

1 LAW OFFICES OF STUART M. FLASHMAN
2 STUART M. FLASHMAN (SBN 148396)
3 5626 Ocean View Drive
4 Oakland, CA 94618-1533
5 TEL/FAX (510) 652-5373
6 e-mail: stu@stuflash.com

7 Attorney for Petitioners and Plaintiffs

8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SACRAMENTO**

10 TOWN OF ATHERTON *et al.*,
11 Petitioners and Plaintiffs
12 v.
13 CALIFORNIA HIGH SPEED RAIL
14 AUTHORITY, a public entity, and DOES 1-20,
15 Respondents and Defendants

No. 34-2008-8000022 filed 8/8/08
Judge Assigned for All Purposes:
HONORABLE MICHAEL P. KENNY
Department: 31

16 **DECLARATION OF STUART M.**
17 **FLASHMAN IN SUPPORT OF PETITION**
18 **FOR WRIT OF ERROR *CORAM NOBIS***

19 Date: August 20, 2010
20 Time: 9:00 AM
21 Dept. 31

22 I, Stuart M. Flashman, declare as follows:

- 23 1. I am an attorney licensed to practice in the State of California. I have represented the
24 petitioners in this action since its initial filing in August of 2008. I have personal knowledge of
25 the facts set forth in this declaration and am competent to testify as to them if called as a witness.
- 26 2. I first became aware of there being potential problems with the high-speed rail ridership
27 and revenue modeling done for the Programmatic EIR/EIS that is the subject of this case through
28 a telephone call from Ms. Elizabeth Alexis on February 1, 2010. Shortly after that phone call, I
29 received from Ms. Alexis copies of the model coefficients and a transmittal memorandum.
- 30 3. I passed the modeling coefficients that I had obtained from Ms. Alexis on to one of my
clients, the Transportation Solutions Defense and Education Fund (“TRANSDEF”) that, in
preparation for the project-level environmental studies, had recently retained a transportation
modeling consultant, Mr. Norman Marshall.
4. Mr. Marshall reviewed the modeling coefficients obtained from Ms. Alexis as well as
other modeling information that had been included in the administrative record for the case.

1 Based on that information, on February 3, 2010 Mr. Marshall sent me a memorandum providing
2 his preliminary opinions on the modeling coefficients.

3 5. Simultaneous with Mr. Marshall's review of the modeling data, I began to research
4 possible ways to address this newly-discovered information and how it might be brought to the
5 court's attention. After considerable research, I concluded that the proper course, if the evidence
6 was substantiated, was to file a petition for writ of error *coram nobis*.

7 6. Once I received the preliminary report from Mr. Marshall, I contacted counsel for
8 Respondent California High-Speed Rail Authority (hereinafter, "Respondent"), Deputy Attorney
9 General Danae Aitcheson, and notified her of the newly-discovered evidence, the circumstances
10 surrounding its discovery, and my intention, if my clients' concerns were substantiated by
11 additional evidence, of petitioning the court for a writ of error *coram nobis*. I also told her that I
12 would be seeking further substantiation from both her client and the Metropolitan Transportation
13 Commission ("MTC") through formal requests under the California Public Records Act. I asked
14 her to see if her client could expedite its responses to the request. She indicated that that was up
15 to her client. She did agree that the concerns I raised could, if substantiated, raise serious issues.
16 She also indicated that she would initiate her own investigations with her client. Subsequent to
17 that time, while I have had several conversations with her, I have heard nothing further about any
18 results from her investigations.

19 7. On February 10, 2010 I submitted requests for documents under the California Public
20 Records Act to both Respondent and to MTC. The requests sought documentation related to the
21 ridership and revenue modeling studies done by Cambridge Systematics in connection with the
22 Bay Area to Central Valley High-Speed Train Project. True and correct copies of those request
23 letters are attached hereto as Exhibit A.

24 8. On February 22, 2010 I received a letter from Respondent responding to my Public
25 Records Act request. A true and correct copy of that letter is attached hereto as Exhibit B. In the
26 letter, Respondent indicated that it would need additional time, two weeks, to respond to my
27 request.

28 9. On February 19, 2010 I received a letter from MTC responding to my Public Records Act
29 Request. A true and correct copy of that letter is attached hereto as Exhibit C.

30 10. On March 1, 2010 I send follow-up letters to Respondent and MTC clarifying that I did
not need nor seek to obtain any of the documents already included in the administrative record

1 for this case. I included an attachment listing the ridership/revenue modeling documents already
2 included in the administrative record. True and correct copies of these letters are attached hereto
3 as Exhibit D.

4 11. On March 4, 2010 I received an additional letter from MTC responding to my Public
5 Records Act Request. A true and correct copy of that letter is attached hereto as Exhibit E.
6 Based on that letter, I promptly arranged to have the copies (both paper and computer files) of
7 the documents responsive to my request made and picked up. The files containing model
8 coefficients were then delivered, through TRANSDEF, to Mr. Marshall for his review. He later
9 confirmed that the information in the MTC files was the same as that in the files I had obtained
10 from Ms. Alexis.

11 12. On March 8, 2010 I received an additional letter from Respondent responding to my
12 Public Records Request. That letter indicated that Respondent was still compiling documents,
13 and they would not be ready for my review until approximately March 16, 2010, more than a
14 month after my original request. A true and correct copy of that letter is attached hereto as
15 Exhibit F.

