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12 ARTHUR and SANDRA BAUER, PAUL HELMAN,
13 GREGG LUKENBILL, and DANIEL PAIGE

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SACRAMENTO

FILE BY FAX

16 SACRAMENTO RAIL PRESERVATION
17 ACTION GROUP, ARTHUR AND
18 SANDRA BAUER, PAUL HELMAN,
19 GREGG LUKENBILL, and DANIEL PAIGE,

20 Petitioners,

21 v.

22 CITY OF SACRAMENTO; CALIFORNIA
23 DEPARTMENT OF TRANSPORTATION
24 and DOES 1 through 10, inclusive,

25 Respondents.

CASE NO.

**VERIFIED PETITION FOR WRIT OF
MANDATE; ELECTION TO PREPARE
RECORD OF PROCEEDINGS**

**ACTION BASED ON CALIFORNIA
ENVIRONMENTAL QUALITY ACT**

**(Code Civ. Proc., §§ 1085, 1094.5;
Pub. Resources Code, §§ 21000 et seq.,
5020 et seq.)**

INTRODUCTION

1. The Sacramento Southern Railroad corridor has been in nearly continuous use for 110 years. Originally conceived as a mainline around San Francisco Bay for the Southern Pacific, the Walnut Grove Branch Line ("WGBL" or "Line") of the Sacramento Southern Railroad eventually became a key transportation and cultural corridor between the Sacramento-San Joaquin Delta and the City of Sacramento and points beyond. Though Southern Pacific never built a second track, the right-of-way is wide enough to accommodate two passing trains, and has ample room to accommodate both a train and bike path. The loss of tracks on this transportation corridor would sever the ties to important regional, national, and global history, negatively affecting the heritage of the greater Sacramento and Delta region, far beyond the 4.8 mile limits of the Del Rio Trail.

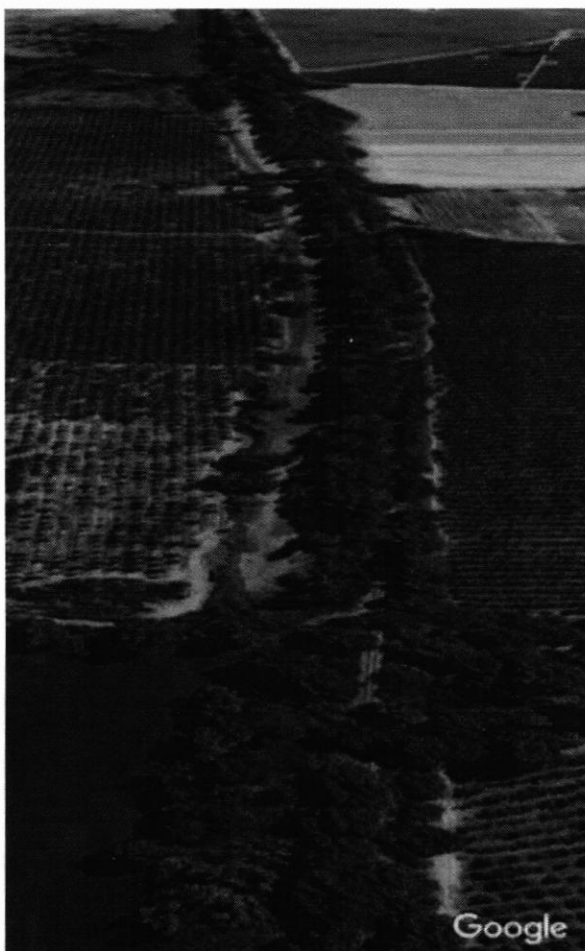


Figure 1: Aerial view of Sacramento Southern Railroad as it enters the Delta South of Freeport, near Cliff's Marina.

2. Yet Respondent CITY OF SACRAMENTO (“City”), propelled by well-connected neighbors living near the middle segment of the 24.5-mile long Sacramento Southern Railroad, developed, promoted and eventually approved a 4.8-mile multi-use trail through the Sacramento Southern Railroad right of way, west of Freeport Boulevard and south of Meadowview Road. Rather than design a “rails with trails” project that would allow California State Parks, historic preservation groups and volunteers to continue the long-planned living railroading experience southward of the already wildly popular interpretive educational train service out of Old Sacramento, the City and the neighbors (through a neighborhood association and a “Right of Way Conversion Committee”) unabashedly sought—and ultimately did—design the trail in a way that would permanently sever the historic rail line. If built as proposed, the project would damage and build over the tracks on this nationally recognized cultural and historic transportation corridor. The project would needlessly sever public access into the living educational history of California’s culturally diverse and globally unique Delta, unnecessarily destroying, rather than preserving, irreplaceable resources.



Figure 2: WGBL of Sacramento Southern Railroad shown in context of Sacramento County and the recently designated Sacramento-San Joaquin Delta National Heritage Area.

1 3. Petitioners SACRAMENTO RAIL PRESERVATION ACTION GROUP ("Rail
2 Group"), ARTHUR and SANDRA BAUER, PAUL HELMAN, GREGG LUKENBILL, and
3 DANIEL PAIGE (collectively, "Petitioners") petition this Court for a Writ of Mandate
4 ("Petition") directed to the City. Petitioners challenge the City's March 26, 2019 certification of
5 the Environmental Impact Report ("EIR") for the Del Rio Trail ("the project").

6 4. In certifying the EIR and approving the project, the City prejudicially abused its
7 discretion and failed to proceed in the manner required by law, including but not limited to its
8 failure to comply with the substantive and procedural mandates of the California Environmental
9 Quality Act ("CEQA"), the State CEQA Guidelines, Title 14, California Code of Regulations,
10 section 15000 et seq. ("CEQA Guidelines"), and other applicable regulations and policies.

11 5. Because the City's approval of the project violates the requirements of CEQA, the
12 approval must be overturned. Therefore, Petitioners request that the Court direct the City to set
13 aside its actions to certify the EIR and approve the project.

14 6. Because the project would be funded with an Active Transportation Program grant
15 from the Federal Highways Transportation Commission, the project must also comply with the
16 National Environmental Policy Act ("NEPA") and Section 106 of the National Historic
17 Preservation Act. The California Department of Transportation ("Caltrans") is also responsible
18 for compliance with the state laws that protect historic resources, including Public Resources
19 Code section 5020 et seq. Caltrans is party to a 2014 Memorandum of Understanding with the
20 State Historic Preservation Office ("2014 MOU") that directs Caltrans' compliance with the
21 requirements of Public Resources Code section 5020 et seq.

22 7. Pursuant to the 2014 MOU, Caltrans' Cultural Studies Office approved a "Finding
23 of No Adverse Effect with Standard Conditions" ("FNAE-SC") based on a Historic Property
24 Survey Report prepared by the City that purportedly evaluated potential adverse effects of the
25 project on the WGBL. The Historic Property Survey Report, however, failed to comply with
26 Public Resources Code section 5020 et seq., the 2014 Memorandum of Understanding and other
27 basic legal requirements, and therefore cannot provide a basis for the City's CEQA conclusions
28 regarding the effect of the project on the historic Walnut Grove Branch Line of the Sacramento

1 Southern Railroad. As a result, Petitioners also seek a Writ of Mandate directed to Respondent
2 Caltrans to set aside its legally inadequate Finding of No Adverse Effect with Standard
3 Conditions.

4 **PARTIES**

5 8. Petitioner SACRAMENTO RAIL PRESERVATION GROUP ("Rail Group") is
6 an unincorporated association whose members are residents of the City of Sacramento,
7 California, who value and aim to protect the cultural and historical heritage represented by
8 California railroads. The Rail Group and its members advocate on behalf of local railroads,
9 including the Sacramento Southern Railroad, also known as the Walnut Grove Branch Line
10 ("WGBL"). The project's unanalyzed and unmitigated impacts would sever the integrity of the
11 WGBL, foreclosing future use of this nationally significant and historic railroad.

