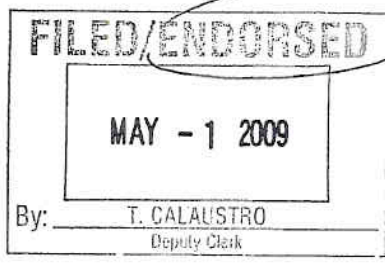


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Government Code, § 6103*



14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SACRAMENTO

16 TOWN OF ATHERTON, a Municipal
17 Corporation, PLANNING AND
18 CONSERVATION LEAGUE, a California
19 nonprofit corporation, CITY OF MENLO
20 PARK, a Municipal Corporation,
21 TRANSPORTATION SOLUTIONS
22 DEFENSE AND EDUCATION FUND, a
23 California nonprofit corporation,
24 CALIFORNIA RAIL FOUNDATION, a
25 California nonprofit corporation, and
26 BAYRAIL ALLIANCE, a California
27 nonprofit corporation, and other similarly
28 situated entities,

Petitioners and Plaintiffs,

v.

CALIFORNIA HIGH SPEED RAIL
AUTHORITY, a public entity, and DOES
1-20,

Respondents and
Defendants.

Case No. 34-2008-80000022

AMICUS CURIAE BRIEF OF THE CITY OF
PALO ALTO IN SUPPORT OF
PETITIONERS' VERIFIED PETITION FOR
WRIT OF MANDATE AND COMPLAINT
FOR INJUNCTIVE AND DECLARATORY
RELIEF

BY FAX

Date Complaint Filed: August 8, 2008
Trial Date: May 29, 2009

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15 California nonprofit corporation,
CALIFORNIA RAIL FOUNDATION, a
16 California nonprofit corporation, and
BAYRAIL ALLIANCE, a California
17 nonprofit corporation, and other similarly
situated entities,

18 Petitioners and Plaintiffs,

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20 CALIFORNIA HIGH SPEED RAIL
21 AUTHORITY, a public entity, and DOES
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1 **I. INTRODUCTION**

2 In 2004, Respondent CALIFORNIA HIGH SPEED RAIL AUTHORITY
3 (“CHSRA” or “Respondent”) first attempted to comply with the California Environmental
4 Quality Act (“CEQA”; Pub. Resources Code, §§ 21000 *et seq.*) through a Draft Systemwide
5 Program EIR/EIS (the “2004 PEIR”), which purported to analyze the significant environmental
6 impacts of a proposed high-speed train system (the “HST” or “Project”). When legal deficiencies
7 in the 2004 PEIR were identified, instead of correcting those deficiencies, CHSRA took the easy
8 way out – it simply deleted the non-compliant sections of the 2004 PEIR and tabled its
9 consideration of the portion of the Project for which CEQA review was consequently incomplete.

10 Then, in an interesting and novel twist on CEQA’s tiering process,¹ CHSRA
11 directed its staff to prepare a second, program-level environmental impact report (the “Second
12 PEIR”) to evaluate the previously deleted portions of the Project, and identify a preferred
13 alignment for the HST “within the broad corridor between and including the Altamont Pass and
14 the Pacheco Pass...connecting the San Francisco Bay Area to the Central Valley and project level
15 studies considering preferred alignment and station locations.” (AR G000209.)² However, when
16 the draft Second PEIR was released, careful review of the document revealed that CHSRA had
17 expanded its scope to include the portion of the HST that would traverse the San Francisco
18 Peninsula (the “Peninsula”). Like the 2004 PEIR, the Second PEIR fails to comply with CEQA’s
19 mandatory environmental review requirements.

