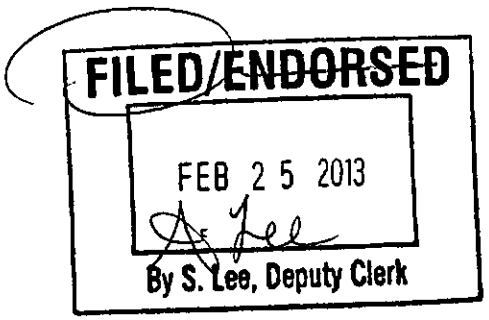

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

TOWN OF ATHERTON, et al.,

Plaintiffs and Petitioners,

v.

CALIFORNIA HIGH SPEED RAIL AUTHORITY,

Defendanst and Respondents.

Case No. 34-2008-80000022-CU-WM-GDS

(consolidated with 34-2010-80000679)

RULING ON SUBMITTED MATTER: RESPONDENTS' RETURN AND MOTION TO DISCHARGE PEREMPTORY WRITS OF MANDATE

I. Introduction

Respondent California High Speed Rail Authority has filed a return to the writs of mandate issued in these consolidated cases, along with a motion to discharge the writs. Petitioners oppose the motion, asserting the respondent still has not complied in full with the requirements of the California Environmental Quality Act ("CEQA"). The Court heard oral argument on the motion on November 9, 2012. At the hearing, the Court granted petitioners' request for leave to file supplemental briefs on the issue of exhaustion of administrative remedies. The Court received the supplemental briefs filed by the parties on November 19, 2012, November 29, 2012, and December 5, 2012, and issued a minute order taking the matter under submission on December 5, 2012.

The Court has reviewed the briefing and the supplemental briefing submitted by the parties, the return to the writs, and the relevant portions of the supplemental administrative record and the

administrative record originally lodged in these consolidated cases.[1] For the reasons stated below, the Court finds that respondent has complied with the requirements set forth in the writs, and with the requirements of CEQA, and therefore grants respondent's motion to discharge the peremptory writs of mandate.

II. Factual and Procedural Background

The factual and procedural background of these consolidated cases is described in detail in the Court's prior rulings on the petitions for writ of mandate, and need not be repeated here. In the present motion, respondent seeks issuance of an order discharging the Peremptory Writ and the Supplemental Writ of Mandate issued in the Atherton I case (Case No. 2008-80000022) and the Peremptory Writ issued in the Atherton II case (Case No. 2010-80000679).

Those writs directed respondent to reconsider and revise specified aspects of its environmental analysis of the Bay Area to Central Valley High-Speed Train Project approving the Pacheco Pass Network Alternative Serving San Francisco and San Jose Termini, and approving preferred alignment alternatives and station location options (referred to in this ruling as "the Project"). The writs were based on rulings of the Court identifying deficiencies in the environmental analysis of the Project that it found to be failures to comply with the requirements of CEQA.

In the first writ issued in the Atherton I case in November, 2009, the Court found deficiencies in the following areas: the description of the alignment of high-speed rail tracks between San Jose and Gilroy; mitigation of vibration impacts on the San Francisco Peninsula that would occur from the placement of freight trains closer to nearby businesses and residences; the need to recirculate the Draft Program Environmental Impact Report after the Union Pacific Railroad announced that it was unwilling to allow the use of its right-of-way for high-speed rail operations; and inadequacy of the project description and land use analysis in light of the Union Pacific announcement.

In the supplemental writ issued in the Atherton I case in February, 2012, and in the writ issued in the Atherton II case at the same time, the Court found deficiencies in the following areas: failure to

[1] Petitioners also filed a Request for Judicial Notice of an excerpt from the Draft Program Environmental Impact Report/Environmental Impact Statement for the systemwide high-speed rail program, issued in 2004. Respondent has not opposed the request, which is granted.

address significant environmental impacts associated with shifting and narrowing Monterey Highway, including traffic, noise, vibration and construction impacts; and failure to address impacts associated with reduced access to surface streets on the San Francisco Peninsula.

