacheco Pass because it  
21 highlighted special mitigation designed specifically for the Grasslands Ecological Area, but did  
22 not have a similar strategy that would apply to the Don Edwards National Wildlife Refuge.  
23 (Petitioners' Brief, pp. 23-24.) This is not the case. Substantial evidence supports the Authority's  
24 inclusion of a mitigation strategy tailored to the Grasslands Ecological Area.

25 The Final Program EIR includes numerous mitigation strategies that apply to the biological  
26 resource impacts regardless of location, including the use of in-line construction to minimize  
27 impacts. (B004534-38.) For wetlands, the EIR includes a lengthy strategy that involves wetland  
28 restoration, creation, enhancement, mitigation banking, or monetary payments toward an

1 approved habitat conservation or restoration program. (B004535-36.) The mitigation strategy  
2 prioritizes onsite mitigation, or mitigation within the same watershed or as close to the impact  
3 area as possible. (B004536.) The strategy would address wetland impacts for both the  
4 Grasslands Ecological Area and the Don Edwards National Wildlife Refuge.

5 For biological impacts within the Grasslands Ecological Area, the Final Program EIR  
6 includes a more detailed mitigation strategy. (B004537-38.) In addition to reciting the types of  
7 project-level analysis that would be required in second-tier EIRs, the mitigation strategy includes  
8 the purchase conservation easements within the Grasslands Ecological Area boundary, to protect  
9 the vast amount of acreage within the boundary that is currently unprotected, with the focus on  
10 protecting wetlands and limiting urban growth. (B004538.) A similarly specific measure was not  
11 included for the Don Edwards National Wildlife Refuge because the lands within the Refuge  
12 boundary are already protected, much of the surrounding land is either protected or in developed  
13 use, and therefore very few opportunities exist to add protection to the wetlands of the Bay.  
14 (G000810 [showing public land ownership in vicinity of Don Edwards National Wildlife  
15 Refuge]; G000815.) Substantial evidence thus supports including a more specific mitigation  
16 strategy for the Grasslands Ecological Area, where opportunities exist for mitigation.

17 **C. Substantial Evidence Supports The EIR's Growth Inducement Analysis**  
18 **For The Altamont Pass and Pacheco Pass Alternatives.**

19 Petitioners assert the HST system will expose distant rural areas to increased residential and  
20 commercial development, and associated impacts, by facilitating long distance commutes to  
21 urban workplaces, and they claim the EIR did not adequately address the growth inducing  
22 impacts of the portion of the HST system connecting the San Francisco Bay Area and California's  
23 Central Valley. (Petitioners' Brief, pp. 24-29.) These claims of fault in the growth impacts  
24 analysis are nothing more than unsupported opinion, vague conjecture and speculation.

25 **1. The analysis of growth inducing impacts in the EIR complies with**  
26 **CEQA requirements and is supported by substantial evidence.**

27 CEQA requires an EIR to address the growth inducing impacts of the proposed project  
28 being considered. (Pub. Resources Code, § 21100, subd. (b)(5).) This growth impacts analysis

1 must discuss ways in which a proposed project could foster economic or population growth,  
2 either directly or indirectly, or encourage activities, that could significantly affect the  
3 environment. (CEQA Guidelines, § 15126.2, subd. (d).) CEQA entrusts to the lead agency's  
4 discretion the duty of choosing and explaining the analytical methodology. (See *Citizens to*  
5 *Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421, 429-430 [County did not  
6 adequately explain limits of modeling process].)

7 The EIR analyzes potential growth-inducing impacts using a multi-layered approach --  
8 applying independently validated, state-of-the-art modeling tools to estimate population and  
9 employment growth and its distribution, and then evaluating the possible secondary impacts of  
10 growth attributable to the HST system. See Final EIR Chapter 5; July 2007 Economic Growth  
11 Impacts Analysis Report, Cambridge Systematics. (B004648-93; C035702-819.)<sup>9</sup> The EIR  
12 explains the conclusion that the HST would add a small fraction to continuing growth in  
13 California. (B004655-661.) Further explanation was provided in written responses to comments  
14 on the EIR, including comments from Petitioners. (B006332-34; B006647-48; B006712-17;  
15 E00008-14; G001353-4.) Finally, the Authority adopted findings and mitigation strategies,  
16 including measures to increase transit-oriented development and densities in station areas for the  
17 HST system and limit growth impacts. (A000032-33, 81-85.)

18 California has experienced substantial growth in population and employment over the last  
19 30 years and this trend is expected to continue. (B004659 [Table 5.3-1], B004667 [Table 5.3-5].)  
20 The analysis shows the growth inducing effects and indirect impacts are similar for the HST  
21 alternatives and the No Project alternative. Projected population growth between 2005 and 2030  
22 absent the HST is about 44 % for the core study area and 33 % statewide. (B004659 [Table 5.3-  
23 1].) Projected employment growth between 2005 and 2030 absent the HST is 37.4% for the core  
24 study area and almost 49% statewide. (B004660 [Table 5.3-2].) The Pacheco alternative could

25 <sup>9</sup> The Authority's intercity travel demand model was used to estimate HST system  
26 benefits (discussed *infra* at § I.D), which were used in a regional econometric model (TREDIS-  
27 REDYN) to estimate population and employment growth resulting from the HST system, and  
28 TREDIS outputs were used in a spatial allocation model (CURBA) to distribute population and  
employment growth in each county to estimate the acreage of undeveloped land needed to  
accommodate the projected growth. (B006685.)

1 increase population growth by an additional 1.2% and employment growth by 1.7%, which is less  
2 than the projected 1.9 % additional population growth and 2.3% employment growth projected  
3 for the Altamont alternative. (B006332-34.) The core study area consists of counties crossed by  
4 the Bay Area to Central Valley section of the HST system. (B004650.)

5 The EIR acknowledges the HST system could contribute indirect impacts to the direct  
6 impacts of the construction and operation of the HST system, since even though the incremental  
7 population increase due the HST is relatively small, it would be added to large population  
8 increases generally expected in California and in the study area. (B004679.) It evaluates many of  
9 these secondary impacts qualitatively, but estimates quantitative impacts for farmland,  
10 waterways, wetlands, and wildlife habitat. (B004679-92.) The estimated impacts from the  
11 increased urbanization generally needed to accommodate overall population and employment  
12 increases would be similar for the no project alternative and the HST alternative. (AR B004679.)  
13 The analysis predicts increases of employment and population at the county level and assesses  
14 urbanization impacts at the county level, taking into account existing land development patterns,  
15 general plans and local zoning. (B004665-66, 4670-71.) The Pacheco alternative would increase  
16 urbanized acreage slightly less than the Altamont alternative would. (B004665, 4670-71.) While  
17 overall impacts are limited by the limited number of HST stations provided, alternative station  
18 locations may produce somewhat different localized effects that cannot be predicted with  
19 specificity, since they will depend on the specific forms of growth that occur in the station area,  
20 which will in turn depend on local plans and policies. (B004691-92.)

