



San Joaquin Regional Rail Commission
Attn: ACEforward Draft EIR
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SUBJECT: COMMENTS ON THE ADEQUACY OF THE ENVIRONMENTAL IMPACT REPORT FOR THE ACEFORWARD PROJECT

Dear Commissioners;

Grassetti Environmental Consulting (GECO) has been retained by the Citizens Committee to Complete the Refuge to review the adequacy of the Draft Environmental Impact Report (DEIR) for the ACEforward Project. This letter specifically addresses the adequacy of the EIR with respect to CEQA structural issues, and treatment of impacts in the baylands and Niles Canyon areas.

As Principal of the firm, I have conducted this review to determine whether, in my professional judgment, the DEIR conforms to the basic requirements of CEQA and its implementing Guidelines. This review is for general CEQA adequacy, and is not intended as a review of technical adequacy of any of the technical studies included in the DEIR. My qualifications include 35 years of preparing and reviewing CEQA documents, as well as teaching both professional and university courses on CEQA. My resume is attached to this letter.

The document is exceedingly complex and unwieldy. Therefore, rather than include exhaustive comments, I have provided overall discussions on areas of deficiency, with select comments in the attached Table A. This table is by no means comprehensive, but rather illustrative. My review found substantive deficiencies in the project description, alternatives section, and overall structure of the DEIR, which are summarized below.

Program vs. Project-level EIR

As discussed in *Citizens for a Sustainable Treasure Island v. City and County of San Francisco*, (2014) Cal. App. LEXIS 595, the title of the document (Program or Project) is less important than the level of analysis. If this EIR is proposed to cover adoption/ implementation of specific ACEforward project components, then it must include an appropriate level of description of the proposal and detailed impacts and mitigation measures to inform the public and decision-makers prior to approval of the actions. Absent this information, an EIR still may be considered adequate at a program level if it at least generally describes and addresses all of the components of the project, both individually and in combination. As discussed below, this DEIR fails on both counts.

CEQA describes a program as either a series of related projects or a plan (Guidelines Section 15168(a)). It appears that the ACEforward DEIR is adopting the former definition, as many of the improvements would have independent utility and could therefore be considered separate “projects”. In so doing, it attempts to address some of the improvements (near-term) described and assessed at a project level, and others (long-term) at a program level. As indicated by examples in the attached Table A, although this EIR does provide substantial information, it falls short of the level of detail required to adequately consider project-level impacts of elements of the Program.

With respect to the program-level analysis, it is critical to note that CEQA requires that an EIR address “the whole of an action...” (Guidelines Section 15378(a), which, in this case, is the entire suite of project/program elements. This EIR fails as a program EIR in failing to address the overall effects of program implementation in many resource areas. An adequate program-level analysis would address additive or synergistic effects of all of the program components.

As shown in the examples in Table A, this EIR focusses on the effects on each project segment but, in most cases, fails to identify the overall, combined impacts of the program. It is telling that the level of detail of both the “program” and “project”- level project descriptions, impact analyses, and mitigation measures are nearly identical. Given the identical level of analysis, it is unclear why the impacts of the short-term program are considered to be assessed at a “project” level while the longer-term components are considered to be analyzed at a “program” level.

The DEIR should have been conceptualized differently – it should have included a program-level analysis on the overall program (including alternatives to the program), and then, if desired, project-level analyses of the program components proposed for near-term implementation. Absent this reconceptualization, the document is fatally flawed, as detailed throughout this letter. As described in the discussion of Alternatives, below, the muddling of program and projects has led to a wholly inadequate range of alternatives in the EIR.

Project Description and Alternatives

Failure to Clearly Describe the Project

The EIR fails to include a firm, fixed project, as it never informs the reader as to which of the optional alignments and features the project includes. This is in conflict with the CEQA requirements set forth in established case law, as follows:

"An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." County of Inyo v. City of Los Angeles (3d Dist. 1977) 71 CA3d 185, 193. Additionally, the entire project being proposed must be described in the EIR, and the project description must not minimize project impacts. City of Santee v. County of San Diego (1989) 214 CA3d 1438, 1450."

The DEIR project description is just a description of the various segments and

operations, with no overall project. The project was disassembled for analytical purposes, but never reassembled to give a complete picture of the project. For example, what's the total length of the project? How many total acres will be disturbed? As indicated above, it is impossible to develop alternatives to a project if the project itself is not well defined. Similarly, an overall picture of the impacts of the project cannot be discerned absent a fixed project description. Metaphorically, the DEIR describes only the trees and not the forest (and the trees themselves are described often only at a general level). As discussed later in this letter, this failure to describe a firm, fixed project results in the same deficiency in the impacts analysis, as well.