The initial returns to the writs filed by respondent on April 2, 2012, the subsequent return filed in connection with the present motion on September 17, 2012, and the administrative record lodged in this matter demonstrate that respondent revised the environmental review of the Project by preparing and circulating a Partially Revised Draft Program Environmental Impact Report (referred to in this Ruling as the "draft EIR"). The draft EIR addressed all of the areas of deficiency addressed by the Court in its rulings. Respondent received public comments (both written and oral) on the draft EIR. Following the close of the public comment period on the draft EIR, respondent issued the Partially Revised Final Program Environmental Impact Report (referred to in this ruling as the "final EIR") on April 6, 2012, and issued an Addendum to that document on April 19, 2012. On April 19, 2012, respondent adopted a resolution rescinding its prior approval of the Project and the environmental review of the Project, and adopted a separate resolution certifying the final EIR for compliance with CEQA, adopting findings of fact and a statement of overriding considerations, adopting a mitigation monitoring and reporting program, and selecting the Pacheco Pass Network Alternative serving San Francisco via San Jose, preferred alignments, and preferred station locations, for further study in project-level environmental documents.

Respondent filed its return to the writs and motion to discharge the writs on September 17, 2012.

III. Summary of Petitioner's Contentions

In their opposition to the present motion, petitioners do not contend that respondent failed to comply with the writs with regard to any of the areas of deficiency the Court identified in its earlier rulings. Petitioners do not assert that the final EIR failed to address the areas the Court identified in its rulings, as described above, or that the discussion of those areas failed to comply with CEQA in any way.

Instead, petitioners contend that respondent violated CEQA in another respect, by failing to address allegedly changed circumstances. Those changed circumstances, according to petitioners, are the probability that the portion of the Project that lies in the so-called "Caltrain corridor" on the San Francisco Peninsula between San Francisco and San Jose will be built and operated as a two-track system in which high-speed trains operate on the same tracks as Caltrain commuter trains (referred to as the "blended

option"), rather than the four-track system with separate tracks for high-speed trains that has been described in all of the environmental review so far.

Petitioners argue that the changed circumstances are signaled by two documents.

The first document is the Revised 2012 Business Plan for the Project, which was issued in April, 2012. That Plan acknowledged criticism of the earlier Draft 2012 Business Plan, including that the cost of the Project was too high, and offered a revised plan for the project that concluded that a "blended approach" to construction of the project, including interim (but possibly long-term) use of the two-track option in the Caltrain corridor, was the "preferred path forward".[2]

The second document is a letter from the Peninsula Corridor Joint Powers Board (the operator of Caltrain commuter rail services) dated February 21, 2012, stating that "...a full-build, four-track option along the Caltrain corridor is not under consideration. [...] The blended system is the only approach we are willing to embrace. [...] As stated in our comment letter on the draft high-speed rail business plan, we are not willing to pursue a planning process that contemplates a full-build project".[3]

Based on these documents, petitioners contend that the four-track Project described and analyzed in the final EIR simply cannot, and will not, be built, thus invalidating the environmental review that was based on that Project.

In particular, petitioners argue that the final EIR fails to comply with CEQA in the following ways: (1) it is based on an unstable and shifting project description; (2) it does not address the issue of the unavailability of the Caltrain right of way for the proposed four-track full-build system, and therefore does not address the infeasibility of the Project as described; (3) it does not adequately address the two-track blended system as an alternative to the Project as described; (4) the EIR should have been recirculated to address the significant new information regarding the alleged infeasibility of the four-track, full-build system; and (5) respondent failed to respond adequately to comments on the unavailability of the Caltrain right of way and the consequent infeasibility of building the Project as described.

[2] See, 2012 Administrative Record ("2012 A.R."), page 14713.

[3] See, 2012 A.R., page 000409.

IV. Standard of Review

The Court's task in this case is to determine whether there has been adequate compliance with the previously issued writ. This amounts to a decision whether the respondent has prejudicially abused its discretion in approving the updated EIR. Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence. (See, *National Parks and Conservation Association v. County of Riverside* (1999) 71 Cal. App. 4th 1341, 1352.)

In analyzing respondent's efforts to comply with the writ, the Court bears in mind that the EIR is the heart of CEQA, and that the integrity of the process is dependent on the adequacy of the EIR. (See, *Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal. App. 4th 316, 327.) The EIR is the mechanism prescribed by CEQA to force informed decision making and to expose the decision making process to public scrutiny. (See, *Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal. App. 4th 892, 910.)