20 The question presented in this case is whether CHSRA complied with its
21 mandatory duty to scrupulously follow CEQA. Without question, it did not. More detailed
22 information was available to CHSRA regarding the impacts of the Project on the Peninsula, and it

23 ¹ **Amicus PALO ALTO can find no legal basis or authorization in CEQA or the CEQA**
24 **Guidelines for the preparation of a second, program-level EIR for the same project.** Section
25 15168 of the CEQA Guidelines provides that: “A program EIR is an EIR which may be prepared
26 on a series of actions that can be characterized as one large project. . .” (14 Cal. Code Regs.,
27 §15168, subd. (a).) Here, instead of preparing a single program EIR for a series of actions that
28 can be characterized as one large project, the CHSRA has split the Project into two separate parts,
and has prepared a program EIR for each separate part. This lateral environmental review
process is unauthorized by CEQA. (See also 14 Cal. Code Regs., § 15165.)

² The Administrative Record prepared by Respondent is cited herein in the form “AR Xnnnnnn.”
X indicates the section, and nnnnnn indicates the page number.

1 was possible for CHSRA to obtain it. This information was absolutely necessary for CHSRA to
2 make a fully informed decision about the environmental consequences of its action.

3 **The consequences of allowing CHSRA to proceed with the Project based on a**
4 **deficient program EIR are substantial. Because CEQA authorizes future environmental**
5 **review to tier off of program level documents, if this Court does not require Second PEIR's**
6 **deficiencies to be corrected, those deficiencies will infect all future levels of environmental**
7 **review for the Project.**

8 **II. RELEVANT PENINSULA-RELATED FACTS AND BACKGROUND**

9 CHSRA prepared and circulated the 2004 PEIR to evaluate three transit system
10 alternatives: (1) a no project alternative, (2) a highway and airport expansion alternative, and (3)
11 the HST. (AR B003869.) In response to comments regarding the adequacy of the 2004 PEIR,
12 CHSRA deleted an entire section from the 2004 PEIR. (Petitioners' Opening Brief ("PB"), 6: 15-
13 18.) This deleted section had defectively evaluated only *one* route for the HST between the
14 Central Valley and the San Francisco Bay Area: the Pacheco Pass alignment. (PB, 6: 6-22.)
15 Instead of taking the extra time to study any alternative route, CHSRA simply deferred complete
16 environmental evaluation of the Central Valley to San Francisco Bay Area alignment to a later
17 date. (AR G000209.)

18 Notwithstanding that CEQA does not contemplate the preparation of multiple
19 program-level EIRs for the same "large project," in 2007 CHSRA prepared and circulated the
20 Second PEIR for the portion of the proposed Project previously deleted from the 2004 PEIR.

21 Consistent with the direction CHSRA provided at the time the 2004 PEIR was
22 certified, and consistent with the Notice of Preparation, many interested parties believed that the
23 limited purpose of the Second PEIR was to evaluate environmental impacts associated with the
24 Pacheco and Altamont Pass alignments. (AR G000209.) This belief was confirmed by reference
25 to the "Bay Area to Central Valley Corridor" map included as Figure 1.1-1 in the final Second
26 PEIR. (AR B003870.) There, a hatched area between the Pacheco and Altamont Passes was
27 described as the "Possible Alignment Area." (*Ibid.*) This hatched area did not extend up the
28 Peninsula into the City and County of San Francisco. Notably, even the brief filed by CHSRA

1 evidences a general understanding that the purpose of the Second PEIR was to evaluate
2 environmental impacts associated with the Pacheco and Altamont Pass alignments. (See
3 Respondent’s Opposition Brief (“RB”), 1: 12-13 [“The Authority used a first-tier, program EIR to
4 focus on the broad differences between the Altamont Pass and Pacheco Pass in order to choose
5 between them.”]; RB, 4: 16-19 [“...The Authority directed staff to prepare a new program EIR
6 focused on the northern mountain crossing. []”]; RB, 12: 11-12 [purpose of second program EIR
7 was “to choose the northern mountain crossing to connect the HST between the Bay Area and the
8 Central Valley.”].) When the draft Second PEIR was released, CHSRA held eight public
9 hearings – none of which were located in PALO ALTO or other Peninsula cities. (See RB, 5: 13-
10 14, fn. 1.)

