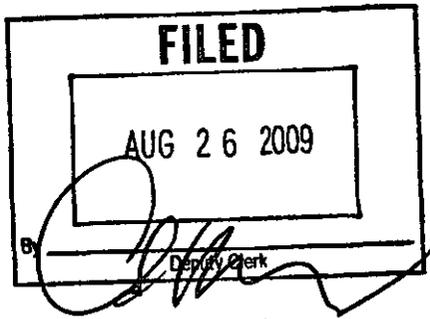


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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

TOWN OF ATHERTON, a Municipal Corporation,
PLANNING AND CONSERVATION LEAGUE, a California nonprofit corporation,
CITY OF MENLO PARK, a Municipal Corporation,
TRANSPORTATION SOLUTIONS DEFENSE AND EDUCATION FUND, a California nonprofit corporation,
CALIFORNIA RAIL FOUNDATION, a California nonprofit corporation,
and BAYRAIL ALLIANCE, a California nonprofit corporation, and other similarly situated entities,

Case No.
34-2008- 80000022

RULING ON SUBMITTED MATTER

Petitioners and Plaintiffs,
v.

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

Respondents and Defendants.

_____ /

This matter came on for hearing on May 29, 2009. The matter was argued and submitted. The Court took the matter under submission. The Court, having considered the papers, the administrative record which was admitted into evidence

1 at the hearing, and the arguments of the parties, makes its
2 ruling as follows.

3 Petitioners challenge the decision of respondent and
4 defendant California High Speed Rail Authority ("CHSRA" or
5 "the Authority") to approve the Bay Area to Central Valley
6 High Speed Train Project ("the Project"), including
7 specifically choosing an alignment for the Project.
8 Respondent chose an alignment running through Pacheco Pass
9 rather than the other major alternative alignment which ran
10 through Altamont Pass.

11 Petitioners contend that respondent has not provided
12 legally adequate review under the California Environmental
13 Quality Act, Public Resources Code section 21000 et seq.
14 ("CEQA"). Petitioners contend that respondent's actions are
15 illegal as they violate CEQA and the California Code of
16 Regulations, Title 14, section 15000 et seq. ("CEQA
17 Guidelines").

18 Petitioners contend that the Final Program
19 Environmental Impact Report ("FPEIR") for the Project was
20 inadequate in several respects. They contend that it failed
21 to include an adequate description of the project and
22 feasible alternatives. They contend it failed to adequately
23 identify and mitigate the Project's significant impacts, and
24 that its alternatives analysis was inadequate and improperly
25 predisposed towards the Pacheco alignment. Petitioners also
26 contend that respondent Authority improperly refused to
27 recirculate the Draft Program Environmental Impact Report
28 ("DPEIR") after Union Pacific Railroad announced it was
unwilling to allow use of its right-of-way, and that

1 respondent Authority failed to consider or respond to Menlo
2 Park's comment letter on the DPEIR.

3
4 I. STANDARD OF REVIEW

5 Petitioners contend that this challenge is governed by
6 Public Resources Code section 21168. Petitioners contend
7 that under that standard of review, "the courts' inquiry
8 shall extend only to whether there was a prejudicial abuse
9 of discretion. Such an abuse is established if the agency
10 has not proceeded in a manner required by law or if the
11 determination or decision is not supported by substantial
12 evidence." (Petitioners' opening brief, 8:24-9:2, citing
13 *Ebbets Pass Forest Watch v. California Dept. of Forestry &*
14 *Fire Protection* (2008) 43 Cal.4th 936, 944.)

15 Respondent contends that its action was quasi-
16 legislative and that review is governed by Public Resources
17 Code section 21168.5, which limits the Court's inquiry to
18 whether there was a prejudicial abuse of discretion.

19 Respondent states that under this standard, a prejudicial
20 abuse of discretion is established if the agency has not
21 proceeded in a manner required by law or if the decision is
22 not supported by substantial evidence. Respondent further
23 states that a prejudicial abuse of discretion is established
24 if the agency has not proceeded in a manner required by law
25 or if the decision is not supported by substantial
26 evidence. (Respondent's brief in Opposition to Petition,
27 6:25-7:3, citing *Citizens of Goleta Valley v. Board of*
28 *Supervisors* (1990) 52 Cal.3d 553, 564 [Goleta II].)