Failure to Identify Alternatives

The CEQA requirements for alternatives are presented in Guidelines Section 15126.6(d) "*The DEIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project*". The DEIR includes "alternatives" in many of the segments that are not actually project alternatives, but rather options for implementation of a specific component of the plan. If each project component were a project, then the alternatives would be alternatives to each of the components. However, in a program EIR, the CEQA "project" is, in fact, the entire program. In that case, the alternatives would be alternatives to the entire program. In this EIR, the alternatives are not alternatives to the program that is the subject of the EIR, but rather alternatives to some of the subcomponents of the project.

This problem can be seen throughout the document, and is summarized in Chapter 6, Alternatives. Section 6.3.1 states, "*The following sections provide a list of ACEforward alternatives by geographic segment...*" Similarly, section 6.3.1.1 and subsequent sections discuss "alignment alternatives" by segment. Table 6.3 shows an Alternatives Screening, yet, once again, there are no alternatives to the project in the screening- just alternatives to parts of the project. None of these "alternatives" meet the CEQA requirements for alternatives, which are, "*alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.*" (Guidelines Section 15126.6 (a)).

For example, an option to realign a small part of the overall project is not an alternative to the overall project (i.e., the program). At best, it is a mitigation measure. If it has no mitigating capacity, then it's just an option for a component of the program that is being considered for non-environmental purposes. It may be the case that a plan that includes a combination of realigned segments designed to substantially reduce or eliminate a significant impact of the overall project may suffice as a CEQA alternative, but the EIR identifies no such combination.

The closest the DEIR comes to discussing real program alternatives is in Section 6.3.2, where it addresses the feasibility of "Multiple Segments Alternatives". Because this and other potential alternatives identified in Section 6.3.2 are not considered feasible by the EIR, no actual impacts analyses have been conducted of those potential alternatives. Yet no evidence is provided in the EIR to support the determinations that these alternatives are, in fact, infeasible. For example, the electrification alternative is eliminated because of an assumption "based on prior precedent" and not any actual analysis.

Similarly, the Operational Alternatives are not designed to mitigate potential project impacts, but rather for operational considerations.

Other than the No Project Alternative, the DEIR analyzes the impacts of no real alternatives. Yet alternatives to the Program are clearly feasible- for example, a “Near-Term Improvements Only” alternative would eliminate many of the impacts from increased operations and construction to the Baylands area. Similarly, an alternative that includes a combination of realigned segments designed to substantially reduce or eliminate a significant impact of the overall project would be acceptable under CEQA.

Failure to Identify an Environmentally Superior Alternative

Finally, the DEIR also fails to identify an environmentally superior alternative. DEIR Section 7.3 purports to describe that alternative, but, once again, gets muddled in the terminological problems caused by calling options on specific alignment alternatives, leading to the almost comical statement on p. 7-17,

“The environmentally superior alternative is identified as a combination of the different alternatives for both the near term and long-term conditions as shown in Tables 7-4a and 7-4b.”

The referenced tables do not discuss environmentally superior alternatives, but rather construction costs of options. The DEIR appears to intend to reference Tables 7.5a and b, which purport to present environmentally superior alternatives for the near- and long-term improvements. Those tables identify a single set of options, but because those options are part of the project itself as described in the EIR text, there is no way to distinguish between the impacts of the CEQA project and the CEQA alternatives to the project. Further, the DEIR contains no text summarizing this alternative and comparing its impacts to other program alternatives, because no such program alternatives have been identified. In essence, the DEIR appears to say that the Environmentally Superior Alternative is just the project, which is not permissible under CEQA (alternatives are alternatives to the project, so logically the project can't be an alternative to itself). In any case, given the DEIR's information, it is not possible to discern the project from the environmentally superior alternative.

Improper Use of CEQA Initial Study Checklist and Criteria/Thresholds of Significance

The DEIR slavishly uses the Initial Study (IS) checklist items as its criteria and thresholds of significance for most topics. As detailed in the attached table, this approach results in a document that misses some of the most important issues, while requiring the reader to wade through numerous detailed discussions of irrelevant items. An IS, which is a screening document to direct further CEQA review, is very different than an EIR, which conducts the detailed review. Further, the use of IS checklist items as *thresholds* of significance is in error. With the exception of the Mandatory Findings of Significance, an IS checklist does not provide any thresholds of significance. Rather it identifies topics to be evaluated during the screening for potentially significant impacts. As identified in Table A, this results in skewed impact analyses and the DEIR missing important potential impact topics that are not on the IS Checklist. The DEIR should be revised to

focus on actual impacts of potential significance, not the often-irrelevant CEQA checklist questions.

Impermissible Baseline/Plan-to Plan Impacts Assessments

CEQA Guidelines (Section 15125 [c]) state that "Where a proposed project is compared with an adopted plan, the analysis shall examine the existing physical conditions as well as the potential future conditions discussed in the plan." The discussion section following this item notes that "The two plans could not be compared with each other without showing how they would relate to the existing level of development", and that "The EIR had to address the existing level of development ... as the baseline for comparison." As shown by examples in Table A, in several instances the DEIR erroneously uses a plan-to-plan comparison approach to identify and determine project impact for some resource issues. This approach denies the reader any means of identifying the proposed plan's effects on the existing environment.

