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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF RIVERSIDE

10 FRIENDS OF RIVERSIDE'S HILLS, a) CASE NO.:
California not-for-profit corporation,) ASSIGNED FOR ALL PURPOSES TO:
11) JUDGE:
Petitioner,) DEPARTMENT:
12) ACTION FILED:
vs.)
13)

14 RIVERSIDE COUNTY TRANSPORTATION)
COMMISSION,)
15)
Respondent and Real)
16 Party in Interest,)

PETITION FOR WRIT OF MANDATE

17 SOUTHERN CALIFORNIA REGIONAL) (Code Civ. Proc. §§ 1094.5; Pub. Res. C. §
18 RAIL AUTHORITY,) 21000 *et seq*; Cal. Code of Regs., Tit. 14 §
15000 .)

19 Real Party in Interest,)

CASE DESIGNATION: CEQA

20 BNSF RAILWAY COMPANY, INC.,)

21 Real Party in Interest,)

22 and DOES 1 through 100, inclusive,)
23 Real Parties in Interest.)
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INTRODUCTION

- 1
2 1. Petitioner, Friends of Riverside’s Hills, respectfully requests issuance of a peremptory
3 writ of mandate setting aside the decisions of the Riverside County Transportation
4 Commission (“RCTC”) adopting Resolution No. 11-013 approving the Perris Valley
5 Line Project (“PVL”), certifying the Final Environmental Impact Report (“EIR”), and
6 adopting the Mitigation Monitoring and Reporting Plan specified therein; approving
7 Memorandum of Understanding (“MOU”) No. 11-33-0005-00 with the Riverside
8 Unified School District; authorizing the Executive Director to execute the MOU on
9 behalf of the Commission; and all associated approvals made for the Perris Valley Line
10 Project on or about July 25, 2011. (Collectively, “the Project”).
- 11 2. In approving the Project, the RCTC violated the provisions of the California
12 Environmental Quality Act (CEQA) (Public Resources Code § 21100 *et seq.*) in that
13 the EIR failed to adequately analyze project impacts. Specifically, the EIR failed to
14 adequately evaluate potentially significant impacts including from soils work,
15 construction noise, train noise, air quality, biological resources, traffic/transportation,
16 etc. The EIR also failed to require that all feasible mitigation occur. The EIR
17 concluded that impacts would be reduced below a level of significance based on no
18 substantial evidence in the record. The EIR also failed to consider an adequate range of
19 project alternatives by failing to evaluate an Express Bus Alternative which would
20 avoid the highway congestion in the San Jacinto Branchline/I-215 Corridor and
21 University Ave.
- 22 3. RCTC improperly failed to recirculate the EIR where the Final EIR added significant
23 new information.
- 24 4. The EIR finds that the Project will have potentially significant impacts to the
25 environment in the areas of aesthetics, biological resources, cultural resources, hazards
26 and hazardous material, noise and vibration, and traffic/transportation. The conclusion
27 that these impacts would be reduced below significance is based on inadequate data and
28 analysis, and no substantial evidence in the record. The project approvals, if allowed to
stand, would thus significantly affect the environment.

1 5. By this verified Petition, Petitioner alleges the following:

2 **PARTIES**

3 6. Petitioner, Friends of Riverside's Hills, is a California not-for-profit corporation created
4 with the purpose of protecting the natural resources of the western Riverside County
5 area including sensitive hillsides, arroyos, and biological resources including native
6 habitats. Petitioner and others submitted comments opposing approval of the Project to
7 the RCTC, which has discretionary approval authority over the Project. Petitioner's
8 officers and members include residents of the University of California Riverside
9 ("UCR") neighborhood through which PVL trains would pass.

10 7. Respondent, RCTC, is a local government agency charged with the authority of
11 planning and implementing transportation and transit development within its territory in
12 compliance with applicable provisions of state law including CEQA. RCTC is the lead
13 agency for the Project and is therefore charged with the duty of ensuring compliance
14 with these applicable laws. RCTC is also the owner of the San Jacinto Branch Line
15 railroad right-of-way and other land encompassing most of the PVL route and facilities
16 and therefore claims an interest in the Project approvals.

17 8. Petitioner is informed and believes and thereon alleges that Real Party in Interest,
18 Southern California Regional Rail Authority ("SCRRA"), operates the commuter rail
19 service, "Metrolink," which will traverse the PVL. Petitioner is informed and believes
20 and thereon alleges that SCRRA claims an interest in the Project approvals at the
21 subject of this lawsuit.

22 9. Petitioner is informed and believes and thereon alleges that a portion of the Project will
23 be constructed on the right-of-way owned and operated by Real Party in Interest, BNSF
24 Railway Company, Inc. ("BNSF") Petitioner is informed and believes and thereon
25 alleges that BNSF claims an interest in the Project approvals at the subject of this
26 lawsuit.