21 **2. Petitioners offer only opinion and speculation on growth inducing**  
22 **impacts of the selected Pacheco Pass Network Alternative.**

23 Petitioners claim that the modeling results of the EIR's growth impacts analysis are  
24 "counterintuitive" and do not constitute substantial evidence; that the growth impacts analysis  
25 underestimated impacts to rural Santa Cruz, San Benito and Monterey counties by submerging  
26 them into the impacts to the "rest of California," and that the analysis fails to identify a range of  
27 impacts from specific station locations and thus underestimates secondary growth impacts from  
28 the system. (Petitioners' Brief, pp. 26-28.) None of these claims is well-founded.

1                                    **a. The growth modeling results are logical and consistent with the**  
2                                    **design of the HST system and California’s expected growth.**

3                                    Calling the results “counterintuitive,” Petitioners broadly claim that the growth impacts  
4 modeling cannot be considered substantial evidence asserting that it ignored project-induced  
5 population shifts of existing employees, and improperly considered where growth from the HST  
6 system would occur by using CURBA, a model using existing urban growth patterns. This  
7 vague criticism amounts to speculation without supporting factual information. (See, e.g., *Lucas*  
8 *Valley Homeowners Assoc. Inc. v. County of Marin* (1991) 233 Cal.App.3d 130, 156-157 [real  
9 estate agent testimony on potential property value decline not substantial evidence but “imprecise  
10 opinion, without any supporting, verifiable data”]; *Wal-Mart Stores, Inc. v. City of Turlock* (2006)  
11 138 Cal.App.4th 273, 293-4 [unsubstantiated opinion not substantial evidence of significant  
12 impact].)

13                                    The Final Program EIR explains the Transportation and Economic Development Impact  
14 System (TREDIS) is an integrated modeling framework that combines a business attraction  
15 model and an economic model to assess direct economic impacts and their potential to create  
16 multiplier effects in California regionally or statewide. (B006685.) It also explains that the  
17 California Urbanization and Biodiversity Analysis [CURBA] model was developed by the  
18 University of California at Berkeley to use employment and population growth information in  
19 calibrated spatial statistical models to estimate population and employment distribution from  
20 county to county. (B006685.) Both the TREDIS and the CURBA models have been  
21 independently validated, have been used in other projects, and are regarded as state-of-the-art  
22 forecasting tools. (B006685.)

23                                    California’s automobile-directed growth patterns and built communities properly frame the  
24 analysis. The CURBA model takes into account the existing built environment (using aerial  
25 photography to verify current development patterns), characterizes development potential and  
26 takes into account other critical factors affecting employment and population distribution.  
27 (B006712.) Changes in population growth distribution that may result from the HST system will  
28 “build upon” this existing environment, because the Authority has chosen station locations in

1 already-developed urban areas in order to attract ridership from “where the people are,” but this  
2 will also help limit sprawl by encouraging denser transit-oriented development near stations.  
3 (B004692-93; B006647-48.) Although there will be some growth in rural areas statewide, and  
4 some increase may be attributable to HST stations, the bulk of the growth increase will occur in  
5 already urbanized areas consistent with smart-growth principles. (B004694-98.)

6 Thus the EIR presents logical and reasonable conclusions based upon complex modeling  
7 tools and expert analysis. (See C035702-819, July 2007 Economic Growth Effects Report,  
8 preparers at C035770-72.) By contrast, Petitioners speculate and raise questions in areas outside  
9 their expertise. (See *Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572, 583 [noting that  
10 opinions outside one’s area of expertise do not constitute substantial evidence].) Although lay  
11 opinions may contain substantial evidence if they are based on relevant personal observations or  
12 involve “nontechnical” issues, Petitioners’ arguments question complex technical analyses and  
13 raise unsubstantiated fears about project impacts. (See *Bowman, supra*, 122 Cal.App.4th at p.  
14 583; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928.)

15 **b. The EIR considers impacts from stations and explains the limits**  
16 **of the growth analysis.**

17 Petitioners claim that the growth analysis failed to estimate a range of growth inducing  
18 impacts associated with specific station locations which resulted in underestimating the overall  
19 growth impacts. They cite no authority for this claim. CEQA does not require an estimated range  
20 of impacts. The analysis provides population and employment growth estimates by county, and  
21 land urbanization estimates in acreage by county, and notes more precise estimates for individual  
22 stations could not be provided based on the available data, given the numerous and complex  
23 interrelationships considered in the analysis and the fact that ridership catchment areas do not  
24 follow county lines. (B006363-64.) The analysis further notes that dropping, adding or changing  
25 station locations would change secondary impacts at the affected station area as well as for the  
26 system as a whole. (B004691.)  
27  
28



1                                    **c.    The EIR explains why substantial population shifts to rural**  
2                                    **counties are not expected with HST system.**

3                    Petitioners claim the growth analysis failed to consider shifts in where business employees  
4 will live, speculating that with HST individuals will move to rural locations and commute a  
5 longer distance to urban centers. (Petitioners' Brief, pp. 26-27.) In a related claim they assert  
6 that it also failed to recognize potential secondary impacts from increased residential growth to  
7 three rural counties near a Gilroy station: Monterey, San Benito and Santa Cruz. Both claims fail.

8                    The analysis considers project-induced population shifts, plus shifts in employment that  
9 follow shifts in residential location, as well as allocation of population between developed and  
10 undeveloped areas in each county. (B004654.) The responses to comments recognize the  
11 argument concerning potential for impacts to rural areas, but explain the system would not result  
12 in a significant increase in commute accessibility to the Bay Area for a number of reasons,  
13 including the limited number of HST stations, the localized accessibility benefits provided by  
14 these limited HST stations, the lack of local transit options in outlying areas, the higher cost of  
15 HST use for shorter trips, compared to auto use, and time considerations. (B006647-48;  
16 B006712-13.) This is consistent with the response to San Benito indicating neither HST  
17 alternative was expected to result in increased traffic on highways from Monterey. (B006460.)