12 9. Petitioners ARTHUR and SANDRA BAUER have lived in Sacramento for 45
13 years. They owned and managed a transportation consulting practice for 25 years. Between
14 1981 and 1990, Mr. Bauer was a member of the governing board for the Sacramento Regional
15 Transit District. In the 1980s, Mrs. Bauer served two terms on the Sacramento County Grand
16 Jury. In addition, between 1992 and 2000, Mrs. Bauer served as a consumer representative on
17 the California Board of Pharmacy. Mr. and Mrs. Bauer are members of the California State
18 Railroad of Museum Foundation, the Sacramento History Alliance, the Sacramento Historical
19 Society, and the Rail Group.

20 10. Petitioner PAUL HELMAN has lived in Sacramento Midtown area since 1974,
21 with over 45 years as an active youth group leader and benefactor. Mr. Helman worked at
22 Sacramento area Procter and Gamble Manufacturing Plant for 30 years and has been heavily
23 involved in local, regional and national railroad history. Mr. Helman is also a member of the
24 Rail Group.

25 11. Petitioner GREGG LUKENBILL has been involved the Sacramento community
26 for more than four decades. A Sacramento native, Mr. Lukenbill was the original owner of the
27 Sacramento Kings, and an extensive developer. Projects developed by Mr. Lukenbill include
28 two ARCO Arenas and the Hyatt Regency, among other numerous developments, throughout

1 the region. Mr. Lukenbill is a student of Sacramento's national history, a board member of the
2 Sacramento Historical Society, a member of the Rail Group, and has been a community
3 benefactor for more than four decades.

4 12. Petitioner DANIEL PAIGE is a longtime rail enthusiast who has been active at the
5 California State Railroad Museum for the past 10 years and is a Land Park Resident. He started
6 working for the Southern Pacific and later retired from the Public Utilities Commission where as
7 a professional engineer he worked on railroad safety matters including environmental issues
8 relating to rail passenger travel. Mr. Paige is also a member of the Rail Group.

9 13. Respondent CITY OF SACRAMENTO ("City" or "Defendant") is a charter city
10 organized under the laws of the state of California, and exercising local government power. The
11 City is the CEQA "lead agency" for the project. As lead agency for the project, the City is
12 responsible for preparation of an environmental document that describes the project and its
13 impacts, and evaluates mitigation measures and/or alternatives to lessen or avoid any significant
14 environmental impacts as required by CEQA.

15 14. Respondent CALIFORNIA DEPARTMENT OF TRANSPORTATION
16 ("Caltrans") is a state agency under the laws of California. Caltrans' Cultural Studies Office
17 ("CSO") is responsible for compliance with Public Resources Code section 5020 et seq. as
18 delegated by the California State Historic Preservation Officer ("SHPO"). Caltrans, through the
19 CSO, approved a FNAE-SC that did not comport with the requirements of the Public Resources
20 Code section 5020 et seq., the 2014 Memorandum of Understanding and other legal
21 requirements.

22 15. Petitioners are unaware of the true names and capacities of Respondents, DOES 1
23 through 10, and sue such respondents by fictitious names. Petitioners are informed and
24 believes, and on the basis of such information and belief allege, that the fictitiously named
25 Respondents are also responsible for the actions described in this Petition. When the true
26 identities and capacities of these respondents have been determined, Petitioners will amend this
27 Petition, with leave of Court if necessary, to insert such identities and capacities.

1 **BACKGROUND FACTS**

2 **The Walnut Grove Branch Line of the Southern Pacific Railroad**

3 16. In its Recommendations for Planning and Development of the California State
4 Railroad Museum in 1972, the Sacramento Trust for Historic Preservation identified that
5 "Integrated with the museum should be an operating, passenger-carrying railroad," referred to as
6 "live railroading" and identified that:

7 The most interesting and convenient route would be the Southern Pacific
8 Railroad's Isleton Branch. Facilities for turning the train exist at Isleton (a
9 wye), and the line transects the Delta Meadows, a site planned for State
10 Park development. Also, the railroad skirts the historic Chinese town of
Locke. Use of this route could be used for the more encompassing
purposes of interpreting the "Historic Sacramento River."

11 17. The WGBL of the Sacramento Southern Railroad runs 24.5 miles along an
12 approximately 500 acre corridor along the east side of the Sacramento River, from Sacramento
13 to Walnut Grove in the Delta. The WGBL was pivotal to the prosperous agricultural and
14 cultural development of the Delta because rail service tied the Delta to Sacramento, and
15 ultimately the nation, for distribution and sales of a wide variety of local agricultural products.
16 The construction of the Line through the Delta was directly responsible for the increased
17 agricultural boom in the region and the rapid spread of canneries, packing facilities and diversity
18 of crops. In addition, the Line lead to ethnic diversity in the region, as the initial development of
19 the future national landmark town of Locke by Chinese Americans was directly related to
20 Southern Pacific activities along the Line. For decades, the railroad provided the only
21 transportation for both commercial freight and passengers between Sacramento and the upper
22 Delta.

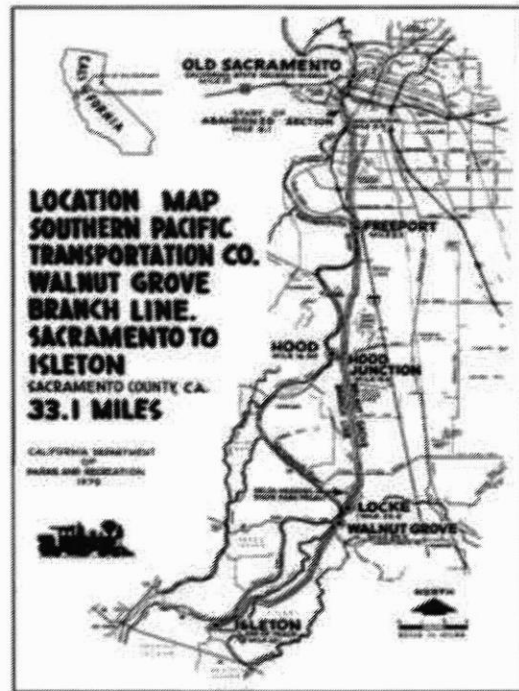
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Figure 3: A wide variety of produce grown in the Delta was transported on the Sacramento Southern Railroad to Sacramento for processing and distribution. The second picture displays Libby, McNeill, and Libby Cannery in Locke in 1935.

18. As formally designated by the United States Army Corps of Engineers ("USACE") in its Walnut Grove Branch Railroad National Register Nomination, Sacramento County, California, Final Report (August 19, 1992), the WGBL begins at the terminus of I Street at Front Street in the City of Sacramento and continues south and west 24.5 miles to the north end of Walnut Grove, California, just south of the Delta Cross Channel to the Mokelumne River. The WGBL is contained entirely within Sacramento County. The geographic extent of this historic resource was specifically selected by USACE based on land purchases by the Sacramento Southern Railroad Company in 1905 and historic alignment maps. The elevated levee is still evident traversing the landscape for the majority of the 24.5-mile corridor. The

1 boundaries include the entire length and width of that portion of the railroad constructed
2 between 1908 and 1912, with the exception of 0.5 miles of route within the town of Walnut
3 Grove.



16 *Figure 4: Steam Train to Sacramento, Walnut Grove Branch Line Acquisition Feasibility*
17 *Study, page 2.*

18 19. The Sacramento Southern Railroad is an outstanding example of railroad branch
19 line operations that occurred throughout California and the nation. The railroad is an integral
20 piece of Sacramento history linking Delta Agriculture to a globally integrated and diverse
21 heritage of unique national significance. The Sacramento region has an obligation to steward
22 and protect the longstanding educational, cultural and agricultural objectives for this historic
23 railroad line. The City, in particular, should promote and protect the living educational
24 railroading opportunity on the Sacramento Southern Railroad for future generations, to advance
25 its own Farm to Fork initiative, and to connect local people as well as visitors with the unique
26 cultural diversity and productive agriculture of the California Delta.



