

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

HRG DATE / TIME	August 28, 2020 / 1:30 P.M.	DEPT. NO.	17
JUDGE	James P. Arguelles	CLERK	Slort
SACRAMENTO RAIL PRESERVATION ACTION GROUP, ARTHUR AND SANDRA BAUER, PAUL HELMAN, GREGG LUKENBILL, AND DAMIEL PAIGE, Petitioners, v. CITY OF SACRAMENTO, and DOES 1 through 100, inclusive, Respondents.		Cases No.: 34-2019-80003130	
Nature of Proceedings:		Petition for Writ of Mandate – Final Ruling	

The petition for writ of mandate is DENIED.

Introduction

Petitioners challenge Respondent City of Sacramento's (City) certification of the Final Environmental Impact Report (FEIR) for the Del Rio Trail Project (Trail). The Trail comprises multi-use trails along the Walnut Grove Branch Line (WGBL) of the Sacramento Southern Railroad. As planned and approved, the Trail would physically alter a portion of the existing line. Railroad cars, however, have not traveled most of the WGBL, including the segment on which the Trail is planned (the "Segment"), since the late 1970s. According to Petitioners, the Trail subverts longstanding plans to resume railroad travel from the City into the Sacramento-San Joaquin Delta (Delta). In addition, Petitioners describe the WGBL as a historic resource that the City failed adequately to consider when evaluating environmental impacts. For its part, the City describes the Trail as the repurposing of an abandoned railroad corridor.

Petitioners allege that the FEIR violates several requirements in the California Environmental Quality Act (CEQA). They argue that the FEIR and the City's resolution adopting the Trail must be set aside. The City opposes.¹

Background

The WGBL

Constructed between approximately 1909 and 1912, the WGBL is a 24.5-mile stretch of the Southern Sacramento Railroad. It begins at I Street and Front Street in Old Sacramento Historic State Park (Old Sacramento) and continues south and west to the Delta town of Walnut Grove. Beginning around 1912, the WGBL provided commercial and passenger service from the Delta to the City. It was responsible for increased agricultural diversity and employment in the region, the rapid spread of canneries and packing facilities, and some of the region's ethnic diversity. Beginning in the 1930s, use of the WGBL declined, and Southern Pacific Railroad abandoned it in 1978.

In 1972, the Sacramento Trust for Historic Preservation produced a planning document that identified the WGBL for potential recreational and educational use in conjunction with the California State Railroad Museum (Museum). The Museum is located in the City and, like Old Sacramento, operates within the Department of State Parks and Recreation (State Parks). When the Southern Pacific Railroad announced its plan to abandon the WGBL, the Museum expressed interest in using the line for steam-powered recreational excursions. Since 1982, the Museum has operated such an excursion train along the City's waterfront from Old Sacramento to Miller Park, providing an approximate 6-mile round trip. Excursions are offered approximately 53 days per year.

In 1991, State Parks completed a final environmental impact report for a project extending the Museum's excursions further into the Delta. Also in 1991, the California State Historic Preservation Officer (SHPO) determined that the WGBL was eligible for listing in the National Register of Historic Places (National Register). SHPO affirmed eligibility again in 2007. The United States Army Corps of Engineers nominated the WGBL to the National Register in 1992. The nomination provides, in part:

The Walnut Grove Branch Line Railroad encompasses approximately 500 acres along a 24.5-mile-long corridor on the east side of the Sacramento River in Sacramento County, California. The property comprises 24.5 miles of railroad grade (17 miles with intact rails and ties), wooden trestles and concrete overpasses. The grade and wooden trestles were constructed between 1908 and 1912 and were innovative at the time due to the use of dredgers to construct the railroad on a levee of fill. The route extends from Sacramento city to Walnut Grove, passing through agricultural fields and

¹ The petition originally included a cause of action against the California Department of Transportation (CalTrans.) Petitioners voluntarily dismissed CalTrans and the cause of action against it in July 2019.

orchards. Today the majority of the levee and features remain intact and are reminiscent of the 1920s era of the railroad. Changes to the alignment are evident in Sacramento where Interstate 5 caused the realignment of a short segment of the route. As a whole, however, the route retains a remarkable degree of integrity of location, setting, design, workmanship and feeling and is intact along most of its length, with the exceptions of paved road crossings. The route conveys a strong sense of time and place, evoking the rural feel and agricultural focus of the alignment during the 1910s and 1920s that has remained uncompromised through the decades.

