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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 Respondents.
26
27
28

Case No.: 34-2008-80000022

**CALIFORNIA HIGH-SPEED RAIL
AUTHORITY'S RESPONSE TO PALO
ALTO AMICUS CURIAE BRIEF**

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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INTRODUCTION

The City of Palo Alto's amicus curiae brief in support of Petitioners Town of Atherton, et al., claims the California High-Speed Rail Authority's Final Program Environmental Impact Report (EIR) for the Bay Area to Central Valley piece of the statewide high-speed train system, violates the California Environmental Quality Act (CEQA). Palo Alto's principal argument is that the EIR is inadequately detailed and that CEQA compels the Authority to engage in a more detailed analysis of impacts along the San Francisco Peninsula. Palo Alto also claims that the Authority's EIR process was flawed because the project description in the EIR was unclear and shifting, resulting in confusion about whether a potential alignment or station locations along the Peninsula were involved. Neither argument is correct.

Courts evaluating strikingly similar legal arguments to those Palo Alto makes here have recognized that the level of detail required in a particular EIR turns on the level of detail in the proposed project and the decision the lead agency will make. The Authority's EIR properly matches a general level of detail in the environmental analysis to the general level of detail in the decision the Authority was prepared to make. Requiring the detail that Palo Alto demands would, for all practical purposes, obviate the use of a program EIR and make an EIR process for a large, statewide public works project like the HST, impossible.

Further, the record belies Palo Alto's claim that the project description was confusing, inconsistent, or prevented it from understanding the project's true scope. Palo Alto and other Peninsula cities received multiple notices about the EIR scoping process, the Draft Program EIR, and the many opportunities to provide comments. Cities up and down the Peninsula participated in the EIR process. Palo Alto remained silent, submitting no comment on the Draft Program EIR or the process, until December 2007 when Palo Alto sent the Authority a letter stating the HST project along the Caltrain corridor, with a potential station in Palo Alto, would be consistent with the City's public transit goals and station plans. Palo Alto had a responsibility to voice any concern about the project during the EIR process. Having failed to do so, Palo Alto lacks standing to sue. And although the Court authorized Palo Alto to file an amicus curiae brief, the Authority respectfully suggests Palo Alto is not properly serving an amicus role in its brief.

1 **ARGUMENT**

2 **I. THE AUTHORITY'S PROGRAM EIR CONTAINS APPROPRIATE DETAIL FOR ITS**
3 **PROGRAMMATIC DECISIONS ON A GENERAL TRACK ALIGNMENT**

4 **A. The CEQA Guidelines Allow For Tiering EIRs In A Manner Appropriate**
5 **To The Facts Of Each Case.**

6 Palo Alto claims that the Authority's EIR process is unauthorized by CEQA because the
7 Authority split an overall large project into two separate parts and prepared two separate
8 program-level EIRs for each part. (Palo Alto Brief, p. 1, fn.1.) Palo Alto also argues the
9 Authority deleted the Bay Area to Central Valley portion from its HST decision in 2005, then
10 expanded greatly the scope of its intended project as part of the second program EIR. Palo Alto is
11 incorrect on both the law and the facts.

12 At the outset, the Authority's 2005 certification of its statewide high-speed train EIR, and
13 its approval of the high-speed train system, was never challenged and is conclusively presumed
14 adequate. (Pub. Resources Code, § 21167.2.) Further, CEQA is flexible, and allows a lead
15 agency to prepare a second program EIR to examine a geographic portion of a large overall
16 project. While the CEQA Guidelines describe different types of EIRs, including project EIRs and
17 program EIRs, among others, the listed variations are not exclusive. Lead agencies may use other
18 variations consistent with the guidelines to meet the needs of other circumstances." (CEQA
19 Guidelines, § 15160.) One variation involves a local government preparing a general first-tier or
20 program EIR for updating its general plan, followed by an additional program EIR for a particular
21 area within its jurisdiction in a community plan. (CEQA Guidelines, § 15152 [describing tiered
22 EIRs].) While a community plan is certainly part of an overall general plan, it is a distinct project
23 that can be properly subject to its own program-level EIR.