11 Upon a close and detailed review of the text of the voluminous Second PEIR, it is
12 clear its scope is much greater than believed. According to the self-described “Alternatives”
13 section of the Second PEIR, the document analyzes the environmental impacts associated with
14 “[s]ix linear geographic belts or bands being considered for the HST system that connect different
15 parts of the study region.” (AR B003898.) One of these “belts or bands” extends up the
16 Peninsula from the City of San Jose into the City and County of San Francisco. (See AR
17 B003934.) Actual station locations on the Peninsula were identified on Figure 2.5-1, including a
18 potential station within the jurisdictional boundaries of PALO ALTO. (AR B003940.) The “San
19 Francisco to San Jose” alignment and station locations options were described in detail as
20 follows:

- 21 • Caltrain Alignment (Shared-Use Four-Track): From San Francisco, this
22 alignment alternative would follow south along the Caltrain rail alignment
23 to Dumbarton and from there to San Jose. This alignment assumes that the
24 HST system would share tracks with Caltrain commuter trains. The entire
25 alignment would be grade separated. Station location options would
26 include a station in the lower level of the proposed new Transbay Transit
27 Center in San Francisco or a station at 4th and King Streets, a station in
28 Millbrae to serve SFO, and a station in either Redwood City or Palo Alto.
The Caltrain shared-use alignment would take advantage of the existing
rail infrastructure and would be mostly at grade.
- Transbay Transit Center: The potential station location would serve the
Caltrain shared-use alignment as a downtown terminal station.
- 4th and King: This potential station location would serve the Caltrain
shared-use four-track alignment as a downtown terminal station.

- Millbrae: This potential station would serve as a connection with SFO.
- Redwood City: This potential station location would provide accessibility and serve the population between San Jose and San Francisco.
- Palo Alto: This potential station location would provide accessibility and serve the population between San Jose and San Francisco.

(AR B003953-B003954; see also AR B003958.)

Despite receiving numerous letters pointing out that the Second PEIR failed to comply with many of CEQA’s mandatory requirements, the final Second PEIR was certified by CHSRA on July 9, 2008. (AR A000002.)

III. ARGUMENT

A. THE SECOND PEIR IS INADEQUATE, AS IT FAILS TO COMPLY WITH CEQA’S MANDATORY REQUIREMENTS FOR EIRS.

1. Program EIRs Must Cover The Same General Content as Project EIRs.

Despite what CHSRA would have the Court believe, CEQA’s content requirements for *program* EIRs are no different than CEQA’s content requirements for *project* EIRs. (See 14 Cal. Code Regs., §§ 15120 – 15132; *Al Larson Boat Shop, Inc. v. Bd. of Commissioners of the City of Long Beach* (1993) 18 Cal.App.4th 729, 741 [“All EIRs must cover the same general content.”].)³ A program EIR is simply a special type of EIR, “which may be prepared on a series of actions that can be characterized as one large project.” (14 Cal. Code Regs., § 15168, subd.(a).) Program EIRs allow government agencies – such as the CHSRA – to “consider broad policy alternatives and program wide mitigation measures...” (14 Cal. Code Regs., § 15169, subd.(b)(4).) The purpose of the *optional* program EIR process is to simplify later environmental review. (See Pub. Resources Code, § 21093, subd.(a); *Al Larson Boat Shop, Inc. v. Bd. of Commissioners of the City of Long Beach, supra*, 18 Cal.App.4th at 741.)

³ While the courts have not determined whether the Guidelines are regulatory mandates or only aids in interpreting CEQA, “...courts should afford great weight to the Guidelines except when a provision is clearly unauthorized or erroneous under CEQA.” (*Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, 391, fn. 2; see also *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova, supra*, 40 Cal.4th at 428, fn. 5.)