The Court concludes that respondent's action was quasi-
legislative and that review is governed by Public Resources

1 Code section 21168.5. However, the two code sections embody
2 essentially the same standard of review, i.e., whether
3 substantial evidence supports the agency's determination.
4 (*Laurel Heights Improvement Assn. v. Regents of the*
5 *University of California ("Laurel Heights II")* (1993) 6
6 Cal.4th 112, 1133, fn. 17; *Laurel Heights Improvement Assn.*
7 *v. Regents of the University of California ("Laurel Heights*
8 *I")* (1988) 47 Cal.3d 376, 392, fn. 5.) Thus petitioner's
9 reliance on section 21168 in its brief does not affect the
10 outcome of this case.

11 An EIR is presumed adequate, and the plaintiff in a
12 CEQA case has the burden of proving otherwise. (*Al Larson*
13 *Boat Shop v. Board of Harbor Commissioners* (1993) 18
14 Cal.App.4th 729, 749.)

15 II. ADEQUACY OF THE FINAL PROGRAM ENVIRONMENTAL IMPACT
16 REPORT FOR THE PROJECT

17 A. WHETHER THE FPEIR FAILED TO INCLUDE AN ADEQUATE
18 DESCRIPTION OF THE PROJECT AND FEASIBLE ALTERNATIVES

19 1. One of petitioners' principal contentions is
20 that the project description in the FPEIR failed to provide
21 sufficient detail on the Pacheco alignment to determine the
22 project's impacts in displacing residents and businesses.
23 The FPEIR and the Authority's findings assume that most, if
24 not all, of the proposed high-speed rail line in the area
25 between San Jose and Gilroy would be built within existing
26 right-of-way, "the existing Caltrain corridor." (AR
27 A000031; see also B004187.) However, Union Pacific Railroad
28 had informed the Authority just prior to the publication of
the FPEIR that it would not allow the Authority to use any
of its right-of-way for the Project. (AR E000027.) And

1 after the FPEIR was released, but before the Authority
2 certified the FPEIR and made the related findings and
3 decisions, Union Pacific submitted a longer letter
4 reiterating its unwillingness to share its tracks with High-
5 Speed Rail vehicles. (AR E000003-E000004.)

6 However, the FPEIR appears to show that the portion of
7 the chosen Pacheco alignment between San Jose and Gilroy
8 follows the Union Pacific right-of-way (AR B003944, B003955,
9 B003961, B005105-5109, B006293.) In many places it shares
10 the right-of-way with the Union Pacific line (e.g., AR
11 B005292, B005298, B005300) and is sandwiched between the
12 Union Pacific right-of-way and Monterey Road/Highway (AR
13 B005300, G001425-G001437). If Union Pacific will not allow
14 the Authority to use its right-of-way, it appears it will be
15 necessary for the Authority to obtain additional right-of-
16 way outside of this area, requiring the taking of property
17 and displacement of residents and businesses. However, none
18 of this was addressed in the FPEIR.

19 Respondent argues that a programmatic EIR does not need
20 to contain a high degree of detail, and that detailed
21 information can be deferred to a later site-specific project
22 EIR. (CEQA Guidelines, sections 15146, 15152; *In re Bay*
23 *Delta Programmatic Environmental Impact Report Cases* (2008)
24 43 Cal.4th 1143, 1169-1172.) Respondent contends that the
25 Project description in the FPEIR contains an adequate level
26 of detail for a programmatic EIR. It argues that this EIR
27 was intended to support the Authority in making the
28 fundamental choice of a preferred alignment and station
locations, but not select a precise footprint for high speed
train facilities. More importantly, respondent argues, the

1 FPEIR does not assume use of the Union Pacific right-of-way
2 between San Jose and Gilroy, but rather that it depicts the
3 HST tracks adjacent to Union Pacific's right-of-way; see,
4 e.g., Figure PP-6 at B005292. Respondent contends that this
5 figure also shows there is room for the HST tracks between
6 the Union Pacific right-of-way and Monterey Highway
7 (B005292).