Deficiencies in Mitigation

Impermissibly Deferred Mitigation

For project-level EIRs, CEQA generally prohibits deferral of mitigation to future study unless the mitigation is proscriptive and known to actually mitigate the impact. Otherwise, the mitigation cannot be assured to actually mitigate the applicable impact. As shown in Table A, this DEIR includes a number of programmatic mitigation measures that rely on future study to assure mitigation of the impact. This may be acceptable in a program level EIR, where project details are not well defined, and where subsequent CEQA analysis would be prepared, but not in a project-level EIR, as this document claims to be for the near-term improvements.

Mitigation Measures that Don't Assure Mitigation

The DEIR also includes many mitigation measures that suggest consultation or use vague wording that result in the mitigation not actually assuring mitigation. Some of these instances are identified on Table A.

Conclusory Impacts Analyses

The DEIR frequently includes a detailed setting description followed by just a conclusory statement of the impact and its significance. As indicated on Table A, there are numerous instances in the document where it fails to include supporting evidence and/or walk the reader through the analytical process. CEQA required evidence-supported conclusions, not just the conclusions themselves.

Cumulative Impacts

The DEIR fails to adequately consider overlapping impacts of the proposed project and Caltrans' SR 84 Improvement Project. Given that this analysis is supposed to be at a project level, the cumulative impacts analysis should describe overlapping visual effect, including cumulative tree loss, multiple grading and retaining structures, erosion /

sedimentation, etc. Additionally, the overall impacts of the project in total plus all of the cumulative projects on air quality, GHG, special status species, and other sensitive resources should be described. Finally, the DEIR breaks out the cumulative effects of railroad, land development, and other regional improvement projects, and sorts them geographically, but never adds the impacts back together for a cumulative total (see Table 5-6).

Technical Deficiencies

Table A also identifies a number of technical deficiencies that must be remedied in the FEIR.

CONCLUSIONS

As summarized above and documented in Attachment A, the DEIR fails as a program EIR for the overall project because it does not, in many instances, adequately evaluate or describe the overall program impacts, and its analysis of project impacts are, in many cases, done at a program level. The project description is unstable and the alternatives essentially non-existent. There also are substantial problems with the cumulative impacts assessment. It is my professional opinion that the DEIR should be completely re-organized, the gaps filled in and re-circulated for public and agency review. The document would be far more comprehensible to the public and decision-makers if, at this stage, it was cast solely as a program-level assessment. Project-level evaluations could later be tiered off this document, as appropriate. Please feel free to contact me at 510 849-2354 if you have any questions regarding this letter.

Sincerely

A handwritten signature in cursive script, appearing to read "Richard Grassetti".

Richard Grassetti

Principal

Table A- Examples of Specific DEIR Deficiencies

Page/Paragraph	Topic	Comment
Chapter 2.0, general; Chapter 3.0. general	Project Description	Nowhere in these chapters is the overall project described in terms of miles, acres, total station improvements, etc. The chapters just launch into a segment-by segment discussion, with no information on total acres disturbed, miles of new track / alignments.
“	Alternatives	The chapter includes numerous “alternatives” to certain alignments and certain parking and station improvement projects, but never informs the reader which “alternatives” are the project and which are alternatives to the project. Further, these “alternatives”, in themselves, are not CEQA alternatives, but merely options for development of certain project components.
“	Program vs. Project	These chapters provide almost identical levels of detail for near-term and long-term project components. Therefore, it is unclear why the long-term project components are considered at a “program” level and the near-term components are considered at a “project” level in this document. The only discernable difference in the descriptions is in the construction timing / duration, which is not defined for the long-term projects. Both the near-term and long-term projects are part of the overall program, and should be described and evaluated as such.
4.1 General	Fragmented analysis	Nowhere in this section are overall impacts of the project on visual quality discussed. What is the total number of viewpoints that would be affected by both the near- and long-term project elements? Overall differences with Alternatives?
P. 4.1-5	Conclusory analysis	The last paragraph on this page (aesthetic policy compliance) is an unsupported conclusion.
Pp. 4.1-51	Significance Thresholds	The claimed significance thresholds are not thresholds at all, but rather criteria to be looked at. A threshold would be a