18                    The growth analysis included projected impacts to Monterey, San Benito and Santa Cruz  
19 counties. In fact, the Economic Growth Effects Analysis Report notes, as an example of possible  
20 impacts from station changes, that if the Pacheco Pass network alternative did not include a  
21 station at Gilroy, then access to the HST system from Monterey, San Benito and Santa Cruz  
22 counties would be reduced, as would overall growth inducement. (C035759.) The standard  
23 responses to comments also note that the Pacheco Alternative would expand accessibility to the  
24 so-called "golden triangle" area in San Jose from areas including northern San Benito County.  
25 (B006332-3.) For this EIR, the most often-cited growth concern was that the HST would spur  
26 residential development with a station in the rural Los Banos area and result in adverse effects to  
27 the nearby Grasslands Ecological Area. The Final EIR reiterates that the Northern Central Valley  
28 is an attractive housing location under all alternatives, including the No Project Alternative, that

1 there will be no station or maintenance facilities at Los Banos, and that rather than encouraging  
2 sprawl, the HST will encourage smart growth near stations. (B006333-4.)

3 **D. Substantial Evidence Supports The EIR's Discussion Of Impacts Along**  
4 **The San Francisco Peninsula.**

5 Petitioners note that the use of the existing Caltrain corridor along the San Francisco  
6 Peninsula is designed to minimize environmental impacts in established communities, but they  
7 claim that the EIR did not adequately assess the impacts associated with using that right of way.  
8 (Petitioners' Brief, p. 29.) In particular they assert flaws in the treatment of noise, vibration and  
9 visual impacts to local communities (*Id.* at pp. 29-30); they assert a failure to address the need for  
10 property acquisition beyond the existing Caltrain right-of-way in Atherton and Menlo Park (*Id.* at  
11 p. 32); and they assert a failure to address potential impacts from removing mature trees, if the  
12 Caltrain alignment needs widening or due to damage during HST construction (*Id.* at p. 33). Each  
13 of these claims misses the mark. The Final Program EIR addresses these issues with an  
14 appropriate level of detail supported by substantial evidence.

15 First, Petitioners arguments ignore the more limited analysis and mitigation properly  
16 contained in a program EIR for the cited impacts. As discussed above at section IA, the  
17 appropriate level of detail for an EIR depends on the type of activity being considered. A  
18 program EIR need only contain the level of detail suitable to the programmatic action being  
19 analyzed. (*Al Larson, supra*, 18 Cal.App.4th at 747-748.) Whether more detailed information is  
20 needed depends on whether it is meaningfully possible to obtain it and whether the information is  
21 necessary to make a decision. (*No Oil, Inc. v. City of Los Angeles* (1988) 196 Cal.App.3d 223,  
22 237.) For these impacts, more detail is not meaningfully possible for this Program EIR, nor was  
23 it necessary to make a decision.

24 Second, the Final Program EIR and the CEQA Findings adopted by the Authority  
25 adequately address each of these impact areas. Taking into account the existing noise  
26 environment, the developed communities along the alignment alternatives, the effectiveness of  
27 noise barriers, benefits from grade separation, and other factors, the Final Program EIR broadly  
28 compared relative differences in noise and vibration impacts among the alternatives. (B004106-

1 28.) The analysis used Federal Railroad Administration and Federal Transit Administration  
2 criteria and tools developed to assess noise for HST and conventional rail. (B4100-4105.) The  
3 Final Program EIR considered all HST alternatives to result in significant noise and vibration  
4 impacts, concluded that grade separations at existing railroad crossings would result in noise  
5 benefits, and listed mitigation strategies, including design practices, to reduce impacts.  
6 (B004129-4137.) The Final EIR notes that more detailed mitigation strategies for noise and  
7 vibration impacts would be developed in the next stage of environmental analysis, when  
8 engineering and design considerations will be applied on a site-specific basis. (B004129-30.)

9 The CEQA findings treat noise and vibration impacts as significant on a region-wide basis,  
10 but they note that, rather than occurring along the entire alignment, these impacts are localized in  
11 certain developed areas. (A000024-25.) The findings also conclude that these impacts can be  
12 reduced to less than significant using through HST design practices and site specific engineering  
13 strategies. Noise mitigation strategies include design practices for grade separations, noise  
14 barriers, and use of trenches, tunnels or berms. (A000024.) Also reflecting the need for site-  
15 specific engineering and design treatment for noise and vibration impacts, the Final Program EIR  
16 response to Atherton's comments notes that project-level environmental review will consider  
17 alignment design and profile variations to reduce impacts, including trench and tunnel concepts,  
18 as well as design options for noise barriers. (B006480, 6538-40.) Mitigation strategies for  
19 vibration, a similarly localized impact, include train and track technologies such as state of the art  
20 suspension, resilient track pads, tie pads, ballast mats and floating slabs. (A000025.)

21 As to whether property outside the Caltrain right-of-way may be needed for HST  
22 construction near Atherton or Menlo Park, the CEQA findings note the HST is highly compatible  
23 with and expected to be primarily within the Caltrain corridor, and again cite design practices to  
24 reduce impacts, pending further study at project-level. (A000029-33) Responses to Atherton's  
25 comments note that the HST tracks are expected to fit within the Caltrain right-of-way, as would  
26 certain design variations, and indicate more detailed future study would include engineering and  
27 design work to avoid and to further reduce impacts to communities along the Caltrain right-of-  
28 way. (B006537-40.) Thus the CEQA findings on visual impacts note some potential for removal

1 of mature trees, and commit to mitigation. (A000039, A000041.) Atherton's comments note  
2 Caltrain's electrification project will remove numerous trees, and speculate that even more tree  
3 removal will result from to the HST. (B006531.) Contrary to these fears, the Final Program  
4 EIR indicates that the HST is not expected to require the removal of additional mature trees and  
5 would undertake efforts to avoid tree removal. (B06538-39.)

6 The Final EIR contains an adequate level of detail about these local environmental impacts  
7 and mitigation for the broad alignment decision before the Authority. A program EIR typically  
8 includes general mitigation strategies that a lead agency adopts and commits to refine and apply  
9 in future site-specific projects. (See *Rio Vista, supra*, 5 Cal.App.4th at pp. 376-377 [upholding  
10 general statement of mitigation measures for a program EIR saying more detailed measures  
11 would have been neither reasonably feasible nor particularly illuminating]). As a practical  
12 matter, not until additional design and engineering information is available, and until profile  
13 variations (e.g., berms or trenches) are considered in more detail for communities along the San  
14 Francisco Peninsula, will it be possible for the Authority to address these potential impacts in  
15 greater detail and develop tailored, site-specific mitigation.