(Admin. Record (AR) 4600.)

More recently, the idea of providing additional seasonal excursions on the WGBL was noted in the 2014 Old Sacramento State Historic Park General Plan and EIR (2014 OSSHP General Plan). The 2014 OSSHP General Plan proposes two new seasonal lines. The first line would travel from Old Sacramento to approximately one-half mile past the Sacramento Zoo. The second line would commence at an undetermined new location in the Pocket/Meadowview area and would travel south to the town of Hood. This line would require new and upgraded lines as well as new service facilities, including a possible maintenance yard. The 2014 OSSHP General Plan describes implementation of the proposed lines to occur "over the next 20 years or more." (AR 21611.) The Segment between the two envisioned lines is the location of the planned Trail. Small sections of track on the Segment were previously paved-over or otherwise altered, prohibiting travel by railcar.

The Trail

The Trail draws upon the City's Bikeway Master Plan and is designed to provide continuous off-street pedestrian and bicycle access from the Sacramento River Parkway north of Sutterville Road south to Meadowview/Pocket Road. The Trail would create an ADA-compliant, non-vehicular path to schools, jobs and amenities including the Sacramento River Parkway. It encompasses a 12-foot wide paved path with unpaved shoulders between two and five feet wide. Most of the Trail would run adjacent to existing WGBL tracks. Where the right-of-way narrows, however, unpaved shoulders would be located within the tracks. Also, some portions of tracks would be removed or encased. In addition, a trestle bridge would be replaced, and some railroad embankment would be removed. The Segment housing the Trail does not include any of the line that the Museum uses for seasonal excursions.

Environmental review of the Trail began in 2017. The City is the lead agency. In June 2018, the City issued a notice of preparation, (see 14 C.C.R. § 15082),² and received comments from the public. The City's Draft Environmental Impact Report was circulated for comments in late 2018. After receiving comments, the City eliminated plans for a separate walking trail adjacent to the

² Further CEQA regulations in Title 14, Chapter 3 of the California Code of Regulations are cited as sections of the "Guidelines."

paved trail and placed the unpaved shoulder within the track in a few locations. The City certified the FEIR and approved the Trail in March 2019.

Legal Standards

The basic purpose of an environmental impact report is to “provide public agencies and the public in general with detailed information about the effect [that] a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.” (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 511-512.) The standard of review in a CEQA case is abuse of discretion. (See *id.*, p. 512.)

“[Judicial] decisions have ... articulated a procedural issues/factual issues dichotomy. ‘[A]n agency may abuse its discretion under CEQA either by failing to proceed in the manner CEQA provides or by reaching factual conclusions unsupported by substantial evidence. [Citations.] Judicial review of these two types of error differs significantly: While [courts] determine de novo whether the agency has employed the correct procedures, ‘scrupulously enforc[ing] all legislatively mandated CEQA requirements’ [citation], [courts] accord greater deference to the agency’s substantive factual conclusions. In reviewing for substantial evidence, the reviewing court ‘may not set aside an agency’s approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable,’ for, on factual questions, our task ‘is not to weigh conflicting evidence and determine who has the better argument.’ [Citations.]

[¶¶]

The ultimate inquiry, as case law and the CEQA guidelines make clear, is whether the EIR includes enough detail “to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.” [Citations.] The inquiry presents a mixed question of law and fact. As such, it is generally subject to independent review. However, underlying factual determinations—including, for example, an agency’s decision as to which methodologies to employ for analyzing an environmental effect—may warrant deference. [Citations.] Thus, to the extent a mixed question requires a determination whether statutory criteria were satisfied, de novo review is appropriate; but to the extent factual questions predominate, a more deferential standard is warranted. [Citation.]

(*Id.*, pp. 512, 516, some brackets added.) Substantial evidence is “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.” (Guidelines § 15385(d).) The burden is on the petitioner to demonstrate an abuse of discretion. (See *Center for Biological Diversity v. Department of Conservation, etc.* (2019) 36 Cal.App.5th 210, 229.)

