

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@stuf flash.com

7 JEFF HOFFMAN SBN: 225569
8 LAW OFFICE OF JEFF D. HOFFMAN
9 132 Coleridge Street, Suite B
10 San Francisco, CA 94110-5113
11 Telephone: (415) 285-7735
12 Facsimile: (415) 920-1731

13 Attorneys for Petitioners and Plaintiffs Town of Atherton *et al.*
14 **(Exempt from filing fees – Gov. Code §6103)**

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF SACRAMENTO

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

Petitioners and Plaintiffs

v.

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

Respondents and Defendants

Case No.:

**VERIFIED PETITION FOR
PEREMPTORY WRIT OF MANDATE
AND COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

**[Public Resources Code §21168; Code of
Civil Procedure §§1060, 1994.5]**

Petitioners and Plaintiffs TOWN OF ATHERTON (hereinafter, “ATHERTON”),
PLANNING AND CONSERVATION LEAGUE (hereinafter, “PCL”), CITY OF MENLO
PARK (hereinafter, “MENLO PARK”), TRANSPORTATION SOLUTIONS DEFENSE AND
EDUCATION FUND (hereinafter, “TRANSDEF”), CALIFORNIA RAIL FOUNDATION
(hereinafter, “CRF”), BAYRAIL ALLIANCE (hereinafter, “BAYRAIL”), and other similarly
situated entities (the foregoing, collectively, to be referred to hereinafter as “PETITIONERS”)
hereby allege as follows:

1 **INTRODUCTION**

2 1. PETITIONERS bring this action to challenge the decision of Respondent and Defendant
3 CALIFORNIA HIGH SPEED RAIL AUTHORITY (“CHSRA”) to approve the Bay Area to
4 Central Valley High Speed Train Project (hereinafter, “Project”), including specifically choosing
5 an alignment for the Project, without providing legally adequate review under the California
6 Environmental Quality Act Public Resources Code section 21000 *et seq.* (“CEQA”).
7 Respondent’s actions are illegal as they violate CEQA and the California Code of Regulations,
8 Title 14, section 15000 *et seq.* (“CEQA Guidelines”).

9 2. PETITIONERS allege that CHSRA approved the Project based on a Final Programmatic
10 Environmental Impact Report/Environmental Impact Study (“FPEIR/S”) that did not adequately
11 and accurately describe the Project, did not give adequate consideration to the Project’s impacts
12 on the environment, failed to propose adequate mitigation measures to address the Project’s
13 significant impacts, failed to provide a fair and adequate consideration of feasible alternatives to
14 the approved Project, and failed to provide adequate responses to comments on the Draft
15 Programmatic Environmental Impact Report/Environmental Impact Study (“DPEIR/S”)
16 submitted by other public agencies, as well as by concerned organizations and individuals.

17 3. The Project is part of a larger proposed legislatively-mandated plan to develop high
18 speed rail service between the cities of Los Angeles and San Francisco. It follows on CHSRA’s
19 earlier approval of an overall proposal for such high speed rail service, based on a broader
20 overall FPEIR/S. However, that FPEIR/S specifically left undetermined the route the high speed
21 rail project would take from the Central Valley to its northwestern terminus of San Francisco.
22 The Project being challenged herein was intended to fill that gap.

23 4. While the Project entailed many studies, analyses, and choices, perhaps the single biggest
24 choice was between two major alternative alignments: the “Pacheco Alignment” running north
25 and westward from the Central Valley main line south of Merced, through Pacheco Pass then
26 north through Gilroy to San Jose and then north and west along the San Francisco Peninsula to
27 San Francisco, and the “Altamont Alignment” running north and westward from the Central
28 Valley main line north of Modesto, through Tracy, through the Altamont Pass and across the

1 East Bay, with one branch going south and westward to San Jose and a second branch going west
2 and northward across San Francisco Bay to San Francisco.

3 5. PETITIONERS allege that the CHSRA's consideration of these two major alternatives
4 was neither fair nor complete, but, instead, improperly distorted the analysis of benefits and
5 impacts, and ultimately of feasibility and desirability to unfairly and improperly bias the analysis
6 in favor of approving the Pacheco Alignment.

7 6. Respondent's actions will harm PETITIONERS, their members, and the public, by
8 causing serious environmental harm along the Pacheco Alignment route. That harm, because of
9 the inadequacy of the environmental review under CEQA, was neither properly disclosed nor
10 adequately mitigated. In addition, it could have been avoided through choice of the Altamont
11 Alignment.

12 7. PETITIONERS seek this Court's peremptory writ of mandate ordering the CHSRA to
13 rescind its actions in approving the Project and certifying the FPEIR/S for the Project.
14 PETITIONERS also seek this Court temporary restraining order and preliminary and permanent
15 injunction to prevent CHSRA from proceeding with implementing the Project in the absence of
16 adequate review under CEQA. PETITIONERS also seek this Court's declaration that the
17 PROJECT approval by CHSRA violated CEQA. Finally, PETITIONERS, acting in the public
18 interest, seek an award of costs and of attorneys' fees under Code of Civil Procedure §1021.5 or
19 other applicable authority.