16 The Authority takes very seriously the concerns of local communities regarding impacts,  
17 and expects to address both impacts and mitigation measures with engineering and design  
18 specificity in project- level environmental review. However, at the program level the Authority  
19 was not ready to tackle these site-specific issues, and such a level of detail would have been  
20 overwhelming. (*Bay Delta Cases, supra*, 43 Cal.4th at pp. 1172-73.) Rather, this detailed  
21 analysis belongs in the project-level EIR for the San Francisco to San Jose section of the HST  
22 system.

### 23 **III. THE FINAL PROGRAM EIR PRESENTS A FAIR AND UNBIASED ANALYSIS OF A** 24 **REASONABLE RANGE OF ALTERNATIVES.**

25 Petitioners launch a variety of challenges related to the EIR's alternatives analysis,  
26 characterizing the problems as being with the Authority's CEQA findings on alternatives on the  
27 one hand, and with the EIR's alternatives discussion on the other hand. (Petitioners' Brief, pp.  
28 34-41.) Petitioners have failed to exhaust their administrative remedies as to the Authority's

1 CEQA findings, and therefore the Court cannot reach this issue. As to the challenge to the EIR's  
2 alternatives analysis, substantial evidence supports the Authority's rationale for excluding the two  
3 Peninsula alignment alternatives that Petitioners believe should have been studied. The record  
4 shows the EIR's alternatives analysis complied with the rule of reason and was adequate to  
5 inform the public and the Authority of the broad differences between alternatives.

6 **A. Petitioners Failed to Exhaust Their Administrative Remedies As To Any**  
7 **Defect In The Authorities CEQA Findings On Alternatives.**

8 As discussed above, Petitioners were obligated to inform the Authority of any defects they  
9 perceived in the Authority's draft set of CEQA findings as a prerequisite to challenging the  
10 findings in court. (Pub. Resources Code, § 21177; *State Water Resources Control Board Cases*,  
11 *supra*, 136 Cal.App.4th at p. 794.) They failed to do so. (*Supra* § IIA.) Accordingly, the  
12 exhaustion doctrine bars Petitioners' claim that the Authority's CEQA findings on alternatives are  
13 not supported by substantial evidence. (Petitioners' Brief, pp. 35-39.)

14 **B. The EIR Studied A Reasonable Range Of Alternatives And Presented A**  
15 **Fair And Unbiased Analysis.**

16 Substantial evidence shows that the Final Program EIR's alternatives discussion, and  
17 consequently the Authority's CEQA findings on alternatives, comply with CEQA.

18 **1. An EIR Must Consider A Reasonable Range of Alternatives To**  
19 **Foster Informed Decision Making And Public Participation.**

20 The function of an EIR is to provide the public and the lead agency with information on a  
21 proposed project's environmental effects, way to mitigate those effects, and alternatives to the  
22 project. (Pub. Resources Code, § 21061.) The alternatives section is a core part of an EIR.  
23 (*Laurel Heights I, supra*, 47 Cal.3d at p. 392; *Goleta II, supra*, 52 Cal.3d at p. 564.) An EIR must  
24 therefore identify a reasonable range of feasible alternatives to a project or its location that may  
25 avoid or substantially lessen any of the project's significant environmental impacts, while also  
26 achieving most of the project's basic objectives. (Pub. Resources Code, §§ 21001, subd. (g),  
27 21002.1, subd. (a), 21003, subd. (c), 21061.1; CEQA Guidelines, § 15126.6, subd. (a).)

1 An EIR must explain the rationale for selecting the alternatives analyzed in detail in the  
2 EIR, but need only provide a brief explanation of the reasons for eliminating potential alternatives  
3 from detailed study. (CEQA Guidelines, § 15126.6, subd. (c).) In crafting the range of  
4 alternatives to be included in an EIR, lead agencies need not study in detail those alternatives they  
5 reasonably determine are infeasible or that fail to meet a project's underlying purpose. (*Ibid.*;  
6 *Goleta II, supra*, 52 Cal.3d at p. 565; *Bay Delta Cases, supra*, 43 Cal.4th at p. 1165.) Similarly,  
7 alternatives that do not accomplish a substantial environmental advantage need not be analyzed.  
8 (*Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 713-14.)

9 In evaluating whether an EIR's alternatives discussion is adequate, or whether a suggested  
10 alternative should have been studied, the test a reviewing court applies is the rule of reason.  
11 (*Laurel Heights I, supra*, 47 Cal.3d at p. 407; *Goleta II, supra*, 52 Cal.3d at pp. 566-567; CEQA  
12 Guidelines, § 15126.6, subd. (f). "CEQA establishes no categorical legal imperative as to the  
13 scope of alternatives to be analyzed in an EIR. Each case must be evaluated on its facts, which in  
14 turn must be reviewed in light of the statutory purpose." (*Goleta II, supra*, 52 Cal.3d at p. 566.)  
15 Under the rule of reason, an EIR must simply set forth those alternatives necessary to permit a  
16 reasoned choice. (*Bay Delta Cases, supra*, 43 Cal.4th at p. 1163.)

17 **2. The Final Program EIR's Alternatives Discussion Fostered Informed**  
18 **Decision Making And Public Participation.**

19 The record shows the EIR's alternatives analysis complies with the rule of reason and is  
20 supported by substantial evidence. What Petitioners fail to explain is that the many different  
21 options in the study area and the two mountain passes (Altamont and Pacheco) allowed for  
22 literally dozens of different ways to build the HST to connect the Bay Area and the Central  
23 Valley. To distill the various alternatives in a logical manner, the EIR divides the study area into  
24 six study corridors. (B001172.)<sup>10</sup> Within each corridor, the EIR then examines different  
25 alignment alternatives and station locations options. (B001172.) The alignment alternatives were  
26 further broken down into segments. (B001172.) Figures 2.5-1 and 2.5-2 illustrate the multitude

27 <sup>10</sup> I.e., San Francisco-San Jose; Oakland-San Jose; San Jose-Central Valley; East Bay-  
28 Central Valley; San Francisco Bay Crossing; and Central Valley Alignment. (B001172.)

1 of linear alignment options analyzed in the EIR. (B003940; B003944.) The potential  
2 environmental impacts of the alignment alternatives and station locations were discussed in  
3 Chapter 3 of the EIR. (See generally B003978 to 981 [describing analysis contained in ch. 3].)