1
2 **2. If An Inadequate Program EIR Is Certified, Its Inadequacies Will Infect All Future Tiers Of Environmental Review.**

3 CEQA contemplates a “tiered” environmental review process, whereby agencies
4 can adopt program EIRs focusing on the “big picture” and can then use streamlined CEQA
5 review for future projects that are consistent with the already reviewed big picture plans. (*Koster*
6 *v. County of San Joaquin* (1996) 47 Cal.App.4th 29, 36.) **Later prepared EIRs for specific**
7 **projects are excused from repeating the analysis of the environmental issues analyzed in the**
8 **previous program EIR.** (Pub. Resources Code, § 21094, subd. (a); 14 Cal. Code Regs., §
9 15384.) By using CEQA’s tiered environmental review process, CHSRA can limit future, site-
10 specific environmental review by excluding certain issues from analysis in later CEQA
11 documents.

12 The importance of a proper CEQA tiering process in this case is paramount.
13 Because future site-specific EIRs will necessarily be more limited in focus than the Second PEIR,
14 and will rely upon the Second PEIR for analysis of certain issues, it is vital that the Second PEIR
15 be legally adequate and comply with all of CEQA’s mandatory requirements. (*See, e.g., Koster v.*
16 *County of San Joaquin* (1996) 47 Cal.App.4th 29, 41-42.) If CHSRA is to adequately analyze
17 the site-specific environmental consequences of the Project in the future, it must remedy the
18 deficiencies and inadequacies of the Second PEIR, so those problems are not allowed to infect
19 future CEQA documents.

20 **B. THE SECOND PEIR’S PROJECT DESCRIPTION IS**
21 **INADEQUATE.**

22 “An accurate, stable, and finite project description is the *sine qua non* of an
23 informative and legally sufficient EIR.” (*County of Inyo v. City of Los Angeles* (1977) 71
24 Cal.App.3d 185, 193.) Here, CHSRA referred to the Project considered in the Second PEIR
25 differently in different parts of the Second PEIR. In fact, CHSRA also referred to the Project
26 differently in many of the documents prepared in connection with the Second PEIR.
27 Respondent’s counsel also refers to the Project differently throughout its brief. As a result, the
28 Second PEIR’s project description is unstable and inadequate.

1 Pursuant to Resolution No. 05-01 of CHSRA, the Second PEIR was supposed to
2 analyze: "...a preferred alignment within the broad corridor between and including the Altamont
3 Pass and the Pacheco Pass for the HST System segment connecting the San Francisco Bay Area
4 to the Central Valley..." (AR G000209.) The document that resulted – the Second PEIR – does
5 not focus exclusively on this issue. Instead, the Second PEIR also identifies a specific alignment
6 for the HST on the Peninsula, and selects specific station locations on the Peninsula.

7 The first time a reader of the Second PEIR becomes aware of the true scope of the
8 project evaluated in the Second PEIR is upon review of the "Alternatives" chapter. In that
9 section, the Peninsula alignment is revealed for the first time. (See AR B003898-AR B003977.)
10 The repeated inconsistencies in describing the project evaluated in the Second PEIR confused the
11 public and local agencies, thus vitiating the usefulness of CEQA's environmental review process.
12 (*County of Inyo v. City of Los Angeles, supra*, 71 Cal.App.3d at 197-198.)

13 The general public was further confused by the fact that **not one of the scoping**
14 **sessions was held in any of the Peninsula cities between San Jose and San Francisco.** (AR
15 B000002.) Additional misunderstanding resulted when **not one of the public hearings on the**
16 **draft Second PEIR was held on the Peninsula.** (AR B001053.) Santa Clara County and **all**
17 **Peninsula cities were conspicuously absent from the Outreach Before Draft Program**
18 **EIR/EIS process.** CHSRA also did not consult⁴ with local agencies located on the Peninsula
19 during the scoping process. (AR B000905.)