27 10. DOES 1 through 100 are individuals or entities that may have an ownership interest in
28 the property, were project applicants, or claim an interest in the Project approvals at the
subject of this lawsuit. Petitioner is unaware of the true names or capacities of the Real

1 Parties in Interest identified herein under the fictitious names DOES through 100
2 inclusive.

3 **STATEMENT OF FACTS**

4 11. The Project is located in western Riverside County within the cities of Riverside,
5 Moreno Valley, and Perris and unincorporated Riverside County areas.

6 12. The Project would extend a rail line from the existing Riverside Downtown Station in
7 Riverside northward and then south to the cities of Moreno Valley and Perris,
8 extending 24 miles of commuter rail service.

9 13. The Project would connect the existing Riverside Downtown Station along the existing
10 BNSF right-of-way. From the BNSF, the Project would operate on a new curved rail
11 segment, the "Citrus Connection," which would connect the BNSF and link to the
12 existing 21-mile San Jacinto Branch Line (SJBL) extending south to the city of Perris.

13 14. The Draft EIR describes the "Project" as follows: "The proposed PVL project would
14 consist of the existing BNSF and SJBL alignments, and corridor Mile Post (MP)
15 locations along the SJBL alignment are shown on Figure 2.4-1. The proposed PVL
16 project would be an extension of the SCRRA/Metrolink 91 line from the existing
17 Riverside Downtown Station, as shown on Figure 2.4-2, along a portion of the BNSF
18 main line and would connect to the SJBL using the proposed Citrus Connection. For the
19 opening year of 2012, the PVL would include installation and rehabilitation of track;
20 construction of four stations and a Layover Facility; improvements to existing grade
21 crossings and selected culverts; installation of new traffic signals, replacement of two
22 existing bridges along the SJBL at the San Jacinto River; and construction of
23 communication towers and landscape walls."

24 15. The Project corridor would be shared between Metrolink, operated by SCRRA, and
25 BNSF, which currently operates freight service within the BNSF and SJBL rights-of-
26 way.

27 16. The Project would provide new ballast, concrete ties, and welded rail on much of the
28 existing line and add a second track along a portion of the San Jacinto Branch Line.

17. The Project also involves the construction of four stations: the Hunter Park Station, the

1 Moreno Valley/March Field Station, the Downtown Perris Station, and the South Perris
2 Station and the Layover Facility.

3 18. The Project's right-of-way is immediately adjacent to numerous residences and to
4 churches and schools, with the tracks less than 50 feet from numerous residential
5 properties, particularly in the UCR neighborhood.

6 19. A jet fuel pipeline runs near the Project's train tracks, which cross over the pipeline at
7 several locations, including at least one location near a number of residences. The EIR
8 does not consider the age or condition of the pipeline.

9 20. The Project's tracks cross trails in the UCR neighborhood that have been used by
10 generations of hikers/walkers, including the trail connecting Islander Park and Box
11 Springs Reserve. The EIR does not consider the potential hazard to users of such trails
12 from Metrolink trains moving at substantially higher speeds than freight trains.

13 21. The EIR does not discuss any measures to avoid trespassing by RCTC to improve or
14 maintain Project tracks nor does it propose a maintenance road on RCTC property
15 throughout the Project area.

16 22. The Project would involve the construction of sound walls adjacent to numerous
17 residences in the UCR neighborhood as mitigation for train noise.

18 23. Twelve (12) daily passenger trains would traverse the PVL during operations, including
19 four peak hour, peak direction trains, one reverse commute train, and one midday train
20 in each direction, with early morning trains proposed to pass through the UCR
21 neighborhood at about 4:15 am, 5:15 am, and 6:15 am.

22 24. The Project crosses Western Riverside County Multiple Species Habitat Conservation
23 Plan ("MSHCP") Proposed Constrained Linkage Nos. 7 and 19 and intersects MSHCP
24 Criteria Cells 545, 635, 721, 3276, and 3378.

25 25. In January 2009, the RCTC prepared an Initial Study and Mitigated Negative
26 Declaration (IS/MND) for the project and circulated the IS/MND for review and
27 comment. The RCTC thereafter determined to prepare a Draft EIR for the Project.

28 26. The Notice of Preparation for the Draft EIR was circulated on July 14, 2009. The Draft
EIR was completed and circulated for public review beginning April 5, 2010.