16 13. On March 11, 2010, I responded by e-mail to Respondent, and there ensued a back-and-
17 forth of e-mail correspondence, culminating in a March 25, 2010 e-mail from Respondent
18 indicating that the documents and files responsive to my Public Records Act Request were being
19 sent to me from Sacramento via first class mail. True and correct copies of that e-mail chain, as
20 well as of a March 25, 2010 letter from Respondent providing a detailed response to my Public
21 Records Act Request, are attached hereto as Exhibit G. I received the package of documents on
22 March 27th, and promptly provided them to a representative of TRANSDEF, who forwarded the
23 relevant documents to Mr. Marshall for his review. To expedite matters further, I also sent some
24 of the most relevant electronic documents, including modeling files, directly to Mr. Marshall.

25 14. On March 31, 2010, I was notified by Mr. Marshall that three files that had been
26 referenced in the published reports on the ridership/revenue modeling had not been included in
27 the materials received from either Respondent or MTC in response to my Public Records Act
28 requests. I promptly called both Respondent and MTC to inquire whether there were any further
29 records that were responsive to my earlier request and e-mailed a supplemental Public Records
30 Act Request to MTC. The request specifically requested copies of those three files. A true and
correct copy of that e-mail is attached hereto as Exhibit H.

1 15. On April 1, 2010 I received an e-mail response from Respondent indicating that it had no
2 further responsive documents in its files. A true and correct copy of that e-mail is attached
3 hereto as Exhibit I. On that same date, I also received an e-mail response from MTC. A true and
4 correct copy of that e-mail is attached hereto as Exhibit J. On April 12, 2010 I received a final
5 verbal response from MTC to my Public Records Act request.

6 16. Once I had heard from Respondent and MTC about the available public record
7 documents, I proceeded to seek authorization from my clients to file the petition for writ of error
8 *coram nobis* on their behalf. In addition to my preparing a briefing for each client on the
9 situation, for Atherton and Menlo Park this also involved scheduling the item for a City Council
10 closed session in accordance with the Ralph M. Brown Act. By the end of April, I had received
11 authorization from all the clients except the BayRail Alliance, who declined to participate.

12 17. On April 26, 2010 I received Mr. Marshall's final formal report on his analysis of the
13 ridership/revenue modeling done by Cambridge Systematics for MTC and Respondent. A copy
14 of that report has been attached to Mr. Marshall's declaration, which is being submitted
15 herewith.

16 18. Upon receiving Mr. Marshall's final report, I notified opposing counsel that I intended to
17 proceed with filing the petition for writ of error *coram nobis*. Since that time, I have been
18 working diligently to complete and file the petition and the necessary accompanying supporting
19 documents.

20 I have personal knowledge of the above facts, and I declare under penalty of perjury
21 under the laws of the State of California that the foregoing is true and correct. Executed on May
22 5, 2010 at Oakland, California.

23 

24 _____
25 Stuart M. Flashman
26

Exhibit A

Law Offices of
Stuart M. Flashman
5626 Ocean View Drive
Oakland, CA 94618-1533
(510) 652-5373 (voice & FAX)
e-mail: stu@stufdash.com

February 10, 2010

Mehdi Morshed, Executive
Director
California High-Speed Rail
Authority
925 L Street, Suite 1425
Sacramento, CA 95814

RE: Public Record Request for documents relating to ridership studies.

Dear Mr. Morshed:

This is request for documents under the California Public Records Act (Government Code §6250 et seq.) on behalf of my clients, the California Rail Foundation and Transportation Solutions Defense and Education Fund. Pursuant to Government Code §6256 and §6257, I request copies, (for electronic documents, preferably in electronic form in their original format), of all documents within your (meaning the California High-Speed Rail Authority's) possession or control¹ in the categories listed below if they exist. Please provide me, via e-mail or letter to the address listed above, the cost for obtaining copies of these records.

The records in question are the following:

1. All documents², including but not limited to correspondence, memoranda, reports (including draft reports), spreadsheets, database files, emails (including specifically e-mails to/from consultants and/or the Metropolitan Transportation Commission or its staff), modeling files (including all inputs, outputs, post-processors, and other files needed to create the outputs), consultant contracts and associated workplans, concerning the travel demand modeling used to estimate interregional trips in the Bay Area/California High-Speed Rail Ridership and Revenue Forecasting Study and specifically the two base alternatives A1

¹ Possession or control includes documents prepared for you under consultant contracts, whether physically located in your office or that of the consultant.

² Documents is used in its broadest sense, consistent with its use in the Code of Civil Procedure, to include, without limitation, writings, recordings (either audio or video), and electronically stored data files.


and P1 for the forecast year 2030, as well as all documentation for the models used and any updates of this study that may have been or in the process of being generated for a revised Programmatic DEIR for the Bay Area to Central Valley High-Speed Train Project.

2. All documents, including but not limited to correspondence, memoranda, reports (including draft reports), spreadsheets, database files, emails, modeling files (including all inputs, outputs, post-processors, and other files needed to create the outputs), consultant contracts and associated workplans, concerning the travel demand modeling used to estimate *intraregional* trips within the San Francisco Bay Region, the Greater Los Angeles Region, and the San Diego Region as applied in the above-same referenced Study for base alternatives A1 and P1 for the forecast year 2030, as well as in any updates of this study that may have been or in the process of being generated for a revised Programmatic DEIR for the Bay Area to Central Valley High-Speed Train Project.

Please note that we are aware that the interregional model uses CUBE software. We do not seek to obtain a copy of the CUBE software itself, only the model files that were used with the CUBE software to produce the modeling results.