20 **C. THE SECOND PEIR DOES NOT ADEQUATELY IDENTIFY,**
21 **ANALYZE, OR MITIGATE THE PENINSULA-RELATED ENVIRONMENTAL**
22 **IMPACTS OF THE HST.**

23 Respondent flatly contends that it need not fully identify, analyze, or mitigate
24 significant environmental impacts that the HST will cause on the Peninsula because the Second

25 ⁴ Section 15083 of the CEQA Guidelines suggests that early consultation with local agencies is an
26 effective way to resolve concerns of affected agencies. (14 Cal. Code Regs., § 15083, subd. (b).)
27 Further, section 15086 of the CEQA Guidelines requires a lead agency to consult with and
28 request comments on a draft EIR from all local agencies which have jurisdiction by law with
respect to the project, or which exercise authority over resources which may be affected by the
project, and any city within which the project is located. (14 Cal. Code Regs., § 15086.; see also
Pub. Resources Code, §§ 21083.9, 21092.4 [requiring consultation with local agencies in
connection with rail projects and projects of regional or statewide significance].)

1 PEIR is a *program* EIR. Respondent indicates it was “not ready to tackle [] site-specific issues,”
2 (RB, 36: 19) despite that it was ready to approve (and actually did approve) a specific well-
3 defined Peninsula alignment, including specific rail station locations. (See AR A000001-
4 A000004.) Contrary to Respondent’s unsupported contention that applicable case law permits
5 CHSRA to defer proper consideration of environmental impacts if the “level of detail” required to
6 be considered is “overwhelming,” (RB, 36: 19-20) **where specific sites have been selected for**
7 **proposed development, and where analysis of environmental impacts is both practicable**
8 **and feasible, CEQA without exception requires such analysis to be conducted.** (*In re Bay-*
9 *Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th
10 1143, 1173; see also *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48
11 Cal.App.4th 182, 199.) Because CHSRA actually selected a Peninsula alignment, and station
12 locations, it was required to fully identify, analyze, and mitigate all Peninsula-related
13 environmental impacts from that specific alignment and those specific stations.

14 Respondents specifically contend that a properly prepared program EIR contains
15 “more limited analysis and mitigation” than a project EIR. (RB, 34: 15.) Such limited analysis is
16 not authorized by CEQA or by the CEQA Guidelines. **“Tiering does not excuse the lead agency**
17 **from adequately analyzing reasonable foreseeable significant environmental effects of the**
18 **project...**” (14 Cal. Code Regs., § 15152, subd. (b).) “An EIR must include detail sufficient to
19 enable those who did not participate in its preparation to understand and to consider meaningfully
20 the issues raised by the proposed project.” (*Laurel Heights Improvement Ass’n v. Regents of the*
21 *University of California, supra*, 47 Cal.3d at 405.)

22 The Second PEIR does identify the specific location of the proposed HST along
23 the Peninsula, and actually identifies station locations. These are not simply broad or general
24 “policy” decisions, but actual plans for a specific rail system. The decision made by CHSRA on
25 July 9, 2008 was a material step in selecting the Project’s Peninsula route and station locations.
26 (AR A000001-A000004.) Because specific sites have been selected for proposed development,
27 and because analysis of the environmental impacts associated with the identified sites and
28 alignment is practicable at this time, CEQA requires such analysis to be conducted.

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1. **The Project Will Result In Significant Land Use Compatibility Impacts Not Properly Identified, Analyzed, or Mitigated In the Second PEIR.**

Two Peninsula cities submitted lengthy comments regarding the significant land use compatibility impacts that would result from the HST. (See, e.g., AR B006530, B006517.) Notwithstanding these identified land use compatibility impacts, the Second PEIR concluded there would be “high” land use compatibility because the alignment was “[c]ompatible with existing Caltrain corridor.” (AR B004184-B004185.) Apparently, CHSRA determined that the only issue with respect to land use compatibility is whether or not a train already exists in the area. CEQA demands much more.

Section 15125(d) of the CEQA Guidelines mandates that: “An EIR shall discuss any inconsistencies between the proposed project and applicable general plans and regional plans.” (14 Cal. Code Regs., § 15125, subd. (d).) The purpose of this discussion is to enable a lead agency to find ways to modify a project to reduce inconsistencies.

