Alameda Creek Alliance

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July 13, 2017

ACEforward DEIR
San Joaquin Regional Rail Commission
949 E. Channel Street
Stockton, CA 95202

RE: Alameda Creek Alliance Comments on DEIR for ACEforward Project

ACE train derailment into Alameda Creek in Niles Canyon, 2016

Freight trains with nitric acid and chloropicrin tanks crossing Alameda Creek, 2016

These are the comments of the Alameda Creek Alliance on the Draft Environmental Impact Report ("DEIR") for the ACEforward project. The Alameda Creek Alliance is a community watershed group with over 2,000 members, dedicated to protecting and restoring the natural ecosystems of the Alameda Creek watershed. Our organization has been working to restore steelhead trout and protect endangered species and wildlife habitat in the Alameda Creek watershed since 1997. A consortium of local, state and federal agencies has been working since 1999 to restore steelhead trout and salmon to Alameda Creek, which is considered an "anchor watershed" for steelhead restoration in the entire Bay Area.

The goal of ACEforward is ostensibly to improve and extend passenger rail service, an appropriate and worthy transportation and conservation goal. However, track upgrades, track connections and double-tracking proposed in the Project are also aimed at increasing freight train access to and from the Port of Oakland. The Project could dramatically increase freight train traffic across and along Alameda Creek and through highly populated areas of Alameda County. We have strong concerns about increasing freight traffic through Niles Canyon, a narrow, constrained rail corridor that runs closely to Alameda Creek, and an area which is subject to landslides. An ACE train recently derailed in Niles Canyon into Alameda Creek. Increased freight traffic will almost certainly lead to further train derailments and accidents that could spill toxic materials and damage water quality and wildlife habitat in Alameda Creek, as well as put nearby communities at risk from toxic and flammable materials.

Our organization submitted extensive questions during formal scoping for the Project, asking that the DEIR identify: the frequency of future freight train traffic under the Project, the possible toxic and flammable contents of freight trains, and the risks to public safety, water quality, and wildlife habitat from derailments or accidents. None of these issues have been adequately evaluated or addressed in the DEIR for the Project.

Separate EIR Needed for Increase in Freight Trains

The proposed increase of Union Pacific Railroad ("UPRR") freight train traffic is a separate and distinct project from improving passenger rail service, with significant environmental and safety concerns that are unaddressed or glossed over in the current DEIR. It is inappropriate for ACEforward to hide the potential environmental and health impacts from UPRR freight traffic expansion in the current DEIR. The proposed increase in freight train traffic requires a separate, focused EIR to fully explain to the public the potential environmental and safety impacts of increased freight train traffic in the ACEforward corridor.

Inadequate Description of Freight Train Operations after Project

The DEIR describes the current average daily freight train traffic in various reaches of the Project area. The DEIR forecasts changes in freight train operations due to near-term and long-term improvements proposed in the Project. However, the DEIR does not explain how the forecasted freight train traffic after Project improvements was derived or calculated. The DEIR claims that construction of various elements of the Project will not increase the overall number of projected freight trains or freight traffic by 2020 or 2040, but the public is unable to determine whether this is the case, since the methodology for forecasting freight traffic with the Project improvements is not explained in the DEIR.

The DEIR claims that Project improvements would not increase the overall number of projected freight trains in the Niles Subdivision and Niles Canyon reaches, but would provide the opportunity to redistribute some freight traffic from the Coast and Oakland Subdivisions to the Niles Subdivision and the Niles Canyon Railway. For the purposes of impact analysis, the DEIR assumes that half of the freight trains forecasted for 2020 or 2040 for the Coast Subdivision between Newark and Elmhurst would instead use the Niles Subdivision to and from the Port of Oakland, and that up to one additional freight train would be added along the Niles Subdivision between Niles Junction and Elmhurst during the morning or evening peak traffic period. Since the DEIR does not adequately explain how these assumptions were made, it is impossible for the public to determine whether this is an accurate projection of future freight train traffic in these reaches. The DEIR notes that Project alternatives CNS-2a or CNS-2b would increase daily freight trains in Niles Canyon on the Niles Canyon Railway from 0 to 5 trains by 2020 and to 8 daily freight trains by 2040 (Table 2-18).