Questions about providing copies of the above documents should be directed to me. Technical questions about the nature of the documents requested should be directed to my clients' consultant, Mr. Norm Marshall, Principal, Smart Mobility, Inc., e-mail: nmarshall@smartmobility.com, phone: (802) 649-5422.

Most sincerely,

A handwritten signature in cursive script that reads "Stuart M. Flashman".

Stuart M. Flashman

Law Offices of
Stuart M. Flashman
5626 Ocean View Drive
Oakland, CA 94618-1533
(510) 652-5373 (voice & FAX)
e-mail: stu@stufflash.com

February 10, 2010

Steve Heminger, Executive
Director
Metropolitan Transportation
Commission
101 Eighth Street
Oakland, California 94607

RE: Public Record Request for documents relating to ridership studies.

Dear Mr. Heminger:

This is request for documents under the California Public Records Act (Government Code §6250 et seq.) on behalf of my clients, the California Rail Foundation and Transportation Solutions Defense and Education Fund. Pursuant to Government Code §6256 and §6257, I request copies, (for electronic documents, preferably in electronic form in their original format), of all documents within your (meaning the Metropolitan Transportation Commission's) possession or control¹ in the categories listed below if they exist. Please provide me, via e-mail or letter to the address listed above, the cost for obtaining copies of these records.

The records in question are the following:

1. All documents², including but not limited to correspondence, memoranda, reports (including draft reports), spreadsheets, database files, emails (including specifically e-mails to/from consultants and/or the California High-Speed Rail Authority or its staff), modeling files (including all inputs, outputs, post-processors, and other files needed to create the outputs), consultant contracts and associated workplans, concerning the travel demand modeling used to estimate interregional trips in the Bay Area/California High-Speed Rail Ridership and Revenue

¹ Possession or control includes documents prepared for you under consultant contracts, whether physically located in your office or that of the consultant.

² Documents is used in its broadest sense, consistent with its use in the Code of Civil Procedure, to include, without limitation, writings, recordings (either audio or video), and electronically stored data files.

2/10/2010

Page 2

Forecasting Study and specifically the two base alternatives A1 and P1 for the forecast year 2030, as well as all documentation for the models used and any updates of this study that may have been or in the process of being generated for a revised Programmatic DEIR for the Bay Area to Central Valley High-Speed Train Project.

2. All documents, including but not limited to correspondence, memoranda, reports (including draft reports), spreadsheets, database files, emails (including specifically e-mails to/from consultants and/or the California High-Speed Rail Authority or its staff), modeling files (including all inputs, outputs, post-processors, and other files needed to create the outputs), consultant contracts and associated workplans, concerning the travel demand modeling used to estimate *intraregional* trips within the San Francisco Bay Region, the Greater Los Angeles Region, and the San Diego Region as applied in the above-same referenced Study for base alternatives A1 and P1 for the forecast year 2030, as well as in any updates of this study that may have been or in the process of being generated for a revised Programmatic DEIR for the Bay Area to Central Valley High-Speed Train Project.

Please note that we are aware that the interregional model uses CUBE software. We do not seek to obtain a copy of the CUBE software itself, only the model files that were used with the CUBE software to produce the modeling results.

Questions about providing copies of the above documents should be directed to me. Technical questions about the nature of the documents requested should be directed to my clients' consultant, Mr. Norm Marshall, Principal, Smart Mobility, Inc., e-mail: nmarshall@smartmobility.com, phone: (802) 649-5422.

Most sincerely,



Stuart M. Flashman

Exhibit B

Curt Pringle, Chairman
Tom Umberg, Vice-Chair
Russell Burns
David Crane
Rod Dindon, Sr.*
Fran Florez*
Richard Katz
Judge Quentin L. Kopp*
Lynn Schenk
*past chair

ARNOLD SCHWARZENEGGER
GOVERNOR



FLY CALIFORNIA
Without ever leaving the ground.



CALIFORNIA HIGH-SPEED RAIL AUTHORITY

February 22, 2010

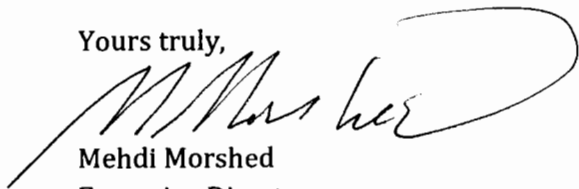
Mr. Stuart M. Flashman
Law Office of Stuart M. Flashman
5626 Ocean View Drive
Oakland, CA 94618-1533

Re: Public Records Act Request

Dear Mr. Flashman:

This letter is a preliminary response to your request for records dated February 10, 2010. On initial examination of your request, it appears that it may call for voluminous separate and distinct records. In addition, the Metropolitan Transportation Commission has a substantial interest in any determination made by the Authority in response to your request, and consequently there is a need for the Authority to consult with the Commission. Finally, our initial review of your request suggests that there may be a need to compile or to extract data from computer records. For each and all of these reasons, the Authority is implementing an extension of time to respond to your request, to and including March 8, 2010.