Discussion

The court's analysis roughly tracks the order of issues in Petitioners' Opening Brief (sometimes "OB").

Description of the Environmental Setting

"An EIR must include a description of the physical environmental conditions in the vicinity of the project." (Guidelines § 15125(a).) "This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. [...] The purpose of this requirement is to give the public and decision makers the most accurate and understandable picture practically possible of the project's likely near-term and long-term impacts." (*Id.*) "Knowledge of the regional setting is critical to the assessment of environmental impacts. Special emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project." (*Id.*, § 15125(c).)

Chapter 2 of the FEIR is parsed into sections dedicated to various environmental impacts, e.g., waters and wetlands, historic resources, population growth, and transportation and traffic. (See AR 774.) Each section, in turn, is comprised of various "components," including an "environmental setting" component under its own heading. (AR 792.) Text at the beginning of Chapter 2 explains that the environmental setting for a component is gauged to the impact in question.

The portion of Chapter 2 dedicated to impacts on "cultural and tribal cultural resources" contains an extensive discussion of the WGBL, its history and its physical features. Among other things, the text indicates that the WGBL is eligible for listing as a historical resource, and that the Segment in which the Trail is planned lies within this larger resource. Petitioners nonetheless argue that the FEIR does not sufficiently describe the WGBL as part of the Trail's environmental setting.

First, Petitioners argue that the WGBL should have been included in the FEIR's definition of the Trail's "Project Area Limits" or "PAL." The FEIR defines the PAL in terms of the length of the Trail and immediate vicinity.³ The PAL then guides much – but not all -- of the analysis of environmental impacts. Petitioners argue that the City and the public could not have

³ "In accordance with the CEQA, the Project Area Limits (PAL) for the proposed Project was established in consultation with Caltrans and the City. The PAL is the same as the Project study area which is included in Figure 3. [¶] The horizontal extent of the PAL was established as the area of direct and indirect effects which encompasses an area of approximately 103 acres. The PAL includes the 4.8-mile length of the Walnut Grove Branch Line of the Southern Pacific Railroad between 11th Ave. and 350 feet south of where I-5 crosses over Freeport Blvd. in Sacramento County. The PAL includes all track removal, right-of-way acquisition areas, trail paving, street crossings, landscaping, drainage facilities, culvert and pipe installation, roadway cut and fill limits, buried utility relocation, vegetation/tree removal, equipment and materials staging, temporary construction easements, and construction access (see Figure 3). [...¶.]" (AR 1826)

understood the Trail's full environmental impacts, available mitigation measures or project alternatives without a PAL definition that included the entire 25.4-mile corridor comprising the WGBL.

Assuming *arguendo* it would have been more accurate to include the entire WGBL within the definition of PAL, there was no prejudicial abuse of discretion. (See *City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 898 [“Failure to comply with the information disclosure requirements constitutes a prejudicial abuse of discretion when the omission of relevant information has precluded informed decisionmaking and informed public participation”].) Despite the PAL definition, the FEIR's discussion of impacts to cultural and tribal cultural resources refers to the entire WGBL as a historical resource. The FEIR inquires into effects on the WGBL overall, not just the Segment within the PAL. (See AR 1851 [noting report produced to evaluate impacts on the “historic property,” the WGBL]; *id.* [“The boundaries of the property consist of its original 24.5-mile route”]; AR 1858 [“The property was historically used as a rail line...[i]ts most significant defining characteristics are its location, horizontal track alignment, and intermittent elevated embankment...[t]he vast majority of the property's most significant characteristics will be retained as a part of the Project”].) Given the FEIR's many references to the WGBL, and its specific references to the Trail's impacts on the WGBL, the PAL definition did not preclude informed decision making or discussion and was not prejudicial.

Next, Petitioners argue that the FEIR's description of environmental setting is insufficient because it does not include information about the WGBL's functionality. In fact, the FEIR conveys that the WGBL “has been inactive and abandoned since 1978.” (AR 1826.) It also conveys that short sections of track within the Segment have been partially dismantled or altered. (AR 1855.) And to the extent “functionality” denotes function as a historical resource, the FEIR adequately discusses the WGBL's historical significance. (See AR 1858.)