4 In Chapter 7, the EIR provides a synthesis of the environmental analysis by summarizing  
5 the environmental consequences of 21 representative network alternatives (i.e., representative  
6 combinations of alignment alternatives to connect the Bay Area and Central Valley). (B004699.)  
7 The 21 network alternatives present a range of reasonable alternatives among the three basic  
8 approaches being considered: 11 Altamont Pass network alternatives; six Pacheco Pass network  
9 alternatives; and four alternatives that would use the Pacheco Pass and the Altamont Pass, with  
10 local service over the Altamont Pass. (B004699-920.) Maps for each of the 21 network  
11 alternatives depict the alignment alternatives and station locations that comprise the network.  
12 (See, e.g., B004703 [fig. 7.2-1]; B004769 [fig. 7.2-12].) Tables then summarize each network  
13 alternative's physical and operational characteristics and its potential impacts on the environment.  
14 (See B004702-708 [Altamont Pass with San Francisco and San Jose Termini]; B004768-773  
15 [Pacheco Pass with San Francisco and San Jose Termini].) By defining the "major tradeoffs"  
16 among the possible network alternatives, the EIR fostered informed public participation and  
17 decision making. (*Laurel Heights I*, *supra*, 47 Cal.3d at p. 404.)

18 **3. Substantial Evidence Supports The EIR's Treatment of the Dumbarton**  
19 **Bridge, Splitting Trains, Construction Difficulties, And Local Government**  
20 **Opinions.**

21 Petitioners would lead the Court to believe that the Authority's CEQA findings on  
22 alternatives improperly concluded that the Altamont Pass network alternatives were infeasible.  
23 (Petitioners' Brief, pp. 35-39.) This is not the case. While Petitioners construct a number of  
24 reasons for why they believe the Altamont Pass alternatives can be optimized to make them  
25 operationally and environmentally superior to the Pacheco Pass alternatives, their reasoning is  
26 little more than unsubstantiated opinion. Substantial evidence supports the Final EIR's  
27 discussion of operational and environmental issues related to the Altamont Pass alternatives, and  
28 therefore supports the Authority's CEQA findings on alternatives.





1 separated and dedicated tracks with full electrification facilities. (B006687.) The rehabilitation  
2 proposed by Caltrain would therefore be insufficient to support high-speed rail, a point that  
3 Caltrain itself communicated in its comments on the Draft Program EIR. (B006368; B006687;  
4 B006542.) While Caltrain's future plans for electrification arguably could make a shared  
5 Caltrain/HST Dumbarton crossing possible over the long-term, the EIR reasonably concludes that  
6 such a Bay crossing would require at least a new double track bridge. (B003926-927; B006687;  
7 G000809.) The Bay Area Regional Rail Plan reached the same conclusion: "Whereas the  
8 recommended Regional Rail Plan would provide separate passenger-only trackage between  
9 Redwood City and Union City using upgrades to the existing bridge, a high-speed rail main line  
10 suitable for carrying both statewide and regional services would require a new two-track high  
11 level bridge or tunnel connection across the Bay." (D001484 emphasis added.)

12 In addition, the existing Dumbarton Rail Bridge has two swing bridges that pivot to allow  
13 for ship traffic to move to the south Bay, both of which would be maintained as part of Caltrain's  
14 rehabilitation. (B003926; B004294 [existing rail bridge]; G000868 [existing rail bridge open].)  
15 The Final Program EIR responses to comments explains the potential need to open the bridge for  
16 ship traffic presents a systemic vulnerability that is inconsistent with the speed, reliability, and  
17 safety requirements of the HST system. (B006687; see B004044 [noting factors that influence  
18 HST reliability.] And while Petitioners cite to public hearing testimony to support their  
19 suggestion that there is little ship traffic that requires the existing bridge to swing open, that very  
20 same testimony cautions strongly against the use of the Dumbarton Rail Bridge for HST for this  
21 and other reasons, and suggests instead a new bridge. (B003435-37.) In short, substantial  
22 evidence supports the EIR's discussion of the rehabilitated Dumbarton Rail Bridge suggestion  
23 and Petitioners' unsubstantiated opinion (B006651-52) does not negate this evidence. (CEQA  
24 Guidelines, § 15384 [unsubstantiated opinion is not substantial evidence].)

25 **b. Train Splitting Is Not A Reasonable Alternative**

26 Petitioners also argue that the Final Program EIR and the CEQA findings were biased  
27 against the Altamont Pass alignment alternatives that would serve San Francisco and San Jose  
28 because they wrongly assumed the need for separate trains to serve both cities, thereby reducing

1 ridership, revenue, and frequency of service. (Petitioners' Brief, pp. 39-40.) As discussed above,  
2 substantial evidence supports the assumption in the conceptual service plan and in the ridership  
3 and revenue forecasts that trains would not be split and coupled since this would be inconsistent  
4 with accepted HST system design and operations for a main trunk line. (*Supra*, § *I.D.*) The  
5 assumption of a single trainset traveling between points in southern and northern California was  
6 therefore reasonable and supported by substantial evidence. (*Supra*, § *I.D.*)

7         It was also reasonable, and logical, for the modeling, and the EIR, to then conclude that if  
8 single trainsets are traveling between southern and northern California cities, frequency of service  
9 will be lower if the service involves a branch, because fewer trains would serve each endpoint  
10 city. (B004396; B006695.) An advantage of the Pacheco Pass is that it provides service to both  
11 San Francisco and San Jose on a single line, the Caltrain Corridor, without the need for a branch  
12 that reduces frequency of service to the endpoint cities. (B004396.) For example, the Final  
13 Program EIR explains that an Altamont Pass alternative with a branch to serve both San Jose and  
14 San Francisco has much lower frequency of service to each city – 33 trains to San Francisco and  
15 17 trains to San Jose, in contrast to the Pacheco Pass alternative that would offer 50 trains per day  
16 to each city. (B006695.) Considering that the statewide HST system already has two branches,  
17 “[a]voiding additional branch splits in the HST alignment would benefit train operations and  
18 service.” (B004396.)

19         Finally, not only does the EIR treat the issue of train splitting consistently for both  
20 Altamont Pass and Pacheco Pass (i.e., no splitting and coupling of trainsets), the EIR and the  
21 CEQA findings treat the branch issue equally for both. The presence of a branch was found to  
22 reduce frequency of service for the Pacheco Pass network alternative that would have a split to  
23 serve Oakland, in addition to the Altamont Pass network alternative that would have a split to  
24 serve both San Francisco and San Jose. (B004780; C000194; see also A000091 [disadvantage of  
25 splitting service for Altamont Pass Network Alternative with San Francisco, Oakland, and San  
26 Jose termini]; A00095-96 [disadvantage of three-way train service split for Pacheco Pass  
27 Network Alternative with San Francisco, Oakland, and San Jose Termini].) Ultimately, the EIR  
28 recognizes that both Altamont Pass and Pacheco Pass have high ridership and revenue, and that

1 while different modeling assumptions might yield somewhat different results, this conclusion  
2 would not likely change. (B006647.)