20 **PARTIES**

21 8. Petitioner TOWN OF ATHERTON is a municipal corporation, formed and existing
22 under the general laws of the State of California. ATHERTON lies directly astride of the
23 proposed Pacheco Pass alignment down the San Francisco Peninsula. It and its citizens will
24 therefore be directly affected by CHSRA's decisions to certify the FPEIR/S for the Project and
25 approve the Pacheco Pass alignment as part of the Project.

26 9. Petitioner PLANNING AND CONSERVATION LEAGUE is a public benefit nonprofit
27 California corporation, established and existing under the laws of the State of California,
28 headquartered in Sacramento, California. PCL works, using the political and legal systems, to

1 enact and implement policies that protect and restore the California environment. PCL is an
2 affiliate of the National Wildlife Federation.

3 10. Petitioner CITY OF MENLO PARK is a municipal corporation, formed and existing
4 under the general laws of the State of California. MENLO PARK lies directly astride of the
5 proposed Pacheco Pass alignment down the San Francisco Peninsula. It and its citizens will
6 therefore be directly affected by CHSRA's decisions to certify the FPEIR/S for the Project and
7 approve the Pacheco Pass alignment as part of the Project.

8 11. Petitioner TRANSPORTATION SOLUTIONS DEFENSE AND EDUCATION FUND is
9 a California nonprofit public benefit corporation, headquartered in the Bay Area, established and
10 existing under the laws of the State of California as a regional advocate to promote transportation
11 solutions favoring transit over new highway capacity, development around transit stops rather
12 than sprawl into the Bay Area's open spaces, and more market-oriented pricing of private motor
13 vehicle travel. TRANSDEF advocates on behalf of its members and the public at large for
14 effective regional planning, smart growth, improved transit service, and cleaner air. TRANSDEF
15 has participated in the development of the 2001, 2005 and 2009 Bay Area Regional
16 Transportation Plans and Transportation Improvement Programs. TRANSDEF has actively
17 engaged in numerous public agency proceedings involving transportation and air quality issues,
18 including specifically the administrative proceedings around the Project and its environmental
19 review under CEQA.

20 12. Petitioner CALIFORNIA RAIL FOUNDATION, based in Sacramento, is a California
21 nonprofit public benefit corporation, established and existing under the laws of the State of
22 California. CRF works to educate the public on rail and bus technology and promote cost-
23 effective expansion of the state's public transportation services.

24 13. Petitioner BAYRAIL ALLIANCE is a California nonprofit public benefit corporation,
25 established and existing under the laws of the State of California. BAYRAIL works to build
26 public awareness of and support for plans that would improve regional passenger rail
27 infrastructure in the San Francisco Bay area, so as to improve the quality and convenience of the
28

1 services that they support, and thereby improve the region's environmental characteristics and
2 quality of life.

3 14. PETITIONERS include in this action as co-petitioners and co-plaintiffs such other parties
4 whose interests and claims are substantially the same as those of the above-named petitioners
5 and plaintiffs. Said additional petitioners and plaintiffs may be named individually by
6 amendment to this petition and complaint.

7 15. PETITIONERS and their members/citizens have a direct and beneficial interest in the
8 approval and implementation of a well-planned, efficient, and environmentally sensitive high
9 speed rail system within California and the San Francisco Bay area, and more specifically in the
10 fully-informed, fair, and proper choice of alignment for the Project.

11 16. Respondent and Defendant CALIFORNIA HIGH SPEED RAIL AUTHORITY was
12 established as an independent state authority by the legislature in 1996 and charged with
13 planning, constructing and operating a high-speed train system to serve the Los Angeles to San
14 Francisco mainline route as well as other major California cities along or connecting with that
15 mainline route. CHSRA is governed by a seven member Board of Directors (hereinafter,
16 "Board"). CHSRA, its staff, and contractors and consultants working under its control and
17 direction, prepared the DPEIR/S and the FPEIR/S for the Project, and the Board of CHSRA
18 certified the FPEIR/S for the Project and gave final approval to the Project.

19 17. PETITIONERS are unaware of the true names and capacities of Respondents and
20 Defendants DOES 1 through 20, inclusive, and therefore sue those Respondents and Defendants
21 under fictitious names. PETITIONERS will amend their Petition and Complaint to show their
22 true names and capacities when the Respondents and Defendants have been identified and their
23 capacities ascertained. Each of the Respondents and Defendants is the agent, employee, or both
24 of every other Respondent and Defendant, and each performed acts on which this action is based
25 within the course and scope of such Respondent's and Defendant's agency, employment, or both.
26 PETITIONERS are informed and believe, and therefore allege, that each Respondent and
27 Defendant is legally responsible in some manner for the events and happenings referred to
28 herein.