Petitioners specifically challenge the FEIR's accuracy in characterizing the WGBL as “abandoned.” There is substantial evidence to support the FEIR's use of this term in its description of the environmental setting. (See AR 11072 [USACE nomination of WGBL as historical resource indicates that Southern Pacific Railroad abandoned the line in 1978]; AR 28314 [OSSHP plan and report describing Southern Pacific Railroad's termination of railroad travel and resumption of travel in 1982 from Old Sacramento to Baths (Miller Park)].) Evidence that railroad enthusiasts maintain interest in the WGBL, (see e.g., AR 1493), and that the Museum operates the seasonal line on a small portion of the line, do not betray the FEIR's characterization of the WGBL as “abandoned” as an abuse of discretion. (See *Sierra Club v. County of Fresno*, *supra*, p. 51 [on factual conclusions, the court does not “weigh conflicting evidence or determine who has the better argument”].)⁴

⁴ Petitioners further argue that the WGBL was not “abandoned” in a strictly legal sense. The court addresses this argument below in the discussion about land use impacts.

Next, Petitioners argue that the FEIR is inadequate because it ignores baseline recreational activity. Petitioners point to several pre-existing documents contemplating extended excursions into the Delta. An environmental impact report must “discuss any inconsistencies between the proposed project and applicable general plans, specific plans and regional plans.” (Guidelines § 15125(d).) Petitioners argue that the FEIR does not meet this requirement. Specifically, Petitioners contend that the FEIR misrepresents the 2014 OSSHP General Plan by stating that “there are no planned recreational uses or facilities within the proposed project area.” (See OB at 19:18-20, citing AR 999.)

As noted above, the 2014 OSSHP General Plan envisions two additional lines running on the WGBL. The first would travel from Old Sacramento to the Sacramento Zoo in Land Park. The second would travel from Meadowview/Pocket Road into the Delta. The Trail is planned on the Segment, which falls between these two potential lines. The 2014 OSSHP General Plan originally contemplated using the Segment to move railcars for maintenance and repair (not to carry passengers). (See AR 28844.) But that part of the 2014 OSSHP General Plan was deleted in June 2014:

Chapters 1 through 4 of the Final General Plan were updated in 2014 to remove the portion of the railroad right-of-way (ROW) between Land Park and the Meadowview area from the planning area. This segment was removed from this planning effort, because it is not currently owned by State Parks. The impact analysis in the DEIR included occasional movement of trains through this segment of ROW to service excursion trains for excursion line #2 between the Pocket-Meadowview area and the community of Hood, however this is no longer proposed in the General Plan.

(AR 21834.) Consequently, the conclusion that the 2014 OSSHP General Plan does not envision recreational uses or facilities where the Trail is planned is supported by substantial evidence. (See also AR 2412 [January 2019 Letter from State Parks’ Director stating that “[State Parks] anticipates that the goals of the City and [State Parks] with regard to the [Trail] will be compatible, including the development of a safe and efficient transportation and recreation trail that protects the historic railway corridor”].)

In an attempt to demonstrate the contrary, Petitioners cite a 2019 letter in which a former State Parks official asserted that, even after the Segment was removed from the 2014 OSSHP General Plan, State Parks still intended to move railcars across tracks there. (See AR 27440 [“By removing the RT segment from the General Plan, as requested by the City of Sacramento, it was Parks continuing intent, as originally proposed in the 2014 draft EIR, to preserve the transit line opportunity through South Land Park from the existing Railyards maintenance facility to the future Meadowview Station, consistent with the original 1980 route approved in the 1991 EIR”].) The letter is at most some evidence supporting a conclusion contrary to the one the City reached in the FEIR. The court does not weigh conflicting evidence. (*Sierra Club v. County of Fresno, supra*, p. 51.) The court further notes that the Guidelines require an environmental impact report to discuss inconsistencies with “plans,” such as the 2014 OSSHP General Plan, not letters from individual planning officials. (See Guidelines § 15125(d).)