- 1 27. The Final EIR was completed in July 2011.
- 2 28. The EIR concluded that impacts to aesthetics, biological resources, cultural resources,
3 hazards and hazardous material, noise and vibration, and traffic/transportation would be
4 potentially significant but reduced below a level of significance through the
5 incorporation and implementation of mitigation measures. All other impacts were
6 determined to be less than significant.
- 7 29. The Project will disturb sensitive habitat, riparian habitat, and federally protected
8 wetlands.
- 9 30. Spadefoot toads, a California Species of Special Concern, regularly breed and produce
10 tadpoles and metamorphs in vernal pools alongside the SJBL tracks in the UCR
11 neighborhood. The EIR does not consider the potential Project impacts on spadefoot
12 toads breeding in this area.
- 13 31. The EIR states that some nighttime construction work may have to occur. As nighttime
14 construction and other construction work near sensitive receptors would violate local
15 noise control ordinances, written consent for exemption or variances will be sought
16 from these ordinances by RCTC.
- 17 32. The EIR analyzes construction noise impacts at only one site, a residential site in the
18 City of Perris over 220 feet from the proposed construction, which site it considers to
19 be a “representative” site, and concludes that temporary/periodic construction noise
20 increases there, at 79 dBA, would be less than significant. The EIR does not analyze
21 construction noise at other sensitive receptors that are much closer to the proposed
22 construction, including numerous residential lots in the UCR neighborhood that are less
23 than 50 feet from the center of the tracks that are proposed to be replaced.
- 24 33. The Project construction would require staging areas for equipment, materials, worker
25 parking, toilets, etc. The EIR proposes certain constraints on the location of such
26 staging areas, such as requirements that it be located on RCTC property and at least 500
27 feet from any environmentally sensitive area, but does not define environmentally
28 sensitive area or propose or consider any particular staging area location and the
impacts at such a location.

- 1 34. There are numerous tight-radius curves along the PVL tracks in the UCR neighborhood
2 near the base of Box Springs Mountain, some with curvature as much as 11 degrees.
- 3 35. Tight radius curves create wheel-squeal noise from trains. Wheel-squeal from trains
4 creates considerable noise. For example, the EIR illustrates the predominant impact
5 from wheel-squeal noise compared to other train noise at the Citrus Connection. The
6 EIR also states that, at a UCR neighborhood locale, "The principal source of noise near
7 the curved area would be wheel squeal."
- 8 36. The EIR concludes that operational noise impacts would occur at 83 residential
9 locations in the UCR neighborhood, 18 of which would experience severe, aka
10 potentially significant, impacts. 14 residences in the UCR neighborhood would be
11 affected by vibration impacts as well.
- 12 37. In reaching its conclusions on operational noise impacts on residential locations in the
13 UCR neighborhood, the EIR did not include or analyze wheel-squeal noise.
- 14 38. The EIR analyzed wheel-squeal noise for only one curve, the Citrus Connection, and
15 not any curves in proximity to the UCR neighborhood residences. The Citrus
16 Connection has different conditions, in particular much higher existing noise levels,
17 than the residential locations near tight-radius curves in the UCR neighborhood. Noise
18 impacts from wheel-squeal may therefore be much more severe in the UCR
19 neighborhood than as analyzed in the EIR for the Citrus Connection.
- 20 39. The wheel-squeal noise analysis for the Citrus Connection in the EIR is erroneous and
21 out of date, since that proposed curve has since been shifted north, making it tighter and
22 closer to residences.
- 23 40. The Project proposes the use of wayside applicators to reduce the wheel-squeal noise at
24 all tight radius curves. The EIR does not analyze the amount of noise reduction that
25 would be obtained by the use of such wayside applicators and does not make their use a
26 Mitigation Measure.
- 27 41. The EIR does not state what kind of lubricants would be used in the Project's proposed
28 wayside applicators, nor does it analyze the impact from weeping off the tracks of such
lubricants in environmentally sensitive areas in the UCR neighborhood.

- 1 42. The EIR does not consider the use of resilient wheels on the train cars, which an FTA-
2 sponsored Manual states are “Well demonstrated to be effective” as a wheel-squeal
3 noise control treatment, providing “10 to 20” dB noise reduction.
- 4 43. Heavy rains in December 2010 resulted in a large mudflow onto the SJBL tracks
5 resulting in an extended stoppage (nearly two weeks) in freight traffic. The mudflow
6 was in an area of the UCR neighborhood adjacent to Islander Park, not near any culvert,
7 and subject to future mudflows. The Project proposes, numerous culvert/drainage
8 improvements along the tracks, yet the EIR does not analyze the drainage situation in
9 the vicinity of said mudflow nor does the Project propose any improvement there.
- 10 44. The Draft EIR claimed that “the proposed PVL project would not involve extensive soil
11 work,” modified in the Final EIR to the claim that, “The ‘Embankment Construction’ is
12 the only task with extensive soils work.”
- 13 45. A document dated August 31, 2009 sent from RCTC to the FTA giving the “PVL
14 Preliminary (30%) Design Cost Estimate Base, Cost Estimate Track-Networks
15 System,” identified vast amounts of soils work for the Project, including “Trackwork”
16 consisting of 430,855 cubic yards (CY) of “unclassified cut,” 35,215 CY of
17 “unclassified fill,” and 81,360 CY of “sub-ballast.” The excess of cut over the sum of
18 the fill and sub-ballast would need to be exported.
- 19 46. The EIR does not quantify any amounts of cut, fill or sub-ballast or identify the
20 locations of such extensive soils work or consider the environmental impacts at such
21 locations. It does not consider the air quality impacts of such extensive soils work,
22 where the vast amount of exported soils would go, or the environmental impacts at
23 those locations. The EIR does not consider the air quality and traffic impacts of such
24 large numbers of dump truck movements.
- 25 47. The EIR’s Alternatives Analysis was completed in May 2004. The only alternatives
26 considered were three substantially similar rail alternatives (including the chosen
27 Project), the no-project alternative, and an express bus (TSM) alternative.
- 28 48. The Alternatives Analysis in the EIR forecasts a daily ridership (boardings) at new PVL
stations of 4,151 in the year 2010.