GENERAL ALLEGATIONS

1 18. PETITIONERS have satisfied the requirements of Public Resources Code §21177.
2 PETITIONERS and their members/citizens/elected officials submitted oral and/or written
3 comments to CHSRA, prior to the close of the public hearing before the approval of the Project,
4 objecting to the approval of the Project. PETITIONERS, their members/citizens/elected
5 officials, other public agencies, other organizations, and members of the public raised each of the
6 claims presented in this petition prior to the close of the public hearing on the approval of the
7 Project.

8 19. PETITIONERS have complied with the requirements of Public Resources Code section
9 21167.5 by mailing written notice of the commencement of this action to Respondent California
10 High Speed Rail Authority before filing this Petition and Complaint. A copy of that notice, with
11 proof of service, is attached hereto as Exhibit A.

12 20. Pursuant to Public Resources Code Section 21167.7, PETITIONERS have provided a
13 copy of this Petition and Complaint to the California Attorney General. A copy of the
14 accompanying notice and proof of service are attached hereto as Exhibit B.

15 21. PETITIONERS have no plain, speedy or adequate remedy in the ordinary course of law.
16 Unless this Court grants the requested writ of mandate to require CHSRA to rescind its approval
17 of the Project and certification of the FPEIR/S, CHSRA’s actions in violation of CEQA will
18 remain in effect.

19 22. If CHSRA is not enjoined from moving forward to implement the Project and from
20 undertaking acts in furtherance thereof, PETITIONERS will suffer irreparable harm for which
21 there is no adequate remedy at law in that CHSRA will move towards constructing a high speed
22 train system including the Pacheco Pass Alignment, with attendant significant environmental
23 impacts, without having first conducted adequate environmental review, which might have
24 avoided or mitigated some or all of those impacts.

PROJECT BACKGROUND

25 23. In 1993, the Governor of California issued Executive order W-48-93 calling for
26 establishment of a task force to study the feasibility of implementing a statewide high-speed rail
27
28

1 system. Shortly thereafter, the Governor signed Senate Concurrent Resolution 6 authorizing
2 creation of a nine-member Intercity High Speed Rail Commission (hereinafter, "Commission")
3 to study and develop a framework for implementing such a system over a 20-year time horizon.

4 24. In 1996, the Commission issued its final report. In that report, the Commission
5 summarized its study of a statewide high speed rail system and specifically of different potential
6 alignments for portions of that system. The report identified the Altamont Pass alignment for the
7 route between the Bay Area and the Central Valley as the preferred alternative, concluding that,
8 "The Panoche or Pacheco Passes would result in higher impacts than the Altamont Pass,
9 particularly impacts to wetlands and habitat for threatened and endangered species."

10 25. After its creation in 1996, the CHSRA prepared and, in or about the year 2000, adopted a
11 final High Speed Train System Business Plan. The CHSRA then moved forward toward the
12 production and certification of a Programmatic EIR/EIS on the broad outlines of the statewide
13 High Speed Rail system.

14 26. In or about January 2004, the CHSRA released its DPEIR/S for the statewide high
15 speed rail system. That DPEIR/S evaluated only two alternative alignments for access to the San
16 Francisco Bay Area: the Pacheco Pass Alignment and the Panoche Pass Alignment. The
17 DPEIR/S rejected an Altamont Pass Alignment as not meeting the purpose and need of the
18 project due to the need for a new Bay Crossing and the claimed reduction in train frequencies.

19 27. PETITIONERS, public agencies, other organizations, and individuals submitted
20 numerous comments on the DPEIR/S objecting to its failure to give serious consideration of the
21 Altamont Alignment option and pointing out the serious environmental problems inherent in the
22 Pacheco Alignment.

23 28. In or about December 2005, the CHSRA certified the FPEIR/S for the statewide high
24 speed rail system and approved the statewide project. In certifying the FPEIR/S for the statewide
25 high speed rail system and approving the project, the CHSRA specifically determined not to
26 choose an alignment for access to the San Francisco Bay area from the Central Valley, putting
27 that decision off for further study.

PROJECT HISTORY

1
2 29. The CHSRA resolution approving the statewide high speed rail system specifically
3 authorized CHSRA staff to prepare a separate programmatic EIR to study the options for a high
4 speed rail connection between the San Francisco Bay Area and the Central Valley portion of the
5 high speed rail system. It specifically mandated study of both the Pacheco Pass Alignment and
6 the Altamont Pass Alignment alternatives.

7 30. The DPEIR/S for the Project was prepared concurrently and in coordination with a
8 separate study undertaken by the Metropolitan Transportation Commission (“MTC”), the Bay
9 Area Rapid Transit District (“BART”), and the Caltrain Joint Powers Authority to develop a Bay
10 Area Regional Rail Plan. However, that effort did not involve any separate environmental
11 review component.