The DEIR states that for freight trains to or from the Central Valley from the Port of Oakland that shift from the Coast Subdivision to the Niles Subdivision, the route distance would be shortened by approximately 6 to 7 miles. The DEIR does not analyze whether this shorter distance will

provide financial or time-saving incentives that will lead to increased freight train traffic in the Niles Subdivision or Niles Canyon reaches.

Failure to Analyze Interference with Fish Passage and Migration

One Project alternative (ACE to Union City) involves construction of 0.36 miles of new track connecting the Niles Subdivision to the Oakland Subdivision, which would require modifying the existing BART undercrossing and constructing a new retaining wall at MP 30.92 on the Niles Subdivision. The DEIR states that this new track connection would remain at grade and would cross under the BART overhead structure north of the existing northern pier at MP 30.92 on the Niles Subdivision. It would require installing pier protection on the northern pier of the BART overhead structure, cutting into the northern abutment slope for the BART overhead structure, and constructing a 160-foot-long retaining wall along the length of the existing abutment slope.

Figure 2-6 of the DEIR, Centerville Line Expansion and Alameda Creek Bridge, does not show the location or design of these proposed improvements in detail, but they appear to potentially conflict and interfere with a proposed fish passage facility in the same location that will be constructed from 2019 to 2022 by the Alameda County Water District. The ACWD will install a fish ladder along the northern embankment of the Alameda Creek Flood Control Channel over ACWD's Rubber Dam No. 1 and the BART weir, to help facilitate migration of Central California coast steelhead trout in the lower section of Alameda Creek. ACWD submitted comments regarding this issue and detailed information about the proposed location and design of the fish ladder during scoping. The 2013 environmental review document for ACWD's Joint Lower Alameda Creek Fish Passage Improvements Project (ACWD 2013) is attached to these comments. ACEforward should coordinate with ACWD to ensure the new track connecting the Niles Subdivision to the Oakland Subdivision and any pier protection or retaining walls do not interfere with the proposed construction and operation of the ACWD fish ladder.

ACE should also contact the National Marine Fisheries Service to determine whether a consultation is necessary under the Endangered Species Act regarding potential impacts to federally threatened steelhead trout which are present in lower Alameda Creek and occasionally in Niles Canyon within the project area, and which will have access to Niles Canyon and upstream areas of Alameda Creek between 2019 and 2022.

Inadequate Analysis of Impacts to Wildlife Movement

The DEIR's impact analysis for interference with wildlife movement notes that "upstream movement of nearly all anadromous fish in Alameda Creek is ultimately blocked by the 12-foot-high Bay Area Rapid Transit (BART) weir" (page 4-4.29) and also notes "Alameda Creek flows west through Niles Canyon and is an important aquatic corridor for anadromous and native fish species, despite the BART weir in Fremont blocking upstream movement of anadromous fish from San Francisco Bay. Fish are able to move downstream over the weir, but upstream fish movement is entirely blocked by the weir except when humans transport fish around the weir or during significant storms when flow is sufficient to allow a limited number of fish over the weir" (page 4-4.78). The DEIR fails to disclose that construction of fish passage facilities which will allow anadromous fish to move upstream past the BART weir is planned for 2019-2022. See the attached ACWD environmental review document and http://www.acwd.org/index.aspx?NID=456 for information on the proposed fish ladder at the BART weir.

As noted above, the DEIR fails to analyze potential interference with the ACWD fish passage facility at the BART weir, and the potential impacts on steelhead trout migration.