		<p>definition as to what is meant by “significantly degrade...” or “substantially damage”. No thresholds are established in this section.</p> <p>This DEIR makes this same error in nearly every technical section.</p>
<p>Pp 4.1-66 through 4.1-70; pp. 4.1-79-80., etc. Includes all mitigations in Section 4.1</p>	<p>Vague Mitigation Measures</p>	<p>The mitigation measures in this section are all presented at a program level. There is no discussion of how they would be implemented at any one site, and no evidence connecting the mitigation to the impacts, making it impossible to actually determine how much effect one or more of the measures would actually have on reducing any specific project impact. The vague mitigation measures in combination with the lack of real significance thresholds and minimal impact significance discussions (which have been separated from the actual impact analyses), make it impossible to understand why an impact is significant or not after mitigation.</p>
<p>Chapter 4 Impacts, general</p>	<p>Incorrect Impact Topics</p>	<p>The visual impacts are arranged not by actual types of impacts, but rather as responses to the Initial Study Checklist. This stunts the impacts and results in a document that focuses on unimportant issues to the exclusion of more important ones.</p> <p>For example, Impact AES-3 addresses scenic resources within a scenic highway. Why are scenic resources within a scenic highway more important than scenic resources elsewhere? What’s the difference on the physical environment between this impact and Impact AES-2? Why even include it?</p>
<p>P. 4.1-90</p>	<p>Unsupported significance conclusion</p>	<p>The San Jose to Fremont discussion states that the baylands are visually sensitive, and then concludes that miles of widened or raised and widened berms or trestles, and several new bridges would not have a significant impact because, “they would not introduce new railroad features inconsistent with existing railroad features...” Consistency with existing</p>

		railroad features isn't the issue here; the DEIR should assess the project's effect on the sensitive visual resources from prominent viewpoints, not on non-sensitive resources, such as the existing rail line.
P. 4.1-104	Omitted Impact	DEIR should evaluate impacts of lighting from additional train traffic.
P. 4.3-34	Cumulative Health Risks	<p>DEIR states that quantitative cumulative Health Risk Assessment (HRA) has not been prepared because details of construction and operation of land use projects are not available and projects would be responsible for their own health risk assessments. The Cumulative Impacts chapter of the DEIR includes sufficient detail on proposed land use projects to support preparation of an HRA. Additionally, deferral of this analysis to future projects is impermissible, given that the project may contribute in a cumulatively considerable manner to this impact.</p> <p>The DEIR also states in this section that, "If the near-term improvements-level assessment demonstrates the potential near-term improvements related health impacts are less than significant, one could conclude that near-term improvements would have a less than cumulatively significant impact."</p> <p>This shows a lack of understanding of cumulative impacts, which are based on the principal that multiple less-than-significant impacts may combine to result in a significant impact. This issue must be re-evaluated using the correct approach.</p>
Section 4.3.4.2, p. 4.3-38; 4.3-69, first paragraph; Section 4.8.4.2 (Greenhouse Gas) has the same issue.	Baseline Issue	This section states that to use the existing baseline would misrepresent impacts. We disagree- existing baseline should be included, along with a future baseline, if so desired. The Courts have repeatedly concluded that knowledge of the impacts of a project when compared with existing conditions is essential.

		On p. 4.3-69, the EIR explicitly compares the project to the No Project alternative to determine impact significance. It should also be comparing the impacts of the project to existing conditions.
P. 4.3-43, Impact characterization	Missing Analysis	This discussion states that, based on Chapter 4.1.1, the near-term improvements do not result in significant plan/policy inconsistencies, yet that section does not contain any detailed evaluation of the project's plan consistency.
P. 4.3-60, Mitigation AQ-2.6	Mitigation Issue	1) Please describe how the BAAQMD's fee would offset or otherwise assure mitigation of the specific emissions impacts of this project. Payment of a fee, in itself, does not guarantee that an impact would be mitigated. 2) The direct implementation mitigation is a programmatic measure, not a project-level measure, as it provides no specifics as to what the project would actually do to directly offset emissions impacts.
4.4.1.3	Missing items	HCPs and NCCPs, as well as Critical habitat and Recovery Plans need to be identified in the regulatory setting, and their applicability to the project discussed.
P. 4.4-10, Waters and Wetlands	Omitted Analysis	Why isn't the same waters/wetlands methodology used for both the near-term and long-term improvements? The project description provides the same level of detail for both categories of improvements, so the analysis is possible to do at this time, and therefore should be included in the EIR.
Section 4.4.2-1	Biological Resources	What is the relationship between "Land Cover" types and habitats? The Land Cover types appear vague and only generally related to potential for sensitive habitats. This chapter should be focusing on habitats, and not a more general surrogate.
Section 4.4, general	Biological Resources	The DEIR states repeatedly with respect to biological resources that it will avoid impacts, but if the impacts cannot be avoided, compensatory mitigation will be provided. The DEIR provides a table of suitable special status plant and animal

		<p>habitat that will be affected by the segment options, but in the text description provides no context.</p> <p>All alternatives in the Centerville/Niles/Sunol segment would affect wetlands and other aquatic resources as shown in Table 4.4-6. Alternatives CNS-1b and CNS-1c are similar in their impacts on riverine habitat, while CNS-1a would result in a greater impact on riverine habitat. The difference is that Alternative CNS-1a includes Alameda Creek Bridge, which increases the degree of impact because the area within and surrounding Alameda Creek Bridge element is urbanized and within developed/ landscaped land cover. Alternatives CNS-1a, CNS-2a, and CNS-2b would result in greater impacts on riverine resources and would affect a small amount of freshwater marsh and seasonal wetlands, than would Alternative CNS-1b or CNS-1c.</p> <p>The reader must flip back and forth between that table and habitat and project improvement maps to try to determine where the impacts might occur and what type of impacts will occur. Even then, the reader cannot determine if impacts will or can be avoided or not.</p> <p>Another piece of information the reader needs to try to sort through without context is the mapping provided in the 15% engineering drawings – Appendices D1-8 – identification of impacts should have been identified based on the information scattered throughout the DEIR and appendices, instead it is left to the reader to try to put together in an impact context. The primary job of the EIR is to clearly walk the reader through the setting, project description, impact, and mitigation measures – this just doesn’t happen in this section.</p>
P. 4.4-30, last paragraph	Biological Resources	This paragraph states that the study includes surveys for both near- and long-