Yours truly,



Mehdi Morshed
Executive Director

cc: File

Exhibit C



**METROPOLITAN
TRANSPORTATION
COMMISSION**

Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700
TEL 510.817.5700
TTY/TDD 510.817.5769
FAX 510.817.5848
E-MAIL info@mtc.ca.gov
WEB www.mtc.ca.gov

February 19, 2010

Scott Haggerty, Chair
Alameda County

Adrienne J. Tissier, Vice Chair
San Mateo County

Tom Azumbrado
U.S. Department of Housing
and Urban Development

Tom Bates
Cities of Alameda County

Dean J. Chu
Cities of Santa Clara County

Dave Cortese
Association of Bay Area Governments

Chris Daly
City and County of San Francisco

Bill Dodd
Napa County and Cities

Dorene M. Giacopini
U.S. Department of Transportation

Federal D. Glover
Contra Costa County

Anne W. Halsted
San Francisco Bay Conservation
and Development Commission

Steve Kinsey
Marin County and Cities

Sue Lempert
Cities of San Mateo County

Jake Mackenzie
Sonoma County and Cities

Jon Rubin
San Francisco Mayor's Appointee

Bijan Sartipi
State Business, Transportation
and Housing Agency

James P. Spering
Solano County and Cities

Amy Rein Worth
Cities of Contra Costa County

Ken Yeager
Santa Clara County

Steve Heminger
Executive Director

Ann Flemer
Deputy Executive Director, Policy

Andrew B. Fremier
Deputy Executive Director, Operations

Mr. Stuart M. Flashman
5626 Ocean View Drive
Oakland, CA 94618-1533

Dear Mr. Flashman:

Your public records request regarding documents related to ridership studies received on February 10, 2010, has been referred to me for response.

MTC will require an additional 14 days to review the items in your request. As permitted pursuant to Government Code Section 6253, subdivision (c), the additional time is necessary for the following reason:

- The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

MTC charges a duplication fee of \$.25 per page for paper copies and \$.10 per page for pdfs. At this time, we cannot give you an approximate count of the number of pages you are requesting. We will review whether documents are available electronically and the format in which they are being stored. We anticipate completing a document assessment and providing a total page count and fees by March 4, 2010.

Please contact me at 510.817.5706 or via e-mail at pgrove@mtc.ca.gov should you have questions.

Very truly yours,

Pamela L. Grove
Public Information Officer

/pl

Exhibit D

Law Offices of
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Oakland, CA 94618-1533
(510) 652-5373 (voice & FAX)
e-mail: stu@stuflash.com

March 1, 2010

Mr. Mehdi Morshed, Executive Director
California High-Speed Rail Authority
925 L Street, Suite 1425
Sacramento, California 95814

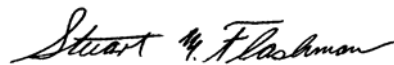
RE: Public Record Request for documents relating to ridership studies.

Dear Mr. Morshed:

This letter follows up on my prior California Public Records Act request of February 10, 2010 and your responding letter of February 22, 2010. My letter requested documents concerning the revenue and ridership modeling studies done for the High-Speed Rail Authority in connection with the Bay Area to Central Valley High-Speed Train Project.

Considering your response that the Authority would need to review a voluminous amount of records, I would like, perhaps, to reduce the breadth of response needed by indicating documents relating to the request that my clients already have in their possession. The attached listing indicates documents that were included in the administrative record for the case *Town of Atherton v. California High-Speed Rail Authority*. My clients do not need to obtain additional copies of any of these documents, unless those copies contain additional annotations not included in the versions placed in the administrative record. Consequently, please remove all of these documents, in their published version, from the scope of documents for which copies are requested. Please feel free to call me if you have additional questions about the request.

Most sincerely,



Stuart M. Flashman

Ridership/Revenue Modeling Documents already available in *Atherton v. CHSRA* administrative record

Independent Ridership and Passenger Revenue Projections for High Speed Rail Alternatives in California, Final Report, July 1996

Independent Ridership and Passenger Revenue Projections for High Speed Rail Alternatives in California, Draft Final Report, January 2000

The following modules of the Bay Area/California High-Speed Rail Ridership and Revenue Forecasting Study:

- Model Design, Data Collection and Performance Measures, Technical Memorandum, May 2005
- Final Work Plan, June 2005
- Findings from First Peer Review Panel Meeting
- Final Report, July 2005
- High Speed Rail Study -- Survey Documentation, Dec. 2005
- Socioeconomic Data, Transportation Supply, and Base Year Travel Patterns Data, Draft Report, Dec. 2005
- Findings from Second Peer Review Panel Meeting, Draft & final reports, July 2006
- Interregional Model System Development, draft & final reports, August 2006
- Levels-of-Service Assumptions and Forecast Alternatives. Final Report, August 2006
- Bay Area/California High-Speed Rail *Ridership and Revenue Forecasting Study* Presentation to CHSRA Board (3/2/07)
- Draft & final "Final Report", July 2007
- Statewide Model Validation, Final Report, July 2007
- Statewide Model Networks, Final Report, August 2007
- Ridership and Revenue Forecasts, Draft & Final Reports, August 2007
- Findings from First [sic] Peer Review Panel Meeting, Final Report, Sept. 2007
- Users Guide, Sept. 2007
- CS Presentation on forecasting model, Sept. 27, 2007
- CS (Elizabeth Sall) training session presentation, Sept. 28, 2007

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e-mail: stu@stuflash.com

March 1, 2010

Ms. Pamela Grove, Public Information Officer
Metropolitan Transportation Commission
101 Eighth Street
Oakland, California 94607

RE: Public Record Request for documents relating to ridership studies.

Dear Ms. Grove:

This letter follows up on my prior California Public Records Act request of February 10, 2010 and your responding letter of February 19, 2010. My letter requested documents concerning the revenue and ridership modeling studies done for MTC in connection with the Bay Area to Central Valley High-Speed Train Project.