Thus, the fundamental purpose of an EIR is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment. (See, *Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal. App. 4th 866, 882.) For the EIR to serve these goals, it must present information in such a manner that the foreseeable impacts of pursuing the project can actually be understood and weighed, and the public must be given an adequate opportunity to comment on that presentation before the decision to go forward is made. (See, *Committee for a Better Environment v. City of Richmond* (2010) 184 Cal. App. 4th 70, 82.)

In evaluating EIRs for compliance with CEQA, courts have looked not for perfection, but for adequacy, completeness and good faith effort at full disclosure. The overriding issue on review is whether the respondent reasonably and in good faith discussed a project in detail sufficient to enable the public to discern the analytic route the respondent traveled from evidence to action. (See, *California Oaks Foundation v. Regents of the University of California* (2010) 188 Cal. App. 4th 227, 262.) If a final environmental impact report does not adequately apprise all interested parties of the true scope of the project for intelligent weighing of the environmental consequences of the project, informed decision making cannot occur under CEQA and the final EIR is inadequate as a matter of law. (See, *Communities*

for a Better Environment v. City of Richmond, supra, 184 Cal. App. 4th at 82-83.)

Finally, under CEQA, an EIR is presumed to be adequate, and the petitioner in a CEQA action has the burden of proving otherwise. (See, *Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners of the City of Long Beach* (1993) 18 Cal. App. 4th 729, 740.)

V. Discussion

A. Issues Regarding Respondent's Compliance with Specific Terms of Prior Rulings:

As noted above, petitioners do not contend that respondent failed to comply with the writs with regard to any of the areas of deficiency the Court identified in its earlier rulings. Indeed, the administrative record of the proceedings following issuance of the writs shows that respondent adequately addressed those areas in the final EIR. The Court accordingly finds that respondent fully complied with the writs, and with CEQA, with regard to the areas of deficiency identified in the Court's rulings. The motion will be granted and the writs will be discharged to that extent.

B. Issues Regarding Petitioners' New Contentions:

1. Petitioners' New Contentions May Be Addressed in the Present Motion:

As stated above, petitioners' new contentions regarding respondent's alleged failure to comply with CEQA are not based on the Court's prior rulings. Instead, they are based on events that occurred after the issuance of the writs in this case: the Peninsula Corridor Joint Powers Board letter and the issuance of the Revised 2012 Business Plan for the Project.

Although petitioners' new contentions raise issues that were not specifically addressed in the writs or the Court's prior rulings, respondent does not argue that those issues are outside the proper scope of review on the present motion. Instead, respondent opposes petitioners' contentions on the basis that petitioners failed to exhaust administrative remedies, as well as on the merits. In any event, the new issues fall within the general provision of the writs that required respondent to revise the Program Environmental Impact Report "in accordance with CEQA", and are thus properly before the Court.[4] Moreover, because the new issues arise out of facts that occurred after the judgments and writs in this case were issued, the Court concludes that it may address these new issues without violating the rule that a trial court evaluating

[4] See, for example, Peremptory Writ of Mandate issued in Case No. 2010-80000679 on February 1, 2012, page 2, par. 3.

a return to a writ may not consider any newly asserted challenges arising from the same material facts in existence at the time of the judgment, because to do so would undermine the finality of the judgment. (See, *Ballona Wetlands Land Trust v. City of Los Angeles* (2011) 201 Cal. App. 4th 455, 480.)

2. Respondent's Contention Regarding Exhaustion of Administrative Remedies:

Although it does not contend that the Court may not address petitioners' new contentions in the context of the present motion, respondent does raise the threshold issue that petitioners failed to exhaust administrative remedies with regard to most of them. Respondent contends that the Court must deny petitioners' new challenges to the EIR on that basis.

Public Resources Code section 21167(a) sets forth the exhaustion requirement as it is applicable to CEQA cases. The statute provides:

> An action or proceeding shall not be brought pursuant to Section 21167 unless the alleged grounds for noncompliance with this division were presented to the public agency orally or in writing by any person during the public comment period provided by this division or prior to the close of the public hearing on the project before the issuance of the notice of determination.

Exhaustion of administrative remedies is a jurisdictional prerequisite to challenging any project approval. Objections not only must be timely, they must be sufficiently specific that the agency has the opportunity to evaluate and respond to them. The general rule is that less specificity is required to preserve an issue for judicial review in an administrative proceeding such as a CEQA matter than in judicial proceedings, because parties in administrative proceedings normally are not represented by counsel, and to hold such parties to knowledge of technical rules of evidence and to the penalty of waiver for failure to make a timely and specific objection would be unfair to them. This rule of less specificity has been applied in favor of organizations that are experienced in CEQA proceedings through frequent participation in such proceedings. (See, *Santa Clarita Organization for Planning the Environment v. City of Santa Clarita* (2011) 197 Cal. App. 4th 1042, 1050.)