		term improvements. This implies a project-level analysis is feasible for both. Why, then, are the long-term analyses deemed programmatic?
Section 4.4.3.2	Significance Thresholds	As described above, these are criteria of significance, not thresholds. Thresholds would define what is/is not considered “substantial”.
Tables 4.4-3; 4.4-4; 4.4-5; 4.4-6; 4.4-7; 4.4-8; 4.4-9; 4.4-10; 4.4-11; 4.4-12	Failure to Consider Entire Program	These tables list habitat types lost due to the project in each segment, but never adds them together. Significance is not just determined within segments, but also the overall program effects. The overall loss of habitat types should be calculated and then assessed for significance, including all of the identified near- and long- term project components.
Pp. 4.4-45; 4.4-67; 4.4-76; 4.4-86; 4.4-129; 4.4-142; 4.4-148; 4.4-160, 161	Unsupported Significance Conclusion; Program vs. Project Level Analysis.	These discussions, and numerous similar statements throughout the DEIR, just lists the mitigation measures followed by a statement that these measures would result in a “less-than-significant” impact. Yet, there is no evidence or analysis showing how, or how much, the mitigations would reduce the impacts for each of the affected plant species. This is a programmatic discussion, at best, and even then is inadequate due to a lack of any thresholds or information of the effectiveness of the mitigation to the impacts identified.
P. 4.4-49, San Jose to Fremont	Program vs. Project- Level Analysis	This is a program-level discussion; if it were project-level, it would identify specific nesting and roosting trees, etc., and describe how the project may affect each of them, and what mitigation measure would need to be applied in each specific situation.
P. 4.4-63; Centerville/Niles/Sunol	Program vs. Project- Level Analysis; Plan-to Plan Analysis	There is no assessment of intensity or level of impact of the proposed new bridges to fish populations. This is a program-level analysis, not project level. The discussion then does an impermissible plan-to-plan analysis, comparing the alternatives against one another rather than against existing conditions.
Pp. 4.4-77	Program vs.	All of the discussions of Impact BIO-6 are

	Project- Level Analysis	at a program level, and not a project level. There is no site-specific analysis of impacts.
P. 4.4-81; 4.4-98-99	Missing Impact Analysis due to IS Checklist Use; Program vs. Project-Level Analysis	The DEIR is once again led astray by its slavish adherence to the IS Checklist. The real impacts here are not the policy compliance issues, but rather the physical impacts underlying the policy non-compliances. The section’s legalistic conclusion undercut the main reason for considering policy compliance, namely that such compliance (or non-compliance) is considered evidence of the level of significance of an impact. By opting out of doing the compliance analysis on a legal technicality, the EIR fails to address a major significance threshold. Additionally, the EIR fails to actually identify which trees would be removed and how many, so it fails to conduct a project-level analysis of impacts.
Pp. 4.4-82	Missing Assessment	The Impact Differences by Segment Discussion fails to address project compliance with applicable plans and policies at all, despite that being the specific topic of the impact. Why include an impact if you’re not going to analyze it?
P. 4.4-115, 116; 4.4-136; 4.4-143; 4.4-154	Vague Analyses	The impact statements on these pages are just conclusions, unsupported by any evidence or analysis, and lacking any information from which a conclusion of potential significance can be made. This is inadequate even at a program level. The term “could affect”, as used throughout this section, provides minimal useful information on intensity, significance, or mode of impact. For example, the Significance with Application of Mitigation discussion on p. 4.4-154 states the impact to fish would be reduced to a less-than-significant level, “by reducing the likelihood of ...fish movement disruption”. Reducing the likelihood is not the same as an insignificant impact, it’s just a general effect of the mitigation. What is the residual impact after mitigation? Is the