Any proposed new bridges across Alameda Creek, Sinbad Creek or lower Arroyo de la Laguna must be designed to allow upstream and downstream passage of Central California coast steelhead trout, Chinook salmon, and Pacific lamprey, all of which may be present in Alameda Creek and its tributaries in the vicinity of bridges proposed in the Project.

Failure to Adequately Evaluate Train Safety and Accident Issues

The DEIR inappropriately dismisses the likelihood of hazardous materials spills as “rare.” Increased freight train traffic along and across Alameda Creek will make accidents and derailments less rare. All it could take is one train derailment carrying oil or toxic materials to cause massive ecological damage to Alameda Creek.

Impact SAF-8 in Section 4.16 (Safety) discusses the potential increased accident conditions as a result of longer-term freight train movements and ACE service. The Safety and Security section of the DEIR (Tables 4.16-6 and 4.16-7) highlights a single year (2015) of accident and incident data for ACE and UPRR in the counties that ACEforward traverses; there were 4 accidents (1 highway-rail incident, 1 derailment, and 2 fire/violent ruptures) in Santa Clara, Alameda and San Joaquin Counties. However, a summary of a decade of accident data from 2006 to 2015 notes that there were 7 ACE train accidents (mostly highway-rail at-grade crossing accidents) and 108 UPRR accidents in five counties which ACE also traverses, a rate of more than 10 accidents per year. Yet the DEIR still claims that accidents/incidents in the study area are “rare.”

The DEIR (section 4.16.3.4) acknowledges that the potential hazards from operation of near-term improvements include train collisions, derailment, highway-rail accidents, trespasser accidents, fire hazards, and the release of hazardous materials; and that design features of tracks including sharp turns, steep grades, bridges with sharp turns and turnout points could increase hazards if they result in a more frequent occurrence of accidents. The DEIR then glosses over such hazards by stating that “travel by rail remains one of the safest modes of transportation.”The DEIR claims that accident conditions are not expected to increase with longer-term operations because freight train movements and ACE service would comply with “stringent” federal, state, and local protocols and regulations, as well as technological improvements, operational and technical measures, and programs aimed at continually making rail safer. However, the more than 10 UPRR rail accidents annually and the recent ACE train accidents in 2015 and 2016 occurred with all of these “stringent” regulations and safety measures in place. These measures did not, and will not ameliorate accident hazards, especially if rail lines in the ACE corridor have increased freight and passenger rail traffic.

An example of the risk to Alameda Creek was the UPRR freight train derailment in January 1994 at a railroad bridge across Alameda Creek, about a mile downstream from the new Alameda Creek bridge proposed in the Project under the Niles Junction Connection plan. According to the comments the Alameda County Water District submitted for scoping on this Project, the 1994 derailment caused a massive fire and released hazardous materials into Alameda Creek. The more recent March 2016 ACE passenger train derailment into Alameda Creek in Niles Canyon shows that the risk of train derailment in the ACE corridor has not been sufficiently reduced to eliminate a serious train accident recurrence.

The DEIR notes that design features of ACEforward improvements such as steep grades, sharp turns, bridges, tunnels, railroad switching/turnout points, aboveground structures, and signal-gate vehicle/pedestrian crossings have the potential to increase safety hazards, particularly derailment. The DEIR acknowledges that increases in passenger and freight train movements increase the risk of train-on-train collisions, collisions with vehicles or other trains entering the corridor, and train derailment. The DEIR notes that improvements would reroute and increase freight through Niles Canyon, where the “potential for derailment is higher through the canyon because of the winding route and landslide risks, especially during rain events.” The DEIR states “increased freight through the Niles Canyon could increase safety risks if an accident occurred,” due to risks of going around sharp curves or along a winding route and steep grades, which exist through Niles Canyon. This would increase risk of spills, and release of flammable or toxic materials.