Having applied those standards to this proceeding, the Court finds that administrative remedies were exhausted as to all the issues petitioners raise in opposition to the present motion except the issue of whether respondent adequately responded to comments on the draft EIR. That is, administrative remedies have been exhausted as to issue numbers 1-4 as listed in Section III of this Ruling, above, but not as to

issue number 5.

The Court finds that administrative remedies were exhausted as to issue numbers 1-4 on the basis of the letter from the Peninsula Corridor Joint Powers Board cited above.[5] That letter, which was submitted as a public comment on the draft EIR, specifically raised the issue of whether the Caltrain right of way would be available to respondent for construction of the four-track, full-build system. The letter was sufficiently detailed to alert respondent, and the public, to the possibility that a four-track build-out in the Caltrain right of way might be deferred indefinitely, or even might never occur. In turn, this information was sufficiently specific to preserve issues for review that related directly to the possibility that the four-track system would not be built, or would be deferred for a significant time. The issues identified above as numbers 1-4 relate directly to that possibility, because all of those issues are based on the common argument that respondent should have evaluated the Project under CEQA in light of a likely two-track build-out.

Administrative remedies also were exhausted for issues 1-4 on the basis of a letter dated April 18, 2012 that petitioner's counsel submitted during the public comment period. That letter specifically raised the issue of whether the EIR should be revised to consider the two-track, blended system as an alternative to the four-track full build-out, in part because a blended system would have significantly fewer and lesser environmental impacts than the four-track system.[6]

By contrast, the Court finds that administrative remedies were not exhausted on issue number 5, whether respondent adequately responded to public comments. The only evidence in the record that petitioners cite regarding this issue is the following passage from the April 18, 2012 letter submitted by their counsel, referred to above:

> There are numerous other flaws in the PRFPEIR that have been pointed out in the various comment letters submitted by my clients and others. I will not go into their details. Suffice it to say that these comments have identified problems in the draft PRPEIR, and those defects remain uncorrected in the PRFPEIR.[7]

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[5] See, 2012 A.R., page 0000409.

[6] See, 2012 A.R., pages 019145-019147.

[7] See, 2012 A.R., page 019146.

Even applying the rule that less specificity is required to preserve issues for judicial review in administrative proceedings to this letter written by petitioners' counsel, the Court finds that the letter did not give notice to respondent that its responses to comments were inadequate. The letter does not identify any specific responses that were found to be inadequate, and refers only generally to other comments. Instead, the letter focuses on substantive defects in the EIR which were identified in public comments, but not corrected. The letter thus preserves issues regarding those substantive defects for review, but not the issue of whether specific responses to the comments were adequate. The Court accordingly does not address the issue of the adequacy of responses to comments further in this Ruling.

3. Project Description:

The critical importance of the project description to the CEQA environmental review process has been described in the case law as follows: "[A]n accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR. The defined project and not some different project must be the EIR's bona fide subject. The CEQA reporting process is not designed to freeze the ultimate proposal in the precise mold of the original project; indeed, new and unforeseen insights may emerge during investigation, evoking revision of the original proposal." (*County of Inyo v. City of Los Angeles* (1977) 71 Cal. App. 3rd 185, 199.)

Petitioners contend that the environmental review in this case violates these principles because the new information regarding the alleged infeasibility of the four-track full-build system is fundamentally at odds with the project description, and requires further revision of the EIR.