12 31. On or about July 16, 2007, CHSRA released the DPEIR/S for the project. The document
13 consisted of nine substantive chapters, totaling almost 800 pages of text, plus numerous tables,
14 diagrams, and figures. In addition to the document itself, CHSRA also released a series of
15 technical studies in support of the DPEIR/S. The initial comment period was set for sixty days.
16 Given the voluminous amount of material to be reviewed, numerous agencies, organizations, and
17 individuals requested an extension of the comment period. The comment period was
18 consequently extended until October 26, 2007.

19 32. PETITIONERS are informed and believe, and on that basis allege the following: that
20 prior to or during the time when the DPEIR/S for the Project was being prepared, CHSRA, either
21 directly or through its directors, staff, consultants and/or contractors, learned that the Union
22 Pacific Railway (hereinafter, “UP”) strongly objected to the use of its right-of-way by the Project
23 or any other portion of the high speed rail system being planned by CHSRA. In part, this was
24 because UP was concerned about potentially severe public safety impacts that could be
25 associated with having its freight operations and the Project operating in the same right-of-way
26 or even in adjoining rights-of-way. UP communicated this concern to CHSRA. CHSRA also
27 became aware that UP insisted that the Project, as proposed, would have severe adverse impacts
28 on UP’s ability to effectively conduct its freight operations in the future. Nevertheless, the

1 DPEIR/S failed to disclose UP’s objections and concerns or any of the potential associated
2 adverse environmental impacts.

3 33. PETITIONERS, their members, public agencies, organizations, and individuals
4 submitted voluminous comments on the DPEIR/S for the Project. Many of those comments
5 again raised questions about the fairness and adequacy of the DPEIR/S’s analysis of the Pacheco
6 Pass vs. Altamont Pass alignment alternatives. In addition, comments pointed up potential
7 disruptive impacts of the Pacheco Pass alignment on areas throughout the San Francisco Bay
8 Area and disputed the DPEIR/S’s claim that its land use impacts would be minimal. Comments
9 also suggested other previously-unanalyzed options for the Project alignment.

10 34. On or about November 14, 2007, CHSRA staff released a document entitled, “Summary
11 of Public Hearings and Comment Period.” The eight-page document purported to summarize the
12 issues raised by comments submitted on the DPREIR/S on the Project. That same day, CHSRA
13 staff also released a document entitled, “Staff Recommendations: Preferred Network Alternative,
14 HST Alignment and Station Locations.” Even though the time period for public review and
15 comment on the DPEIR/S had already closed and even though responses to comments on the
16 DPEIR/S had not yet been completed or provided to the CHSRA Board, the staff
17 recommendations designated the Pacheco Alignment Alternative as the preferred alternative in
18 the DPEIR/S, with the proviso that at an unspecified future date, with unspecified future funding,
19 a lower speed regional rail link between the Central Valley and the East Bay through the
20 Altamont Pass could be added. The Board purported to take no action on the staff
21 recommendations.

22 35. On or about May 21, 2008, CHSRA released the FPEIR/S for the Project, consisting of
23 three volumes: Volume I – the FPEIR/S itself; Volume II – the technical appendices to the
24 FPEIR/S; and Volume III – comments received on the DPEIR/S and responses to those
25 comments.

26 36. In or about June 2008, CHSRA released a document entitled, “Addendum/Errata to Final
27 Program EIR/EIS for Bay Area to Central Valley Portion of the California HST System”
28 (hereinafter, “Errata/Addendum”). The Errata/Addendum contained modifications to the

1 FPEIR/S's analyses of air quality and energy use. The Errata/Addendum was not circulated for
2 public comment.

3 37. On or about July 8, 2008, CHSRA held a public hearing to receive comments on the
4 FPEIR/S and on the Project. PETITIONERS and others submitted oral and written comments
5 objecting to the certification of the FPEIR/S and the approval of the Project.

6 38. On or about July 9, 2008, after hearing staff-prepared responses to the comments
7 received at the public hearing, the CHSRA Board voted to certify the FPEIR/S for the Project
8 and to approve the Project.

9 39. On or about July 9, 2008 CHSRA filed a Notice of Determination for its approval of the
10 Project.

11 **CHARGING ALLEGATIONS**

12 **FIRST CAUSE OF ACTION**

13 **Violation of CEQA and CEQA Guidelines – Certification of Legally Inadequate Environmental**
14 **Impact Statement.**

15 40. PETITIONERS hereby reallege and incorporate by reference the preceding paragraphs 1
16 through 38 as though fully set forth herein.

17 41. The Project required discretionary approval by CHSRA and was therefore a project under
18 CEQA.

19 42. The Project did not qualify for any CEQA exemption and therefore required
20 environmental review under CEQA.

21 43. CHSRA was the lead agency for environmental review of the Project under CEQA.

22 44. CHSRA determined that the Project had potential to cause significant adverse
23 environmental impacts, and therefore determined to prepare a programmatic EIR for the Project.