8 Petitioners contend that Figure PP-6 (AR B005292)
9 identifies "Existing ROW" for "Monterey Road" but does not
10 explicitly identify the existing right-of-way for the UP
11 tracks. Petitioners contend that Figures PP-12 (AR B005296)
12 and PP-14 (AR B005298), by contrast, clearly show the HST
13 right-of-way as lying within that existing right-of-way.
14 Several maps show little room between the existing UP tracks
15 and the Monterey Highway (e.g. AR G001432-G001435.)
16 Respondent, in oral arguments, argued a different
17 interpretation of Figure PP-14.

18 The Court concludes that the description of the
19 alignment of the HSR tracks between San Jose and Gilroy was
20 inadequate even for a programmatic EIR. The lack of
21 specificity in turn results in an inadequate discussion of
22 the impacts of the Pacheco alignment alternative on
23 surrounding businesses and residences which may be
24 displaced, construction impacts on the Monterey Highway, and
25 impacts on Union Pacific's use of its right-of-way and spurs
26 and consequently its freight operations.

26 2. Petitioners contend that the project description
27 failed to provide an adequate explanation or delineation of
28 the project's costs. They contend that the cost estimates
in the FPEIR were inaccurate and skewed to favor the Pacheco

1 Pass alignment alternative by significantly understating the
2 acquisition costs for permanent right-of-way and temporary
3 construction-period right-of-way. They also contend that
4 the cost analyses for Altamont Pass alignment alternatives
5 considered only the cost of a new high or low bridge but not
6 the option of "piggybacking" on the existing Dumbarton rail
7 bridge.

8 The authorities cited by petitioners do not require
9 project cost information to be in an EIR; case authority
10 does, however, hold that cost information is required to
11 support a lead agency's CEQA findings when it rejects
12 alternatives as economically infeasible. (*Uphold Our*
13 *Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587;
14 *Citizens of Goleta Valley v. Board of Supervisors* ("Goleta
15 I") (1988) 197 Cal.App.3d 1167.) The Authority did not
16 reject all of the Altamont alternatives as economically
17 infeasible. Furthermore, the Court finds that the FPEIR's
18 cost information is supported by substantial evidence. The
19 evidence includes Chapter 4 (B004624-647) which in turn
20 refers to Appendices 4A and B (B005971-6086, B006087-6180);
and Appendix D (B004637; B004646; B006243).

21 3. Petitioners contend that the FPEIR failed to
22 accurately and impartially describe the operating
23 characteristics of the project alternatives. They contend
24 that the FPEIR failed to accurately describe the frequency
25 of service for the Altamont and Pacheco alternatives in that
26 it did not consider "train-splitting."

27 The Court finds that the EIR provides an adequate
28 description of HSR operations, supported by substantial
evidence. The ridership forecasts were developed by experts

1 in the field of transportation modeling and were subject to
2 three independent peer review panels. (See C001886-88,
3 C001879-964, C001954-60, E004118-148; E004149-187; E004188-
4 97.) Substantial evidence supports respondent's approach of
5 not using train-splitting on main trunk service. Evidence
6 in the record, including evidence submitted by petitioners,
7 shows that train-splitting and coupling is operationally
8 disruptive, and that while some HST systems worldwide use
9 train-splitting and coupling, the use is very limited. (See
10 B004716, B006694, B008032, B008035-36, B008037.)

11 Petitioners also contend that the FPEIR failed to
12 adequately and fairly describe the ridership of the Altamont
13 and Pacheco alternatives. They contend the Pacheco
14 alignment would not draw significant additional recreational
15 ridership because the limited number of stops on the HSR
16 would make it less attractive than the already-existing
17 Caltrain "baby bullet" route, and any additional ridership
18 would be at the expense of Caltrain ridership rather than
19 taking cars off the road.

20 The Court finds that the ridership modeling and
21 forecasts performed by the Authority and the MTC are
22 substantial evidence to support the FPEIR's description of
23 the Pacheco alternative as having higher "recreational and
24 other" ridership than Altamont pass. The ridership analysis
25 concluded that it taps into a very wide market in Santa
26 Clara County (B006696) and also creates a sizeable HST
27 market to and from the Monterey Bay area, a market virtually
28 non-existent for the Altamont Pass alternative (B006695).
The ridership analysis also suggests that some individuals
will pay a premium to ride the HST rather than Caltrain in

1 this corridor based on the service being faster and more
2 reliable. (B006696.)