The Court finds this contention to be unpersuasive. As respondent argues convincingly, the project description for this first-tier environmental review always has been the selection of a route into the Bay Area from the Altamont Pass and Pacheco Pass alternatives, along with the selection of general track alignments and station locations based on that choice. This project has not changed in any fundamental way during the environmental review process. The new information regarding the unwillingness of the Peninsula Corridor Joint Powers Board to consider a four-track system concerns the implementation of the project as described, and not the nature of the project itself. Moreover, in the Project Description section

of the final EIR, the alignment between San Francisco and San Jose is stated to be "Caltrain Corridor (Shared Use)", which is consistent with the concept of phased implementation or the blended, two-track system.[8]

In essence, petitioners argue that the new information regarding the unavailability of the Caltrain right of way for a four-track, full-build system could have influenced the choice of routing between Altamont Pass and Pacheco Pass, and that the EIR should be reopened and recirculated to deal with that issue. This argument fails, because Chapter 6 of the final EIR addresses the 2012 Business Plan and the impact of a phased or blended system in relation to the choice of the Altamont or Pacheco alignments. The conclusion expressed in the final EIR is that a phased or blended system may be implemented under either alignment, and that phasing or adoption of a blended system makes no difference to the choice of alignments, which has been based on other factors.[9] Petitioners have not demonstrated that this conclusion is invalid.

The Court accordingly concludes that petitioners have not demonstrated that the environmental review of the project should be invalidated on the ground that it is based on an inaccurate or unstable project description.

4. <u>Unavailability of Caltrain Right of Way:</u>

Petitioners contend that the final EIR fails to address the issue of the unavailability of the Caltrain right of way for a four-track, full-build system, and thus fails to address the infeasibility of the Project as described.

This contention is also unpersuasive. As stated above, the Project under review is (and always has been) the selection of a general route into the Bay Area through Pacheco Pass. Petitioners have not demonstrated that this Project is not feasible as a result of the unavailability of the Caltrain right of way for a four-track system. To the contrary, Chapter 5 of the final EIR discusses implementation of the Project through phased construction of a blended system in the Caltrain right of way, thus concluding that the

[8] See, 2012 A.R., page 12.

[9] See, e.g., 2012 A.R., pages 249, 259, 264, 266-267, 269-270.

Project may be accomplished in that manner.[10] The Project of routing high speed rail into the Bay Area through Pacheco Pass thus remains feasible even if the Peninsula Corridor Joint Powers Board refuses to consider construction of a four-track system in the Caltrain right of way at this time, or in the foreseeable future.[11] In essence, petitioners argue that the entire high speed rail project is infeasible if a phased implementation approach is used, or if a blended system is adopted (over the short or long term) in the Caltrain corridor. Petitioners do not cite evidence in the record to support this argument, and it is not convincing.

Petitioners' counsel also have argued that CalTrain's refusal to permit the 4-track build-out is similar to the Union Pacific's refusal to allow use of its right-of-way. Counsel further argue that the degree of similarity between the CalTrain and the UP issues compels the Court to reach the same conclusion it reached with regard to Respondent's failure to properly consider Union Pacific's action and the consequences to the routing selection. The Court disagrees. The absence of the UP right-of-way was fundamental to route selection. The opportunity to discuss such a fundamental question was not presented to the public; nor was the Authority made aware of the consequences of such a refusal. The contrary is true with the CalTrain refusal. CalTrain limited its right-of-way, but did not prohibit its use. As the court has indicated, such a limitation is not fundamental to route selection. Furthermore, the blended approach was discussed in the EIR.

5. <u>Analysis of Alternatives:</u>

Petitioners contend that the final EIR is inadequate as a matter of law because it fails to address the construction of a two-track, blended system in the Caltrain right of way as a feasible alternative to the

[10] See, e.g., 2012 A.R., pages 237-238.

[11] The Court notes that petitioners appear to treat the Peninsula Corridor Joint Powers Board's refusal to consider construction of the four-track system to be inherently irreversible and thus absolutely to preclude construction of a four-track system in the Caltrain right of way forever. While it is clear that the Board opposes the four-track system now, it is not necessarily clear that this will always be the case. The Court observes that the Board is an appointed body, the members of which are appointed from various governmental entities and locations. It is not inconceivable that its position on construction of the high speed rail system, which is essentially a political decision, could change in the future.

Project, in particular, an alternative that would have lessened the significant environmental impacts of the Project.