**AMERICA'S
FARM-TO-FORK CAPITAL
SACRAMENTO, CA**

Figure 5: City of Sacramento's Recently Painted Water Tower just north of Freeport, along the Sacramento Southern Railroad, and the City's Farm to Fork logo.

20. For over forty years the California State Railroad Museum has brought visitors to Sacramento and the Delta from all over the world, particularly from China, Japan, the Philippines and Vietnam, due to the agricultural links to the Delta's and California's railroad history. The final phase of the Museum, a living interactive educational operating railroad, first became a reality in 1977 when Southern Pacific applied for abandonment of the operating cargo line. State Parks recognized and seized the opportunity to plan for interpretive living railroading as it existed during the greater part of the Twentieth Century and offer visitors an educational experience of riding a train. The Sacramento Southern Railroad possesses the essential qualities as for an educational train: it is located within easy traveling distance of large metropolitan areas; the corridor itself is accessible, well built and maintained; and it provides idyllic scenery along the river and through farms and countryside.



Figure 6: California State Parks and the California State Railroad Museum's Excursion Train, which currently runs from Old Sacramento to just north of Sutterville Road, alongside a biking and walking trail.

21. The grade and wooden trestles of the WGBL were constructed between 1908-1912 and were considered innovative engineering for the times due to their location atop a levee. According to the USACE's 1992 National Register Nomination, the entire 24.5 mile route retains a remarkable degree of integrity of location, setting, design, workmanship and feeling. The WGBL conveys a strong sense of time and place by evoking the rural and agricultural feel of the railway and its surroundings. Recognizing the value and potential for live railroading and active interpretative learning, State Parks and many others have worked for 47 years to make live railroading on the WGBL a reality as an extension and enhancement of the highly acclaimed California State Railroad Museum in Old Sacramento. To this end, State Parks, assisted by other groups and train and history enthusiasts, prepared multiple studies that develop the Old Sacramento State Historic Park as well as advance the Delta Farm to Fork Excursion Train that must retain the historic maintenance connection with Old Sacramento. Important events and studies include:

- 1969 – Railroad Equipment Gift Made to the State of California
- 1972 – The California State Railroad Museum Plan
- 1976 – Central Pacific Passenger Station opened on the Riverfront in Old Sacramento
- 1977 – State Parks Monitors Southern Pacific Railroad Walnut Grove Branch Line Cessation of Service and Plans to Pursue Purchase of Right of Way
- 1978 – Southern Pacific Ceases to Provide Train Service on the Walnut Grove Branch Line
- 1980 – State Parks Completes Steam Train to Sacramento - Walnut Grove Branch Feasibility Study
- 1981 – California State Railroad History Museum Opens
- 1984 – Sacramento Southern Railroad Initiates Steam Powered Passenger Service from Old Sacramento southbound
- 1985 – Rail Easement for the Walnut Grove Branch Line for State Parks Reserved in Southern Pacific 15 parcel Purchase
- 1988 – Regional Transit Enters Agreement with 99-year Lease to State Parks for Operation of an Excursion Train to the Delta
- 1988 – State Parks Acquires Additional Walnut Grove Branch Line parcels to Hood
- 1991 – U.S. Army Corps of Engineers National Historic Resource Significance Determination for Walnut Grove Branch Line

- 1 • 1991 – State Parks Certifies Final EIR for Extension of the Steam Excursion Train, Walnut Grove Branch Line – Old Sacramento to Hood (“1991 FEIR”)
- 2 • 1992 – U.S. Army Corps Walnut Grove Railroad National Register Nomination
- 3 • 1996 – Parks Proposes to Regional Transit to Lease Meadowview Corridor Property
- 4 • 1996 – Office of State Historic Preservation Letter Confirming Walnut Grove Branch Line of the Southern Pacific Railroad is Eligible for the National Register of Historic Places
- 5
- 6 • 2007 – Historic American Engineering Record Walnut Grove Branch Line Registration on the National Historical Engineering Record
- 7
- 8 • 2008 – City and State Parks Negotiate on Reciprocal Bridge Easement Status
- 9 • 2008 – State Parks Easement for Bike Trail Replacing Rails on Sacramento Valley Railroad
- 10 • 2014 – Old Sacramento State Historic Park FEIR & General Plan Approved, which Includes Future Excursion Train to Hood
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- 12 • 2017 – Joint Museum/Parks/Foundation Master Plan– Strategic Plan Approved, which Includes Excursion Train to Hood
- 13 • 2017 – California State Railroad Museum 5 Year Vision, Mission Statement & Strategic Plan Approved, which Includes Excursion Train to Hood
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15 22. Since even before the Sacramento Southern Railroad ended regular service on the
 16 WGBL in 1978, State Parks and others have been working to create an interpretive train that
 17 would travel from Sacramento into the Delta. In these efforts, more than \$60 million of public
 18 funds have been spent to further operation of the excursion train into the Delta as originally
 19 planned 47 years ago. Those investments s include:

- 20 • More than \$12 million in annual State budgetary administrative planning of, funding for, and documentation, over the last 51 years;
- 21 • More than \$10 million in land and right of way purchases, along with other related passenger food, convenience services since 1978; and corridor vegetation maintenance from Hood to Old Sacramento sing 1985;
- 22 • More than \$30 million in engine and passenger railcar vehicle purchases, relocation costs, refurbishment and ongoing operational vehicle maintenance to federal passenger licensing standards of compliance over the last five decades;
- 23 • \$13 million in passenger safety certification encompassing State Parks’ administrative management, as well as annual operational recurrent safety training for hundreds of State Parks Sacramento Southern volunteers over the last 37 years;
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- State Parks staff and docents have expended tens of thousands of hours on turntable, grade and rail refurbishment and vegetation maintenance down to Sutterville Road since 1978.

It is important to note that the only area of vegetation damage and rail removal by others along the WGBL right of way has been the area controlled by the City of Sacramento and Regional Transit.

23. As a result of the WGBL's special status as a resource eligible for listing in the National Historic Register, as well as State Parks' longstanding plans to develop an excursion train into the Delta, other projects along the Line have gone to great lengths to ensure that the integrity of the tracks remained undisturbed. For instance, when the Freeport Regional Water Authority constructed the new water intake in Freeport in 2007, the federal government, under the supervision of the USACE, maintained the tracks in their current location so that they could be used by State Parks for the Delta excursion train, which was analyzed by State Parks in the 1991 FEIR. The concurrence of the State Historic Preservation Officer with the finding of No Adverse Effect for that project was expressly conditioned on the rehabilitation of the portion of the WGBL impacted by the Freeport Regional Water Project. Later, flangeways were installed along the Line to provide safe bike and pedestrian access across the tracks to reach the Bill Conlin Sports Complex.

24. In contrast, the City's environmental review documents and Caltrans' FNAE-SC ignore the decades of planning and public investment into this unique, nationally recognized historic resource. While the Final EIR for the Del Rio Trail project claims that the proposed multi use trail would not interfere with the approved land use; in fact, the project would render State Park's plans for the excursion train to the town of Hood nearly impossible.

25. When planning and reviewing the project, the City appeared to favor the preferences of a small and specific group of people: the South Land Park Neighborhood Association. Throughout the planning process, the City continually and exclusively sought input from the residents of the influential neighborhood immediately surrounding the project, who demonstrated a single-minded intent to remove and sever the WGBL. The City ignored and failed to seek input from parties interested in the historic qualities of the WGBL in the

1 broader City and region, such as Preservation Sacramento. The City expended substantial
2 resources engaging and accommodating the neighbors in the immediate vicinity of the project,
3 indicating that only their views were relevant to the decision making for a project ostensibly
4 meant to serve all residents of Sacramento, while essentially shutting out the broader
5 Sacramento community from the process.