3 B. WHETHER THE FPEIR AND THE AUTHORITY'S FINDINGS
4 FAILED TO ADEQUATELY IDENTIFY AND MITIGATE THE PROJECT'S
5 SIGNIFICANT IMPACTS

6 Petitioners contend the Authority understated the
7 project's potentially significant impacts and overstated the
8 degree to which those impacts would be adequately
9 mitigated. Petitioners' primary contentions regarding
10 impacts concern biological impacts, growth-inducing impacts,
11 and local impacts along the San Francisco Peninsula (noise,
12 vibration, visual, taking of property and severance impacts,
13 and impacts on mature and heritage trees).

14 1. Exhaustion of administrative remedies:

15 Respondent contends that petitioners failed to exhaust
16 administrative remedies as to any defect in the respondent's
17 CEQA findings on impacts and mitigation, and that therefore
18 the exhaustion of administrative remedies doctrine codified
19 in Public Resources Code section 21177 bars petitioners'
20 claim that respondent's CEQA findings on impacts and
21 mitigation are not supported by substantial evidence. The
22 authorities cited by respondent, including *Mira Mar Mobile*
23 *Community v. City of Oceanside* (2004) 119 Cal.App.4th 447,
24 do not support respondent's contention that it was necessary
25 to specifically object to proposed findings. The Court
26 concludes that the criticisms, comments and objections made
27 to the EIR were sufficient to exhaust administrative
28 remedies as to the issues raised in this case.

2. Biological impacts: Petitioners contend that
the analysis and mitigation of the impacts to the Grasslands

1 Ecological Area ("GEA") along the Pacheco alignment and to
2 the Don Edwards National Wildlife Refuge ("Refuge") along
3 the Altamont alignment were not adequate, were neither equal
4 nor impartial, and were lacking in detail. Petitioners also
5 contend that certain factors are considered for the GEA but
6 not for the Refuge, and that respondent did not adequately
7 consider comments that replacing an existing bridge
8 embankment with an elevated structure on piles would
9 actually enhance conditions in the Refuge.

10 The Court finds that substantial evidence supports
11 respondent's treatment of biological impacts to the GEA and
12 the Refuge. The impacts analysis and mitigation section of
13 the EIR (see generally AR B004462-4538), read together with
14 the responses to comments (see B006584 et seq.; G000807-
15 00814 [Summary of Key Issues on the DPEIR]) constitutes an
16 adequate and impartial analysis of the biological impacts on
17 the two areas. The same methodology was used throughout the
18 area. The level of detail was adequate for a programmatic
19 EIR. The FPEIR's identification of a more detailed
20 mitigation strategy for the GEA (AR B004537) but not for the
21 Refuge is not unreasonable because the lands within the
22 Refuge boundary are already protected. The record does not
23 support petitioners' contention that the inclusion of a more
24 detailed mitigation strategy for the GEA and not the Refuge
25 was the cause of concerns expressed by the U.S. Fish and
26 Wildlife Service (B006366) and the U.S Environmental
27 Protection Agency (B006358) about use of areas within the
28 refuge.

3. Growth-inducing impacts: Petitioners contend
that the analysis of growth-inducing impacts was not

1 adequate. They contend that there was not a sufficient
2 analysis of the impacts in three rural counties—San Benito,
3 Santa Cruz, and Monterey Counties. Petitioners contend that
4 the HSR will extend the area in which existing employees can
5 live and commute to a job in a distant urban center, and
6 that such growth is not analyzed in the FPEIR. Instead,
7 there was analysis as to eleven other counties and San
8 Benito, Santa Cruz, and Monterey Counties were merely
9 included in "the rest of California."