The DEIR claims that expanding capacity at rail choke points and relieving congestion in the rail network would create safer future conditions despite an increase in passenger and freight trains. The DEIR gives a litany of dubious claims why Project improvements are not expected to increase hazards: there will be routine inspections; old tracks would be upgraded and new tracks would be designed to meet operational and safety standards; train speed would supposedly be limited when traveling through canyons and around curves; federal and state regulations and requirements would be followed; near-term improvements would not change what freight trains carry; retaining walls and debris fences would reduce hazards and trespassing on tracks; and UPRR's hazardous materials management measures would mitigate any accidents involving freight.

Presumably current passenger and freight train operations in the ACE service corridor already have routine inspections, meet operational and safety standards, obey lower speeds in canyons and around curves, and follow state and federal safety regulations. This has not prevented numerous accidents of ACE and UPRR trains in the ACE corridor. Accidents happen, and with more passenger and freight trains, especially in Niles Canyon, more accidents will occur. The DEIR does not actually discuss exactly how UPRR's hazardous materials management measures would reduce or adequately mitigate the risk of toxic spills, fires, explosions, or release of hazardous materials in the event of an accident or derailment, just that such measures exist. How would UPRR prevent oil or toxic materials from entering Alameda Creek in the event of a derailment, collision or spill? Where are spill prevention and cleanup materials stored? What is the response time once a spill has occurred? Is UPRR's hazardous materials management prepared for an explosion of an oil train, should that occur?

A current redevelopment project proposed at the former Oakland Army Base adjacent to the Port of Oakland includes a bulk export terminal aimed at exporting million of tons of coal per year, as well as liquids such as crude oil and gasoline. To the extent that the ACEforward Project will accommodate freight traffic to or from this terminal containing coal, crude oil, or other fossil fuels, the impacts of transporting these materials must be discussed and mitigated for in the EIR.

Despite our request during scoping comments, the DEIR does not disclose how many freight trains would cross Alameda Creek daily and how many crossings, what types and quantities of toxic materials freight trains would carry across the creek and through Niles Canyon, whether oil trains or trains carrying crude or tar sands oil or other combustible materials would use the ACE corridor, and what safety measures and upgrades the Project would provide for tracks over Alameda Creek and through Niles Canyon to ensure there are <u>no</u> freight train derailments.

The potential for accidents involving oil trains crossing Alameda Creek and running through Niles Canyon are a huge concern, although the public cannot discern from the DEIR the number of oil cars that would travel in the ACEforward corridor. There was a 40-fold increase crude oil being transported by rail throughout North America in just 5 years since 2008 (USDOT 2012). Federal regulatory agencies have allowed this increase in oil-train traffic with little to no environmental review and a complete lack of adequate spill-response plans; the Department of Transportation continues to allow railway freight use of unsafe and puncture-prone tank cars and allows oil trains to routinely exceed safe weights and speeds (CBD 2015). The dramatic increase in oil-train traffic has caused a rise in oil spills from trains. In 2013 there were 117 crude-by-rail spills in the United States, a near-tenfold increase since 2008 (USDOT 2013). These resulted in more than 1.1 million gallons of crude oil spilled, more in one year than the total amount spilled from 1975-2012 (McClatchy 2014). There were more oil train spills in 2014 than in any year since the federal government began collecting data on spill incidents in 1975 (NBC 2015). A 2015 Federal Railroad Administration risk analysis predicted that freight trains hauling crude oil or ethanol will derail an average of 10 times a year in North America over the next two decades (FRA 2015).

