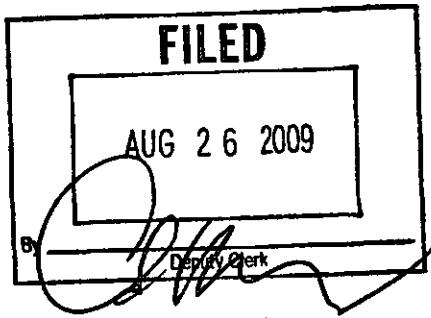


1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



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.  
29         Petitioners contend that the visual impacts of these  
30         barriers should have been analyzed in more detail. However,  
31         the extent to which noise barriers would be used could not  
32         be known until the next stage of environmental analysis,  
33         when engineering and design considerations will be applied  
34         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.

3  
4  
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.

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

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

DATED: August 26, 2009



---

MICHAEL P. KENNY  
JUDGE OF THE SUPERIOR COURT

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

**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  
San Francisco, CA 94110

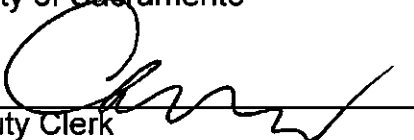
Danae Aitchison  
Attorney at Law  
1300 I Street #Suite 125  
Sacramento, CA 94244

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.

Superior Court of California,  
County of Sacramento

Dated: **AUG 26 2009**

  
Deputy Clerk