10 The Court finds that the FPEIR contains an analysis of
11 growth-inducing impacts which is sufficient to satisfy
12 CEQA. (Pub. Resources Code, sec. 21100, subd. (b)(5); CEQA
13 Guidelines, sec. 15126(d), 15126.2(d).) Nothing in the
14 Guidelines or in the cases requires more than a general
15 analysis of projected growth. (*Napa Citizens for Honest*
16 *Government v. Napa County Bd. of Supervisors* (2001) 91
17 Cal.App.4th 342, 369.) Respondent relied on established
18 modeling programs, the Transportation and Economic
19 Development Impact System (TREDIS) and the California
20 Urbanization and Biodiversity Analysis (CURBA). Stations
21 will be located in already-urbanized areas and thus the bulk
22 of the growth increase will occur in already urbanized
23 areas. Petitioners' claim that the HSR will result in
24 greater development in the three more distant rural counties
25 is based on speculation, not matters as to which they have
26 technical expertise or which are based on relevant personal
27 observations. (See *Bowman v. City of Berkeley* (2004) 122
28 Cal.App.4th 572, 583.) Respondent's responses to comments
explained that the system would not result in a significant
increase in commute accessibility to the Bay Area for a

1 number of reasons, including the limited number of stations,
2 the localized accessibility benefits provided by these
3 limited stations, the lack, of local transit options in
4 outlying areas, the higher cost of HST use for shorter trips
5 compared to auto use, and time considerations. (B006647-48;
6 B006712-13.) The Court finds the analysis to be
7 sufficient.

8 4. Local impacts along the San Francisco Peninsula

9 -
10 Petitioners contend that the Project will result in
11 significant noise, vibration, and visual impacts; that it
12 will result in significant land use impacts, including
13 specifically taking of property and severance impacts; and
14 that it will impact mature and heritage trees along the
15 right-of-way:

16
17 a. Noise, Vibration, and Visual Impacts

18 Petitioners contend that section 3.4 of the FPEIR,
19 addressing the project's noise and vibrational impacts,
20 failed to identify specific quantifiable standards or
21 criteria used to determine whether the impacts would be
22 significant, and that it identified qualitative criteria but
23 failed to provide evidence by which the public could
24 determine whether these criteria had been met. Further,
25 respondent found that vibrational impacts would be reduced
26 to a level of insignificance (AR000024), but petitioners
27 contend there is no evidence in the record to support this
28 finding.

1 As for noise and vibration impacts, petitioners contend
2 that the FPEIR does not provide appropriately detailed
3 information to show that noise impacts will be reduced below
4 a level of significance. The FPEIR also identifies the need
5 for extensive soundwalls of up to 16 feet in height, but
6 petitioner contends respondent does not address the
7 potential visual impact of these barriers and improperly
8 puts off consideration of such impacts to the project level
9 environmental review.

10 The Court finds that the FPEIR contains an adequate
11 level of detail regarding noise for a program EIR. The
12 analysis used Federal Railroad Administration and Federal
13 Transit Administration criteria and tools to assess noise.
14 (B004100-4105.) The FRA manual contemplates that the
15 evaluation will first look at general questions.
16 (C008070.) It concluded that grade separations at existing
17 crossings would result in noise benefits, and listed
18 mitigation strategies, including design practices, to reduce
19 impacts. (B004120-4137.)

20 The FPEIR also considered all HST alternatives to
21 result in significant noise and vibration impacts for
22 purposes of the programmatic analysis. (B004129.) It noted
23 that more detailed mitigation strategies for noise and
24 vibration impacts would be developed in the next stage of
25 environmental analysis. (B004129-30.) Response to comments
26 noted that project-level environmental review will consider
27 design and profile variations to reduce impacts, as well as
28 design options for noise barriers. (B006480, B006538-40.)
The FRA manual identifies means of mitigating vibrational

1 impacts (C008147; C008176-8180) and noise impacts (C008085,
2 C008117-8122).

3 However, with regard to vibration impacts, the FPEIR
4 states:

5 "Although mitigation measures will
6 reduce vibration impact levels, at the
7 programmatic level *it is uncertain*
8 *whether the reduced vibration levels*
9 *will be below a significant impact.* The
10 type of vibration mitigation and
11 expected effectiveness to reduce the
12 vibration impacts of the HST Alignment
13 Alternatives to a less-than-significant
14 level will be determined as part of the
15 second-tier project-level environmental
16 analyses." (B004131 [emphasis added].)

17 Nevertheless, the Authority, in its CEQA Findings of
18 Fact, found that, as to the impact of vibrations, specified
19 mitigation strategies "will reduce this impact to a less-
20 than significant level." (A000025 [emphasis added].)