Petitioners argue that, notwithstanding the 2014 OSSHP General Plan's exclusion of the Segment from its scope, State Parks' 1991 Environmental Impact Report independently required the City to treat the Segment as a baseline source of recreation. The FEIR contains both the City's acknowledgment of the 1991 Environmental Impact Report as well as the City's determination that the 2014 OSSHP General Plan is State Parks' "current planning document for planned uses of the historic rail corridor." (AR 2397.) Both the 2014 OSSHP General Plan and the 1991 Environmental Impact Report discuss the commencement of two new lines on the WGBL. Given this, the City acted within its discretion by finding that the 2014 OSSHP General Plan superseded the 1991 Environmental Impact Report to the extent the Segment is concerned. The 1991 Environmental Impact Report did not require FEIR to disclose excursions on the Segment as baseline recreational activity.

Disclosure of Environmental Impacts

An environmental impact report must "identify and focus on the significant environmental effects of the proposed project." (Guidelines § 15126.2(a).) A "significant environmental effect" is a "substantial, or potentially substantial, adverse change in the environment." (Pub. Res. Code § 21068; Guidelines § 15282.) "The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure." (Guidelines § 15151.)

Petitioners argue that the FEIR fails adequately to consider significant historical, recreational, aesthetic, air quality, and land use impacts. The court addresses these impacts seriatim, below.

Impacts on Historical Resources

Under CEQA, a "substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment." (Pub. Res. Code § 21084.1.) The phrase "substantial adverse change in the significance of an historical resource" means "physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired." (Guidelines § 15064.5(b)(1).) The Guidelines provide alternative definitions for "materially impaired." (See *id.* § 15064.5(b)(2).)

The Guidelines also provide the following mitigation benchmark: "Generally, a project that follows the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings ... shall be considered as mitigated to a level of less than a significant impact on the historical resource." (*Id.* § 15064.5(b)(3).) These standards for preservation, rehabilitation, restoration and reconstruction (Secretary's Standards) are located in Title 36 of the Code of Federal Regulations, Section 68 *et seq.* "Rehabilitation" is defined as "the act or process of making possible an efficient compatible use for a property through repair, alterations and additions while preserving those portions of features that convey its historical, cultural or architectural values." (*Id.* § 68.2(b).) The FEIR contains a finding the Trail constitutes such rehabilitation.

(See AR 1857.) Accordingly, the FEIR analyzes the Trail for consistency with the Secretary's Standards for Rehabilitation.⁵

The City retained architectural historian Laura O'Neill (O'Neill)⁶ to evaluate the Trail's potential impacts on the WGBL's historic character. O'Neill's findings are memorialized in a report filed August 2018 and incorporated into the FEIR. The FEIR contains O'Neill's determinations that the Trail complies with the Secretary Standards for Rehabilitation. The FEIR incorporates O'Neill's action plan identifying "specific tasks during each stage of the undertaking that will be required to ensure the work complies with the Rehabilitation Standards, as well as the responsible parties for ensuring that each task is completed." (AR 1861; see also AR 1862-1864.) Thus, the FEIR indicates compliance with the Secretary's Standards for Rehabilitation and, as a result, qualifying mitigation of impacts to historical resources.

⁵ The Secretary's Standards for Rehabilitation appear in 36 CFR § 68.3(b):

Rehabilitation.

- (1) A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces and spatial relationships.
- (2) The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces and spatial relationships that characterize a property will be avoided.
- (3) Each property will be recognized as a physical record of its time, place and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.
- (4) Changes to a property that have acquired historic significance in their own right will be retained and preserved.
- (5) Distinctive materials, features, finishes and construction techniques or examples of craftsmanship that characterize a property will be preserved.
- (6) Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.
- (7) Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.
- (8) Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.
- (9) New additions, exterior alterations or related new construction will not destroy historic materials, features and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.
- (10) New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

⁶ O'Neill is employed by GPA Consulting. Assistant Architectural Historian Amanda Y. Duane assisted O'Neill on the report. (See AR 10902.)

Petitioners challenge the FEIR's findings of compliance with the Secretary's Standards. First, Petitioners argue that the Trail falls short of Standard No. 1, which reads, "[a] property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces and spatial relationships." Petitioners assert that the removal of sections of track, the lowering of a portion of the elevated embankment, and the destruction of a trestle bridge cannot be considered 'minimal' changes." (OB at 25:5-7.) Petitioners likewise dispute the significance of covering tracks with DG to create an unpaved shoulder, and of encasing sections of track in cement.