1 49. Extracting the Alternatives Analysis forecast of daily riders from and to existing 91-line
2 stations results in a 2010 91-line daily ridership of over 4,400 with no PVL line. The
3 actual daily ridership on the 91-line in 2010, pursuant to official Metrolink figures, was
4 2,215.

5 50. The EIR's Air Quality analysis, in particular for NOx, is dependent on an estimate of
6 automobile trips saved by PVL ridership. Hence a significant overestimate of PVL
7 ridership corresponds to a significant underestimate of air quality impacts.

8 51. The EIR's Express Bus alternative uses congested route segments even though less
9 congested route segments are available, would significantly cut the distance and time of
10 the bus trips, would equally or better serve passengers, and were known to RCTC. For
11 example, the Alternatives Analysis uses a University Ave. route segment even though
12 the RCTC's own analysis states that Martin Luther King Boulevard would be a better,
13 quicker route.

14 52. The Alternatives Analysis projects 22 minutes by the PVL from an Alessandro station
15 to the Riverside Downtown Station and 1,468 boardings at Alessandro; versus 28
16 minutes by Express Bus and only 238 TSM boardings. There is no explanation for this
17 large discrepancy in ridership projections.

18 53. The Project was approved at the July 25, 2011 hearing of the RCTC by adoption of
19 Resolution No. 11-013. The Notice of Determination was posted July 25, 2011.

20 54. Approval of the PVL also requires compliance and approval of a Supplemental
21 Environmental Assessment (SEA) and Finding of No Significant Impact (FONSI) for
22 the Project pursuant to the National Environmental Policy Act (NEPA). In November
23 2010, a SEA for the PVL was prepared for the Federal Transit Administration (FTA)
24 and RCTC. Petitioner is informed and believes and on that basis alleges that the FTA
25 has not, as of the date of this filing, taken any final action with regards to the
26 SEA/FONSI.

27 55. The maintenance of this action is for the purpose of enforcing important public policies
28 of the State of California with respect to the protection of the environment under
CEQA. The maintenance and prosecution of this action will confer a substantial benefit

1 upon the public by protecting the public from environmental harms and other harms
2 alleged in this Petition. Petitioner is acting as a private attorney general to enforce these
3 public policies and prevent such harm.

4 56. Petitioner has performed all conditions precedent to filing the action by complying with
5 the requirements of Public Resources Code § 21167.5, in notifying Respondent of the
6 filing of this action (attached hereto as Exhibit “A”), and by complying with the
7 requirements of Public Resources Code § 21167.6, in notifying Respondent of
8 Petitioner’s election to prepare the record of Respondent proceedings in connection
9 with this action (attached hereto as Exhibit “B”).

10 **FIRST CAUSE OF ACTION**

11 **(All parties did not comply with the requirements of CEQA.)**

12 **a. The RCTC failed to comply with the procedural requirements of CEQA by**
13 **failing to consider all aspects of the project as part of the CEQA review.**

14 57. Petitioner hereby realleges and incorporates paragraphs 1 through 56.

15 58. All discretionary projects are subject to CEQA review. (State CEQA Guidelines §
16 15002 (d), (i).) CEQA defines a project as “the whole of an action, which has a
17 potential for resulting in either” a direct or “reasonably foreseeable indirect physical
18 change in the environment.” (State CEQA Guidelines § 15378 (a)(1)) The lead agency
19 “must consider the whole of an action, not simply its constituent parts, when
20 determining whether [a project] will have a significant environmental effect.” (State
21 CEQA Guidelines § 15003 (h).)

22 59. CEQA provides an exemption for the institution or increase of passenger or commuter
23 services on rail or highway rights-of-way *already in use*, including modernization of
24 existing stations and parking facilities.

25 60. The PVL is subject to CEQA and a “project” as new rail line not currently in use, and
26 not part of an existing rail right-of-way, will be laid with the development of the PVL.