21 The Court finds that in light of this contradiction
22 between the FPEIR and the CEQA Findings, the Authority's
23 finding that the mitigation strategies will reduce the
24 vibration impact to a less-than-significant level is not
25 supported by substantial evidence.

26 Visual impacts: The FPEIR recognizes that sound
27 barriers may be necessary mitigation measures along some
28 portions of the HST route through the Peninsula.
Petitioners contend that the visual impacts of these
barriers should have been analyzed in more detail. However,
the extent to which noise barriers would be used could not
be known until the next stage of environmental analysis,
when engineering and design considerations will be applied
on a site-specific basis. (B004129-30.) Sound barriers are

1 discussed in FPEIR section 3.9, Esthetics and Visual
2 Resources, along with mitigation strategies. (B004305-
3 4307.) Visual and esthetic impacts were considered
4 significant and unavoidable. (B004307.) The FPEIR
5 identified subsequent analysis which should be performed.
6 (Id.) Respondent found that as part of the site-specific
7 design, many of the impacts on aesthetics and visual
8 resources can be avoided or substantially mitigated, but
9 that it did not have sufficient evidence to make that
10 determination on a program-wide basis. Therefore, for
11 purposes of this programmatic EIR, esthetic and visual
12 impact was considered significant and unavoidable.
13 (A000041.) Respondent adopted a Statement of Overriding
14 Considerations. (A000104-109.)

15 The Court finds that petitioners have failed to
16 establish that respondent failed to adequately analyze the
17 visual impacts of the Project or that it otherwise abused
18 its discretion.

19 b. Land Use Impacts

20 Petitioners contend that the Project will result in
21 significant land use impacts, including taking of property
22 and severance impacts. Atherton contended in its comment
23 letter that the proposed four-track alignment would result
24 in the need to take additional property beyond the existing
25 right-of-way. (B006530.) However, the response to this
26 comment (B006537-40) and the CEQA findings (A000029-33)
27 indicated that the HST tracks were expected to fit within
28 the Caltrain right-of-way.

As discussed elsewhere in this Court's ruling, Union
Pacific has stated it is unwilling to allow its right-of-way

1 to be used for the project. The need for the taking of
2 additional property is a related issue that will be required
3 to be analyzed in connection with further analysis of the
4 impact of Union Pacific's denial of use of its right-of-
5 way.

6 c. Mature and Heritage Trees

7 Petitioners contend that the Project will impact mature
8 and heritage trees along the right-of-way. But the FPEIR's
9 response to Atherton's comments indicates, in part, that a
10 more detailed review of the impacts on mature and heritage
11 trees would be performed at a project level environmental
12 review (B06538) and that the HST is not expected to require
13 the removal of trees along the right-of-way in Atherton
14 (B006538).

15 The Court finds that respondent did not need to conduct
16 a more detailed review of the impacts on trees at this level
17 and properly deferred such analysis to project-level
18 environmental review.

19 C. WHETHER THE FPEIR'S ALTERNATIVES ANALYSIS WAS
20 INADEQUATE AND IMPROPERLY PREDISPOSED TOWARDS THE PACHECO
21 ALIGNMENT

22 Petitioners contend that the Authority's findings
23 improperly determined that all Altamont alternatives were
24 infeasible. Petitioners contend that it improperly
25 determined that there were cost and regulatory obstacles to
26 a Dumbarton Bay crossing; that the decision to eliminate
27 several Altamont choices because of lower ridership and
28 frequency of service was not supported by substantial
evidence; and that construction difficulties for the
Altamont alternatives should not have been the basis for

1 eliminating those alternatives. Petitioners contend
2 solutions and answers existed to meet each of the issues.
3 Petitioners further contend that the Authority's decision to
4 dismiss an alternative using the median of U.S. Highway 101
5 or 1-280 through the Peninsula without analysis violated
6 CEQA.

7 The Court finds that the FPEIR studied a reasonable
8 range of alternatives and presented a fair and unbiased
9 analysis. There were dozens of different ways to build the
10 HST to connect the Bay Area and the Central Valley. The EIR
11 divided the study area into six study corridors, examined
12 different alignment alternatives and station locations
13 options within each corridor, and further broke down the
14 alignment alternatives into segments.