Inadequate Analysis and Mitigation of Impacts from Hazardous Materials Spills on Alameda Creek and Aquatic Resources

Among the proposed improvements in the Project that could have an impact on wildlife habitat, water quality and aquatic resources in Alameda Creek are: the proposed double tracks for freight trains through Niles Canyon, using the Niles Canyon Railway; the bridge over Alameda Creek near the BART tracks in Fremont; double track in Sunol that would cross over the tributaries Sinbad Creek and lower Arroyo de la Laguna; Niles Canyon Railway upgrades that would involve two crossings of Alameda Creek; and potential increased freight train use of UPRR tracks that cross Alameda Creek, Sinbad Creek and lower Arroyo de la Laguna. The DEIR notes that Project alternatives CNS-2a or CNS-2b would increase daily freight trains in Niles Canyon on the Niles Canyon Railway from 0 to 5 trains by 2020 and to 8 daily freight trains by 2040 (Table 2-18). It is clear that the proposed track improvements, new track, and track connections described in the DEIR in the Centerville to Union City and Centerville/Niles/Sunol Segments have the potential to increase freight train traffic in rail segments along and over Alameda Creek, increasing the likelihood of accidents or derailments that could lead to spills of toxic or hazardous materials into the creek and aquatic habitats.

Despite our scoping comments, the DEIR does not evaluate, address or adequately mitigate any potential environmental impacts from freight train spills or derailments. The DEIR does not disclose in any way what toxic and hazardous materials would be transported on freight trains along and over Alameda Creek. The Alameda Creek Alliance has documented UPRR freight trains crossing Alameda Creek in Niles on the Warms Springs Subdivision line carrying xylenes (a flammable liquid), nitric acid, phosphoric acid, chloropicrin (a class 6 poisonous material), and other toxic and corrosive materials. The DEIR does not disclose what the ecological impacts would be from a spill, accident or release of toxic materials, nor evaluate the impacts on endangered and threatened species and sensitive habitats.

Inadequate Analysis and Mitigation of Impacts to Public Safety

The DEIR does not disclose what toxic and hazardous materials would be transported on freight trains along and over Alameda Creek, nor what the impacts on human health would be from an explosion, spill, accident or release of toxic substances. The DEIR does not disclose or analyze the significant risks to human life and public health that are posed by rail transport of volatile oil and hazardous materials, including fiery oil-train derailments.

Interference with Recreational Trail of Regional Significance

Numerous proposed elements in the Project may conflict or interfere with the proposed Niles Canyon Trail through Niles Canyon. The East Bay Regional Park District's 2013 Master Plan defines the goal of establishing a multi-use trail for pedestrians, bicyclists, and equestrians through Niles Canyon, and the idea has been considered by the Park District since 1975. The Park District is exploring two trail segments that could be impacted by the Project: a 6-mile long Niles to Sunol multi-use trail through Niles Canyon from Vallejo Mill Park near the intersection of Mission Boulevard to the town of Sunol; and a Bay Area Ridge Trail Railroad Crossing of the Niles Canyon Railway tracks near Vallejo Mill Park to allow for a connection to the future Bay Area Ridge Trail. See Alameda County's *Expanding Regional Trail Connectivity Trail Options in Niles Canyon Feasibility Study* (Alameda County 2015). The DEIR does not evaluate the impacts of proposed Project elements on the Niles Canyon Trail.

Unmitigated Visual and Aesthetic Impacts, Including To Scenic Corridor and Regional Trail

The DEIR describes the scenic blight and industrial atmosphere that will result in Niles Canyon from Project elements on the Niles Canyon Railway, including severe visual and aesthetic impacts from: constructing many miles of debris flow fence, concrete barriers, rockwall fencing and retaining walls; hillside anchor cables; cutting down mature trees and shrubs; landscape

scars from areas of cut and fill; new or modified bridge structures; new or modified culverts; and landform changes in hilly areas, intersections and driveways.