Considering your response that MTC would need to review a voluminous amount of records, I would like, perhaps, to reduce the breadth of response needed by indicating documents relating to the request that my clients already have in their possession. The attached listing indicates documents that were included in the administrative record for the case *Town of Atherton v. California High-Speed Rail Authority*. My clients do not need to obtain additional copies of any of these documents, unless those copies contain additional annotations not included in the published versions that were placed in the administrative record. Consequently, please remove all of these documents, in their published version, from the scope of documents for which copies are requested. Please feel free to call me if you have additional questions about the request.

Most sincerely,



Stuart M. Flashman

Ridership/Revenue Modeling Documents already available in *Atherton v. CHSRA* administrative record

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- Findings from Second Peer Review Panel Meeting, Draft & final reports, July 2006
- Interregional Model System Development, draft & final reports, August 2006
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- Users Guide, Sept. 2007
- CS Presentation on forecasting model, Sept. 27, 2007
- CS (Elizabeth Sall) training session presentation, Sept. 28, 2007

Exhibit E



**METROPOLITAN
TRANSPORTATION
COMMISSION**

Joseph P. Bort MetroCenter
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WEB www.mtc.ca.gov

March 4, 2010

Scott Haggerty, Chair
Alameda County

Adrienne J. Tissier, Vice Chair
San Mateo County

Tom Azumbrado
U.S. Department of Housing
and Urban Development

Tom Bates
Cities of Alameda County

Dean J. Chu
Cities of Santa Clara County

Dave Cortese
Association of Bay Area Governments

Chris Daly
City and County of San Francisco

Bill Dodd
Napa County and Cities

Dorene M. Giacopini
U.S. Department of Transportation

Federal D. Glover
Contra Costa County

Anne W. Halsted
San Francisco Bay Conservation
and Development Commission

Steve Kinsey
Marin County and Cities

Sue Lempert
Cities of San Mateo County

Jake Mackenzie
Sonoma County and Cities

Jon Rubin
San Francisco Mayor's Appointee

Bijan Sartipi
State Business, Transportation
and Housing Agency

James P. Spering
Solano County and Cities

Amy Rein Wortb
Cities of Contra Costa County

Ken Yeager
Santa Clara County

Steve Heminger
Executive Director

Ann Flemer
Deputy Executive Director, Policy

Andrew B. Fremier
Deputy Executive Director, Operations

Mr. Stuart M. Flashman
5626 Ocean View Drive
Oakland, CA 94618-1533

Dear Mr. Flashman:

This letter is in further response to your February 10, 2010 public records request regarding documents related to ridership studies.

The bulk of the records you are requesting have been assembled and are stored on an external hard drive. MTC will copy the hard drive upon payment from you of the direct cost of the hard drive plus the copying time, which is \$209.75. Alternatively, you may provide your own hard drive and arrange to copy the records from the MTC drive upon appointment.

In addition, we have identified a number of paper files included in your request. MTC charges a duplication fee of \$.25 per page for paper copies. We estimate that the number of pages for this material is 339. Again, you may review these documents at MTC's offices upon appointment during normal work hours. MTC will copy the records for you for the direct cost of duplication of \$.25 per page, plus actual postage for transmittal of the materials. The documents you have requested total 339 pages, at a copying charge of \$84.75 plus \$8.82 postage for a total of \$93.57.

The documents listed above can be furnished via hard drive and paper upon receipt of a check payable to MTC in the amount of \$303.32. Please contact me at pgrove@mtc.ca.gov or 510.817.5706 to schedule an inspection of the documents or to let me know if you wish to request that MTC have documents copied for you.

Very truly yours,

Pamela L. Grove
Public Information Officer

/pl

Exhibit F

Curt Pringle, Chairman
Tom Umberg, Vice-Chair
Russell Burns
David Crane
Rod Diridon, Sr.*
Fran Florez*
Richard Katz
Judge Quentin L. Kopp*
Lynn Schenk
*past chair

ARNOLD SCHWARZENEGGER
GOVERNOR



CALIFORNIA HIGH-SPEED RAIL AUTHORITY

March 8, 2010

Mr. Stuart Flashman
5626 Ocean View Drive
Oakland, CA 94618

Re: California Public Records Act Request

Dear Mr. Flashman:

This letter provides a further response to your February 10, 2010, California Public Records Act request as well as your March 1, 2010, follow up letter regarding the request. At first glance, your request appears overly broad and ambiguous in light of your use of the word "concerning," which calls for a subjective determination. However, on closer examination, we believe we understand what you are requesting. We interpret your request to seek all documents related to the travel demand model developed and used as part of the Bay Area/California High-Speed Rail Ridership and Revenue Forecasting Study, including both its interregional and intraregional components. We further interpret your request to seek all documents related to any updates to the model "for a revised Programmatic DEIR for the Bay Area to Central Valley High-Speed Train Project." We understand your March 1st letter to indicate that you do not seek copies of the documents identified in the letter unless they contain "additional annotations not included in the versions included in the administrative record" for the *Town of Atherton* litigation.

The Authority will not disclose documents that are subject to the attorney-client privilege, that constitute attorney work product, or that qualify as preliminary drafts, notes, or interagency/intra-agency memoranda that are not retained by the public agency in the ordinary course of business.

The Authority is in the process of gathering disclosable records that are responsive to your request, and expects to be able to make them available to you by March 16, 2010. At this point, the number of pages of paper documents is indeterminable.