27 61. Petitioner commented that, based on RCTC and Metrolink Manuals and RCTC Agenda
28 Reports, the reasonably foreseeable future plans for the PVL include: expansion and
improvements to the amenities at the project’s four new stations; future maintenance
road along the right-of-way; and double tracking along more of the SJBL than the 9-

1 mile segment considered in the EIR.

2 62. Petitioner commented that the EIR improperly failed to consider the whole of the
3 Project and improperly segmented approvals. The EIR failed to evaluate reasonably
4 foreseeable environmental impacts. By failing to evaluate the whole of the Project,
5 future expected and *reasonably foreseeable plans* for the Project will not be subject to
6 undergoing any CEQA review.

7 63. The RCTC has future plans to upgrade and expand amenities for the four stations to be
8 built with this project after opening day of the stations, as detailed in the RCTC
9 Commuter Rail and Multimodal Facility Design Criteria Manual. Such upgrades and
10 expansions are not included in the Project description and impacts from these
11 upgrades/expansions were not considered in the EIR.

12 64. The EIR improperly fails to consider the construction of a maintenance road for the
13 Project along track alignment with access points from adjacent City, County Streets, or
14 RCTC owned property, as detailed in the RCTC Commuter Rail and Multimodal
15 Facility Design Criteria Manual and SCRRA Design Criteria Manual.

16 65. The EIR fails to consider RCTC plans to future double track along more of the SJBL
17 than the presently proposed 9-mile segment.

18 66. In failing to consider these reasonably foreseeable and expected plans, the RCTC
19 failed to consider the “whole” of the Project and improperly segmented Project
20 approvals.

21 67. Excluding these known development plans from Project CEQA review would result in
22 the future development, including double tracking, construction of a maintenance road,
23 and station upgrades and expansions, being exempt from CEQA review.

24 68. By failing to consider the whole of the Project and reasonably foreseeable
25 environmental impacts arising from the Project, the RCTC committed a prejudicial
26 abuse of discretion for which the Project approval must be set aside. (Public Resources
27 Code § 21168.5.)

28 **b. The RCTC Failed to Adequately Evaluate Project Impacts**

69. Petitioner hereby realleges and incorporates paragraphs 1 through 68.

1 70. An adequate EIR must evaluate all potentially significant environmental impacts of a
2 proposed project, including all phases of the project; both direct and indirect impacts;
3 and both short-term and long-term impacts. (California Code of Regulations., tit. 14 §
4 15126, 15126.2.) An EIR must evaluate local as well as regional impacts. (California
5 Code of Regulations., tit. 14 § 15125, 15126.2.)

6 71. Petitioner and others commented that the EIR failed to adequately evaluate indirect
7 Project impacts and failed to evaluate all potentially significant Project impacts
8 including, but not limited to, impact to/from air quality, traffic, noise, biological
9 resources, and hazards. For example, Petitioner and others commented that the EIR
10 failed to evaluate construction noise and wheel-squeal noise in the UCR neighborhood.

11 72. The EIR failed to adequately evaluate potentially significant environmental impacts
12 from the Project.

13 73. By failing to adequately evaluate Project impacts, the RCTC committed a prejudicial
14 abuse of discretion for which the Project approvals must be set aside. (Public Resources
15 Code § 21168.5.)

16 **c. The EIR Failed to Disclose and Evaluate Relevant Information.**

17 74. Petitioner hereby realleges and incorporates paragraphs 1 through 73.

18 75. An EIR is an informational document intended to inform agency decision-makers and
19 the public of the significant environmental effects of a project and minimize those
20 significant effects through the implementation of mitigation measures or project
21 alternatives. (Public Resources Code § 21061; Guidelines § 15121.)

22 76. CEQA requires that an EIR be adequate, complete, and evidence a good faith effort at
23 full disclosure. (Guidelines § 15003(i).)

24 77. An adequate EIR must include enough relevant information to permit full assessment of
25 significant environmental impacts by the public and reviewing agencies. (Guidelines §
26 15147.)

27 78. CEQA provides that the failure to comply with CEQA's information disclosure
28 provisions can result in a prejudicial abuse of discretion regardless of whether a different
outcome would have been reached if the agency had complied. (Public Resources Code

1 § 21005 (a))

2 79. Petitioner and others commented that the EIR failed to disclose and evaluate relevant
3 information with regards to air quality, hazards, biological resources, and noise impacts,
4 among others.

5 80. The EIR fails to disclose enough relevant information regarding the Project to permit
6 informed decision making and to permit a full assessment of the significant impacts of
7 the Project. By way of example, the EIR fails to disclose and evaluate significant
8 information such as the amount and location of soil work that will occur with the
9 Project, including cut, fill, and sub-ballast, and soil export.