Highway 84 along Niles Canyon Road is designated as a state scenic highway. The DEIR acknowledges significant visual and aesthetic impacts to the scenic highway from alternatives CNS-1a, CNS-1b, CNS-1c, CNS-2a, and CNS-2b. The DEIR discusses the impacts from "removing and altering scenic resources associated with scenic routes and recreation areas, emphasizing the presence of the rail line, and degrading the existing visual landscape, which would likely be negative received given the existing scenic route protections and scenic nature of views associated with Niles Canyon." The DEIR also notes degradation of scenic views and visual impacts to Niles Canyon Railroad operations and passengers, recreational viewers at Vallejo Mill Park, drivers and bicyclists along Niles Canyon Road, Pleasanton-Sunol Road, and at Castlewood Country Club (DEIR 4.1-56 to 4.1-77, Figures 2-10a, b, c). The DIER treats impacts associated with the Alameda Creek Bridge under Alternative CNS-1a and impacts associated with the NCRY under Alternatives CNS-2a and CNS-2b as significant and unavoidable.

The DEIR purports to mitigate for the scenic blight and industrial atmosphere that will result in Niles Canyon with mitigation measures AES-2.2, AES-2.3, and AES-2.5. However these mitigations consist only of: applying "aesthetic design treatments" to bridges and retaining walls with visibility to residents, recreationalists, and viewers from scenic roadways; utilizing "selective grading and planting techniques" in hilly terrain; and applying "aesthetic surface treatments" to fencing, pedestrian bridge safety barriers, rock netting, and cable railing. The DEIR does not discuss whether these token measures will reduce or adequately mitigate for the industrial atmosphere in scenic Niles Canyon that will be created by adding miles of concrete barriers, retaining walls, and fencing, nor the scenic blight of anchor cables, tree cutting, cut and fill, and new structures.

The DEIR does not discuss visual impacts to future users of the proposed Niles Canyon Trail through Niles Canyon.

<u>Need To Fully Avoid, Minimize or Mitigate Impacts to National Historic Resources</u>

The National Historic Preservation Act (NHPA) sets forth national policy and procedures for historic properties, defined as districts, sites, buildings, structures, and objects included in or eligible for the National Register of Historic Places. The DEIR notes that the Niles Canyon Transcontinental Railroad Historic District was listed in the National Register of Historic Places in 2010. The NHPA requires agencies to identify and protect resources that meet National Register of Historic Places listing criteria, and to provide notice to and consult with the State Historic Preservation Officer before altering, transferring, relocating, or demolishing state-owned historical resources that are listed in the National Register.

The DEIR acknowledges that Project alternatives CNS-2a and CNS-2b would have a direct impact on the Niles Canyon Transcontinental Railroad Historic District, demolishing and altering the historic district's contributing resources, including the Dresser Bridge and Farwell Underpass Bridge, and affecting its historic integrity aspects of design, setting, feeling, and association. The DEIR proposes mitigation measures CUL-1.1 and CUL-1.2 to reduce potential impacts on historical resources. These measures consist merely of preparing and submitting "Historic American Engineering Record–like and Historic American Building Study–like" documentation and preparing "interpretive exhibits" and do not in any way fully mitigate for the impacts. The DEIR acknowledges these mitigations would not reduce impacts to a less-than-significant level for the Niles Canyon Transcontinental Railroad Historic District. The DEIR does not contain any efforts to avoid or minimize these impacts.

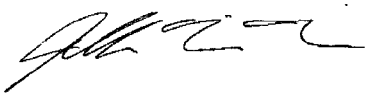
The DEIR fails to discuss the indirect impacts on the Niles Canyon Transcontinental Railroad Historic District from the scenic blight and industrial atmosphere that will result from proposed

Project elements on the Niles Canyon Railway.

Failure to Respond to Scoping Comments and Questions

Our organization submitted extensive questions during formal scoping for the Project, asking that the DEIR identify: the frequency of future freight train traffic under the Project, the possible toxic and flammable contents of freight trains, and the risks to public safety, water quality, and wildlife habitat from derailments or accidents. None of these issues have been adequately addressed in the DEIR for the Project. Our June 2016 scoping comment letter is attached. These scoping questions need to be answered in the EIOR for the Project, so the public can fully understand the impacts of the proposed actions.

Sincerely,



Jeff Miller
Director, Alameda Creek Alliance

Citations

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