		reduced likelihood still significant or not, and why?
P. 4.4-160	Missing Analysis	There is zero analysis of impacts with respect to the project's compliance with applicable HCPs, NCCPs, Critical Habitat, and Recovery Plans in this discussion.
P. 4.4-163	Missing Analysis	Conclusion at top of the page that strikes and noise would be similar in magnitude to existing levels does not provide adequate information to determine significance. How significant are the existing effects; what would be the effect on the species of adding more of the same types of impacts? The DEIR should assess the effects of train noise impacts occurring more frequently with less separation between train use than under existing conditions, and the project would involve different types of trains.
Mitigation Measures BIO-2.5, 2.7, 2.8, 2.9, 2.10, 2.11, 2.14, 2.15, 2.16, 2.18, 2.22, 5.1, 9.1, 9.2, 15.1	Misleading Mitigation Measure Titles	All of these mitigation measures are titled "Avoid...", yet the measures do not require avoidance (many have "to the extent feasible..." in their discussions) and are minimization measures, not avoidance.
Section 4.5.3.3; p. 4.5-19; p. 4.5-5; Mitigation CUL-2.1; Impact CUL-5	Improperly Deferred Analysis	Most of the identified cultural resources have not been evaluated for significance. The DEIR states that "Additional testing will be required prior to project implementation to assess whether these are NRHP-eligible." As this is supposed to be a project-level EIR on the near-term improvements, the resources need to be evaluated for significance in this document, not deferred to some future date. Mitigation CUL-2.1 impermissibly defers this analysis to mitigation.
Table 4.5-2; Impact CUL-4 (pp. 4.5-56, 57)	Missing Impact Analysis	The Cultural resource section fails to evaluate the potential significance of the railroad berms and bridges in the baylands area. Impact CUL 1 says that they may be, but they are not analyzed. Are these historic resources? If so, what is the significance of the various options for expanding or altering them?
P. 4.8-25, 26	Missing Program	The DEIR's GHG assessment fails to quantify total construction emissions of

	Analysis	GHG for long-term program construction. This should be added to the near-term construction emissions calculations and its significance discussed/mitigated.
P. 4.10-18	Technical Issue	Sea-level rise estimates used in this section are out of date. They should be updated with more current estimates (for example, Rising Seas in California, April 2017), which show substantially higher sea-level-rise estimates. Impacts assessments for relevant segments should be revised accordingly. This is particularly important for the long-term project from Fremont to Alviso
P. 4.10-49 and following pages (Impact HYD-1)	Program vs. Project Level Assessment	The impact assessment for the near-term project is generic and programmatic, not project level.
Pp. 4.10-53 through 56	Missing Impact Assessments	The Impact Differences by Segment discussion has no actual impact assessment; it is just a listing of project activities and components with respect to hydrologic features. The impact significance discussion is entirely programmatic. Impacts aren't described or evaluated.
Mitigation Measures HYD-1.1, 1.2,	Misleading Mitigation Measure	All of these mitigation measures are titled "Avoid...", yet the measures do not require avoidance (many have "to the extent feasible..." in their discussions) and are minimization measures, not avoidance. In addition, these measures are entirely generic/programmatic and not project specific. There is no site-specific analysis of how these mitigations would apply to specific impacts at specific sites.
Impacts HYD 1.2, HYD-6	Program vs. Project Level Assessment	San Jose to Fremont analyses is entirely programmatic, despite the fact that a detailed project description exists for these facilities. Given that the project description is detailed, a commensurately detailed analyses of any of the proposed new facilities should be included in the DEIR (they are listed, but not evaluated).
P. 4.10-63, top	Inapplicable Mitigation	Mitigation Measure HAZ-2.3 is not applicable to this impact.
P. 4.10-76	Deferred	The discussion of adequacy of proposed

	Impact Assessment	bridges with respect to flood hazards has not been determined. For the near-term improvements, this information should be included in any project-level CEQA document.
P. 4.10-80 Mitigation HYD 6.1; P 4.10-88, Mitigation HYD-8.1	Improperly Deferred Analysis	The studies identified as mitigation in these measures must be done in the DEIR, and not deferred, if the EIR is to be considered Project level.
P. 4.10-91	Missing Impact Assessments	The Impact Differences by Segment discussion has no actual impact assessment; it is just a listing of project activities and components with respect to hydrologic features. The impact significance discussion is entirely programmatic. Impacts aren't described or evaluated.
Pp. 4.10-96-98 - Impact HYD-10	Inadequate Analysis	The discussion of potential pollutants deposited by train activity is inadequate in that it provides no evidence to support the conclusions that no new sources of pollutants would be generated. Further, it relies on a comparison of the project to other transport methods rather than to existing conditions, which is inconsistent with CEQA's baseline requirements. Further, it concludes that accident conditions would not increase, completely sidestepping the question as to whether accidents themselves would increase.
Table 4.11-2	Program Impacts	What is the total land conversion of each type of land use, including agricultural, from all of the near- and long-term program components?
P. 4.11-44 (table), p. 4.11-63, San Jose to Fremont	Project and Program Impacts	Please provide a discussion of the project's compliance with BCDC Bay Fill and land use policies. These are missing.
Section 4.12.3.1	Program vs. Project Impacts	The discussion of San Jose to Fremont existing noise levels of "55 to 83 dBA" does not provide any baseline from which to judge project impacts. If this is a Project level EIR, it must describe the noise levels at all noise-sensitive sites that may be affected by the project.
Table 4.12-3	Inappropriate Significance Criteria	The use of the FTA Noise Criteria for construction noise fails to meet even the most basic CEQA requirements. Please see