Please let the Authority know in what manner you want the disclosable records made available to you. Please write or send an e-mail to Rachel Weninger, at rweningen@hsr.ca.gov for that purpose.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Morshed', with a large, sweeping flourish extending to the right.

Mehdi Morshed
Executive Director

Exhibit G

Stuart Flashman

From: Rachel Weninger [rweninger@hsr.ca.gov]
Sent: Thursday, March 25, 2010 2:40 PM
To: stu@stuflash.com
Subject: RE: Public Record Act Request

Mr. Flashman:

Following up on our email exchange of late last week, I am sending out to you today by first class mail the materials in response to your Public Records Act request. These materials include the first three items identified in your March 17th email to me, but not the fourth item. Thank you.

Rachel Weninger

From: Law Offices of Stuart Flashman [mailto:stu@stuflash.com]
Sent: Wednesday, March 17, 2010 1:34 PM
To: Rachel Weninger
Subject: RE: Public Record Act Request

Responding to your recent e-mail about my PRA request:

I appreciate your willingness to provide computer files in their original formats. As I understand it, e-mails will be provided as pst files, readable by Microsoft Outlook. Please confirm that this is the case.

In general, my clients (and I) believe we already have all of the responsive files that were part of the litigation record in the Atherton litigation. Indeed, we have a full copy of that record. We therefore do not need any of those files copied. (I had thought that my listing of files not to be copied included all those contained in that record. If that is not the case, I would appreciate knowing the titles and/or file names for the additional files in that record which the Authority felt were responsive to my request.)

My client believes that the Authority should have the following files in its records. These files are responsive to the PRA request. Would you please indicate whether these files will be included in the compilation of files to be provided:

- 1) CALHSRMOD.EXE described on p. 4-8 of the Users Guide as performing " interregional trip frequency, destination choice and mode choice"
- 2) Source code for CALHSRMOD.EXE
- 3) The coefficients file used by CALHSRMOD.EXE – understood to be COEFFS_FINAL_TXT based on the Users Guide and on the entries in the CALHSRMOD.CTL files.
- 4) Print outputs from CALHSRMOD.EXE – from the CALHSRMOD.CTL files, these are named: hsr_run_validation_v1.prt, HsrModelPrint_Nobuild_v1.prt, HsrModelPrint_P1_v1.prt, and HsrModelPrint_A1_v1.prt

If it would be more convenient, my clients can bring over to the Authorities offices an external hard drive onto which the computer files can be copied, rather than copying them onto one or more CDs or DVDs. My client could also pick, and pay for the paper document copies at the same time. However, we will need the cost for the documents in advance in order to have a check in the proper amount prepared.



Serving public interest and private clients since 1990

Stuart Flashman
Attorney

stu@stuflash.com

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5/4/2010

of this communication to anyone other than the party for whom it is intended is prohibited. If you have received this e-mail in error, please notify me immediately by telephone or return e-mail.

-----Original Message-----

From: Rachel Weninger [mailto:rweningen@hsr.ca.gov]
Sent: Tuesday, March 16, 2010 2:26 PM
To: stu@stuflash.com
Subject: RE: Public Record Act Request

Dear Mr. Flashman: Following up on your email to me on March 11th, we will provide you with the public records responsive to your request as follows:

- * public records that are currently in paper format we will provide on paper
- * electronic mail messages that qualify as public records will be provided to you on a CD as "pst" files
- * other public records that are currently in electronic format will be provided on CD
- * items we have identified from the Atherton litigation record that are not included on the list attached to your March 1st letter will be provided on CD in pdf format

The Authority will need a few more days to screen the electronic mail messages and to copy the paper materials, however, we anticipate being able to provide you this material in a single mailing by the middle of next week. I will notify you next week of the quantity of paper copies and the charge. If you have any questions, please feel free to email me. Note that this Friday March 19th is a State furlough day.


Rachel Weninger
CA High-Speed Rail Authority
925 L Street, Suite 1425
Sacramento, CA 95814
916-324-9456
rweningen@hsr.ca.gov

From: Law Offices of Stuart Flashman [mailto:stu@stuflash.com]
Sent: Thursday, March 11, 2010 5:58 PM
To: Rachel Weninger
Subject: Public Record Act Request

Dear Ms. Weninger,

This is in response to Mr. Morshed's letter dated March 8, 2010, responding to my public records act request of February 10, 2010. My clients would prefer to obtain all of the documents in their original native formats, to the greatest extent possible. For computer files, that would mean in their native file format (preferably with the original file names); for paper documents, in their original paper format. However, if it would make things easier, we would be willing to accept electronic scans of paper documents in pdf format.

Computer files can be delivered on one or more CDs or DVDs. If that is not convenient, we could also bring a external hard drive to the Authority's office and copy the files onto the hard drive, but that would not be our preference.