The FEIR's discussion beneath Standard No. 1 provides, in relevant part:

The property was historically used as a rail line until the route was inactivated and abandoned in the 1970s. Its most significant defining characteristics are its location, horizontal track alignment, and intermittent elevated embankment. The location and horizontal track alignment will not be altered by the Project. The elevated embankment will be retained at all but one location. At the intersection of 27th Avenue/Normandy Lane/Del Rio Road, the existing embankment and ramps do not meet current ADA requirements and must be lowered accordingly in order to meet the Project goals. The vast majority of the property's most significant characteristics will be retained as a part of this Project.

Other defining characteristics of the property include its steel rails, wood ties, and gravel ballast. Track removal is limited to 2 percent of the existing material and is only proposed where necessitated for safety reasons. [...] Two sections of track that require removal for safety or ADA requirements are proposed to be salvaged and reused in adjacent areas where track is already missing, in order to reduce net loss of track resulting from the Project. Other sections of track at certain major intersections will be encased in concrete—leaving the steel rails visible—to increase safety. The tracks have already been altered at these major intersections.

Less significant defining characteristics of the property include its agricultural setting, which has been diminished by continuous development outside the period of significance. The resource's integrity of setting is now primarily represented by the resource's topographical relationship to its site; this will be retained as part of the undertaking, apart from the intersection of 27th Avenue/Normandy Lane/Del Rio Road, as discussed above. The majority of new construction proposed as part of the Project will take place adjacent to the historic structure. The new construction is linear and will be constructed at or below the same height as the historic structure, using asphalt and concrete. These materials already exist in the vicinity of the resource.

(AR 1858.) Elsewhere the Administrative Record indicates that 288 feet of approximately three miles of elevated embankment near the Segment will be removed or altered. (See AR 10947.)⁷ The Administrative Record also establishes that the one trestle bridge to be removed from the WGBL was previously damaged in a fire and made unsafe. (See AR 931.) In addition, the Administrative Record indicates that tracks will only be encased at ten road crossings. (See AR 10937-10940, 10944-10945.) And, finally, there is evidence in the record that the placement of DG between rails in portions of the track is both compatible with the pre-existing ballast and easily removable. (See AR 10942.)

Substantial evidence in the Administrative Record supports a conclusion that the Trail entails minimal changes to the WGBL's distinctive materials, features, spaces and spatial relationships. Petitioners' argument, that the FEIR wrongly concludes that the Trail complies with Standard No. 1 of the Secretary's Standards for Rehabilitation, lacks merit.

Petitioners also challenge the Trail's compliance with Secretary's Standard No. 2, which provides, "[t]he historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces and spatial relationships that characterize a property will be avoided." O'Neill's discussion of this standard, which is reprinted in the FEIR, includes the following:

Track removal is only proposed where necessary for safety reasons, particularly when the skew of the proposed bike path against the existing track would create a safety hazard. Two sections of track that require removal for safety or ADA requirements are proposed to be salvaged and reused in adjacent areas where track is already missing, in order to reduce net loss of track resulting from the Project. Other sections of track at certain major intersections will be encased in concrete—leaving the steel rails visible—to increase safety.

In certain areas of the Project alignment, park-like features such as drought-tolerant native landscaping and benches will be introduced among the existing tracks and rails in a manner that does not disturb the historic fabric. Lighting will be added at roadway crossings only. If a material, such as ballast, must be removed in order to install a new element, such as irrigation or plantings, the material will be replaced in kind after the work is completed.

Overall, track removal will only constitute approximately 2 percent of the total remaining historic fabric where necessitated for safety reasons and will otherwise be avoided. Therefore, the undertaking complies with Standard 2.

(AR 1858-1859.)

⁷ The City asserts that only 123 feet of elevated embankment will be removed. (See Opp. at 22:14-17.) This figure appears to correspond with the amount of track slated for removal at the location where embankment will be lowered. (See AR 778, 1473.)