10 81. By failing to disclose relevant information, and by failing to evaluate all aspects of the
11 Project in the EIR, the RCTC committed a prejudicial abuse of discretion for which the
12 Project approvals must be set aside. (Public Resources Code §§ 21005(a), 21168.5)

13 **d. The Project Description is Inadequate and Misleading.**

14 82. Petitioner hereby realleges and incorporates paragraphs 1 through 81.

15 83. CEQA requires that an EIR contain an accurate and complete description of the
16 proposed project so that decision-makers and the public can properly assess a project's
17 environmental impacts. (Guidelines § 15124)

18 84. CEQA also requires that project notices contain an accurate and complete description
19 of the project. (Public Resources Code § 21092; Guidelines § 15094)

20 85. Petitioner and members of the public commented that the Project description was
21 inadequate.

22 86. The EIR fails to describe the Project with sufficient specificity to allow decision-
23 makers and the public to assess the Project's impacts. For example, the Project fails to
24 describe the precise scope and location of track improvements and upgrades.

25 87. By providing an inconsistent and misleading project description in the various project
26 documents and notices, the RCTC committed a prejudicial abuse of discretion for
27 which the Project approvals must be set aside. (Public Resources Code §§ 21005(a),
28 21168.5)

1 **e. The RCTC Failed to Adopt all Feasible Mitigation Measures and Improperly**
2 **Rejected Mitigation Measures without Adequate Findings.**

3 88. Petitioner hereby realleges and incorporates paragraphs 1 through 87.

4 89. CEQA establishes a duty on the part of the lead agency to mitigate all significant
5 environmental impacts of a project. (Public Resources Code § 21002, 21002.1, Cal.
6 Code of Regs., tit. 14 § 15021(a).)

7 90. A lead agency may not approve a project for which there are significant environmental
8 impacts unless the agency makes findings that: (a) mitigation measures have been
9 required of the project which avoid or substantially lessen the significant environmental
10 effects, or (b) mitigation measures are found to be infeasible based on substantial
11 evidence. (Public Resources Code §§ 21081 (a), 21081.5; Guidelines §§ 15091 (a), (b),
12 15092 (b).)

13 91. Petitioner and others commented that not all feasible mitigation was required of this
14 Project.

15 92. Petitioner and others proposed additional feasible mitigation measures to lessen the
16 Project's environmental impacts, including, but not limited to, mitigation measures
17 relative to air quality, noise, traffic, and hazard impacts.

18 93. The RCTC failed to adopt all feasible mitigation measures in violation of CEQA and
19 failed to make findings, supported by substantial evidence, that said measures were
20 infeasible. For instance, while stating that the use of wayside applicators would
21 significantly reduce wheel-squeal noise, RCTC refused to make this a Mitigation
22 Measure, and failed to consider the use of resilient wheels as a measure to reduce wheel
23 squeal noise. Also, the RCTC failed to adopt mitigation limiting construction to
24 daytime hours in order to comply with local noise ordinances where such mitigation
25 was feasible and a finding to the contrary was unsupported by substantial evidence in
26 the record.

27 94. By approving the Project when feasible mitigation existed to reduce Project impacts
28 and without basis on substantial evidence in the record, the RCTC committed a
prejudicial abuse of discretion for which the Project approvals must be set aside. (Pub.

1 Res. C. § 21168.5)

2 **f. Mitigation measures that were adopted are inadequate, uncertain and**
3 **unenforceable in violation of CEQA.**

4 95. Petitioner hereby realleges and incorporates paragraphs 1 through 94.

5 96. CEQA requires that adopted mitigation measures be certain and enforceable. (Public
6 Resources Code § 21081.6 (b); State CEQA Guidelines § 15126.4 (a)(2))

7 97. The lead agency must ensure that mitigation measures are required by or incorporated
8 into the project. (Public Resources Code § 21081.6(b).) .)

9 98. Petitioner and others commented that mitigation measures were uncertain and
10 unenforceable in violation of CEQA.

11 99. The RCTC approved the Project where many mitigation measures are uncertain of
12 lessening impacts or are based on deferred analysis. By way of example, mitigation
13 measures to reduce project noise were not certain to reduce noise impacts.

14 100. By approving the Project when mitigation measures are inadequate, uncertain,
15 not legally enforceable, or deferred, the RCTC committed a prejudicial abuse of
16 discretion for which the Project approvals must be set aside. (Public Resources Code §
17 21168.5.)

18 **g. RCTC Failed to Consider a Reasonable Range of Project Alternatives and**
19 **Improperly Rejected Feasible Alternatives Without Adequate Findings.**

20 101. Petitioner hereby realleges and incorporates paragraphs 1 through 100.

21 102. An adequate EIR must consider a reasonable range of alternatives to the
22 proposed project. The alternatives must be designed to meet basic project objectives
23 and lessen or avoid significant environmental impacts. (Guidelines § 15126.6(a).)