3 **c. The EIR Accurately Describes Construction Challenges for the**  
4 **Altamont Pass With a Bay Crossing Or Using the I-880 Median**

5 Petitioners claim the Final Program EIR showed bias against the Altamont Pass alignment  
6 alternatives in the way it described construction difficulties associated with building in the Don  
7 Edwards National Wildlife Refuge and in the median of I-880. (Petitioners' Brief, p. 39.) Again,  
8 however, substantial evidence in the record shows the Final Program EIR was fair and unbiased.

9 As discussed above, the Final Program EIR discloses that crossing the San Francisco Bay at  
10 Dumbarton on a new bridge would have significant adverse impacts to wetlands and biological  
11 resources. (B004451, B004524, B004525-26.) These impacts are caused, in part, by the need for  
12 permanent structures in the Bay associated with a new bridge crossing that would result in both  
13 permanent loss and degradation of wetland habitats. (See, e.g., D000974-977 [Regional Rail  
14 Technical Memorandum showing cross sections of piers needed for new crossings]. The  
15 mitigation strategy of using in-line construction to reduce the impacts of constructing the HST  
16 can be applied equally to the Altamont Pass and Pacheco Pass alignment alternatives where  
17 materials can be delivered to the construction site via the constructed rail line. (B004619  
18 [explaining in line construction]; see also B006367.) This technique is expected to be highly  
19 effective at minimizing and avoiding impacts in sensitive areas like both the Grasslands  
20 Ecological Area and the Don Edwards National Wildlife Refuge. (B006367, cite for GEA.) The  
21 use of in-line construction does not, however, eliminate the loss of irreplaceable wetland habitats  
22 in the Bay associated with a new Bay crossing. (See, e.g., G000808-811.) The Final Program  
23 EIR properly indicates this in its analysis, and therefore the CEQA findings on this point are  
24 supported by substantial evidence.

25 In addition, the EIR properly notes the potential difficulty of obtaining the types of permits  
26 and environmental clearances needed to build a new Bay crossing. The Don Edwards National  
27 Wildlife Refuge is subject to federal laws that limit activities within refuges to those that are  
28 compatible with the refuge purpose. (B006366.) In addition, construction projects in the San

1 Francisco Bay are subject to the permitting jurisdiction of the Bay Conservation and  
2 Development Commission under the McAteer-Petris Act. (B004468-69; B000762-63.) The Act  
3 specifies that a new bridge can only be approved by the Commission if there is not an alternative  
4 upland (out of the bay) location for the route. (B000763.) The Final Program EIR therefore  
5 properly characterized the permitting activities needed for a new bridge as time consuming and  
6 uncertain. (B006330.) The CEQA findings that note these construction issues are therefore  
7 supported by substantial evidence. (See, e.g., A000089.)

8       Regarding construction issues for HST on the alignment alternative in the I-880 median, the  
9 fact that the EIR highlights this issue does not indicate any bias. Chapter 8 of the EIR compares  
10 the construction challenges for the Pacheco Pass and Altamont Pass network alternatives  
11 generally and cites construction issues for both. (B004933.) This section notes that Caltrans  
12 District 4 commented that construction in the I-880 median for Altamont Pass network  
13 alternatives would present significant construction stage impacts. (B004933.) An aerial structure  
14 would be required between San Jose and Fremont, requiring construction of new columns and  
15 footings in the I-880 median, while maintaining existing freeway traffic below construction.  
16 (B003954; B003944 [Fig. 2.5-2].) The plans and profiles show this stretch of the alignment and  
17 its complex relationship to the existing highway. (B005090 [pg. 2-D-13]; B005261 [fig. NS-8].)  
18 The complexity of constructing HST in the I-880 median was also recognized by the  
19 Metropolitan Transportation Commission in its Regional Rail Plan. (D001482.)

20       The I-880 median construction issue is far different from the situation in the Caltrain  
21 Corridor. The record shows the Caltrain Corridor between San Francisco and San Jose is a  
22 publicly owned rail right-of-way and the owner supports shared use with HST. (*Supra*, p. 18  
23 fn.5.) There is generally space for four tracks at grade within the existing right-of-way, resulting  
24 in a simpler construction than for I-880. (B006516; B007301 [W090-7].) For the stretch of right-  
25 of-way between San Jose and Gilroy that is owned by Union Pacific, construction difficulties are  
26 not assessed as difficult because, as discussed above, the EIR does not assume the need for HST  
27 tracks to be in Union Pacific's right-of-way. (*Supra*, § I.B.) The EIR's treatment of the  
28

1 complexity of building an aerial HST structure in the median of I-880 was therefore correct,  
2 unbiased, and based on substantial evidence.

3 **d. Local Government Positions Were Summarized Fairly**

4 Finally, Petitioners suggest the EIR's alternatives analysis is biased, and the CEQA findings  
5 unsupported, because the concerns of some local jurisdictions related to construction of the HST  
6 are elevated over others. (Petitioners' Brief, pp. 36, 39.) This is not the case. Based on the  
7 comments received on the Draft Program EIR, the Final Program EIR notes the wide divergence  
8 of views on whether the HST should use an Altamont Pass or Pacheco Pass alignment and that  
9 the choice of one versus the other is controversial. (B004923, B004932.) The Final Program EIR  
10 summarizes the views of public agencies, organizations, and individuals supporting both  
11 alignments and the main reasons the supporters gave for their preference. (B004923-26.)

12 Opposition has been raised to potential impacts for both the Pacheco Pass (impacts on the  
13 GEA, Pacheco Pass, the Town of Atherton, and Millbrae), and the Altamont Pass (impacts on the  
14 San Francisco Bay, Don Edwards San Francisco Bay National Wildlife Refuge, East Bay  
15 Regional Parks, the City of Fremont, City of Livermore, and the City of Pleasanton). (B004932.)