Remarkably, although the Second PEIR says it includes a discussion of potential inconsistencies with land use plans, no such discussion is actually contained in the Second PEIR. (AR B004164.) Review of the Second PEIR reveals that CHSRA only considered the existing land use designations of property within the Peninsula alignment and did not consider other glaring incompatibility and inconsistency issues. (AR B004165.) In fact, the Second PEIR’s woefully inadequate land use compatibility discussion for the *entire* Peninsula alignment is contained in the following three (3) sentences:

The San Francisco to Dumbarton alignment alternative would be highly *compatible with existing land uses* because it would be constructed primarily within the existing Caltrain corridor. Grade separations along the alignment alternative would entail the conversion of residential and nonresidential property...The land use compatibility for the Dumbarton to San Jose alignment alternative would be the same as the San Francisco to Dumbarton alignment alternative.

(AR B004195, *emph. added.*) This quotation makes clear that CHSRA failed to sufficiently evaluate the impact of applicable land use plans. CEQA does not merely require an evaluation of whether a project is consistent with existing land uses – **CEQA also requires an evaluation of**

1 **whether a project is consistent with applicable land use plans.** (14 Cal. Code Regs., § 15125,
2 subd.(d).)

3 For the Peninsula station locations, the Second PEIR’s analysis is similarly
4 deficient. (AR B004195.) Again, the Second PEIR answers the question whether the HST is
5 consistent with existing land uses at the separate station sites, but fails entirely to address the
6 additional question CEQA requires to be answered – whether the project is consistent with
7 applicable land use plans. (*Id.*)

8 CHSRA simply ignores that CEQA requires it to “use its best efforts to find out
9 and disclose all that it reasonably can” in its EIR. (14 Cal. Code Regs., § 15144.) At a minimum,
10 CHSRA was required to identify the general and regional plans applicable to the Project on the
11 Peninsula,⁵ and to discuss any inconsistencies between those plans and the Project. CHSRA’s
12 failure to include such a discussion in the Second PEIR renders the document useless for
13 informational purposes in this regard, and inadequate under CEQA.

14 Perhaps even more alarming for the public and Peninsula-area officials, is the
15 manner in which the Second PEIR unlawfully proposes to limit analysis in future, second-tier,
16 project-specific environmental documents. As set forth on page 3.7-42 of the Second PEIR:
17 “Project-level review would consider consistency with existing and planned land use,
18 neighborhood access needs, and multi-modal connectivity issues.” (AR B004207.) In essence,
19 CHSRA reads section 15125(d) right out of the CEQA Guidelines, and proposes to limit future
20 discussion to only three separate land use-related issues, to the exclusion of all others.

21 **2. The Project Will Result In Significant Noise Impacts Not**
22 **Properly Identified, Analyzed, or Mitigated In The Second PEIR.**

23 The Second PEIR provides that the proposed Peninsula alignment will “pass
24 through densely populated areas where there is high potential for noise impacts.” (AR B004117.)
25 The Second PEIR then leaps to the unsupported conclusion that Peninsula noise impacts will be
26 either “low-level”, or “medium-level.” (AR B004118.)

27 ⁵ **Not one of over 20 applicable General and/or Regional plans is specifically referenced in**
28 **the Land Use and Planning, Communities and Neighborhoods, Property, and**
Environmental Justice section of the Second PEIR. (AR B004164 – B004211.)

1 CEQA is not concerned with whether a particular environmental impact will have
2 an “impact rating”⁶ of “low”, “medium” or “high.” (AR B004101.) CEQA is concerned with
3 whether a particular impact is *significant*. (See 14 Cal. Code Regs., § 15382 [defining
4 “significant”].) **An EIR is required to provide a complete discussion and analysis of any**
5 **identified significant environmental impact, regardless of whether it is characterized as a**
6 **low-level, medium-level or high-level impact.** (See *Berkeley Keep Jets Over the Bay Comm. v.*
7 *Board of Port Comm’rs* (2001) 91 Cal.App.4th 1344, 1370.)