24 45. CHSRA had a duty under CEQA to certify that the FPEIR/S for the Project satisfied all
25 requirements under CEQA. CHSRA violated this duty by certifying the FPEIR/S for the Project
26 where the FPEIR/S was deficient in the following respects:
27
28

1 **Count One: Inadequate Project Description**

2 46. An EIR is required to include an adequate description of the Project being considered.
3 The description must be accurate and must contain sufficient detail to allow the reader of the EIR
4 to understand the nature of the Project and its salient characteristics. The project description in
5 the FPEIR/S was inadequate for the following reasons:

- 6 • The Project description failed to adequately describe the location of the Project,
7 including relevant information on the location of the proposed right-of-way and
8 station locations. In particular, the project description failed to indicate the degree of
9 uncertainty as to where the Project right-of-way and stations would be located and
10 contained conflicting information about the location of the Project right-of-way. In
11 addition, the project description failed to indicate the extent the project would require
12 acquisition of private property through eminent domain.
- 13 • The Project description failed to include relevant information about essential
14 characteristics of the project, including specifically operational characteristics such as
15 the projected ridership for the various alternative alignments along with a clear
16 explanation of the methodology used to calculate those ridership figures.
- 17 • The Project description failed to include an explanation of what portions of projected
18 ridership would occur regardless of whether the Project was approved or regardless of
19 the alignment alternative chosen.
- 20 • The Project description failed to include a full tabulation, with explanations, of
21 Project costs, including costs for each alternative or sub-alternative, methodologies
22 for calculating those costs, and including the projected costs for tunnels through
23 developed urban areas and costs for developing the ridership for each alternative
24 (e.g., advertising costs, costs of incentives offered to employers, developers, etc.), as
25 well as severance costs involved in taking portions of parcels by eminent domain.
- 26 • The Project description failed to include a tabulation of expected funding sources for
27 the Project.

- The Project Description, as presented in the DPEIR/S circulated for public review and comment, failed to include information on the environmentally superior alternative and how it was chosen, thereby depriving the public of the opportunity to comment on the methodology used to identify that alternative.
- The project description failed to clearly explain the relationship of the project to the proposed regional rail service along the Altamont Alignment, including specifically the extent to which the two projects were and would be linked, both financially and operationally.

Accordingly, the approval of the Project and the certification of the FPEIR/S must be set aside.

Count Two: Failure to Fully Disclose and Adequately Analyze the Project’s Significant Environmental Impacts.

47. The FPEIR/S failed to fully disclose or adequately analyze the significant growth-inducing impacts of the Pacheco Alignment in and around the areas south of San Jose, around Gilroy, and both east and west of Pacheco Pass. These impacts, both direct and indirect, would include:

- loss of valuable prime agricultural land;
- increased automotive traffic;
- increased energy consumption;
- promotion of inefficient “sprawl” development;
- promotion of development in the absence of adequate supporting infrastructure;
- loss of valuable wildlife habitat;
- destruction of wetlands and other valuable water resources;

48. The FPEIR/S fails to fully disclose or adequately analyze the Project’s significant impacts associated with the use of UP and/or UP-shared right-of-way and/or the necessity of moving the Project away from the UP right-of-way, including the following:

- public health and safety impacts due to the potential for derailments on the UP freight line and subsequent collision of high speed trains with the derailed freight cars;

- 1 • displacement of residents and businesses if CHSRA was forced to relocate the Project
- 2 right-of-way away from the UP right-of-way;
- 3 • destruction of wetlands, wildlife habitat, and/or valuable prime agricultural lands if
- 4 the CHSRA was forced to relocate the Project right-of-way away from the UP right-
- 5 of-way;
- 6 • Land use impacts through the division of existing communities if the Project right-of-
- 7 way was moved away from the UP or UP-shared right-of-way so as to divide existing
- 8 communities;

9 49. The FPEIR/S fails to fully disclose or adequately analyze the Project's significant
10 impacts on jurisdictions it will traverse, including specifically cities on the San Francisco
11 Peninsula bordering on the Caltrain right-of-way, including the following:

- 12 • noise, air quality, and vibration impacts on portions of the jurisdictions near the
- 13 Caltrain right-of-way from the construction and operation of the Project;
- 14 • land use impacts in dividing existing communities if CHSRA is forced to move the
- 15 Project away from the Caltrain right-of-way in order to protect UP freight use of the
- 16 Caltrain right-of-way, as well as land use impacts from further visually and physically
- 17 dividing communities by the widened and possibly elevated structures along the high
- 18 speed rail right-of-way;
- 19 • displacement of residents and businesses if CHSRA was forced to relocate the Project
- 20 right-of-way away from the Caltrain right-of-way;
- 21 • impacts through the destruction of existing vegetation, including many mature trees
- 22 along the proposed Pacheco Pass alignment.
- 23 • Visual impacts from placement of the high speed rail right-of-way, including
- 24 specifically visual impacts from possible elevated structures and/or soundwalls.

25 50. The FPEIR/S fails to fully disclose or adequately analyze the Project's significant air
26 quality impacts, including specifically its impact through production of greenhouse gases and
27 contribution to global warming;

28

1 51. The FPEIR/S fails to fully disclose or adequately analyze the Project’s significant
2 impacts on traffic and public transportation.