24 103. The discussion of project alternatives must focus on alternatives to the project
25 which are capable of avoiding or substantially lessening any significant effects of the
26 project, even if those alternatives would impede to some degree the attainment of the
27 project objectives, or would be more costly. (Guidelines §15126.6 (b).)

28 104. A lead agency has a duty to adopt an alternative to the proposed project if said
alternative is feasible. (Public Resources Code § 21002)

105. Petitioner commented that feasible alternatives existed which would reduce

1 project impacts, but which were not considered or were rejected based on inadequate
2 findings. For instance, Petitioner recommended an alternate route for an express bus
3 which would avoid the worst freeway traffic segment in the San Jacinto Branchline/I-
4 215 Corridor and the heavily congested University Ave. in the City of Riverside,
5 reduce project impacts, and could be developed at a much lower cost.

6 106. Without consideration of an Express Bus Alternative which would avoid the
7 highway congestion in the San Jacinto Branchline/I-215 Corridor and University Ave.,
8 the range of alternatives considered was unreasonable.

9 107. Petitioner commented that rejection of feasible alternatives was made not based
10 on accurate and substantial evidence in the record. For example, Petitioner commented
11 that alternatives were rejected based on grossly exaggerated Metrolink ridership
12 projections for 2010 when compared with actual 2010 ridership figures, and that
13 Express Bus ridership projections were absurdly low.

14 108. By failing to consider feasible alternatives, considering an unreasonable range
15 of alternatives, and rejecting alternatives based on no substantial evidence in the record,
16 the RCTC committed a prejudicial abuse of discretion for which the Project approvals
17 must be set aside. (Public Resources Code § 21168.5.)

18 **h. The RCTC Failed to Recirculate the EIR where Significant new Information was**
19 **Added in the Final EIR**

20 109. Petitioner hereby realleges and incorporates paragraphs 1 through 108.

21 110. CEQA requires that a lead agency recirculate an EIR, or portions thereof, when
22 significant new information is added to the EIR, including changes in the project, data,
23 or other information, after availability of the draft EIR for review but prior to
24 certification. (Guidelines § 15088.5(a),(c).)

25 111. Information is significant when it deprives the public of a meaningful
26 opportunity to comment upon a substantial adverse effect or a feasible way to mitigate
27 or avoid such an effect. (Guidelines § 15088.5(a).)

28 112. Petitioner and others commented that the RCTC must recirculate the EIR as a
result of the addition of significant new information.

1 113. For example, the Draft EIR stated that the Project would not involve extensive
2 soil work, yet the Final EIR noted some extensive soil work with “Embankment
3 Construction.”

4 114. By failing to recirculate the EIR where significant new information was added,
5 the RCTC committed a prejudicial abuse of discretion for which the Project approvals
6 must be set aside. (Public Resources Code § 21168.5.)

7 **WHEREFORE**, Petitioner prays for the following relief on all causes of action:

8 115. For the Court’s peremptory writ of mandate requiring Respondent RCTC to set
9 aside their decision certifying the EIR for the Project and requiring Respondent RCTC to
10 set aside their approval of the Project.

11 116. For the Court’s peremptory writ of mandate requiring Respondent RCTC to fully
12 comply with the requirements of CEQA prior to any future approval of the Project. (CCP
13 § 1094.5).

14 117. For a judgment enforcing the duty imposed upon the RCTC by CEQA to
15 adequately address potential individual and cumulative impacts to the environment in any
16 subsequent action taken regarding the Project.

17 118. For a judgment enforcing the duty imposed upon the RCTC by CEQA to
18 adequately consider mitigation to reduce significant impacts in any subsequent action
19 taken to approve the Project.

20 119. For the RCTC to prepare, circulate, and consider a new and legally adequate
21 Environmental Impact Report and otherwise comply with CEQA in any subsequent
22 action taken to approve this Project.

23 120. For costs of this suit, including attorney’s fees pursuant to CCP § 1021.5.

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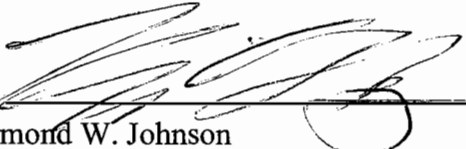
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121. For such other and further relief, including preliminary and permanent injunctive relief, in the event that RCTC, or its agents or instrumentalities, intend to commence construction on the site.

DATED: August 22, 2011

Respectfully submitted,
JOHNSON & SEDLACK

By: 
Raymond W. Johnson
Abigail A. Broedling
Kimberly Foy
Attorneys for Petitioner

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VERIFICATION

State of California)
) SS.
County of Riverside)

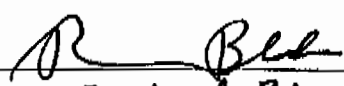
I, the undersigned, certify and declare that I have read the foregoing Petition for Writ of Mandate and know its contents. The statement following the box checked is applicable.