8 One of the most extreme impacts of the Project is its noise impact. (AR B006530.)
9 The Project proposes electrified steel-wheel-on-steel-rail train service, running through densely
10 populated residential communities. (AR B003869.) In some cases, the trains will run within
11 yards of the bedrooms of single-family residences. (AR B006531.) As a direct environmental
12 impact of the Project, CEQA mandates that the noise impact be fully and properly evaluated and
13 mitigated. (14 Cal. Code Regs., § 15064, subd. (d)(1).)

14 Section 15143 of the CEQA Guidelines provides that “significant effects should be
15 discussed with emphasis in proportion to their severity and probability of occurrence.” (14 Cal.
16 Code Regs, § 15143.) Despite the CHSRA-described “**high potential for noise impacts,**” on the
17 Peninsula (AR B004117) the Second PEIR failed to properly identify, analyze, or mitigate the
18 Project’s noise impacts.

19 The Second PEIR identifies four noise-related thresholds of significance. (AR
20 B004105.) However, the Second PEIR makes no attempt to quantify whether the project will
21 exceed these identified thresholds of significance on the Peninsula. Instead, the Second PEIR
22 merely estimates noise levels on a region-wide (the entire San Francisco Bay area) basis, and
23 makes no attempt to quantify noise levels anticipated on the Peninsula alignment or at the
24 identified station locations. (AR B004116.)

25 Like the deficient land use compatibility analysis, the noise impact analysis for the
26 entire Peninsula alignment and station locations is contained in three short conclusory sentences.
27 (See AR B004118.) Again, CHSRA simply ignores that CEQA requires CHSRA to “use its best

28 ⁶ “Impact rating” has no meaning under CEQA.

1 efforts to find out and disclose all that it reasonably can” in its EIR. (14 Cal. Code Regs., §
2 15144.) At a minimum, CHSRA should have quantified specific noise impacts to Peninsula
3 sensitive receptors. CHSRA’s failure to include such information in the Second PEIR renders the
4 document useless for informational purposes, and inadequate under CEQA.

5 **3. The Project Will Result In Significant Vibration Impacts Not**
6 **Properly Identified, Analyzed, or Mitigated In the Second PEIR.**

7 CHSRA used the exact same legally deficient approach to vibration impacts as it
8 did for noise impacts. Again, CHSRA classifies potential vibration impacts according to “levels”.
9 As explained above, CEQA is not concerned with whether a particular environmental impact will
10 have an “impact rating” of “low”, “medium” or “high.” (AR B004101.) CEQA is concerned
11 with whether a particular impact is *significant*. (See *Berkeley Keep Jets Over the Bay Comm. V.*
12 *Board of Port Comm’rs, supra*, 91 Cal.App.4th at 1370.)

13 Because the EIR identifies potential vibration impacts as “significant” it is
14 required to provide a complete discussion and analysis of the potential vibration impacts.
15 Amicus PALO ALTO is unable to locate any discussion or analysis of the potential vibration
16 impacts of the HST to the Peninsula cities in the Second PEIR beyond the conclusory statement
17 that there is “the potential for medium to high vibration impacts because of the proximity of
18 residential structures to the alignment,” and a diagrammatic reference to the same conclusion in
19 Figure 3.4-7 of the EIR. (AR B004118, B004132.) The Second PEIR contains absolutely no
20 reference to an appendix or other document that would provide supporting data for its conclusory
21 vibration determinations. At a minimum, CHSRA should have attempted to quantify specific
22 vibration impacts to the Peninsula. CHSRA’s failure to include such information in the Second
23 PEIR renders the document useless for informational purposes, and inadequate under CEQA.