3 52. The FPEIR/S fails to fully disclose or adequately analyze the Project’s significant
4 impacts on agricultural lands, including both impacts through the taking of agricultural lands,
5 impacts from severance of agricultural land, and indirect agricultural impacts due to induced
6 sprawl development

7 53. The FPEIR/S fails to fully disclose or adequately analyze the Project’s significant
8 impacts on biological resources, including the direct and indirect impacts on wildlife habitat,
9 threatened, endangered, or otherwise protected species, wetlands areas, and other unique or
10 valuable biological resources.

11 54. The FPEIR/S fails to fully disclose or adequately analyze the Project’s significant land
12 use impacts, including impacts due to incompatibility with existing or planned land uses,
13 inconsistency with zoning or general plan designations, and impacts on Section 4(f) or 6(f)
14 resources.

15 55. The FPEIR/S fails to fully disclose or adequately analyze the Project’s significant
16 cumulative impacts. Accordingly, the approval of the Project and the certification of the
17 FPEIR/S must be set aside.

18 **Count Three: The FPEIR/S Failed to Adequately Mitigate the Project’s Significant**
19 **Impacts.**

20 56. Especially because the FPEIR/S failed to adequately assess and identify the Project’s
21 significant impacts, the FPEIR/S failed to adequately identify appropriate measures to mitigate
22 the Project’s significant impacts. Even in those cases where the FPEIR/S identified a significant
23 impact and identified measures to mitigate that impact, the mitigation measures were often
24 inadequate and, in many cases so poorly described as to make it impossible to determine whether
25 the measure was even feasible. For example, the FPEIR/S, as mitigation for potentially
26 significant Project land use impacts, calls for, “Continued coordination with local agencies.
27 Explore opportunities for joint and mixed-use development at stations. Relocation assistance
28

1 during future project-level review. Overall mitigation strategies for affected land uses and in EJ
2 areas.” (FPEIR/S, p. 9-8.)

3 57. Consequently, the FPEIR/S often improperly determined than the identified measures
4 were sufficient or potentially sufficient to mitigate Project impacts to a level of insignificance
5 when the evidence in the record failed to support that determination. Accordingly, the approval
6 of the Project and the certification of the FPEIR/S must be set aside.

7 **Count Four: The FPEIR/S Failed to Include an Adequate Analysis of Project Alternatives.**

8 58. Under CEQA, an EIR must include an adequate analysis of feasible project alternatives.

9 59. In addition to the statutorily-mandated no project alternative, the FPEIR/S included two
10 basic alternative alignment alternatives, Pacheco Pass and Altamont Pass, although each of these
11 alignment alternatives included numerous sub-alternatives for various portions of the route. For
12 example, the Pacheco Pass Alternative included sub-alternatives traversing the area east of
13 Pacheco Pass either along a southerly “Henry Miller Road” alignment or a northerly “Grasslands
14 Ecological Area North” alignment. Similarly, the Altamont Pass alignment included sub-
15 alternatives using either an elevated bridge near the existing Dumbarton Rail Bridge or a new
16 tunnel between Oakland and San Francisco to traverse San Francisco Bay between the East Bay
17 and San Francisco.

18 60. While the FPEIR/S purported to provide a fair, objective and complete comparison of
19 these two project alternatives, the analysis was inadequate, inaccurate, incomplete and biased,
20 thereby making a fair comparison of the two major alternatives impossible. This violated the
21 basic purpose of the analysis of alternatives under CEQA.

22 61. The FPEIR/S’s analysis of the Altamont Pass Alternatives inaccurately portrayed the
23 operational characteristics of those alternatives in a way that resulted in significantly
24 underestimating the potential ridership for those alternatives, thereby unfairly penalizing the
25 Altamont Alternatives compared to the Pacheco Alternatives.

26 62. The FPEIR/S improperly and unfairly discounted and found infeasible the potential for
27 the Altamont Alternative to rebuild the Dumbarton Rail Bridge in a way so that it could be used
28 by both Caltrain Dumbarton Rail Project trains and High Speed Rail trains.

1 63. The FPEIR/S improperly and unfairly overemphasized the aquatic impacts of building a
2 new rail bridge at the site of the existing Dumbarton Rail Bridge and discounted the likelihood of
3 being able to obtain environmental clearance for such a bridge as part of an Altamont Pass
4 alignment alternative; while, at the same time, underestimating the aquatic, wetlands, and
5 wildlife impacts of the Pacheco Pass alignment alternative's crossing of the Grasslands
6 Ecological Area and discounting the difficulty of obtaining environmental clearance for such a
7 crossing.