Petitioners argue that compliance is lacking because the Trail will result in realignment of the WGBL. The WGBL's horizontal track alignment is one of the WGBL's most defining historical characteristics. O'Neill determined that the Trail will not alter this characteristic. (AR 1858.) The only portion of the record that Petitioners arguably cite for a contrary view is AR 272. (See OB at 25:13-15.) That page, however, does not indicate that the Trail will alter the WGBL's horizontal alignment. The court thus rejects Petitioners' argument that changes to WGBL's horizontal alignment bar a conclusion that the Trail complies with Secretary's Standard No. 2.

Petitioners also argue that the Trail does not comply with Standard No. 2 because it will "remove or cover up [the WGBL's] most distinctive materials in its rails, ties and ballasts." (OB at 25:13-15.) Petitioners contrast O'Neill's conclusion, that such removals and alterations will be "limited," with language in Standard No. 2 that such removals or alterations "will be avoided." Petitioners thus appear to argue that Standard No. 2 prohibits even limited removal or alteration of a historical property's distinctive materials.

Neither side cites any court case or administrative decision construing the phrase "will be avoided" as used in Secretary's Standard No. 2. In the absence of such authority, the court applies established canons of textual interpretation. The court begins with the text itself, and if the text is clear, goes no further. (See *People v. Valencia* (2017) 3 Cal.5th 347, 357.) Words in the text are viewed in context and given their ordinary meanings. (See *id.*) The court endeavors to harmonize the text's various provisions on the same subject, presumes different words used in the same connection mean different things, and attempts to give significance to every word. (See *id.*; *Ferra v. Loews Hollywood Hotel, LLC* (2019) 40 Cal.App.5th 1239, 1247.)

Secretary's Standard No. 2 speaks of certain removals and alterations that "will be avoided." "[T]he word 'avoid' connotes some measure of flexibility in responding to a particular risk[.]" (*Sierra Club v. California Coastal Com.* (1993) 19 Cal.App.4th 547, 561-562.) That such flexibility inheres in Secretary's Standard No. 2 is evident from language elsewhere in the Secretary's Standards. Standard for Rehabilitation No. 3, for example, provides that "[c]hanges that create a false sense of historical development, such as adding conjectural features or elements from other historical properties, *will not be undertaken*." (36 CFR § 68.3(b)(3), emphasis added.) The phrase "will not be undertaken" expresses a prohibition. Standard No. 2, however, does not employ the same phrase and thus does not convey the same meaning. (Compare also Secretary's Standard for Restoration No. 2, 36 CFR § 68.3(c)(2) ["The removal of material or alteration of gestures, spaces and spatial relationships that characterize the period will not be undertaken"].)

Standard for Rehabilitation No. 1, above, further supports a construction of the phrase "will be avoided" that permits some removal and alteration of significant materials and/or features. Standard No. 1 authorizes "minimal change" to such materials and features. Granted, Standard No. 1 is focused on new uses of historical property, whereas Standard No. 2 is more specifically directed at preservation of property's historical character. Nonetheless, if the phrase "will be avoided" expressed an outright bar on alteration of a property's historically important features, then it would nullify Standard No. 1's allowance of minimal changes to such features.

The court concludes that the phrase “will be avoided” in Secretary’s Standards for Rehabilitation No. 2 does not denote a total prohibition on the removal of distinctive materials, or the alteration of features of historical character, from a historical property. Rather, the phrase connotes the minimization of such changes, but affords some flexibility. (See *Sierra Club v. California Coastal Com.*, *supra*, pp. 561-562.)

O’Neill identified safety as the reason track removal is unavoidable at certain locations along the Trail. (See AR 10943.) Her report includes photographs of locations where track will be removed. The Administrative Record likewise identifies the specific places where track will be removed. (See AR 777-780.) During the comment period, the City explained why safety requires the removal of track in these places, and why safety and ADA-compliance require alteration of existing embankment:

Track removal is proposed at select locations for safety purposes for the following conditions:

Where steel rails remain and are buried or embedded in asphalt concrete, there is a safety concern because asphalt is a flexible pavement as compared to steel and the differential strength and expansion/contraction characteristics of these two materials cause the asphalt over and around the embedded/buried steel rails to separate, settle, and prematurely deteriorate. The deterioration of the asphalt around embedded/buried rails at the trail crossing can result in gaps/cracks that can catch bike tires and loose debris that can cause slippage or unexpected tire rupture. Rubber is not a material that would be used to fill gaps/cracks because rubber breaks down at an accelerated pace due to the wide range of climatic conditions experienced in the Sacramento Area.