This contention fails because Chapter 5 of the final EIR does, in fact, contain a discussion of the environmental impacts of construction of a blended system. The discussion, set forth under the headings "Phased Implementation and Prior Program EIR Analysis" and "Blended System Concept and Prior Program EIR Analysis", essentially concludes that, under either scenario, the expected environmental benefits that would flow from construction of a full-build high speed rail system would accrue more slowly, and the expected adverse environmental effects of construction of the full-build system in the Caltrain corridor area would be deferred as long as construction of the full-build system was deferred.[12]

Although not set forth explicitly as analysis of a separate project alternative, the discussion of the environmental effects of the phased or blended system was tantamount to such an analysis. Specifically, the discussion of the phased or blended system disclosed to the public, and to the decision-makers, what the changed effects of such a system would likely be. That disclosure served the informational purposes of CEQA whether the blended system in the Caltrain corridor is an interim step towards final construction, or whether, as petitioners contend, it may be the final end point for construction. Moreover, the final EIR contained mitigation strategies applicable to the significant environmental impacts that would occur during phased implementation.[13]

The Court accordingly finds that petitioners have not demonstrated that respondent violated CEQA by failing to address a phased or blended system as an independent project alternative.

6. <u>Recirculation:</u>

Petitioners contend that the EIR for the Project should have been recirculated to address significant new information regarding the alleged infeasibility of the planned, four-track, full-build system. In particular, petitioners contend that the Peninsula Corridor Joint Powers Board's letter stating that it would not agree to construction of the four-track system in the Caltrain corridor made it inevitable that

[12] See, 2012 A.R., pages 239-244.

[13] See, 2012 A.R., page 22.

respondent would need to seek an alternative right of way (such as the Highway 280 routing) in order to make the project feasible. The result, petitioners argue, would be significantly increased environmental impacts as compared to the proposed Caltrain corridor routing.

The Court is not persuaded. As discussed above, petitioners have not demonstrated that the Project, including the proposed routing using the Caltrain corridor, has been rendered infeasible simply because the four-track system will not be built initially, or because (as petitioners assert) it may never be built at all. Indeed, the final EIR is based on the conclusion that the Project feasibly may be implemented with, initially, only a two-track system in the Caltrain corridor, with construction of a four-track system to follow (if at all) significantly later. Nothing in the environmental review, in the record, or in petitioners' arguments, makes it evident that respondent will need to consider, or even should consider, a complete change of alignment on the San Francisco Peninsula, such as to the Highway 280 routing, in order to make the Project workable. Petitioners' contention that such a change will occur is merely speculative, and is not sufficient to support a conclusion that the EIR must be recirculated.

Moreover, as also discussed above, the final EIR did address the initial construction of a two-track system in the Caltrain corridor. It analyzed the potential environmental consequences of phasing and the use of a blended system in the Caltrain corridor, and described why these had no impact on the fundamental choice of the Pacheco Pass route into the Bay Area.

As the California Supreme Court stated in *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal. 4th 1112, 1132, the statutory requirement that an EIR must be recirculated when significant new information is added was intended to "...reaffirm the goal of meaningful public participation in the CEQA review process, [but] [i]t is also clear, however, that...the Legislature did not intend to promote endless rounds of revision and recirculation of EIRs. Recirculation was intended to be an exception, not the general rule."

Here, the final EIR's discussion of phasing and the implementation of a blended system in the Caltrain corridor served the goal of meaningful public participation in the CEQA review process. Respondent adequately disclosed to the public how the Project would be implemented, and described in

adequate detail what the environmental consequences of such implementation would be. Even if the process was not absolutely perfect, it was sufficient to comply with CEQA.

VI. Conclusion

Petitioners have not overcome the initial presumption that the final EIR in this case is valid, and thus have not demonstrated that respondent failed to comply with the provisions of the writs of mandate previously issued in these consolidated cases. Petitioners also have not demonstrated that respondent violated CEQA in any other way in the environmental review of the Project. Respondent reasonably and in good faith discussed the Project, including the implementation of the Project through phased construction and use of a blended, two-track system in the Caltrain corridor, in detail sufficient to enable the public to discern the analytic route the respondent traveled from evidence to action. (See, *California Oaks Foundation v. Regents of the University of California* (2010) 188 Cal. App. 4th 227, 262.)

The Court accordingly finds that respondent has complied with the writs and with CEQA. Respondent's motion to discharge the writs is granted.

DATED: February 25, 2013

Judge MICHAEL P. KENNY
Superior Court of California,
County of Sacramento

CERTIFICATE OF SERVICE BY MAILING
(C.C.P. Sec. 1013a(4))

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above-entitled **RULING ON SUBMITTED MATTER** in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at 720 9th Street, Sacramento, California.

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Superior Court of California,
County of Sacramento

Dated: February 25, 2013

By: S. LEE
Deputy Clerk