8 64. The FPEIR/S improperly and unfairly overemphasized the impacts of running the high
9 speed rail alignment through the cities of Pleasanton and Fremont as part of an Altamont Pass
10 alignment alternative, while, at the same time, underemphasizing the impacts of running the high
11 speed rail alignment through the developed urban jurisdictions along the San Francisco
12 Peninsula, including specifically Atherton, Menlo Park, Palo Alto, Mountain View, Sunnyvale,
13 and Santa Clara, as well as portions of San Jose. In addition, by not disclosing the absence of
14 undeveloped land outside the UP corridor south of San Jose's Diridon Station, the FPEIR/S
15 underemphasized the impacts of running the high speed rail alignment through portions of San
16 Jose south of that station.

17 65. Both AHERTON and MENLO PARK, in their comments on the DPEIR/S, proposed
18 study of an additional alignment alternative along the San Francisco Peninsula, running within or
19 along the Caltrans right-of way for Highway 280. The FPEIR/S failed to adequately discuss this
20 alternative alignment.

21 66. The FPEIR/S's unfair, incomplete, and biased analysis of project alternatives violated
22 CEQA's requirement that the discussion of project alternatives allow the decision makers and the
23 public the information needed to make an informed decision. Accordingly, the approval of the
24 Project and the certification of the FPEIR/S must be set aside.

25 **Count Five: Failure to Adequately Respond to Comments on the DPEIR/S**

26 67. An EIR must include adequate written responses to all comments, both oral and written,
27 received by the lead agency during the public comment period. The FPEIR/S was inadequate
28 because the responses to many of the comments received by the lead agency during the public

1 comment period were inadequate. In many cases, the responses were perfunctory or conclusory,
2 and in other cases the responses were not supported by substantial evidence. In the case of
3 MENLO PARK, the comment letter was not even included in the FPEIR/S and was not
4 responded to at all. Accordingly, the approval of the Project and the certification of the FPEIR/S
5 must be set aside.

6 **SECOND CAUSE OF ACTION**

7 **Violation of CEQA and CEQA Guidelines – Failure to recirculate DPEIR/S in response to new**
8 **information and/or changed circumstances**

9
10 68. PETITIONERS hereby reallege and incorporate by reference the allegations in the
11 preceding paragraphs 1 through 66 inclusive as though fully set forth herein.

12 69. CEQA requires that a draft EIR be recirculated for an additional round of public
13 comment if changes to the document after the close of the previous comment period result in the
14 addition of significant new information. In addition, recirculation is required if new
15 circumstances have arisen after the close of the previous public comment period that would
16 require substantial revision to the EIR. CHSRA violated its duty under CEQA by refusing to
17 recirculate the DPEIR/S for public comment after changes to the EIR resulting in addition of
18 significant new information on air quality and energy use impacts, and specifically the Project’s
19 impacts on global warming.

20 70. CHSRA violated its duty under CEQA by refusing to recirculate the DPEIR/S for public
21 comment after it was publicly revealed that UP had raised strong objections to CHSRA’s use of
22 its right-of-way or adjoining property for the Project right-of-way and raised serious concerns
23 about significant public safety impacts not previously identified in the DPEIR/S. Accordingly,
24 the approval of the Project and the certification of the FPEIR/S must be set aside.

25 **THIRD CAUSE OF ACTION**

26 **Violation of CEQA and CEQA Guidelines – Failure of CEQA Findings to be Supported by**
27 **Substantial Evidence**

1 71. PETITIONERS hereby reallege and incorporate by reference the preceding paragraphs 1
2 through 69 inclusive as though fully set forth herein.

3 72. CEQA requires that an agency approving a Project for which an EIR was prepared and
4 significant impacts were identified adopt findings explaining and justifying its actions. (Public
5 Resources Code §21081.) Those findings must be supported by substantial evidence in the
6 record. CHSRA violated this duty to prepare and approve adequate CEQA findings in support of
7 its decision to approve the Project in that the findings were not supported by substantial
8 evidence. Accordingly, the approval of the Project must be set aside.

9 **FOURTH CAUSE OF ACTION**

10 **DECLARATORY RELIEF – Code of Civil Procedure §1060**

11 73. PETITIONERS hereby reallege and incorporate by reference the preceding paragraphs 1
12 through 71 as though fully set forth herein.

13 74. An actual controversy and dispute exists between PETITIONERS and CHSRA regarding
14 the Project approval's compliance with CEQA and the CEQA Guidelines. PETITIONERS
15 allege that the Project approval failed to comply with CEQA and/or the CEQA Guidelines, while
16 PETITIONERS are informed and believe, and on that basis allege, that CHSRA believes that the
17 Project approval did fully comply with both CEQA and the CEQA Guidelines.

18 75. PETITIONERS seek a judicial declaration that the Project approval failed to comply with
19 the requirements of CEQA and/or the CEQA Guidelines.

20 76. An actual controversy and dispute exists between PETITIONERS and CHSRA regarding
21 the FPEIR/S's compliance with CEQA and the CEQA Guidelines. PETITIONERS allege that
22 the FPEIR/S failed to comply with CEQA and/or the CEQA Guidelines, while PETITIONERS
23 are informed and believe, and on that basis allege, that CHSRA believes that the FPEIR/S did
24 fully comply with both CEQA and the CEQA Guidelines

25 77. PETITIONERS seek a judicial declaration that FPEIR/S failed to comply with CEQA
26 and/or the CEQA Guidelines.