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<p>Stuart Flashman Attorney stu@stuflash.com</p>	<p>Law Offices of Stuart Flashman 5626 Ocean View Drive Oakland, CA 94618-1533 tel: (510) 652-5373 fax: (510) 652-5373</p>

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Curt Pringle, Chairman
Tom Umberg, Vice-Chair
Russell Burns
David Crane
Rod Dindon, Sr.*
Fran Florez*
Richard Katz
Judge Quentin L. Kopp*
Lynn Schenk
*past chair

ARNOLD SCHWARZENEGGER
GOVERNOR



CALIFORNIA HIGH-SPEED RAIL AUTHORITY

March 25, 2010

Stuart Flashman
5626 Ocean View Drive
Oakland, CA 94618

Re: California Public Records Act Request

Dear Mr. Flashman:

This letter provides our response to your February 10, 2010, request for records under the California Public Records Act as well as your March 1, 2010, clarification of that request. In response to your request, we are providing the following items:

1. Paper copies of California High-Speed Rail Authority public records that relate to the Bay Area/California High-Speed Rail Ridership and Revenue Forecasting Study. Per your March 1, 2010, letter, these paper public records exclude copies of documents that your clients already have because they were contained in the electronic administrative record for the *Town of Atherton* litigation. We have, however, provided copies of pages of such reports with annotations along with a cover as you indicated in your follow up electronic mail communication with Rachel Weninger dated March 18, 2010.
2. A DVD containing materials from the *Town of Atherton* litigation record that were not included in the list attached to your March 1, 2010, letter, but that we interpret to be responsive to your request. Please be aware that the *Town of Atherton* litigation record included electronic mail messages in eleven (11) pdf files, pages E000045 to E002284. We have not copied those files on the DVD, but note that there are some emails in this set of pdf files that are responsive to your request and that you already have in your possession.
3. A DVD containing electronic mail messages that relate to the Bay Area/California High-Speed Rail Ridership and Revenue Forecasting Study. These electronic mail messages are contained in a "pst" file that can be read with Microsoft Outlook software.
4. A few printed emails that contain redacted personal information about a member of the public, which the Authority considers exempt from disclosure under the Public Records Act pursuant to Government Code section 6255, subdivision (a). You did not request this information. We are not aware of any public interest served by disclosing the personal information. Any such public interest is clearly outweighed by the public interest in not disclosing it.
5. A DVD containing CALHSRMOD.EXE, the source code for CALHSRMOD.EXE, and the coefficients file used by CALHSRMOD.EXE.

As I indicated in my letter to you of March 8, 2010, the Authority is not providing copies of records that are exempt from disclosure under Government Code section 6254(k) because they constitute confidential attorney-client communications or confidential attorney work product.

Stuart Flashman

March 25, 2010

Page 2 of 3

Further, we are not providing copies of records that involve communications related to a pending state. We are advised by the Bureau of State Audits that such items are considered confidential under Government Code sections 8545 and 8545.1, and we therefore, assuming they are public records, deem them exempt under Government Code section 6254(k).

Considering the fairly small amount of material being provided with paper copies, the Authority is waiving the cost of paper copies and mailing.

I understand that Rachel Weninger of my staff has been in contact with you and provided you with email updates and clarifications related to your request. In your email inquiry of March 17, 2010, you requested confirmation that these items would be provided from the California High-Speed Rail Authority:

- “1) CALHSRMOD.EXE described on p. 4-8 of the Users Guide as performing “interregional trip frequency, destination choice and mode choice”
- 2) Source code for CALHSRMOD.EXE
- 3) The coefficients file used by CALHSRMOD.EXE – understood to be COEFFS_FINAL_TXT based on the Users Guide and on the entries in the CALHSRMOD.CTL files.
- 4) Print outputs from CALHSRMOD.EXE – from the CALHSRMOD.CTL files, these are named: hsr_run_Validation_v1.prt, HsrModelPrint_Nobuild_v1.prt, HsrModelPrint_P1_v1.prt, and HsrModelPrint_A1_v1.prt”

In response to this question, the California High-Speed Rail Authority does not have the electronic files that comprise the original statewide travel demand model in its agency files. The original statewide travel demand model was developed by Cambridge Systematics under its contract with the Metropolitan Transportation Commission (MTC) as part of the Bay Area/California High-Speed Rail Ridership and Revenue Forecasting Study, which concluded in the fall of 2007. Cambridge Systematics provided the electronic modeling files for the original statewide travel demand model to MTC as deliverables pursuant to its contract with that agency. The Authority did not receive a duplicate set of those electronic files when that study concluded in 2007 and has not subsequently obtained a copy of the electronic model files from MTC.

To ensure that the Authority provides you with all materials responsive to your request that qualify as public records under the California Public Records Act, we inquired with Cambridge Systematics as to whether they maintained an archive copy of the modeling files for the original statewide travel demand model in the condition as they existed at the time Cambridge provided the final deliverables to MTC in the fall of 2007. Cambridge Systematics has been performing additional, updated ridership work for the Authority over the last two years. We are informed by Cambridge Systematics that many of the original ridership model files in their possession are no longer in the configuration they were in as delivered to MTC in the fall of 2007 because they have been re-organized in a manner conducive to their current ridership work for the Authority.

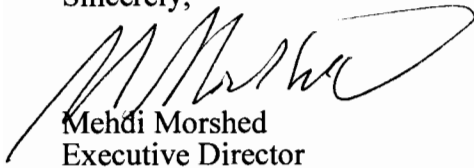
While we understand that Cambridge Systematics has the theoretical ability to reconstruct the 2007 ridership model files as they existed at that time for the original statewide travel demand model, this would be a very time consuming and burdensome effort in light of how the modeling files are configured now. Cambridge Systematics informs us that the process could take a considerable amount of time by their modeling professionals. In addition, to ensure an accurate reconstruction of the electronic files for the original statewide travel demand model as they existed in 2007, Cambridge Systematics would need to be guided by the model files that MTC

Stuart Flashman
March 25, 2010
Page 3 of 3

has in its possession. We believe the costs of such a reconstruction, putting aside whether it would serve a useful purpose to do so, and putting aside the fact that the files are not in the Authority's possession, would be a cost contemplated under Government Code section 6253.9 to the extent such an effort is required under the California Public Records Act.