24 **4. The Project Will Result In Significant Aesthetic/Visual**
25 **Resources Impacts Not Properly Identified, Analyzed, or Mitigated In the Second PEIR.**

26 As a result of the Second PEIR’s deficient noise analysis, the Second PEIR
27 proposes only a single measure to mitigate the CHSRA-described “**high potential for noise**
28 **impacts,**” on the Peninsula. (AR B004117, B004129.) Specifically, the Second PEIR provides

1 that “[p]otential noise impacts can be reduced substantially by the installation of sound barrier
2 walls constructed to shield receivers from train noise.” (AR B004129.) Reference to Table 3.4-7
3 in the Second PEIR indicates that CHSRA expects to install over 45 miles of noise barriers along
4 the Peninsula. (AR B004130.) The Second PEIR fails to comply with CEQA because it includes
5 absolutely no identification, analysis, or mitigation of the potentially significant impacts of the
6 installation of noise barriers along the Peninsula.

7 As set forth in section 15126.4(a)(1)(D) of the CEQA Guidelines: “ If a mitigation
8 measure would cause one or more significant effects in addition to those that would be caused by
9 the project as proposed, **the effects of the mitigation measure shall be discussed** but in less
10 detail than the significant effects of the project as proposed.” (14 Cal. Code Regs., § 15126.4,
11 subd. (a)(1)(D) [internal citations omitted, emph added.]

12 At an absolute minimum, the potentially significant visual and aesthetic impacts
13 should have been identified in the Second PEIR. Because the Second PEIR fails to identify,
14 analyze, or mitigate the significant environmental effects of the noise mitigation measure, the
15 document is useless for informational purposes, and inadequate under CEQA.

16 **IV. CONCLUSION**

17 For the reasons set forth above, the Second PEIR fails to comply with CEQA’s
18 most basic requirement – full disclosure. The deeply flawed Second PEIR fails to inform the
19 public and the decisionmakers of all of the significant environmental impacts of the Project, and
20 is therefore inadequate. Amicus curiae PALO ALTO supports Petitioners’ request that the Court
21 grant the petition and issue a writ of mandate ordering CHSRA to rescind its certification of the
22 Second PEIR and its approval of the Project.

23 Dated: May 1, 2009

Respectfully Submitted,

MILLER STARR REGALIA

26 By: 

27 KRISTINA DANIEL LAWSON
Attorneys for Amicus Curiae
28 CITY OF PALO ALTO

1 **PROOF OF SERVICE**

2 (Town of Atherton, et al. v. California High-Speed Rail Authority, et al.,
3 Sacramento Superior Court, Case No. 34-2008-80000022)

4 I, Karen Wigylus, declare:

5 I am a resident of the State of California and over the age of eighteen years, and
6 not a party to the within action; my business address is 1331 N. California Blvd., Fifth Floor, Post
7 Office Box 8177, Walnut Creek, CA 94596. On May 1, 2009, I served the within documents:

8 **AMICUS CURIAE BRIEF OF THE CITY OF PALO ALTO IN SUPPORT
9 OF PETITIONERS' VERIFIED PETITION FOR WRIT OF MANDATE
10 AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

- 11 by transmitting via facsimile the document(s) listed above to the fax number(s) set
12 forth below on this date before 5:00 p.m.
- 13 by placing the document(s) listed above in a sealed envelope with postage thereon
14 fully prepaid, in the United States mail at Walnut Creek, California addressed as
15 set forth below.
- 16 by placing the document(s) listed above in a sealed Federal Express envelope and
17 affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal
18 Express agent for next business day delivery.
- 19 by personally delivering the document(s) listed above to the person(s) at the
20 address(es) set forth below.

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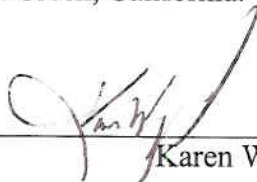
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SPEED RAIL AUTHORITY

1 I am readily familiar with the firm's practice of collection and processing
2 correspondence for mailing. Under that practice it would be deposited with the U.S. Postal
3 Service on that same day with postage thereon fully prepaid in the ordinary course of business. I
4 am aware that on motion of the party served, service is presumed invalid if postal cancellation
5 date or postage meter date is more than one day after date of deposit for mailing in affidavit.

6 I declare under penalty of perjury under the laws of the State of California that the
7 foregoing is true and correct.

8 Executed on May 1, 2009, at Walnut Creek, California.

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Karen Wigylus