27 78. An actual controversy and dispute exists between PETITIONERS and CHSRA regarding
28 the adequacy of the CEQA findings made by CHSRA in support of the Project approval.

1 PETITIONERS allege that said findings were invalid because they were not supported by
2 substantial evidence in the record, while PETITIONERS are informed and believe, and on that
3 basis allege, that CHSRA believes that said findings were fully adequate and valid.

4 79. PETITIONERS seek a judicial declaration that the CEQA findings made by CHSRA in
5 support of its approval of the Project were invalid because they were not supported by substantial
6 evidence in the record.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, PETITIONERS pray for relief as follows:

9 1. For this Court's peremptory writ of mandate ordering CHSRA to:

10 (a) vacate and set aside its determinations approving the Project, including its
11 determination to choose the Pacheco Pass alignment for the Project;

12 (b) vacate and set aside its certification of the FPEIR/S for the Project; remanding the
13 Project and its environmental review under CEQA to CHSRA for reconsideration in
14 accordance with this Court's determination and final judgment.

15 2. For this Court's temporary restraining order and preliminary injunction restraining
16 CHSRA, its agents, servants and employees, and all others acting in concert with it or in its
17 behalf, from taking any action to move forward on implementing the project pending a final
18 decision on the merits by this Court.

19 3. For this Court's permanent injunction restraining CHSRA, its agents, servants and
20 employees, and all others acting in concert with it or in its behalf, from undertaking any activity
21 or activities that could result in any change or alteration in the physical environment until
22 CHSRA has fully complied with this Court's writ of mandate and judgment and taken all
23 required actions that may be necessary to bring the FEIR and all planning permit approvals into
24 compliance with CEQA, Code of Civil Procedure section 1094.5, and all other requirements of law.

25 4. For this Court's declarations that:

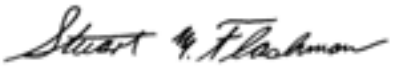
26 a. the Project approval violated CEQA and/or the CEQA Guidelines as set forth
27 in this Petition and Complaint;

- b. the certified FPEIR/S for the Project failed to meet the requirements of CEQA and/or the CEQA Guidelines; and
- c. the CEQA findings for the Project approval were not supported by substantial evidence in the record.

- 5. For its costs of suit.
- 6. For an award of attorneys' fees under C.C.P. §1021.5 or other applicable basis.
- 7. For such other equitable and/or legal relief as the Court considers just and proper.

DATED August 7, 2008

Law Offices of Stuart M. Flashman
Law Offices of Jeff Hoffman
Attorneys for Petitioners and Plaintiffs

By: 
Stuart M. Flashman

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

I, David Schonbrunn, am the President of the Transportation Solutions Defense and Education Fund, which is a petitioner and plaintiff in the above petition and complaint, and I make this verification on its behalf and with its authorization. I have read the foregoing Petition and Complaint and am familiar with the matters alleged therein. All facts alleged in this complaint are true of my own personal knowledge except as to facts that are alleged on information and belief, and as to them I am informed and believe they are true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Verification was executed on August 7, 2008 at *San Francisco* California.

David Schonbrunn
David Schonbrunn

Exhibit A

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

August 7, 2008

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

RE: Notice of Intent to Initiate Litigation (Bay Area to
Central Valley High Speed Train Project).

Dear Mr. Morshed,


Please take notice that the Town of Atherton, the Planning and Conservation League, the City of Menlo Park, the Transportation Solutions Defense and Education Fund, the California Rail Foundation, and the BayRail Alliance intend to file suit against the California High Speed Rail Authority challenging its approvals for the above-referenced project and its associated environmental review. The lawsuit will allege violations of the California Environmental Quality Act in connection with those approvals.

Most sincerely,

Stuart M. Flashman
Law Offices of Stuart M. Flashman

Jeff Hoffman
Law Office of Jeff D. Hoffman

Attorneys for the Town of
Atherton, the Planning and
Conservation League, the City of
Menlo Park, the Transportation
Solutions Defense and Education
Fund, the California Rail
Foundation, and the BayRail
Alliance

By: 
Stuart M. Flashman

PROOF OF SERVICE BY MAIL.

I am a citizen of the United States and a resident of Alameda County. I am over the age of eighteen years and not a party to the within above titled action. My business address is 5626 Ocean View Drive, Oakland, CA 94618-1533.

On August 8, 2008, I served the within NOTICE OF INTENT TO INITIATE LITIGATION on the party listed below by placing a true copy thereof enclosed in a sealed envelope with first class postage thereon fully prepaid, in a United States Postal Service mailbox at Oakland, California, addressed as follows:

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

I, Stuart M. Flashman, hereby declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Oakland, California on August 8, 2008.


Stuart M. Flashman