16 Where local governments articulated opposition to a particular alignment, the responses to  
17 comments acknowledges the opposition. (See, e.g., B006840 [noting Atherton opposition to  
18 Caltrain Corridor alignment alternative for Pacheco Pass]; B006451 [noting Fremont opposition  
19 to Niles-I880 alignment alternative for Altamont Pass].) The EIR's presentation of various views  
20 on the Altamont Pass/Pacheco Pass decision was fair. The CEQA findings recitation of these  
21 points in the EIR is also fair and unbiased.

22 **C. Substantial Evidence Supports Eliminating Alignment Alternatives Along**  
23 **US Highway 101 or Interstate 280 From Detailed Consideration.**

24 Petitioners also claim the Authority should have studied in detail two alignment alternatives  
25 for the Peninsula that would avoid the Caltrain Corridor entirely by instead using the median area  
26 of U.S. Highway 101 or Interstate 280. (Petitioners' Brief, pp. 40-41.) While Petitioners admit  
27 that there are "significant problems" with these two alignments, they nevertheless contend the  
28 record does not support the Authority's decision to exclude them from detailed study in the EIR.

1 (*Id.* at p. 40.) Substantial evidence, however, supports the Authority’s decision to eliminate the  
2 101 and 280 alignment alternatives from detailed analysis in the EIR.

3 The Final Program EIR uses a table to briefly explain the basis for eliminating alignment  
4 alternatives and station location options from detailed evaluation in the EIR. (B003963, 968-72.)  
5 This table indicates that the primary reasons for eliminating the 101 and 280 alignment  
6 alternatives were construction problems, right-of-way needs, and environmental impacts.  
7 (B003968.) An additional basis for eliminating the 101 alignment alternative involved land use  
8 compatibility. (B003968.) Consistent with CEQA, the text refers the reader to Appendix 2-G for  
9 more information. (B003963; see also B005483-5505; CEQA Guidelines, § 15126.6(c).)

10 As Petitioners admit, the primary reason for eliminating the 101 and 280 alignment  
11 alternatives was the need to construct an aerial guideway for the train adjacent to and above the  
12 existing freeway, while maintaining freeway access and capacity during construction. (B005485,  
13 86.) These alignments “would require many sections of high-level structures to pass over existing  
14 overpasses and connector ramps, resulting in high construction costs and constructability issues  
15 that would make this alignment alternative impracticable.” (B005485 emphasis added; see also  
16 B005486; B006540 [response to Atherton].)<sup>11</sup> The alignment would have to be 40-50 feet above  
17 several overcrossings of US 101 and roughly 75 feet above US 101 at State Route 92. (C029037-  
18 to 38; B004389-91.) Construction over active freeways and roadways also presents unique  
19 difficulties in terms of freeway detours, construction worker safety, and restrictions on night and  
20 weekend work. (C029075.) Where the ability to even implement an alternative is truly remote  
21 and speculative, as here, it need not be studied in detail in an EIR. (*Bay Delta Cases, supra*, 43  
22 Cal.4th at p. 1163 citing CEQA Guidelines, § 15126.6, subd. (f)(3).)

23 Although the foregoing information is sufficient on its own to justify eliminating the 101  
24 and 280 alignment alternatives, the record includes further support. Appendix 2-G explains that  
25 101 has very limited right-of-way available for HST, necessitating the purchase of extensive  
26 rights-of-way and nearly exclusive use of an aerial structure. (B00485.) The report “Bay Area-

27 <sup>11</sup> The Authority’s EIR certification includes a finding that explains eliminating certain  
28 alternatives in Appendix 2-G, including the 101 and 280 alternatives. (A000086-87.)

1 to-Merced Corridor High-Speed Train Alignments/Stations Screening Evaluation” by Parsons  
2 Transportation Group determined there would be a substantial increased cost (ranging from \$ 1  
3 billion to \$ 400 million) associated with the 101 alignment alternative using an exclusive  
4 guideway and aerial structures between San Francisco and San Jose versus the Caltrain alignment  
5 alternative at grade. (See C029074, 76.) The report also concluded that the 101 alignment using  
6 an exclusive guideway would present significant tunneling issues in San Francisco between 17th  
7 Street and the Transbay Terminal due to very soft ground, issues that would not be present for the  
8 Caltrain alignment alternative at grade. (C028984; C029075; B005485; C02982-84, 89-91.)

9 For the 280 alignment alternative, it is fair to infer from the Parsons Transportation Group  
10 study that an exclusive guideway with aerial structures along 280 would also be substantially  
11 more costly than an alignment along the Caltrain Corridor at grade, particularly considering the  
12 added length of the 280 alignment alternative and the fact that lengthy portions have very limited  
13 right-of-way available to place HST. (B005487; see C028982-83; B005497 [map showing  
14 lengths of 101 and 280 alignments].) In addition, the 280 alignment alternative would not  
15 provide access to the San Francisco Airport absent an entirely new corridor between Hillsborough  
16 and Burlingame. (C029017.) And connecting a 280 alignment alternative with Diridon Station in  
17 San Jose would require a guideway passing through fully developed portions of downtown San  
18 Jose. (C029017.)

19 In addition, Petitioners’ premise is that either 101 or 280 would not result in major  
20 environmental impacts because the HST tracks would be included within noisy freeways.  
21 (Petitioners’ Brief, pp. 39-40.) The record shows, however, that both the 101 and 280 options  
22 would create their own set of environmental impacts. The 280 option would have potentially  
23 significant impacts to wildlife preserves in the vicinity of Palo Alto and Woodside. (B005486.)  
24 Both 101 and 280 would have significant visual impacts from the new and very high aerial  
25 structures. (B005486.) This is in contrast to the Caltrain Corridor, where the addition of HST on  
26 this existing rail corridor is expected to create environmental benefits by reducing existing train  
27 noise, automobile traffic, and safety problems, as well as improve Caltrain operations, through  
28 grade separations. (See, e.g., B004771; B004927; B004206; B004100, fn.2.)

1 While some conclusions in an EIR may need to be supported by extensive study, other  
2 conclusions are so straightforward they are self explanatory. (*Save Our Residential Environment*  
3 *v. City of West Hollywood* (1992) 9 Cal.App.4th 1745, 1754.) Here, substantial evidence supports  
4 the elimination of the 101 and 280 alignment alternatives from detailed study in the EIR.

#### 5 **IV. THE LETTER FROM UNION PACIFIC DID NOT TRIGGER RECIRCULATION OF THE EIR.**

6 Petitioners claim the Authority was required to recirculate the EIR because it received a  
7 May 13, 2008, letter from Union Pacific requesting that the Authority move forward with the  
8 HST system in a manner that “would not require the use of Union Pacific’s operating rights-of-  
9 way or interfere with Union Pacific operations.” (Petitioners’ Brief, pp. 41-42; E000027.)