15 Substantial evidence supports the FPEIR's discussion of
16 operational and environmental issues related to the Altamont
17 Pass alternatives. The potential environmental impacts of
18 the alternatives were discussed in Chapter 3 of the FPEIR.
19 Chapter 7 of the EIR summarizes and compares the
20 environmental consequences of 21 representative network
21 alternatives, defining the major tradeoffs among the
22 possible network alternatives. This fostered informed
23 public participation and decision-making. (*Laurel Heights*
24 *Improvement Assn. v. Regents of the University of California*
25 (*"Laurel Heights I"*) (1988) 47 Cal.3d 37, 404.)

26 The Court finds that substantial evidence in the record
27 supports the FPEIR's explanation that putting the HST system
28 over the existing, out-of-service Dumbarton Rail Bridge is
not reasonable. (See, e.g., GB003926-27 [existing retrofit
plans involve only a single track], B006687 [HST requires

1 two separated and dedicated tracks], B006368, B006687,
2 B006742.) The EIR reasonably concludes that a shared
3 Caltrain/HST Dumbarton crossing would require at least a new
4 double track bridge. (B003926-927, B006687; G000809.) The
5 Bay Area regional Rail Plan reached the same conclusion.
6 (D001484.) Furthermore, the existing Dumbarton Rail Bridge
7 has two swing bridges that pivot to allow ship traffic, a
8 systemic vulnerability which is inconsistent with the speed,
9 reliability and safety requirements of the HST system.
10 (B006687, B004044.)

11 The Court also finds that the FPEIR reasonably
12 concluded that train-splitting was not a reasonable
13 alternative, and that avoiding additional branch splits
14 would benefit train operations and service. The FPEIR and
15 the CEQA Findings treat the branch issue equally for both
16 Altamont Pass and Pacheco Pass.

17 The Court also finds that the FPEIR accurately
18 describes construction challenges for the Altamont Pass with
19 a Bay crossing or using the I-880 median. The challenges
20 for a Bay crossing include loss of wetland habitats in the
21 Bay associated with a new Bay crossing, the potential
22 difficulty of obtaining the types of permits and
23 environmental clearances needed to build a new Bay crossing
24 because of the limits which federal law imposes on
25 activities within the Don Edwards National Wildlife Refuge,
26 and the permitting jurisdiction of the Bay Conservation and
27 Development Commission. The record shows that the
28 construction challenges for use of the I-880 median are
complex - a complexity also recognized by the Metropolitan
Transportation Commission.

1 The Court further concludes that the record supports
2 the Authority's decision to exclude from further detailed
3 study an alternative using the median of U.S. Highway 101 or
4 1-280 through the Peninsula. The primary reason for
5 eliminating these alignment alternatives was the need to
6 construct an aerial guideway for the train adjacent to and
7 above the existing freeway, while maintaining freeway access
8 and capacity during construction. Such need would result in
9 substantially increased construction costs and
10 constructability issues. These alignments would also have
11 significant or potentially significant environmental
12 impacts, due to height and proximity to wildlife preserves.
13 The evidence supports the elimination of the 101 and 280
14 alignment alternatives from detailed study.

15 III. WHETHER THE AUTHORITY IMPROPERLY REFUSED TO RECIRCULATE
16 THE DRAFT PROGRAM EIR AFTER UNION PACIFIC'S ANNOUNCEMENT OF
17 ITS
18 UNWILLINGNESS TO ALLOW USE OF ITS RIGHT-OF-WAY

19 Petitioners contend that portions of the Pacheco
20 alignment as analyzed by respondent are dependent upon the
21 use of Union Pacific Railroad's right-of-way, and that
22 respondent improperly refused to recirculate the DPEIR after
23 Union Pacific Railroad announced its unwillingness to allow
24 use of its right-of-way shortly before respondent's approval
25 of the Pacheco alignment.

26 Respondent contends that the alignment is not dependent
27 upon the use of Union Pacific's right-of-way.

28 However, this Court concludes that various drawings,
maps and photographs within the administrative record
strongly indicate that it is. The record further indicates

1 that if the Union Pacific right-of-way is not available,
2 there may not be sufficient space for the right-of-way
3 needed for the HST without either impacting the Monterey
4 Highway or without the takings of additional amounts of
5 residential and commercial property.