6 26. The EIR prepared for the project wrongly concludes that the 2014 Old Sacramento
7 State Historic Park General Plan ("2014 OSSHP General Plan") abandoned the nearly five
8 decade-old plan to use the WGBL, including the 4.8 mile segment within the project area. The
9 fact is that Regional Transit controlled and fenced access to that property, essentially barring
10 even vegetation maintenance of the property. In fact, the 2014 OSSHP General Plan proposed
11 to maintain Old Sacramento State Historic Park as one park with five distinct management
12 zones: the riverfront zone, the gold rush and commerce zone, the railroad history zone, the
13 railroad technology and shops zone, and the excursion railroad zone. The railroad zone plan
14 presented on May 2, 2014 at the State Parks Commission meeting was revised from earlier
15 versions based on extensive prior 1972 and 1980 State Parks Plans that led to the existing State
16 Parks 1991 Steam Train Final EIR approval from Old Sacramento to Hood. The 2014 OSSHP
17 General Plan affirms the General Plan opportunities in the Excursion Railroad Zone extending
18 the existing Sacramento Southern Railroad line to the Sacramento Zoo with stops at other local
19 museums, reapproving the second excursion line from a Pocket/Meadowview Station to the
20 Delta agricultural town of Hood.

21 27. By removing the segment of the WGBL from the General Plan, which was
22 purchased by Regional Transit for possible use, as specifically requested by the City of
23 Sacramento, it was State Parks and the State Parks Commission's continuing intent, as originally
24 proposed in the 2014 draft OSSHP General Plan, to preserve the transit line opportunity through
25 South Land Park from the existing Railyards maintenance facility through to the future
26 Meadowview Station, consistent with the original 1980 route approved in the 1991 FEIR.

27 28. State Parks recognized that servicing the future Delta excursion train without the
28 ability to move rolling stock on those rails would be prohibitively expensive.

1 Removing the Regional Transit four miles from the plan, as explicitly requested by the City of
2 Sacramento, left only State Parks owned lands in the 2014 OSSHP General Plan from the
3 Railyards to Hood in anticipation that later, there would be more detailed planning and
4 community engagement for specific projects. As a result, the 1991 FEIR and approval of an
5 excursion train on the entire Line was left intact, protecting the existing thoroughfare.

6 29. State Parks has expended considerable effort planning and ensuring the viability of
7 the excursion line over the past five decades. The WGBL is a necessary component to those
8 plans, and their success is contingent on the railroad remaining fully intact. Relying on a theory
9 advanced by certain homeowners along the historic Line (many of whom explicitly
10 acknowledged the existence of a future excursion train on the Line pursuant to the City's own
11 conditions on development of housing in that neighborhood), the City's EIR ignored the fact
12 that State Parks has consistently planned for an excursion train to the Sacramento Zoo, and
13 through South Land Park to Hood.



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27 *Figure 7: California State Parks Sacramento Southern School Train, providing*
28 *educational experiences.*

The City's Rail Conversion Project

30. The City's project is a 4.8-mile long multi-use trail along the railway corridor west of Freeport Boulevard from south of Meadowview Road and Pocket Road to the Sacramento River Parkway north of Sutterville Road. The project would at times consist of a 6 to 12 foot paved trail with 2 to 3 foot unpaved shoulders. The project would displace and dismember a large section of the historic railroad by: (1) encasing eight intersection rail crossings in concrete or removing the tracks entirely, (2) replacing a trestle bridge with a walking and biking bridge upon which a train could not travel, (3) removing several hundred feet of railroad embankment, and (4) placing the shoulder of the bike trail (to be used by pedestrians) on about 1.7 miles of track in two locations, making use of the tracks impossible.

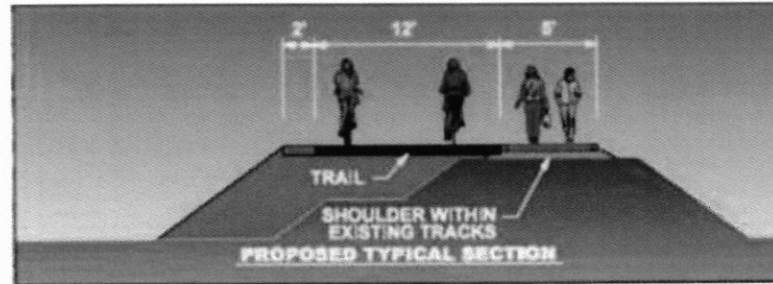
31. While the City attempts to obscure and minimize the impact of the project on the WGBL, a resource of national historic significance, and the surrounding environment, the project includes numerous significant, unmitigated environmental impacts.

32. The City released a Notice of Preparation for the project on June 8, 2018. The City circulated the Draft EIR for public review and comment on November 1, 2018. The initial project was a "rails to trails" conversion, sacrificing the about half of the WGBL railway within the project for a separate and unnecessary walking path that would fill the WGBL tracks with decomposed granite, rendering the tracks useless.

33. The City circulated the Final EIR in March 2019. As proposed in the Final EIR, the project still would result in permanent damage to the WGBL, precluding the planned use of the WGBL for a live railroading educational excursion line to Hood, and otherwise significantly impacting the surrounding environment.

34. The Rail Group, its members, and other members of the public provided extensive public comment on the Draft EIR, and in response, the City purported to abandon the separate walking path along the railway in the Final EIR. However, the Final EIR also failed to modify the project to avoid significant impacts to the historic WGBL, or the project's other significant environmental impacts. The City also presented the changes to the project in a misleading way in the Final EIR and responses to comments, saying the project was changed to accommodate

1 comments about damaging the Line by building a separate walking path on top of it. However,
2 the Final EIR failed to disclose that the project as revised would still result in significant
3 portions of the WGBL being converted into a walking path (about 1.7 miles).



10 *Figure 8: This cross section of the proposed trail, from Florin Road to Z' Berg Park*
11 *shows that the adjacent walking path would be on top of existing tracks. The trail section*
12 *between 35th Avenue and 43rd Avenue would have a similar alignment.*

13 35. On March 12, 2019, federal legislation was signed into law that designated the
14 Sacramento-San Joaquin Delta National Heritage Area, underscoring the historical significance
15 of the WGBL and its connection to the Delta.

16 36. Under an unsubstantiated guise of "safety", the project would encase eight
17 intersection rail crossings in concrete or remove the tracks entirely. Allegedly, in order to have
18 a narrower span, a trestle bridge would be dismantled and replaced with a walking and biking
19 bridge upon which a train could not travel. In addition, several hundred feet of railroad
20 embankment would be permanently removed, also displacing and dismembering a large section
21 of the historic railroad. In addition, contrary to representations in the Final EIR, the City intends
22 to place a shoulder intended to function as a walking path on about 1.7 miles of track.

23 37. Sadly, the destruction of the WGBL tracks is an unnecessary and avoidable impact
24 of the project. Public comments notified the City that alternative trail alignments and alternative
25 safety measures would meet the project's objectives without jeopardizing the WGBL. The City
26 ignored these suggestions, claiming without substantiation that the destruction of the tracks was
27 necessary for "safety" reasons. Yet as pointed out in public comments and is evident to
28 residents throughout the area, there are hundreds of railroad crossings throughout the City that
accommodate trains and other bicycle and pedestrian uses.



Figure 9: These crossings in busy downtown Sacramento are safeguarded with flangeways and other measures to accommodate train, pedestrian and vehicle traffic.

38. The Rail Group, its members, and other members of the public provided additional comments cautioning the City regarding the project's interference with long-planned use of the WGBL, the significant damage to the WGBL the project would still cause, the project's inconsistency with CEQA, and other failures in the Final EIR.

39. Despite these comments and the substantial evidence of significant impacts to the WGBL and the environment that was neither adequately analyzed or mitigated, the City approved the project on March 26, 2019.

JURISDICTION AND VENUE

40. This Court has jurisdiction over the matters alleged in this Petition pursuant to Code of Civil Procedure sections 1085 and 1094.5, and Public Resources Code sections 21167, 21168 and 21168.5.