10 Petitioners are wrong. Union Pacific’s letter does not trigger recirculation of the EIR.

11 Public Resources Code section 21092.1 requires a lead agency to recirculate a Draft EIR  
12 when significant new information is added after circulation, but prior to certification of the Final  
13 EIR. (Pub. Resources Code, § 21092.1.) New information is “significant” only in those  
14 circumstances when “the EIR is changed in a way that deprives the public of a meaningful  
15 opportunity to comment upon a substantial adverse environmental effect of the project or a  
16 feasible way to mitigate or avoid such effect (including a feasible project alternative) that the  
17 project’s proponents have declined to implement.” (*Laurel Heights II, supra*, 6 Cal.4th at p.  
18 1129.) For example, new information is significant if it reveals a new significant environmental  
19 impact, or one that is substantially more severe, unless the lead agency adopts mitigation to  
20 reduce it to less than significant. (CEQA Guidelines, § 15088.5, subd. (a).)

21 The Authority’s decision not to recirculate the EIR is supported by substantial evidence  
22 because the information in Union Pacific’s letter is not significant. (*Laurel Heights II, supra*, 6  
23 Cal.4th at p. 1135.) The EIR does not assume the use of Union Pacific’s right-of-way between  
24 San Jose and Gilroy. (See *supra* §§ IA and IB.) Rather, the EIR assumes the HST tracks are  
25 adjacent to Union Pacific right-of-way in this area, along the Monterey Highway right-of-way.  
26 (*Supra* § I.B.) The impacts analysis was performed as if HST tracks were either within or  
27 adjacent to existing transportation rights-of-way, using used broad study areas that exceed the  
28 width needed to place HST tracks. (B003980; see also G001110-11 [07/08 Staff Report];



1 G001357-58 [07/09/08 Staff Summary].) Even if Union Pacific's right-of-way between San Jose  
2 and Gilroy is unavailable, the EIR's impacts analysis is still accurate. Thus, recirculation is not  
3 required. (*Laurel Heights II, supra*, 6 Cal.4th at pp. 1139-40.)

4 Moreover, recirculation is not necessary due to the nature of the EIR as a programmatic  
5 environmental analysis. A lead agency has broad discretion to choose to use CEQA's tiering  
6 provisions and to pursue a programmatic project or decision, rather than a more detailed project.  
7 (Pub. Resources Code, § 21093.) The lead agency also has discretion to control the timing and  
8 scope of its decisions at each tier. (*Ibid.*) For this reason, courts have upheld lead agencies'  
9 decisions to limit their first-tier projects to general decisions, and exclude details that are more  
10 appropriately considered in the second-tier projects that may follow. (*Bay Delta Cases, supra*, 43  
11 Cal.4th at pp. 1176-1177; *Al Larson, supra*, 18 Cal.App.4th at pp. 743-44.) Agencies would  
12 never finish their first-tier EIRs if they were required to recirculate their first-tier EIR every time  
13 new information becomes available that is pertinent to a decision the lead agency wants to make  
14 at the second tier. (Cf. *Laurel Heights II, supra*, 6 Cal.4th at p. 1132.)

15 **V. THE AUTHORITY WAS NOT REQUIRED TO RESPOND TO MENLO PARK'S COMMENT**  
16 **LETTER.**

17 Petitioners argue the Final Program EIR violates CEQA because it does not include or  
18 respond to a letter allegedly sent by the City of Menlo Park commenting on the Draft Program  
19 EIR. (Petitioners' Brief, pp. 42-43.) The City of Menlo Park's September 25, 2007, letter was  
20 properly excluded from the Authority's administrative record, however, because the Authority  
21 never received the letter. (See Order Denying Motion to Supplement Administrative Record.)  
22 The Authority takes its CEQA obligation to respond to public comments on the Draft EIR  
23 seriously. The record shows the Authority responded to more than 1300 individual comments in  
24 an entire volume of the Final Program EIR. (B006307-7309.) Where a lead agency does not  
25 even receive a comment letter, however, CEQA imposes no legal obligation to respond. (CEQA  
26 Guidelines, § 15088, subd. (a).) Accordingly, the Authority was not obligated to respond to the  
27 environmental issues in the City of Menlo Park's letter.  
28

1 **CONCLUSION**


2 In 2005, the Authority embarked on new program EIR process to take a fresh look at  
3 alternatives for the Bay Area to Central Valley piece of the nearly 800-mile statewide HST  
4 system. Years of prior work revealed divergent views in the region on whether the HST should  
5 travel the Altamont Pass or the Pacheco Pass. The Authority engaged the public, agencies, and  
6 local governments in a nearly three-year CEQA process designed to examine the broad  
7 differences between these two options.

8 The Final Program EIR provides a thorough and fair evaluation of the impacts of many  
9 different alternatives using the Pacheco Pass or the Altamont Pass, at a general level of detail  
10 consistent with the Authority's defined project: choosing a conceptual alignment and general  
11 station locations. The EIR discloses that implementing the HST system between the Bay Area  
12 and the Central Valley will have significant environmental impacts, regardless of whether the  
13 train traverses the Altamont Pass or the Pacheco Pass. The Authority's decision therefore  
14 involved balancing different types and degrees of environmental impacts at different locations, as  
15 well as consideration of how the Altamont Pass and Pacheco Pass options perform in the context  
16 of the statewide system. The Authority's choice of the Pacheco Pass Network Alternative with  
17 San Francisco and San Jose Termini is a logical, reasonable decision based on the information in  
18 the Final Program EIR and in the administrative record. The Final Program EIR and the  
19 Authority's decision are supported by substantial evidence. The California High-Speed Rail  
20 Authority therefore respectfully requests that the Court deny the petition for writ of mandate

21 Dated: April 6, 2009

Respectfully submitted,

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**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **Town of Atherton, et al. v. California High-Speed Rail Authority**  
Case No.: **34-2008-8000022**

I declare:

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

On April 6, 2009, I served the attached

- 1. CALIFORNIA HIGH-SPEED RAIL AUTHORITY'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PETITION FOR WRIT OF MANDATE**
- 2. NOTICE OF LODGING—ONE COPY OF THREE VOLUME FINAL PROGRAM EIR**

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

Stuart M. Flashman  
Law Offices of Stuart M. Flashman  
5626 Ocean View Drive  
Oakland, CA 94618-1533

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 6, 2009, at Sacramento, California.

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

\_\_\_\_\_  
  
Signature