		Berkeley KJOB v. Board of Port Commissioners (2002) case law re this. CEQA establishes much more protective noise standards than do federal agencies. That FTA criteria was designed to protect against hearing damage, not annoyance or disturbance. Please review the noise literature and either describe why this standard is deemed acceptable, or replace with actual protective criteria.
P. 4.12-63	Inadequate Analysis	San Jose to Fremont segment discussion provides no impact analysis, just a relative comparison of alternatives.
Section 4.13.4	Missing Analysis; Plan-to-Plan	This section needs to address the overall growth-inducing effects of the project, particularly on the outlying areas and near new stations. It is not enough to say that an area is planned for development- CEQA does not permit a plan to plan analysis. The questions that needs to be addressed in this EIR are whether the project would induce any growth, planned for or not, and what the impacts of that growth may be.
Mitigations POP-1.1, 3.1a, 3.1b	Mitigation Measures Don't Mitigate	These mitigation measures are to "coordinate with" or "encourage and collaborate with..."). None of these would assure mitigation, therefore, contrary to the DEIR's conclusions, these measures would not reduce any potentially significant impacts to a less-than-significant level.
Section 4.15.4.3	Mitigation Measures Don't Mitigate	These mitigation measures include "coordinate with" various entities. This does not assure mitigation, therefore, contrary to the DEIR's conclusions, these measures would not reduce potentially significant impacts to a less-than-significant level.
P. 5-7	Cumulative Impacts	The major Highway Improvement projects need to be broken out so that their potential overlap with project impacts can be discerned.
P. 5-29	Cumulative Impacts	The SR 84 Niles Canyon project should be described in detail so that cumulative impacts with those of the project can be determined. For example, tree removal, grading, retaining walls, safety fencing, etc., should all be described and their

		overlap with proposed project improvements (both near- and long-term) should be described. Absent this information, it is impossible to determine the significance of cumulative impacts in Niles Canyon.
P. 5-46	Inadequate Analysis	<p>Construction impact analysis is entirely generic- no cumulative impacts assessment has been done.</p> <p>Operational impacts are very programmatic, which is not appropriate for a project-level document. Specific overlapping impacts (i.e. grading plans, tree removal, retaining structures) should be described and their overlapping visual impacts described. Overlapping construction impacts to recreation also should be addressed in detail (i.e. length of disruption; specific trail areas to be disrupted; specific mitigation).</p>
P. 5-53	Cumulative Impacts	Missing assessment of cumulative health risks at a project level – are there places where cumulative health risks would increase (e.g. near new stations)?
Pp. 5-54-56	Cumulative Impacts- Biology	<p>The DEIR states, “Implementation of the applicable mitigation measures would reduce ACEforward impacts on biological resources in Niles Canyon to a less-than-significant level. Consequently, ACEforward construction, with mitigation, would make a less-than-considerable contribution to any potential cumulative impacts. The DEIR has a similar statement with respect to birds, bats, and fish, on p. 5-54.</p> <p>This shows a complete lack of understanding of cumulative impacts, which are based on the principal that multiple less-than-significant impacts may combine to result in a significant impact. This issue must be re-evaluated using the correct approach.</p>
P. 5-57	Cumulative Impacts- Cultural Resources	Impact CUL-1: This discussion has the same deficiency as described above for Biological Resources.

P. 5-68	Cumulative Impacts-Land Use	The section has no discussion of actual cumulative land use impacts from operation, just discusses the project itself.
P. 5-71	Cumulative Impacts-Noise	Construction noise discussion has the same deficiency as described above for Biological Resources. Assumes incorrectly that if project noise is mitigated, to less-than-significant then it will have no cumulatively considerable contribution to overlapping noise from other projects.
Table 5-7	Technical Issue	What is meant by the number of "noise impact" in this table? How were these calculated?
P. 5-78	Cumulative Impacts-Noise	Vibration discussion has the same deficiency as described above for Biological Resources. Assumes incorrectly that if project vibration is mitigated to less-than-significant, then it will have no cumulatively considerable contribution to overlapping noise from other projects.
P. 5-81, 2 nd para.	Impact Significance	Minimizing growth-related planning impacts isn't a guarantee of a less-than-significant impact. Please re-evaluate.
P. 5-81, 3 rd para.	Impact Significance	Discussion provides no evidence that project- contribution to growth inducement would be less than considerable. The mitigation cited is to just discuss with land use agencies- no actual mitigation is included.
P. 5-89	Cumulative Hazards	DEIR assumes rules adherence would reduce cumulative hazards to a less-than-significant level. Needs an actual analysis. Specific cumulative rail hazards in Niles Canyon are not addressed.
Sections 7.2.1.1 and 7.2.1.2	Alternatives	The issues with respect to adequacy and range of alternatives are illustrated in that the "alternatives" discussed herein have very little difference in terms of environmental effects.
Section 7.2.3	Inappropriate inclusion of Costs	An EIR is not a cost/benefit analysis- it's an analysis of impacts. The costs information in this section is inappropriate unless it is in the context of feasibility. Since there are no revenue discussions, that is not the case. It should be removed.