24 The Authority followed a similar approach here. In 2005, the Authority approved an
25 overall HST system in general terms, including a geographic scope that extended from San Diego
26 in the south to the Bay Area in the north and general locations for potential track alignment.
27 (G000209 [res. 05-01]; G000088-92 [2005 CEQA Findings project description].) The Caltrain
28 Corridor and a potential station in Palo Alto or Redwood City were identified as preferred and
subject to further study. (G000091.) The Authority did not delete the Bay Area to Central Valley

1 portion of the HST system, as Palo Alto contends, but instead determined it needed to take a
2 closer look at the region in a separate program EIR in order to examine more closely its options
3 to connect the Bay Area with the Central Valley. (G000209.) And contrary to Palo Alto's claim,
4 the Notice of Preparation for the Bay Area to Central Valley EIR process plainly identified that
5 the second program EIR would examine the Caltrain Corridor up the Peninsula and a potential
6 station in Palo Alto, not just the alignments that would physically cross the Altamont and Pacheco
7 passes. (B000001-05.)

8 **B. A First-Tier, Program EIR Can Be Tailored To The General Level Of**
9 **Detail In The Proposed Project and the Decision to be Made, With**
10 **Further Analysis To Follow In Future, Second-Tier, Project-Level EIRs.**

11 Palo Alto claims that "CEQA's content requirements for *program* EIRs are no different
12 than CEQA's content requirements for *project* EIRs." (Palo Alto Brief, p. 4 emphasis in original.)
13 The City also suggests that the Authority can use tiering to exclude certain issues from analysis in
14 its later CEQA documents. (*Id.* at p. 5.) According to Palo Alto, because the Authority can rely
15 on the current Final Program EIR for analysis of certain issues, any defects will infect future
16 CEQA documents unless corrected. (*Ibid.*) Palo Alto's arguments inaccurately describe the law
17 on tiering and how the Authority has applied it to the Draft and Final Program EIRs.

18 While it is correct that a program EIR and a project EIR must contain the same general
19 content, Palo Alto fails to acknowledge that these two types of EIRs are distinct, and they vary in
20 the *level of detail* required. (*Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993)
21 18 Cal.App.4th 792, 741 citing CEQA Guidelines §§ 15120-15132 [*Al Larson*]; compare CEQA
22 Guidelines, § 15161, 15168.) As CEQA provides and the California Supreme Court recently
23 explained, program EIRs allow the public agency to focus on the issues ripe for a decision at each
24 level of environmental review. (*In re Bay-Delta Programmatic Environmental Impact Report*
25 *Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1170 [*Bay-Delta Cases*].) "Tiering is
26 properly used to defer analysis of environmental impacts and mitigation to later phases when the
27 impacts or mitigation measures are not determined by the first-tier approval decision but are
28 specific to later phases." (*Ibid.* citing *Vineyard Area Citizens for Responsible Growth, Inc. v.*
City of Rancho Cordova (2007) 40 Cal.4th 412, 431.) Accordingly, the level of detail in a First-

1 Tier or Program EIR depends on the level of detail in the project and the decisions under
2 consideration. (CEQA Guidelines, §§ 15146; 15152, subd. (b).)

3 Palo Alto mistakenly characterizes the tiering process as an opportunity for “excluding
4 certain issues from analysis in later CEQA documents” in a manner that would leave
5 environmental issues unanalyzed. (Palo Alto Brief, p. 5.) The California Supreme Court,
6 addressing a similar argument in the *Bay-Delta cases*, explained:

7 The purpose of tiering is to allow a lead agency to focus on
8 decisions ripe for review. (Pub. Resources Code, § 21093, subd.
9 (a); Cal.Code Regs., tit. 14, § 15385, subd. (b).) An agency that
10 chooses to tier may provide analysis of general matters in a
broader EIR, then focus on narrower project-specific issues in later
EIRs. (Cal.Code Regs., tit. 14, § 15152, subd. (a).)