41. Venue for this action properly lies in the Superior Court for the State of California in and for the County of Sacramento pursuant to section 394 of the Code of Civil Procedure.

42. This Petition is timely filed in accordance with Public Resources Code section 21167, subdivision (c). The City filed a NOD for the Project on March 27, 2019.

43. Petitioners have complied with Public Resources Code section 21167.5 in serving notice of this action to the City on April 26, 2019. (See attached Exhibit 1.)

STANDING AND EXHAUSTION

44. Petitioners have standing to assert the claims alleged in this Petition because they are beneficially interested in this matter, as required by Code of Civil Procedure section 1086. Petitioners advocate for and value the historical significance of railroads located in Sacramento County and will be directly impacted by the project. Unless the relief requested herein is granted, the environment will be adversely affected and injured by the City's failure to comply with CEQA in approving the project and certifying the EIR, and by Caltrans' failure to comply with Public Resources Code section 5024 et seq. and the 2014 MOU. Petitioners bring this petition on behalf of all others similarly situated that are too numerous to be named and brought before this Court as petitioners. The City and Caltrans' actions in connection with the project are also a matter of public interest by damaging a historical resource in violation of numerous applicable laws.

45. Petitioners have exhausted all administrative remedies as required by law.

IRREPARABLE HARM

46. The City's failures, set forth in this Petition, constitute a prejudicial abuse of discretion within the meaning of the Code of Civil Procedure and CEQA. (See Code Civ. Proc., §§ 1085, 1094.5; Pub. Resources Code, §§ 21168, 21168.5.)

47. Petitioners have no plain, speedy or adequate remedy in the ordinary course of law. If the City's actions regarding the project are effectuated, Petitioners and the environment will be irreparably harmed. No money damages could adequately compensate for that harm.

48. Caltrans' failures, set forth in this Petition, constitute a prejudicial abuse of discretion within the meaning of the Code of Civil Procedure. (See Code Civ. Proc., §§ 1085, 1094.5.)

49. Petitioners have no plain, speedy or adequate remedy in the ordinary course of law. If Caltrans is not required to set aside its FNAE-SC, Petitioners and the environment,

1 including nationally significant historical resources, will be irreparably harmed. No money
2 damages could adequately compensate for that harm.

3 **PRIVATE ATTORNEY GENERAL DOCTRINE**

4 50. Petitioners brings this action as a private attorney general pursuant to Code of
5 Civil Procedure section 1021.5, and any other applicable legal theory, to enforce important
6 rights affecting the public interest.

7 51. Issuance of the relief requested in this Petition will confer a significant benefit on
8 the general public by requiring the City and Caltrans to carry out their duties and will result in
9 the enforcement of important rights affecting the public interest with respect to the project.

10 **REQUEST TO PREPARE ADMINISTRATIVE RECORD**

11 52. Petitioners elect to prepare the administrative record in this action pursuant to
12 Public Resources Code, section 21167.6, subdivision (b)(2) and any other applicable laws.

13 **FIRST CAUSE OF ACTION**

14 **Against the City for Violations of CEQA**
15 **(Public Resources Code, §§ 21000 et seq.)**

16 53. Petitioners incorporate by reference each and every allegation contained in
17 Paragraphs 1 through 52 as though fully set forth herein.

18 54. The City prejudicially abused its discretion in certifying the EIR. The City did not
19 proceed in the manner required by law and its decisions in approving the Project and certifying
20 the EIR are not supported by substantial evidence. (Pub. Resources Code, § 21168.5; *Vineyard*
21 *Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 426.)
22 These legal deficiencies include, without limitation, the following:

23 **The EIR Fails to Provide an Adequate Summary of the Project and Its Consequences**

24 55. An EIR must provide a brief and concise summary of the proposed actions and
25 their consequences. (CEQA Guidelines, § 15123, subd. (a).) The summary must include: each
26 significant effect and proposed mitigation measures or alternatives that would reduce or avoid
27 the effect; areas of controversy raised by other agencies or the public; and issues left to be
28 resolved such as choice of alternatives and mitigation. (CEQA Guidelines, § 15123, subd. (b).)

1 56. The EIR fails to provide an accurate summary of the project, by omitting
2 significant effects, misstating the areas of controversy, and not listing issues left to be resolved.

3 The EIR Fails to Adequately Define the Project Setting

4 57. In order to determine whether a project's impacts will be significant, CEQA
5 requires lead agencies to compare the impact of a proposed project to the "physical
6 environmental conditions in the vicinity of the project, as they exist at the time the notice of
7 preparation is published." These conditions serve as the project's setting or "baseline." (CEQA
8 Guidelines, § 15125.) The description of a project's baseline ensures that the public has "an
9 understanding of the significant effects of the proposed project and its alternatives." (CEQA
10 Guidelines, § 15125, subd. (a).) An EIR's description of a project's environmental setting must
11 account for a "local and regional perspective." (*Ibid.*) Accurately determining the baseline
12 environmental conditions is crucial to accurately evaluating a project's impact. (*E.g., San
13 Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 729.)
14 "Without accurate and complete information pertaining to the setting of the project and
15 surrounding uses, it cannot be found that that [an EIR] adequately investigated and discussed the
16 environmental impacts of [a project]." (*Ibid.*)

17 58. The EIR's description of baseline environmental conditions is incomplete and
18 inaccurate, invalidating the entirety of the EIR's environmental analysis. Examples of these
19 flaws include, without limitation, the following:

20 a. The EIR fails to adequately disclose and describe the project setting with
21 respect to cultural and historic resources. The FEIR misrepresented the WGBL as an
22 "abandoned" rail line and did not consider it to be an existing recreational facility at all,
23 and did not evaluate it in the EIR. The EIR failed to recognize the current use of the
24 Sacramento Southern Railway, including the California State Railroad Museum's
25 excursion train on part of the historic WGBL running north-south along the east bank of
26 the Sacramento River south to Sutterville Road.

27 b. The EIR fails to disclose all applicable land use plans and failed to analyze
28 all of the project's inconsistencies with those plans. The EIR incorrectly states that

1 “there are no planned recreational uses of facilities within the proposed Project area.”

2 However, the California Department of State Parks has planned for use of WGBL
3 corridor for an excursion train to the Delta town of Hood, as described in numerous
4 documents, including the 2014 OSSHP General Plan and EIR. The 1991 FEIR prepared
5 and approved by State Parks, or the California State Railroad Museum Strategic Plan
6 2017-2022, also planned for and prioritized the excursion line extension to the town of
7 Hood.

8 c. The EIR fails to disclose and describe the project setting with respect to
9 recreational resources. The omissions with respect to planned land uses also undermine
10 the EIR’s description of the recreational setting. The EIR fails to acknowledge the
11 planned recreational use of the WGBL for an excursion train to the Delta and falsely
12 claims that no other parks or recreational resources would be permanently displaced
13 because of the project. Yet the project would interfere with State Parks’ recreational
14 facilities.

15 59. In all, the EIR misrepresents the baseline conditions of the project in order to
16 justify its inaccurate and incomplete impact analysis, skewing the analysis of project impacts.

17 The City Failed to Consult with Responsible Agencies

18 60. CEQA requires that a lead agency include a list of related environmental review
19 and consultation requirements under federal, state, or local laws, regulations or policies, and
20 integrate these additional requirements into environmental review of a project. (CEQA
21 Guidelines, § 15124, subd. (d)(1)(C).) Lead agencies are encouraged to consult with other
22 responsible agencies before and during preparation of an EIR so that the document will meet the
23 needs of all agencies that will rely on it in the future. (CEQA Guidelines, § 15006, sub. (g).)
24 Such considerations and discussion are central to an EIR’s analysis of project alternatives.
25 (*Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 937 (*Banning*
26 *Ranch*)). Further, when there is credible evidence that resources subject to another agency’s
27 jurisdiction are within the project area, an EIR must discuss the other agency’s anticipated
28 exercise of its authority. (*Id.* at 938.) Failure to disclose such information is a prejudicial abuse

1 of discretion that precludes informed decisionmaking and informed public participation. (*Id.* at
2 942.)