Qualifications of Reviewer

Richard Grassetti

PRINCIPAL

Expertise

- CEQA/NEPA Environmental Assessment
- Project Management
- Geologic and Hydrologic Analysis

Principal Professional Responsibilities

Mr. Grassetti is an environmental planner with 30 years of experience in environmental impact analysis, project management, and regulatory compliance. He is a recognized expert on California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) processes, and has served as an expert witness on CEQA and planning issues. Mr. Grassetti regularly conducts peer review and QC/QA for all types of environmental impact analyses, and works frequently with public agencies, citizens' groups, and applicants. He has managed the preparation of over 80 CEQA and NEPA documents, as well as numerous local agency planning and permitting documents. Mr. Grassetti has prepared over 200 hydrologic, geologic, and other technical analyses for CEQA and NEPA documents. He has analyzed the environmental impacts of a wide range of projects including infrastructure improvements, ecological restoration projects, waste management projects, mixed-use development, energy development, residential projects, and recreational facilities throughout the western U.S. Mr. Grassetti also has prepared numerous peer reviews of CEQA and NEPA documents for agencies, applicants, native American tribes, and citizens groups. In addition to his consulting practice, Mr. Grassetti regularly conducts professional training workshops on CEQA and NEPA compliance, and is a lecturer at California State University, East Bay, where he teaches courses on environmental impact assessment, among others.

Professional Services

- Management and preparation of all types of environmental impact assessment and documentation

for public agencies, applicants, citizens' groups, and attorneys

- Peer review of environmental documents for technical adequacy and regulatory compliance
- Expert witness services
- Assisting clients in CEQA and NEPA process compliance
- Preparation of hydrologic and geologic analyses for EIRs and EISs
- Preparation of project feasibility, opportunities, and constraints analyses, and mitigation monitoring and reporting plans

Education

University of Oregon, Eugene, Department of Geography, M.A., Geography (Emphasis on Fluvial Geomorphology and Water Resources Planning), 1981.

University of California, Berkeley, Department of Geography, B.A., Physical Geography, 1978.

Professional Experience

1992-Present	Principal, GECO Environmental Consulting, Berkeley, CA
1994-Present	Adjunct Professor, Department of Geography and Environmental Studies, California State University, Hayward, CA
1988-1992	Environmental Group Co-Manager/ Senior Project Manager, LSA Associates, Inc. Richmond, CA
1987-1988	Independent Environmental Consultant, Berkeley, CA
1986-1987	Environmental/Urban Planner, City of Richmond, CA
1982-1986	Senior Technical Associate - Hydrology and Geology -

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1979-1981 Graduate Teaching Fellow,
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1978 Intern, California Division of Mines
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**Professional
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Member and Past Chapter Director, Association of
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**Publications
and Presentations**

Grassetti, R. *Round Up the Usual Suspects: Common
Deficiencies in US and California Environmental Impact
assessments*. Paper Presented at International Association
for Impact Assessment Conference, Vancouver, Canada.
May 2004.

Grassetti, R. *Understanding Environmental Impact
Assessment – A Layperson’s Guide to Environmental Impact
Documents and Processes*. (in press).

Grassetti, R. *Developing a Citizens Handbook for Impact
Assessment*. Paper Presented at International Association
for Impact Assessment Conference, Marrakech, Morocco.
June 2003

Grassetti, R. *CEQA and Sustainability*. Paper Presented at
Association of Environmental Professionals Conference,
Palm Springs, California. April 2002.

Grassetti, R. and M. Kent. *Certifying Green Development, an
Incentive-Based Application of Environmental Impact
Assessment*. Paper Presented at International Association
for Impact Assessment Conference, Cartagena, Colombia.
May 2001

Grassetti, Richard. *Report from the Headwaters: Promises
and Failures of Strategic Environmental Assessment in
Preserving California’s Ancient Redwoods*. Paper Presented

at International Association for Impact Assessment Conference, Glasgow, Scotland. June 1999.

Grassetti, R. A., N. Dennis, and R. Odland. *An Analytical Framework for Sustainable Development in EIA in the USA*. Paper Presented at International Association for Impact Assessment Conference, Christchurch, New Zealand. April 1998.

Grassetti, R. A. *Ethics, Public Policy, and the Environmental Professional*. Presentation at the Association of Environmental Professionals Annual Conference, San Diego. May 1992.

Grassetti, R. A. *Regulation and Development of Urban Area Wetlands in the United States: The San Francisco Bay Area Case Study*. Water Quality Bulletin, United Nations/World Health Organization Collaborating Centre on Surface and Ground Water Quality. April 1989.

Grassetti, R. A. *Cumulative Impacts Analysis, An Overview*. Journal of Pesticide Reform. Fall 1986.

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