11 (*Bay-Delta Cases, supra*, 43 Cal.4th at p. 1173.) Rather than a ruse to avoid
12 environmental analysis, as Palo Alto implies, tiering provides for increased disclosure of
13 environmental impacts by ensuring that the general, big picture environmental issues are
14 addressed at the first-tier, and the site-specific, detailed environmental issues are
15 addressed at the second tier.

16 Moreover, the record demonstrates that the Authority used CEQA’s tiering provisions in a
17 manner consistent with the law. From the outset, the Authority explained its intention to evaluate
18 the options for the high-speed train system in the Bay Area to Central Valley study area generally,
19 using a program EIR. (B000001 [Notice of Preparation; B000014 [Fact Sheet].) The Draft and
20 Final Program EIRs explain the general, programmatic nature of the document and proposed
21 project in chapter 1. (B001129-30 [Draft PEIR, ch. 1]; B003869-71 [Final PEIR, ch. 1].) The
22 Final Program EIR even includes two master responses to comments reiterating the general level
23 of decision making being considered and the general level of detail in the program EIR.
24 (B006325-28 [Master Responses].) Throughout the EIR process, the Authority has committed to
25 undertaking subsequent, site-specific environmental review, and has acknowledged that for this
26 particular project, a large amount of additional, more-detailed review will be necessary.
27 (A000013 [CEQA Findings]; B006328 [Master Response].) The site-specific details about the
28 selected project, including Peninsula impacts, that are not included in the Final Program EIR will

1 be addressed in the subsequent project-level EIRs for the precise alignment of HST tracks,
2 catenary, and related facilities. (A000013.) This is an appropriate use of tiering under CEQA.

3 **C. The EIR Properly Analyzes Local Peninsula Impacts at a General Level**
4 **of Detail, Deferring More Detailed Analysis to Future, Project EIRs.**

5 Palo Alto contends a more detailed analysis of local impacts on the Peninsula and more
6 detailed mitigation measures are required in the Authority's Program EIR because the Authority
7 selected a highly specific Peninsula alignment and station locations. (Palo Alto Brief, p. 7.) First,
8 Palo Alto is mistaken as to the function of a program EIR, as explained above, and the nature of
9 the decision the Authority made. Its argument ignores the tiering allowed by Public Resources
10 Code section 21093 subd.(a), and Guidelines section 15146 which directs agencies to tailor their
11 EIR analyses and mitigation to the decisions being considered. Second, also as noted above, the
12 Authority explained it was selecting a general alignment and station options with general
13 mitigation strategies.

14 Along with its selections, the Authority explained the selected areas would be studied
15 further in project EIRs, when further engineering and design detail would be available, in order to
16 evaluate site-specific impacts from track placement and elevation (at, above or below grade), as
17 well as specific mitigation measures resulting from applying and refining the mitigation strategies
18 in the Program EIR. This meets CEQA criteria for general mitigation in a program EIR, which
19 will be made more specific as a result in project EIRs. As explained in *California Native Plant*
20 *Society v. City of Rancho Cordova* (2009)172 Cal.App. 4th 603, 621, citing *Sacramento Old City*
21 *Assn. v. City Council* (1991) 229 Cal.App. 3d 1011, "the details of exactly how mitigation will be
22 achieved under the identified measures can be deferred pending completion of a future study."