3 61. The EIR fails to demonstrate that the City consulted with other responsible
4 agencies, including, but not limited to, State Parks, Caltrans, Sacramento Regional
5 Transportation, and the State Historic Preservation Office.

6 62. The City planned and reviewed the project without consulting with State Parks, as
7 evidenced by the project's infringement on State Parks' planned live railroading excursion line
8 into the Delta utilizing the segment of the WGBL within the project area. While the EIR
9 includes a single sentence discussing State Parks' 2014 OSSHP General Plan EIR mentioning
10 State Parks excursion train plans, there is no discussion or analysis of the impacts of the project
11 on those plans, and the EIR wrongly concludes that removal of tracks would not be a significant
12 impact. The failure to discuss these impacts constitutes an abuse of discretion. (*Banning Ranch*,
13 *supra*, 2 Cal.5th at 942.)

14 63. The EIR omits any disclosure of the related National Environmental Protection
15 Act's ("NEPA") requirements that apply to the project, disclosing only that Caltrans is the
16 NEPA lead agency. Failing to discuss the NEPA process or elaborate on Caltrans' role in
17 approving the project violates the consulting requirements of CEQA. The FEIR is a deficient
18 document because it fails to disclose and discuss the federal regulatory requirements that apply
19 to the project. (*Banning Ranch, supra*, 2 Cal.5th at 942.)

20 The Project Description Is Inadequate and Inaccurate

21 64. A "finite project description is indispensable to an informative, legally adequate
22 EIR." (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192.) An "accurate
23 project description is necessary for an intelligent evaluation of the potential environmental
24 effects of a proposed activity." (*San Joaquin Raptor/Wildlife Rescue Ctr. v. County of*
25 *Stanislaus* (1994) 27 Cal.App.3d 713, 730; see also *Sierra Club v. City of Orange* (2008) 163
26 Cal.App.4th 523, 533; *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th
27 1437, 1448.) An EIR's project description must include a degree of detail deficient to enable
28

1 decision makers to make an intelligent decision. (*Dry Creek Citizens Coalition v. County of*
2 *Tulare* (1999) 70 Cal.App.4th 20, 26.)

3 65. The EIR's project description is legally deficient because it is inaccurate and fails
4 to provide enough information to permit informed decision making. The EIR did not include a
5 sufficient amount of detail of construction methods, and key project components including, but
6 not limited to, landscaping, lighting, parking, and safety.

7 66. The EIR also fails to disclose which portions of the WGBL would be filled with
8 decomposed granite, or otherwise destroyed, in order to accommodate the unpaved walking
9 shoulder that would adjoins the bike path. The EIR does not disclose where the overlap occurs,
10 how it will be filled, or how many miles of tracks would be destroyed. The only disclosure of
11 track fill is found in Appendix D of the Final EIR, which only provides example cross-sections
12 of the trail.

13 67. An EIR must state the precise boundaries of the proposed project. (CEQA
14 Guidelines, § 15124, subd. (a).) The EIR fails to include the entire WGBL in its project
15 description. As defined by the USACE and other documentation, the WGBL is made up of 24.5
16 miles of railroad tracks, and the project would irreparably sever the Line in several locations.
17 The EIR inaccurately defines the boundaries of the project by omitting the complete length of
18 the WGBL rail corridor impacted by the project.

19 68. The EIR also fails to include an adequate statement of objectives sought by the
20 proposed project. "A clearly written statement of objectives will help the Lead Agency develop
21 a reasonable range of alternatives to evaluate in the EIR and will aid the decision makers in
22 preparing findings or a statement of overriding considerations. The statement of objectives
23 should include the underlying fundamental purpose of the project." (CEQA Guidelines, §
24 15124, subd. (b)(1).) No objectives are included in the project description section of the EIR.
25 The project objectives are only discussed in the context of alternatives. In addition, the EIR fails
26 to include consideration of alternatives that could meet the project's basic project objectives
27 with fewer significant impacts.

The EIR Fails to Disclose the Significant Effects of the Project

69. CEQA requires that an EIR describe the proposed project's significant environmental effects. Each must be revealed and fully analyzed in the EIR. (Pub. Resources Code, § 21100, subd. (b), CEQA Guidelines, § 15126.2, subd. (a).) The City failed to proceed in the manner required by law and/or failed to support its impact conclusions with substantial evidence.

70. The EIR fails to provide decision makers with sufficient impact analysis in numerous respects. Without limiting the scope of the claims regarding the inadequacy of the EIR adequately assess the project's potential impacts on the environment, the following are examples, without limitation, of the EIR's inadequate analysis:

a. The EIR fails to adequately analyze and disclose the project's significant impacts on cultural and historic resources. The project would irreparably harm the WGBL, a historic resource under CEQA. The project would permanently destroy portions of the WGBL railway, interfering with the previously approved extension of State Parks' Sacramento Southern Railroad educational excursion line planned since at least 1972. The project would fundamentally undermine the viability, historic integrity, and use of the WGBL. Destroying portions of a linear historic resource, such as the WGBL, impacts the entirety of the resource. The EIR entirely ignores this potentially significant impact.

b. The EIR failed to follow CEQA Guidelines section 15064.5 to evaluate the project's impacts on cultural and historic resources. Instead, the EIR relies on the faulty conclusions of the Historic Property Survey Report to support its improper findings regarding the significance of the project's cultural and historic resource impacts. Caltrans abused its discretion in approving the Historic Property Survey Report, as discussed under the Second Cause of Action below. Preparation and review in the Historic Property Survey Report was not conducted pursuant to any procedure or standards contained within CEQA. The Historic Property Survey Report analysis was focused solely on the federal standards found in 36 C.F.R. 800. Therefore, the Historic

1 Property Survey Report, and its conclusions do not constitute substantial evidence in the
2 context of determinations made pursuant to CEQA.

3 c. The EIR fails to analyze the impacts of using sections of the WGBL (about
4 1.7 miles) as an unpaved walking path adjacent to the paved bike trail. The EIR does not
5 directly disclose this project element, only revealing it in cross-section diagrams in
6 Appendix D. Presumably, these walking paths would be comprised of decomposed
7 granite, much like the allegedly abandoned separate walking path described in the Draft
8 EIR, which covered about half of the project length (at least two miles). Impacts from
9 covering the tracks with decomposed granite or other material would be significant.

10 d. The EIR fails to adequately analyze the project's significant impacts on
11 recreation. The project would sever the WGBL, preventing the planned future use of the
12 WGBL for an excursion line, thereby diminishing recreational opportunities. The EIR
13 fails to disclose, let alone analyze, this significant impact on recreation.

14 e. The EIR fails to adequately analyze the project's impacts to biological
15 resources. For instance, fifteen Valley elderberry shrubs are within 100 feet of the
16 proposed work areas. Despite this fact, the City has not conducted the necessary
17 consultation with the Department of Fish and Wildlife on the presence of Valley
18 elderberry longhorn beetle. The EIR fails to adequately disclose and assess the loss of
19 habitat from cutting 59 trees and significant vegetation removal for the project. The EIR
20 thus incorrectly concludes the project's potential for take of listed species such as
21 Swainson's hawk is low. Removal of valuable habitat would inevitably result in illegal
22 take of Swainson's hawk.

23 f. The EIR fails to adequately analyze the project's aesthetic impacts. Rail
24 group and other commenters raised concerns that the project's impacts to the WGBL
25 would have a negative aesthetic impact to the project area. The EIR never considers or
26 analyzes the aesthetic impacts of modifying the WGBL corridor or destroying the railway
27 itself. Further, the EIR fails to account for the aesthetic impacts of tree removal and
28

1 landscaping changes. The removal of 220 trees and other landscaping would
2 substantially and adversely change the existing character of the project area.

