

1 Michael J. Brady  
101 Marshall St., Ste. 500  
2 Redwood City, CA 94063  
Telephone: (650) 364-8200  
3 Fax: (650) 780-1701  
e-mail: mbrady@rmkb.com

4 Stuart M. Flashman (SBN 148396)  
5 5626 Ocean View Dr.  
Oakland, CA 94618-1533  
6 Telephone/Fax: (510) 652-5373  
e-mail: [stu@stuflash.com](mailto:stu@stuflash.com)

[Exempt from filing fees per Government  
Code §6103]

7 Attorneys for Defendants John Tos, Aaron Fukuda, and County of Kings

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

10 HIGH-SPEED RAIL AUTHORITY AND  
11 HIGH-SPEED PASSENGER TRAIN  
12 FINANCE COMMITTEE, for the STATE OF  
CALIFORNIA

13 Plaintiffs

14 vs.

15 ALL PERSONS INTERESTED IN THE  
16 MATTER OF THE VALIDITY OF THE  
17 AUTHORIZATION AND ISSUANCE OF  
GENERAL OBLIGATION BONDS TO BE  
18 ISSUED PURSUANT TO THE SAFE,  
RELIABLE HIGH-SPEED PASSENGER  
TRAIN BOND ACT FOR THE 21<sup>ST</sup>  
CENTURY AND CERTAIN PROCEEDINGS  
AND MATTERS RELATED THERETO,,

19 Defendants

No. 34-2013-00140689 filed March 19, 2013

Assigned for all purposes to Department 31,  
Hon. Michael P. Kenny

REQUEST FOR JUDICIAL NOTICE OF  
DEFENDANTS JOHN TOS, AARON  
FUKUDA, AND COUNTY OF KINGS IN  
OPPOSITION TO VALIDATION  
COMPLAINT

20 Defendants John Tos, Aaron Fukuda, and County of Kings request that the Court take  
21 judicial notice of the following:

22 1) Under Evidence Code §452(d), of the Court files for the related case *Tos et al. v.*  
23 *California High-Speed Rail Authority et al*, Sacramento County Superior case number 34-2011-  
24 00113919-CU-MC-GDS, and specifically of the administrative record lodged therein, the Briefs  
25 submitted therein and the Declaration of Quentin L. Kopp filed therein, and the Court's Order on  
26 Submitted Matter issued on August 16, 2013.

27 2) Under Evidence Code §452(c) and (d), of Executive Order W-48-93, signed by then-

1 governor Pete Wilson in 1993. A true and correct copy of that order, as contained in the Final  
2 Report of the California Intercity High-Speed Rail Commission and included in the  
3 Administrative Record lodged with this Court in the case *Town of Atherton et al. v. California*  
4 *High-Speed Rail Authority*, Sacramento County Superior Court case number 34-2008-80000022-  
5 CU-WM-GDS, is attached hereto as Exhibit A.

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 **A. JUDICIAL NOTICE SHOULD BE TAKEN OF THE REQUESTED CASE AND**  
8 **DOCUMENTS.**

9 Defendants John Tos *et al.* ask that the Court take judicial notice of the records of the  
10 related case *Tos et al. v California High-Speed Rail Authority et al.* and of a 1993 executive  
11 order creating the California Intercity High-Speed Rail Commission. In general, judicial notice  
12 requires both that 1) the documents be of the type for which judicial notice is appropriate under  
13 Evidence Code §451 or §452 and 2) the documents be relevant to issues to be decided in the  
14 case. (*See, e.g., California Redevelopment Assn. v. Matosantos* (2013) 212 Cal.App.4th 1457,  
15 1490 fn.2.) In addition, in cases such as this where a decision made by an administrative body is  
16 being challenged, the document must either have been placed before the decision-making body  
17 or fall into one of several narrow exceptions to that requirement. (*Western States Petroleum*  
18 *Assn. v. Superior Court* (1995) 9 Cal.4th 559.) The documents for which judicial notice is  
19 requested here fall within the required categories.

20 1. RECORDS OF *TOS ET AL. V. CALIFORNIA HIGH-SPEED RAIL AUTHORITY*  
21 *ET AL.*

22 Under Evidence Code §452(d), the Court is entitled to take judicial notice of any court in  
23 this state. (*People v. McKee* (2010) 47 Cal.4th 1172, 1218.) Judicial notice is especially  
24 appropriate here, where the Court has already identified the case as a related case. (*Laabs v. City*  
25 *of Victorville* (2008) 163 Cal.App.4th 1242, 1266 fn. 12, 1283 [dissenting opinion].) These court  
26 records are also relevant to issues that are before the Court in this case, notably the degree to  
27 which the project for which bond authorization has been requested is the same as that for which  
28 voter approval was given, as well as whether issuance of bonds for construction activities was  
29 and is “necessary or desirable.” Further, these court case and its records were obviously before  
30

1 the Authority, which is a named defendant in the case, and were placed before the Committee  
2 through the letter sent to the Committee Chairperson, Treasurer Bill Lockyer, by counsel for the  
3 Plaintiffs Tos et al. (See, Exhibit A to Declaration of Stuart M. Flashman.)