23 Palo Alto claims that the EIR does not adequately address local noise and vibration impacts
24 (noting a discussion of "high, medium and low" impacts), does not adequately provide mitigation
25 for such impacts, and fails to address the visual impacts of potential mitigation for noise (e.g.,
26 sound barriers). (Palo Alto Brief, pp. 10-12.) Because the EIR was prepared to comply with both
27 CEQA and the National Environmental Policy Act (NEPA) requirements, it contains both general
28 discussions of levels of impacts for NEPA purposes and significance conclusions to comply with

1 CEQA. The Authority's findings comply with CEQA's direction for program EIRs by
2 determining whether impacts will be significant and adopting mitigation strategies to reduce
3 significant impacts. Palo Alto's arguments ignore the Authority's CEQA conclusions and its
4 findings, which set forth mitigation strategies to be refined and applied in project-level EIR
5 review. (A000024-25.) When more detailed review of local noise and vibration impacts, and of
6 specific mitigation measures to address them, is provided in a project-level document, then more
7 detailed review of mitigation impacts (e.g., from sound barriers) can also be provided without
8 being unduly speculative (CEQA Guidelines §15145). This approach is fully consistent with the
9 tiering allowed by CEQA.

10 Finally, Palo Alto claims that the HST will result in significant land use compatibility
11 impacts that were not properly identified in the EIR. Specifically, it faults the Authority for
12 considering existing passenger and freight rail services in the Caltrain corridor as an indicator of
13 land use compatibility and for not considering various local plans. (Palo Alto Brief, p. 8.) This
14 issue is not properly before the court and should not be considered, because it was not raised in
15 Petitioners' Briefs, and an amicus curiae is generally not permitted to expand the issues to be
16 addressed by the court. (See below, p. 11.) Local plans were considered at a general level, and
17 existing use of the Caltrain corridor is properly considered an indicator of land use compatibility,
18 since the Peninsula communities grew up around it. Community development around the rail
19 corridor began in the 1800's, and both rail services and historic stations have long been part of the
20 Peninsula communities. (A000049, B001607, B001616-18, B004542-43, B004551.) Local plans
21 were considered at a general level. Land use compatibility issues, as well as local impacts, will
22 be further considered in the project EIR.

23 **D. Requiring Site-Specific Details In A Program EIR For A Geographically**
24 **Dispersed Project Like the HST Would Be Impractical.**

25 Finally, Palo Alto's demand for more detail about impacts on the Peninsula in the program
26 EIR is identical to arguments that California courts have already rejected. In the *Bay-Delta Cases*,
27 the California Supreme Court held that requiring more detail about potential sources of water for
28 second-tier project decisions in a first-tier EIR on a 30-year general planning project,

1 “undermined the purpose of tiering and burdened the program EIR with detail that would be more
2 feasibly given and more useful at the second-tier stage.” (*Bay-Delta Cases, supra*, 43 Cal.4th at p.
3 1173.) A lead agency can defer site-specific details until a second-tier analysis, when detailed
4 second-tier projects are described and the lead agency is prepared to make a detailed decision.
5 (*Ibid.*) Deferring detailed analysis to the second-tier makes sense where, as here, the program
6 EIR covers over eight hundred route-miles of HST alternatives, and including more detailed study
7 in the Program EIR would be impractical.

8 In its *Bay-Delta Cases* holding, the California Supreme Court cited with approval two
9 appellate cases that are instructive. (*Id.* at pp. 1171-1172, 1176-1177.) In *Rio Vista Farm Bureau*
10 *Center v. County of Solano* (1992) 5 Cal.App.4th 351, the county approved a hazardous waste
11 management plan, but did not select a specific hazardous waste disposal site. (*Id.* at pp. 362, 364.)
12 Instead, the county’s plan identified general areas that met specific siting criteria for a disposal
13 site, and stated that actual siting decisions would be subject to further environmental review. (*Id.*
14 at p. 364.) The court held that details about potential waste disposal sites were not required in the
15 EIR for the overall plan, but could be addressed in second-tier environmental documents if and
16 when a specific site was proposed. (*Id.* at pp. 371, 375.) *Rio Vista* illustrates how the level of
17 detail in an EIR depends on the decision to be made.

18 In *Al Larson*, a case involving approval of a 5-year port master plan that was followed
19 within weeks by approval of site-specific development projects identified in the master plan, the
20 court also rejected a demand for more detail in the first-tier program EIR. Although more detail
21 about the second-tier projects was readily available, because the lead agency was preparing
22 second-tier EIRs, the lead agency had discretion to consider and approve the port master plan as a
23 programmatic project. (*Al Larson, supra*, 18 Cal.App.4th at pp. 743-744.) *Al Larson* illustrates
24 how the availability of detailed information does not force a lead agency to convert its first-tier
25 project and EIR into a more detailed second-tier project and EIR.