3 g. The EIR fails to adequately analyze or disclose the project's hazards
4 impacts. Project construction would expose workers and sensitive receptors to toxic soil
5 vapors. The City failed to sample the project site and quantify the risks from soil vapor.
6 The amount of exposure potentially caused by the project would be a significant impact.

7 h. The EIR fails to disclose or analyze the project's air quality impacts. The
8 project's construction would occur in soils containing fine particulates as well as heavy
9 metals and pesticide residues. The EIR does not fully disclose all sensitive receptors that
10 would be exposed to these air contaminants. Further, the EIR does not disclose the
11 source of necessary imported materials, the distance materials would be transported, or
12 the total number of trips. Depending on the amount of imported material, and miles
13 traveled to import that material, the project could have significant air quality impacts.
14 Further, the EIR does not disclose the air quality impacts from the proposed placement of
15 decomposed granite on approximately 1.7 miles of track, nor does the EIR describe the
16 process for removal of that material and the impacts that would be associated with that
17 activity if it occurred.

18 i. The EIR fails to disclose or analyze the project's transportation impacts.
19 The WGBL is an existing transportation corridor, yet the EIR does not disclose or
20 analyze the removal of WGBL track as a transportation impact. The EIR also fails to
21 disclose the total number of truck trips necessary for project construction. Given that the
22 EIR fails to disclose the total amount of material that must be imported to fill
23 approximately 1.7 miles of track with decomposed granite, the traffic generated from
24 importing this material could be significant. The EIR also fails to disclose, analyze or
25 mitigate the traffic safety impacts of the project's road crossings.

26 j. The EIR fails to disclose the project's agricultural resource impacts. The
27 WGBL represents the agricultural history of the Sacramento and the Delta's agricultural
28 heritage. Moreover, the region currently relies on its agricultural reputation as a "farm to

1 fork” capital with signage directly above the WGBL right of way. (Figure 5.) The EIR
2 must disclose and analyze how the destruction of the WGBL would undermine the
3 region’s agricultural economy.

4 k. The EIR fails to adequately analyze the project’s land use and planning
5 impacts. The EIR does not disclose the existence of and/or incorrectly characterizes
6 numerous land use planning documents that pertain to the project area, including the
7 1991 FEIR and the 2014 OSSHP General Plan, and thus fails to consider the project’s
8 impacts to these land use plans. The project would conflict with these omitted land use
9 plans and land use impacts would be significant. Additionally, the EIR misidentifies the
10 ownership of property within the project area and necessary for project completion, thus
11 providing an incomplete and misleading analysis of the project’s land use impacts.

12 71. The City failed to proceed in the manner required by law by preparing an EIR that
13 did not inform the public or decisionmakers of the project’s impacts, and/or the impact
14 conclusions in the EIR are not supported by substantial evidence. (Pub. Resources Code §
15 21168.5.)

16 The EIR Fails to Include Adequate Mitigation under CEQA

17 72. An EIR must describe feasible mitigation measures that would minimize a
18 project’s potentially significant impacts. (CEQA Guidelines, §§ 15121, subd. (a), 15126.4,
19 subd. (a).) Including mitigation measures to address a significant impact does not absolve a lead
20 agency from fully analyzing that impact. (See *Vineyard Area Citizens for Responsible Growth*
21 *v. City of Rancho Cordova* (2007) 40 Cal.4th 412.) Mitigation measures must not be vague,
22 incomplete, untested, remote, or speculative. (See *Federation of Hillside & Canyon Association*
23 *v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1260.) It is inappropriate to defer
24 formulation of mitigation to a future date. (CEQA Guidelines, §15126.4, subd. (a)(1)(B).)
25 “Mitigation measures must be fully enforceable through permit conditions, agreements, or other
26 legally-binding instruments.” (CEQA Guidelines, § 15126.4, sub. (a)(2).)

27 73. The EIR fails to include adequate mitigation measures for all potentially
28 significant impacts of the project. For example, the irreparable damage to and removal of

1 WGBL tracks, a significant impact, is left completely unmitigated due to the EIR's faulty
2 conclusion of a less than significant impact to the historic and cultural resources. The "Action
3 Plan" that is included in the HSPR is inadequate to reduce the project's significant cultural,
4 aesthetic, recreational and other impacts. Mitigation measures are available for these impacts,
5 but the City's inadequate and incomplete impact analyses precluded these measures from
6 consideration.

7 74. The EIR includes impermissibly vague mitigation measures that are not fully
8 enforceable, including but not limited to AES-1, AES-3, and AES-4. For instance, the EIR does
9 not actually describe what constitutes the "replacement plan" or include enforceable
10 performance standards in these and other mitigation measures.

11 The EIR Fails to Adequately Analyze the Project's Cumulative Impacts

12 75. An EIR must discuss a cumulative impact if the project's incremental effect
13 combined with the effects of other projects is cumulatively considerable. (CEQA Guidelines, §
14 15130, subdivision (a).) In performing cumulative impact analysis, the lead agency must
15 analyze the project's incremental effects in connection with the effects of past projects, other
16 current projects, and probable future projects. (CEQA Guidelines, § 15065, subd. (a)(3).) An
17 EIR must make a reasonable, good faith effort to disclose cumulative impacts. (*Citizens for*
18 *Open Gov't v. City of Lodi* (212) 205 Cal.App.4th 296, 320.

19 76. The EIR fails to provide decision makers with sufficient analysis of cumulative
20 impacts in numerous respects including, without limitation, the following:

21 a. The EIR fails to adequately disclose or analyze the project's cumulative
22 impacts to cultural and historic resources. The EIR's cumulative impact analysis fails to
23 consider the planned use of the WGBL as part of the excursion line from Old Sacramento
24 to Hood, despite the fact the project would foreclose the possibility of that future use,
25 which was approved in 1991 and analyzed in numerous other planning documents.

26 b. The EIR fails to adequately disclose or analyze the project's cumulative
27 impacts to recreational resources. Again, because the EIR never considered the necessity
28 of maintaining the continuity of the WGBL in order to operate an excursion train to

1 Hood, the EIR does not adequately analyze the cumulative impacts to recreation from
2 unnecessarily severing and destroying portions of the WGBL corridor to construct a trail.

3 c. The EIR fails to adequately disclose or analyze the project's cumulative
4 land use impacts. The EIR fails to consider the 1991 EIR and 2014 OSSHP General Plan
5 and FEIR, and numerous other projects/plans, as cumulative projects, resulting in an
6 incomplete cumulative land use analysis.

7 d. The project's adverse impacts to the WGBL would affect the entire 24.5
8 mile rail corridor. Yet the EIR impermissibly limited the geographic scope of its analysis
9 to just the 4.8 miles of track that overlaps with the project. Analysis of cumulative
10 impacts from the destruction and removal of WGBL tracks, including but not limited to,
11 cumulative impacts analysis of cultural, aesthetics, and recreational impacts, was
12 improperly limited to the smaller project area; this flaw in the analysis ignores that fact
13 that the tracks in the smaller project area tie and connect the other WGBL segments (to
14 the north and to the south) together to make it a working railway.

15 e. The EIR also fails to consider the project's cumulative impacts all past,
16 present and probable future projects. For instance, the EIR fails to consider the effect of
17 the new Sacramento-San Joaquin Delta National Heritage Area designation, a proposal
18 that has been in the works for nearly a decade and which became law prior to project
19 approval.

20 EIR Consideration of Project Alternatives Inadequate

21 77. The discussion of project alternatives is the core of an EIR. (*Citizens of Goleta*
22 *Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.) An EIR must identify which project
23 alternative, other than the no-project alternative, is environmentally superior. (CEQA
24 Guidelines, § 15126.6, subd. (e)(2).) The EIR includes an inadequate alternatives analysis and a
25 reasonable range of alternatives was not considered.

26 78. The EIR incorrectly identifies the proposed project as the environmentally
27 superior alternative. The project would have significant cultural, aesthetic, recreational and
28 other impacts due to damage to and removal of WGBL tracks. The EIR does not support the

1 claim that Alternative 1 – Reduce Tree Removal is not feasible, even though it would reduce the
2 aesthetic and biological resource impacts.