4 2. EXECUTIVE ORDER W-48-93

5 Under Evidence Code §452(c), the Court is entitled to take judicial notice of official acts  
6 of the executive branch of the state of California. (*Western States Petroleum Assn. v. State Dept.*  
7 *of Health Services* (2002) 99 Cal.App.4th 999, 1002 fn.1 [court took judicial notice of the  
8 governor's executive order, among other things].) The executive order establishing the  
9 California Intercity High-Speed Rail Commission is similarly subject to judicial notice. It is also  
10 subject to judicial notice under §452(d) as part of the administrative record lodged with the court  
11 (the record page number is shown at the bottom of the pages) in the case *Town of Atherton et al*  
12 *v. California High-Speed Rail Authority* (34-2008-80000022-CU-WM-GDS).

13 While this executive order was not before the Committee, and was not before the  
14 Authority in these proceedings, it fits into the narrow exception to extra-allowing record  
15 evidence where the evidence is intended only to provide general background information.  
16 (*Western States Petroleum Assn. v. Superior Court, supra*, 9 Cal.4<sup>th</sup> at 579.) For that reason,  
17 judicial notice should be granted.

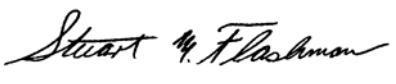
18 Dated: August 22, 2013

19 Respectfully submitted,

20 Michael J. Brady

21 Stuart M. Flashman

22 Attorneys for Defendants John Tos,  
23 Aaron Fukuda, and County of Kings

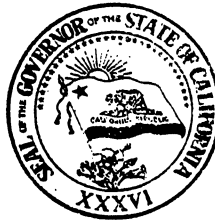
24 by: 

# **Exhibit A**

---

EXECUTIVE DEPARTMENT  
STATE OF CALIFORNIA

---



EXECUTIVE ORDER W-48-93

WHEREAS, California must develop alternative modes of passenger transportation to meet increasing demands on its existing transportation system, address air quality concerns and reduce fossil fuel dependency; and

WHEREAS, a high speed ground transportation (HSGT) system offers the opportunity to stimulate the growth of research, development, manufacturing and support industries associated with rail transportation in California; and

WHEREAS, HSGT passenger services are environmentally attractive alternatives to auto and air travel, and the congestion caused by their use; and

WHEREAS, the federal Intermodal Surface Transportation Efficiency Act (ISTEA) contains several provisions to encourage development of HSGT, including MagLev and steel-wheel-on-rail technologies, and identifies federal funds to facilitate the creation of a viable commercial high speed ground transportation industry within the United States; and

WHEREAS, the State of California is in a unique position from both market and geographic perspectives to attract the investment capital needed to implement a HSGT system as a public/private partnership, but initial groundwork is needed to make this promise a reality; and

WHEREAS, State of California should identify key transportation corridors with high potential for HSGT implementation in California which would be integrated into and coordinated with California's overall transportation system and provide improved mobility for the people of the State of California; and

WHEREAS, the San Diego-Los Angeles-San Francisco corridor is the most heavily travelled corridor in the United States and is considered one of the most viable candidate corridors of HSGT development; and

WHEREAS, the San Diego-Los Angeles-San Francisco rail corridor through the San Joaquin Valley has been federally designated as one of five high speed passenger rail corridors nationwide; and

WHEREAS, the HSGT endeavor is the largest public/private infrastructure project contemplated by the State of California, requiring full and careful consideration of its policy implications; and

WHEREAS, close coordination between private industry and all levels of government is needed to develop the sound policy and financial framework to make this effort succeed; and

WHEREAS, it should be the policy of the State of California that construction of a high speed rail network should be started by the end of this century;

NOW, THEREFORE, I, PETE WILSON, Governor of the State of California, by virtue of the power and authority vested in me by the Constitution and statutes of the State of California, do hereby issue this order to become effective immediately:

1. There is hereby created an Intercity High Speed Ground Transportation Task Force, to be chaired by the Secretary of the Business, Transportation, and Housing Agency.
2. Membership on the Task Force will include the Director of the California Department of Transportation, two members of the California Transportation Commission, one member of the California Public Utilities Commission, the Secretary for Environmental Protection, one designee of the Chairman of the Senate Transportation Committee, one designee of the Assembly Minority Leader, one representative from a regional transportation agency, and two representatives from the transportation and public finance industries with an expertise in high speed rail transportation, and a member of a public interest group with an expertise in transportation.
3. To assist in their activities, the Task Force may invite individuals to become non-voting ex officio members, such as representatives of federal, state and local governments, institutions of higher education, representatives of the railroad and aeronautics industries, labor unions, local and regional economic development organizations, trade associations, and others as appropriate. Each Task Force member who is a state or local officer shall be subject to the conflict of interest code adopted and promulgated by his or her agency or appointing authority. All other members, including non-voting ex officio members, shall be subject to the conflict of interest code adopted and promulgated by the California Transportation Commission.
4. The Task Force shall recommend strategies to develop a multi-phase public/private partnership effort leading to the construction of a California High Speed Ground Transportation passenger system, including plans to enable California to gain any federal funds intended to assist in the development of a high speed rail system.
5. The Task Force shall develop, by December 31, 1993, an overall plan -- a visionary document -- outlining the development of such a system, which will include identifying transportation corridors within the State which have great potential for high speed ground transportation.
6. The Task Force also shall develop, by June 30, 1995, a detailed financial and construction plan to enable the construction of at least one high speed transportation corridor by the end of this century.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 30th day of March 1993.

*Pete Wilson*

Governor of California

ATTEST:

*Martha Fong Eu*

Secretary of State