6 These are significant impacts which were sufficient to
7 trigger the recirculation of the FPEIR. However, respondent
8 failed to take such further action after it received Union
9 Pacific's statement of its position.

10 IV. WHETHER THE AUTHORITY FAILED TO CONSIDER OR RESPOND TO
11 MENLO PARK'S COMMENT LETTER ON THE DPEIR

12 This issue is moot in light of the Court's ruling
13 denying the motion to augment the administrative record. In
14 that ruling, the Court determined that the evidence was
15 insufficient to establish that Menlo Park's comment letter
16 was received by the Authority. The Authority was not
17 required to consider or respond to a comment letter it did
18 not receive.

19 V. RESPONDENT'S CONTENTION THAT PETITIONERS FAILED TO
20 EXHAUST ADMINISTRATIVE REMEDIES

21 Respondent contends that petitioners failed to exhaust
22 administrative remedies as to any defect in the respondent's
23 CEQA findings on impacts and mitigation, and that therefore
24 the exhaustion of administrative remedies doctrine codified
25 in Public Resources Code section 21177 bars petitioners'
26 claim that respondent's CEQA findings on impacts and
27 mitigation are not supported by substantial evidence. As
28 stated in the Court's discussion of arguments concerning
impacts, *supra*, the Court concludes that petitioners

1 exhausted their administrative remedies as to the issues
2 raised in this case.

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5 VI. PALO ALTO'S AMICUS CURIAE BRIEF

6 Palo Alto was granted leave to file an amicus brief.
7 However, its brief has raised legal issues not raised and
8 briefed by the parties, including challenges to the use of a
9 second program EIR, the Authority's treatment of land use
10 compatibility, and an alleged failure to consult Palo Alto.
11 For this reason its arguments have been disregarded by the
12 Court.

13 VII. CONCLUSION

14 The Court finds petitioners have met their burden of
15 showing that the EIR contains an inadequate description of
16 the project, that respondent's finding that mitigation
17 strategies will reduce the vibration impact to a less-than-
18 significant level is not supported by substantial evidence,
19 that as a result of the FEIR's inadequate description of the
20 project its land use analysis was inadequate, and that
21 respondent improperly failed to recirculate the FPEIR upon
22 receipt of Union Pacific's statement of its position
23 regarding its right-of-way. The petition for writ of
24 mandate is granted on these grounds.

25 Petitioners' other contentions are without merit.

26 VIII. DISPOSITION

27 Petitioners shall prepare a judgment consistent with
28 this ruling and in accordance with California Rules of
Court, rule 3.1320 and Local Rule 9.16. Petitioners shall
also prepare a writ for issuance by the clerk of the court.

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Petitioners shall recover their costs pursuant to a memorandum of costs.

DATED: August 26, 2009



MICHAEL P. KENNY
JUDGE OF THE SUPERIOR COURT

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CERTIFICATE OF SERVICE BY MAILING

(C.C.P. Sec. 1013a(3))

I, the Clerk of the Superior Court of California, County of Sacramento, certify that I am not a party to this cause, and on the date shown below I served the foregoing **RULING** by depositing true copies thereof, enclosed in separate, sealed envelopes with the postage fully prepaid, in the United States Mail at Sacramento, California, each of which envelopes was addressed respectively to the persons and addresses shown below.

- Stuart Flashman
Attorney at Law
5626 Ocean View Drive
Oakland, CA 94618

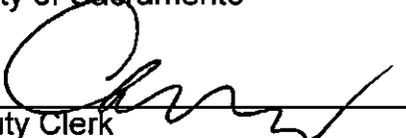
- Jeff Hoffman
Attorney at Law
132 Coleridge Street #B
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- Danae Aitchison
Attorney at Law
1300 I Street #Suite 125
Sacramento, CA 94244

- Kristina Lawson, Arthur Coon
Attorney at Law
1331 N California Blvd., Fifth Floor
Walut Creek, Ca 94596

I, the undersigned deputy clerk, declare under penalty of perjury that the foregoing is true and correct.

Dated: **AUG 26 2009**

Superior Court of California,
County of Sacramento

Deputy Clerk