3 79. An EIR must focus on alternatives that would be capable of avoiding or lessening
4 significant impacts of the project, even at the expense of attaining project objectives or higher
5 costs. (CEQA Guidelines, § 15126.6. subd. (b).) The EIR unduly constrained consideration of
6 alternatives that would reduce or avoid these impacts. A trail alignment that would not require
7 the removal, concrete encasement, or granite filling of WGBL tracks was required to be
8 considered to reduce project impacts.

9 80. The record includes other alternatives that would avoid these impacts while still
10 fulfilling the project's objectives. These include narrow bicycle path width or building the trail
11 to connect existing trails on the Sacramento River levee.

12 81. Due to inadequate impact analyses that did not disclose all of the project's
13 significant effects, the City fails to consider the feasibility of alternative trail alignments that
14 would avoid the project's significant impacts, including but not limited to, impacts to historic
15 resources. Though alternatives to removal, encasement and fill of the tracks are feasible, the
16 EIR fails to substantiate the alleged safety considerations that purportedly make alternatives that
17 reduce or eliminate damage to the WGBL infeasible. The EIR fails includes an inadequate
18 alternatives analysis, rendering the EIR deficient.

19 The City Failed to Exercise Its Independent Judgment

20 82. An EIR must reflect the independent judgment of the lead agency. (CEQA
21 Guidelines, §§ 15084, subd. (e), 15090, subd. (a)(3).) The City allowed other parties to make
22 decisions over the formulation, planning, and environmental review of the project, including the
23 discussion of feasible alternatives. The EIR reflects these other parties' judgment and not the
24 City's. By failing to prepare, circulate, and certify an EIR reflecting the City's independent
25 judgment, the City failed to proceed in a manner required by law.

26 The City Failed to Recirculate the EIR after Adding Significant New Information

27 83. Recirculation under Public Resources Code section 21092.1 and CEQA
28 Guidelines section 15088.5, subdivision (a) was required due to the addition of "significant new

1 information. The Final EIR includes significant new information that must be disclosed and
2 analyzed in a recirculated EIR. For instance, the Final EIR failed to consider the effect of the
3 passage of the Delta National Heritage Area Act prior to approval of the project.

4 The Final EIR Failed to Adequately Respond to Comments

5 84. The Final EIR failed to provide reasoned, good faith response to public comments
6 raising deficiencies with the document. Instead, the Final EIR offers a litany of legally
7 insufficient, misleading, and unresponsive boiler plate language, conclusory statements, and
8 vague references unsupported by specific reference to explanatory information. (CEQA
9 Guidelines, § 15088, subd. (c).)

10 **SECOND CAUSE OF ACTION**
11 **Petition for Writ of Mandate Against Caltrans**
(Code Civ. Proc. §§ 1085, 1094.5)

12 85. Petitioners incorporate by reference each and every allegation contained in
13 Paragraphs 1 through 84 as though fully set forth herein.

14 86. A writ of mandate must issue to correct a prejudicial abuse of discretion. An
15 agency prejudicially abuses its discretion when it fails to proceed in a manner required by law.

16 87. According to the 2014 Memorandum of Understanding Between the California
17 Department of Transportation and the California State Historic Preservation Officer Regarding
18 Compliance with Public Resources Code Section 5024 and Governor's Executive Order W-26-
19 92 ("2014 MOU"), Caltrans is responsible for compliance with Public Resources Code section
20 5020 et seq., and with preserving and maintaining historic resources under its jurisdiction.

21 88. Under the 2014 MOU, Caltrans is responsible for applying a list of potential
22 adverse effects to determine whether proposed projects would cause adverse effects on historic
23 resources.

24 89. On October 22, 2018, the Cultural Studies Office ("CSO") determined it did not
25 object to the Finding of No Adverse Effect with Standard Conditions ("FNAE-SC") for the
26 project made in the Historic Property Survey Report.

27 90. Caltrans CSO failed to comply with Public Resources Code section 5020 et seq.
28 by not objecting to the FNAE-SC because the project would unambiguously result in substantial

1 adverse change under Public Resource Code sections 5020.1, subdivision (q), and 5024.5. The
2 analysis in the Historic Property Survey Report is flawed and does not support its conclusions.
3 Caltrans CSO's approval of the Historic Property Survey Report and the FNAE-SC constitutes a
4 failure to proceed in the manner required by law and prejudiced the City's CEQA process.

5 91. Caltrans also violated the 2014 MOU. Among other flaws, the Historic Property
6 Survey Report included an incorrect project area limit ("PAL"). According to the 2014 MOU,
7 Attachment 3, the PAL can extend well beyond the area directly under the project footprint, in
8 part to encompass indirect effects. Most importantly, "[i]n delineating the PAL, consideration
9 must always be given to the projects['] . . . potential effects on a state-owned historical resource
10 as a whole. If any part of a resource may be affected . . . the PAL will generally encompass the
11 entire resource"

12 92. Caltrans based its determination on an inaccurate and impermissible PAL, which
13 did not include the entire length of the WGBL as designated by the USACE in 1992 and
14 numerous other documents. As the project would have direct and/or indirect impacts on the
15 entire WGBL, the PAL was required to include the entire 24.5 mile length of the historic
16 resource.

17 93. Caltrans failed to proceed in the manner required by law and abused its discretion
18 in violating the Public Resources Code sections 5020 et seq. and the 2014 MOU. As a result of
19 the flawed Historic Property Survey Report and Caltrans' unsupported FNAE-SC, no agency,
20 including the City, may rely on its conclusions.

21 **PRAYER**

22 WHEREFORE, Petitioners respectfully request the following relief and entry of
23 judgment as follows:

- 24 1. For a peremptory writ of mandate directing the City to:
- 25 a. vacate and set aside certification of the Final EIR and approval of the
- 26 entitlements for the Del Rio Trail project on the grounds that adequate CEQA
- 27 compliance did not precede those actions; and
- 28

- 1 b. comply with CEQA and the CEQA Guidelines in any subsequent action taken
2 to consider approval of the Project.
- 3 2. For a peremptory writ of mandate directing Caltrans to:
4 a. vacate and set aside its approval of the Historic Property Survey Report and its
5 Finding of No Adverse Effect on the grounds those actions violated Public
6 Resources Code section 5020 et seq. and the 2014 MOU; and
7 b. comply with Public Resources Code section 5020 et seq. and the 2014 MOU in
8 any subsequent action taken pursuant to those laws.
- 9 3. For a temporary stay to prevent the City and Caltrans from taking further actions
10 to implement or proceed with the Project during the pendency of this litigation and subsequent
11 to the Court's issuance of a peremptory writ;
- 12 4. For temporary, preliminary, and permanent injunctive relief to prevent the City
13 and Caltrans from taking further actions to implement or proceed with the Del Rio Trail project
14 during the pendency of this litigation and subsequent to the Court's issuance of a peremptory
15 writ;
- 16 5. An order awarding Petitioners' attorney's fees under Code of Civil Procedure
17 section 1021.5, Government Code section 800, and other applicable authority;
- 18 6. Costs of suit; and
- 19 7. Such other and further relief as the Court deems just and proper.

20 Dated: April 26, 2019

21 SOLURI MESERVE,
22 A LAW CORPORATION

23
24 By: 

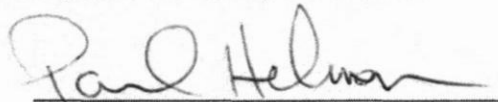
Osha R. Meserve
Attorneys for Sacramento Rail Preservation Action
Group, Arthur and Sandra Bauer, Paul Helman,
Gregg Lukenbill, and Daniel Paige

VERIFICATION

I Paul Helman, am a member of the Sacramento Rail Preservation Action Group, the Petitioner in the above-entitled action. I have read the foregoing petition and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true.

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

Executed this 26th day of April 2019, in Sacramento, California.


Paul Helman