In light of the fact that the 2007 ridership model files for the original statewide travel demand model can be obtained directly from MTC, and as we understand it you have obtained these files directly from MTC, it appears that your request for the 2007 ridership model files has been satisfied by the public agency that contracted for that model. Nevertheless, in our discussions with Cambridge Systematics, we were informed that CALHSRMOD.EXE, the source code for CALHSRMOD.EXE, and the coefficients file used by CALHSRMOD.EXE could be readily retrieved. As identified above, we have obtained these files from Cambridge Systematics and are providing them to you on DVD at no additional cost. The files identified in the fourth item in your March 17th emailed list are not contained in the files that Cambridge Systematics has in its possession with the precise files names you have identified and are therefore not included with this package.

Sincerely,



Mehdi Morshed
Executive Director

cc: File

Exhibit H

Stuart Flashman

From: Law Offices of Stuart Flashman [stu@stuflash.com]
Sent: Wednesday, March 31, 2010 2:43 PM
To: 'pgrove@mtc.ca.gov'
Subject: RE: Public Record Act Request

Dear Ms. Grove:

This is a follow-up request to my recent public record act request to MTC. My client believes that MTC should have the following files in its records. These files are responsive to the PRA request. In reviewing the files previously sent, we did not find copies of these files, which should have been part of the materials provided to MTC by Cambridge Systematics under its contract to conduct ridership/revenue modeling for the high-speed rail system into the Bay Area:


- 1) CALHSRMOD.EXE described on p. 4-8 of the Users Guide as performing " interregional trip frequency, destination choice and mode choice"
- 2) Source code for CALHSRMOD.EXE
- 3) The coefficients file used by CALHSRMOD.EXE – understood to be COEFFS_FINAL_TXT based on the Users Guide and on the entries in the CALHSRMOD.CTL files.
- 4) Print outputs from CALHSRMOD.EXE – from the CALHSRMOD.CTL files, these are named: hsrrun_Validation_v1.prt, HsrModelPrint_NoBuild_v1.prt, HsrModelPrint_P1_v1.prt, and HsrModelPrint_A1_v1.prt

We believe that all these files should be relatively small, and therefore should be amenable to being provided as e-mail attachments. Would you please check MTC's files again to see if any of these files were overlooked in responding to the previous PRA request.

Thank you.

Sincerely,

Stuart M. Flashman

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Stuart Flashman <i>Attorney</i> stu@stuflash.com	Law Offices of Stuart Flashman 5626 Ocean View Drive Oakland, CA 94618-1533 tel: (510) 652-5373 fax: (510) 652-5373

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Exhibit I

Stuart Flashman

From: Rachel Weninger [rweninger@hsr.ca.gov]

Sent: Thursday, April 01, 2010 2:24 PM

To: stu@stufdash.com

Subject: Voice Message

Mr. Flashman,

In response to your voice mail question of March 31, 2010, the Authority produced emails responsive to your request that were available and these date back to August 2009 on a CD. The Authority's cover letter with responsive public records also references earlier emails that were included in the Atherton litigation record, of which you already have a copy. There are no other records of other emails that would respond to your request. If you have further questions, please do not hesitate to contact me.

Rachel Weninger
rweninger@hsr.ca.gov
California High-Speed Rail Authority
925 L Street, Suite 1425
Sacramento, CA 95814
(916) 324-9456

Exhibit J

Stuart Flashman

From: Pam Grove [PGrove@mtc.ca.gov]
Sent: Thursday, April 01, 2010 2:26 PM
To: stu@stufash.com
Subject: RE: Public Record Act Request

Hello, Mr. Flashman,

I received your e-mail and voice mail, and we are currently researching your request.

Pam Grove
Public Information Officer
Metropolitan Transportation Commission
510.817.5706

>>> "Law Offices of Stuart Flashman" <stu@stufash.com> 3/31/2010 2:42 PM >>>
[Dear Ms. Grove:](#)

This is a follow-up request to my recent public record act request to MTC. My client believes that MTC should have the following files in its records. These files are responsive to the PRA request. In reviewing the files previously sent, we did not find copies of these files, which should have been part of the materials provided to MTC by Cambridge Systematics under its contract to conduct ridership/revenue modeling for the high-speed rail system into the Bay Area:

- 1) CALHSRMOD.EXE described on p. 4-8 of the Users Guide as performing "interregional trip frequency, destination choice and mode choice"
- 2) Source code for CALHSRMOD.EXE
- 3) The coefficients file used by CALHSRMOD.EXE – understood to be COEFFS_FINAL_TXT based on the Users Guide and on the entries in the CALHSRMOD.CTL files.
- 4) Print outputs from CALHSRMOD.EXE – from the CALHSRMOD.CTL files, these are named: hsr_run_validation_v1.prt, HsrModelPrint_Nobuild_v1.prt, HsrModelPrint_P1_v1.prt, and HsrModelPrint_A1_v1.prt

We believe that all these files should be relatively small, and therefore should be amenable to being provided as e-mail attachments. Would you please check MTC's files again to see if any of these files were overlooked in responding to the previous PRA request.

Thank you.

Sincerely,

Stuart M. Flashman



Serving public interest and private clients since 1990

Stuart Flashman
Attorney

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Oakland, CA 94618-1533

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