() I am a party to this action. The matters stated in the document described above are true of my own knowledge and belief except as to those matters stated on information and belief, and as to those matters I believe them to be true.

I am an officer () a partner () a member of Friends of Riverside's Hills, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the document described above are true.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Dated: August 22 2011


Richard Block

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Exhibit "A"

Exhibit A

Johnson & Sedlack

ATTORNEYS at LAW

Raymond W. Johnson, Esq. AICP
Abigail A. Broedling, Esq.
Kimberly Foy, Esq.
Carl T. Sedlack, Esq. Retired

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E-mail: EsqAICP@WildBlue.net
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August 22, 2011

Riverside County Transportation Commission
4080 Lemon Street, 3rd Floor
P.O. Box 12008
Riverside, CA 92502-2208
Phone: (951) 787-7141
Fax: (951) 787-7920

VIA U.S. MAIL AND FACSIMILE

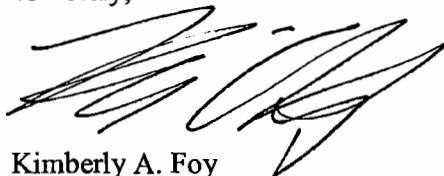
Re: Notice of Intent to file CEQA Petition in the matter of the adoption of Resolution No.11-013 approving the Perris Valley Line project and the Environmental Impact Report associated therewith

To the Riverside County Transportation Commission:

PLEASE TAKE NOTICE, under Public Resource Code § 21167.5, that this letter serves as written notice of Petitioner Friends of Riverside's Hills intent to file a Petition for Writ of Mandate under the provisions of the California Environmental Quality Act against the Respondent Riverside County Transportation Commission (RCTC).

The Petition challenges the decision of the RCTC adopting Resolution No. 11-013 approving the Perris Valley Line Project ("PVL"), certifying the Final Environmental Impact Report ("EIR") approving Memorandum of Understanding No. 11-33-0005-00 with the Riverside Unified School District, and associated approvals made on or about July 25, 2011.

Sincerely,



Kimberly A. Foy
JOHNSON & SEDLACK
Attorney for Petitioner

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Exhibit "B"

Exhibit B

1 JOHNSON & SEDLACK
RAYMOND W. JOHNSON SBN 192708
2 ABIGAIL A. BROEDLING SBN 228087
KIMBERLY FOY SBN 259746
3 26785 Camino Seco
Temecula, CA 92590
4 Telephone: (951) 506-9925
Facsimile: (951) 506-9725
5 E-Mail: EsqAICP@wildblue.net

6 Attorneys for Petitioner
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF RIVERSIDE

10	FRIENDS OF RIVERSIDE’S HILLS, a	)	CASE NO.:
11	California not-for –profit corporation,	)	ASSIGNED FOR ALL PURPOSES TO:
		)	JUDGE:
12	Petitioner,	)	DEPARTMENT:
		)	ACTION FILED:
13	vs.)	
14	RIVERSIDE COUNTY TRANSPORTATION	)	PETITIONER’S NOTICE OF ELECTION
	COMMISSION,	)	TO PREPARE THE ADMINISTRATIVE
15	Respondent and Real	)	RECORD
16	Party in Interest,)	
17	SOUTHERN CALIFORNIA REGIONAL)	
	RAIL AUTHORITY,	)	(Pub. Res. C. § 21167.6)
18	Real Party in Interest,	)	CASE DESIGNATION: CEQA
19)	
20	BNSF RAILWAY COMPANY, INC.,)	
21	Real Party in Interest,)	
22	and DOES 1 through 100, inclusive,)	
23	Real Parties in Interest.)	

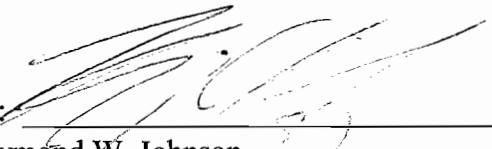
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1 Pursuant to Public Resources Code § 21167.6, Petitioner, FRIENDS OF RIVERSIDE'S
2 HILLS, hereby notifies Respondent, RIVERSIDE COUNTY TRANSPORTATION
3 COMMISSION, of Petitioner's election to prepare the administrative record of proceedings
4 relating to this action.

5 Petitioner requests that Respondent identify all documents, including all transcripts,
6 minutes or meetings, notices, correspondence, reports, studies, proposed decisions, final
7 decisions, findings, and any other documents or records relating to Respondent's approval of
8 the PERRIS VALLEY LINE project, Environmental Impact Report, and all associated
9 approvals made on or about July 25, 2011 (the "Project").

10
11 DATED: August 22, 2011

Respectfully submitted,
JOHNSON & SEDLACK

12
13
14 By: 
15 Raymond W. Johnson
16 Abigail A. Broedling
17 Kimberly Foy
18 Attorneys for Petitioner
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