26 The Authority appreciates some may consider the level of detail in a program EIR
27 unsatisfying. The public and local governments want details so they can understand precisely
28 how a project will affect their communities. The Final Program EIR is designed to give a general

1 overview of the likely expected impacts of the HST system for different network alternatives, but
2 the precise impacts on individual locations are dependent on the actual footprint of facilities and
3 their more precise design. As a practical matter, the type of detail that Palo Alto suggests is
4 required would be overwhelming in a document that is already thousands of pages long, and
5 considers some 800 miles of track alignment options across a large study area. Tiering is
6 particularly appropriate here because a site-specific level of detail, provided uniformly across the
7 study area, would be impracticable.

8 **II. PALO ALTO WAS INFORMED ABOUT THE EIR PROCESS, AND THE EIR'S**
9 **INCLUSION OF A POTENTIAL CALTRAIN ALIGNMENT WITH A PALO ALTO STATION**

10 Palo Alto also claims that it was left out of the outreach process before the Draft Program
11 EIR was issued, that the description of the proposed project was unclear, and it was unaware of or
12 confused about the scope of the proposed HST project and the inclusion of a potential alignment
13 along the Peninsula in the EIR. (Palo Alto Brief, pp. 2-3, 6:13-19.) The Authority respectfully
14 disagrees with Palo Alto's representation of the facts. The Authority devoted substantial
15 resources to informing local agencies, including Palo Alto, and the public about the HST project
16 and its geographic scope. Palo Alto's own letter to the Authority belies its claims of being left
17 out or not comprehending the project. Despite having a duty to inform the Authority of any
18 objections, Palo Alto submitted none, and thus, has no standing to sue on the adequacy of the EIR.
19 It is also not properly serving as an amicus in this case.

20 **A. The Authority Provided Palo Alto Notices of the EIR process, and Direct**
21 **Communication About The Proposed Project.**

22 The record belies Palo Alto's suggestion that it was left out of the public outreach process.
23 In November 2005, the Authority mailed Palo Alto a copy of the Notice of Preparation, inviting
24 the city to attend scoping meetings and submit written comments about the scope of the EIR
25 analysis. (B000001-05 [NOP]; B000042 [NOP Mailing List showing mailing to Mayor Jim
26 Burch].) The Authority also mailed postcards to Palo Alto officials notifying them about EIR
27 scoping. (B000043 and linked excel spreadsheet [lines 476 and 477 showing mailing to Chief
28 Transportation Official Joseph Kott and to Mayor Jim Burch, lines 497 and 498 showing mailing
to Public Works Director Glenn Roberts and Planning Director Steve Emslie].) Both the Notice

1 of Preparation and the postcard show a potential alignment between San Francisco and San Jose
2 along the Peninsula, and both identify a potential station location at Palo Alto. (B000005;
3 B000041.) The Notice of Preparation includes the Caltrain Corridor edge along with its stations
4 in the study area. (B000001.)¹ This is precisely the type of early public consultation that the
5 CEQA Guidelines describe. (Palo Alto Brief, p. 6 and fn.4; CEQA Guidelines, §§ 15082, 15083.)

6 In addition, the Authority undertook its scoping process in cooperation with workshops for
7 the Bay Area Regional Rail Plan, being led by the Metropolitan Transportation Commission in
8 cooperation with Bay Area Rapid Transit, Caltrain, and the Authority. (See generally D000661-
9 692 [Regional Rail Phase One Public Outreach & Involvement Program].) Notices of the
10 Authority's scoping and the Regional Rail workshops were widely publicized through web
11 postings, media advisories, email blasts, and flyers. (D000666-67.) Even though the Authority
12 had no legal obligation to hold a scoping meeting along the Peninsula, one of these workshops
13 featuring the high-speed rail scoping process was in San Carlos on December 8, 2005. (D000668.)

14 When the Authority issued the Draft Program EIR in July 2007, it mailed a copy of the
15 Executive Summary to the City of Palo Alto, along with a CD ROM of the entire document.
16 (B003151 and linked spreadsheet page for Exec Summ [line 184 showing mailing to Mayor
17 Yoriko Kishimoto].) A full copy of the Draft Program EIR was sent to the Palo Alto Public
18 Library. (B004987.) The Authority mailed postcards about the availability of the Draft Program
19 EIR to Palo Alto's mayor and three other city staff persons. (B001052-53 [postcard]; B001054
20 and linked spreadsheet [lines 465 and 466 showing mailing to Mayor Yoriko Kishimoto and to
21 Joseph Kott, lines 481 and 482 showing mailing to Glenn Roberts and Steve Emslie].) This
22 solicitation of input from Palo Alto fulfilled the Authority's consultation responsibilities under
23 CEQA Guidelines section 15086. (See Palo Alto Brief, p. 6 and fn.4.)

24
25
26 ¹ The Authority's public mailing list shows that Peninsula cities and towns were notified
27 of the EIR scoping process, including: Belmont, Brisbane, Burlingame, Hillsborough, Colma,
28 Daly City, Los Altos, Los Altos Hills, Menlo Park, Atherton, Millbrae, Mountain View, Redwood
City, San Bruno, San Carlos, Sunnyvale, Santa Clara, South San Francisco, Palo Alto, East Palo
Alto, San Mateo, Foster City, (B000043 and linked spreadsheet.)

1 Palo Alto's claims ignore the fact that the Peninsula alignment *and a potential Palo Alto*
2 *station* are shown on the cover of the Draft EIR, as well as on a color map on the third page of the
3 executive summary contained in the Draft Program EIR. (B001076 [Draft Program EIR Cover];
4 B001106 [Ex. Summ.]) Like the Notice of Preparation, the Draft Program EIR describes the
5 study area as including the Caltrain Corridor, and identifies the Caltrain alignment on maps early
6 in the document itself and in the Executive Summary. (B001104 [Ex. Summ.]; B001126;[ch. 1].)
7 Even the map in Chapter 1 that Palo Alto claims is confusing clearly shows an alignment up the
8 Peninsula and a potential Palo Alto station. (B003870 [Fig. 1.1-1 in Final Program EIR].) It is
9 disingenuous for Palo Alto to claim that it was in the dark about the HST project or the potential
10 options for an alignment along the Caltrain Corridor.²

11 Finally, the record also shows that Authority staff communicated directly with Palo Alto
12 Mayor Kishimoto about the proposed project by telephone on April 23, 2008, and in person at a
13 meeting on May 2, 2008 in San Francisco. (E002237-38 [email communications between Dan
14 Leavitt, Authority, and Yoriko Kishimoto, Palo Alto City Council].) The Authority made its
15 decision on the proposed project in July 2008, more than two months following the May 2, 2008,
16 meeting. In short, Palo Alto had multiple opportunities to learn more about this project and to
17 participate in the EIR process, but declined.

18 **B. Palo Alto's Own Letter To The Authority Belies Its Claims.**

19 Palo Alto's December 2007 letter to the Authority serves to dispel any lingering
20 doubt as whether Palo Alto was aware of the Authority's EIR process and the HST
21 alternative being considered for the Caltrain Corridor. That letter states:

22 The High Speed Rail project alignment from San Jose to San
23 Francisco along the Peninsula would be consistent with the City's
24 public transit goal of developing an efficient public transit system
25 that offers a convenient and viable alternative to driving. Palo Alto
26 has a long range plan for upgrading and expanding the Palo Alto

27 ² Palo Alto's sister entities on the Peninsula were aware of the project, and Santa Clara
28 County and the Santa Clara Valley Transportation Authority [VTA] submitted comments on the
Draft Program EIR. (B006481-82; B006618.) VTA's letter specifically acknowledges the
benefits of using the Caltrain Corridor. (B006481.) Both public agencies sent subsequent letters
supporting the Pacheco Pass Network Alternative that would use the Caltrain Corridor between
San Francisco and San Jose. (F000976; F001017.)

1 Intermodal Transit Center in a manner consistent with the future
2 high speed rail service. (F001018.)

3 Palo Alto's current claim (Palo Alto Brief, p. 6) that it was confused about the scope of
4 the project and the use of the Caltrain Corridor is belied by its own letter

5 **C. Palo Alto Is Not Serving As A Proper Amicus Curiae, And The Court**
6 **Should Disregard Its Brief.**

7 The Court has discretion to disregard Palo Alto's brief because on the one hand it is
8 offering the same perspective as two of the petitioners, and on the other hand it is
9 improperly going beyond the legal issues raised by the parties. Amici curiae can perform
10 a valuable role for the judiciary when they are nonparties who "have a *different*
11 perspective from the principal litigants." (*Connerly v. State Personnel Board* (2006)37
12 Cal.4th 1169, 1177, emphasis added.) Here, Palo Alto has interests essentially identical
13 to those of Menlo Park and Atherton, nearby localities along the Caltrain Corridor. Like
14 Menlo Park and Atherton, Palo Alto had an opportunity, and duty, to participate in the
15 CEQA process if it wanted to be heard in litigation. By failing to do so, Palo Alto is
16 precluded from litigating as a party. (Pub. Resources Code, §21177(b).) It should not be
17 allowed to circumvent both CEQA's exhaustion requirement and its short statute of
18 limitations with its amicus brief. (Pub. Resources Code, § 21177; § 21167, subd. (c).)

19 At the same time, Palo Alto has raised legal issues not briefed by the parties. These
20 issues include challenges to the use of a second program EIR, the Authority's treatment
21 of land use compatibility, and an alleged failure to consult Palo Alto. (Palo Alto Brief,
22 pp. 1, 6, 8-9.) An amicus curiae, however, must accept the case as presented by the
23 parties, and cannot expand the legal questions to be considered, except in certain limited
24 circumstances not applicable here. (*E.L. White, Inc. v. City of Huntington Beach* (1978)
25 21 Cal.3d 497, 510-511.) Palo Alto's additional legal arguments are unfounded, as
26 discussed above, but the fact that the issues go beyond those addressed by the parties
27 provides an additional reason for the court to disregard Palo Alto's amicus curiae brief.
28

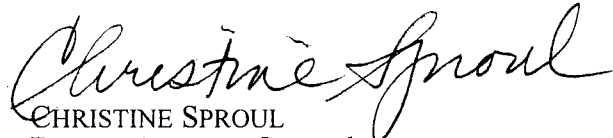
CONCLUSION

2 The Authority respects the rights of local governments like Palo Alto to voice their
3 concerns about the HST system. But the appropriate forum for local governments to voice
4 concerns about the HST proposal and environmental analysis was during the CEQA process,
5 prior to the Authority making its decision on the Program EIR. Palo Alto had ample opportunity
6 to voice its concerns, and a duty to do so as a precondition to bringing its objections on the
7 Program EIR to this court. For the reasons set forth above, the court should decline to consider
8 Palo Alto's brief or, if it is considered, should reject Palo Alto's arguments entirely.

9 Dated: May 15, 2009

Respectfully submitted,

10 EDMUND G. BROWN JR.
11 Attorney General of California
12 DANIEL L. SIEGEL
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13 
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17 *California High-Speed Rail Authority*

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Town of Atherton, et al. v. California High-Speed Rail Authority**
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 May 15, 2009, I served the attached **CALIFORNIA HIGH SPEED RAIL AUTHORITY'S RESPONSE TO PALO ALTO AMICUS CURIAE BRIEF** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 15, 2009, at Sacramento, California.

Laurie Nunez
Declarant


Signature