Where steel rails remain and are embedded in concrete (with the surface of the rail flush with the pavement) and the trail crosses the rail in a skewed alignment, there is a safety concern because the length along which a bicyclist would have to involuntarily ride their tire over the steel surface that provides no traction is significantly greater in a skewed condition as compared to a perpendicular condition. During this time, the tractionless surface has greater potential to cause instability with the bicycle, which increases the potential for accident or collision.

At road crossings, where steel rails intersect proposed access improvements such as curb/gutter/sidewalk and the required ADA-compliant ramps, the existing rail, which is buried beneath the asphalt pavement, will be exposed within the ADA ramp and curb/gutter section due to the differential elevation of the rails and the gutter grades. If left intact, the rail would create an unsafe obstruction to trail users, drivers, and storm runoff flow.

The existing railroad embankment south of the Del Rio Road/ 27th Avenue/Normandy Lane intersection is significantly higher than the adjacent roadways. At the highest

elevation differential, there is an existing path of travel across the tracks in an east-west direction for residents and for school children traveling to Sutterville Elementary that is unsafe and non-ADA compliant due to its steep grades. Lowering the embankment, which requires removal and relocation of existing track, would establish safe, ADA compliance to the trail while also improving the safety of the existing east-west path of travel.

(AR 1509.) Petitioners fail to acknowledge this evidence. This failure is fatal to Petitioners' argument that insufficient evidence substantiates safety as a consideration rendering the removal of some all track (and embankment) unavoidable. (See *Latinos Unidos de Napa v. City of Napa* (2013) 221 Cal.App.4th 192, 201.) The passage quoted above provides substantial evidence in this regard, and the City did not abuse its discretion by concluding that plans to remove track and embankment due to safety and ADA-compliance concerns were consistent with Secretary's Standard No. 2.

Petitioners have likewise failed to demonstrate the insufficiency of evidence to support a determination that the re-encasement of rail is unavoidable. The initial project description and photographs in the record explain that the rails planned for encasement in decorative cement are already encased or buried in asphalt at road crossings. (See AR 777-780, 10930-10933.) Hence, whether re-encasing the rails in cement (while leaving the rails visible) even constitutes an alteration of a historic feature is questionable. But assuming it is an alteration for purposes of Secretary's Standard No. 2, the quotation above is sufficient evidence that re-encasement is unavoidable.

A remaining question is whether substantial evidence supports a determination that the placement of DG within rails is unavoidable. The City argues that some filling of rails is necessary to provide a shoulder where the right-of-way narrows. The City cites pages 1705 through 1708 of the Administrative Record to support this argument. These pages identify the places in which use of DG is planned to create unpaved shoulder between rails, but they do not demonstrate that the right-of-way narrows at these locations.

In its tentative ruling, the court invited counsel for the City to identify evidence in the record demonstrating that the right-of-way narrows where DG is slated for placement between rails. At oral argument, counsel asserted that maps included in the FEIR reflect the right-of-way's narrowing. The map in Appendix D to the FEIR (AR 2299) reflects portions of the Trail that are 17 feet wide. The map identifies some of these narrow sections as locations where rails will be filled to provide an unpaved shoulder. Counsel also cited AR 13668, a "Del Rio Trail Project I Trail Advisory Group Recap" noting "narrow strips reaching to only 15 feet wide" within the right-of-way. In addition, an engineering report in the record indicates that the right-of-way narrows to 15 feet at certain locations. (See AR 10658.) Given that the Trail envisions at least 12 feet of paved trail, (see AR 743), the record supports a reasonable inference that DG will be placed within rails to provide an unpaved shoulder at the right-of-way's narrowest points. Accordingly, there is sufficient evidence to support a determination that such use of DG is unavoidable.

In sum, the record substantiates a conclusion that the Trail complies with Secretary's Standard No. 2.

Petitioners further argue that, regardless whether the Trail complies with the Secretary's Standards and thus mitigates impacts to a less than significant level, the FEIR fails sufficiently to identify and discuss all the relevant impacts in the first place. As noted above, Guidelines Section 15064.5(b)(1) defines a "substantial adverse change in the significance of an historical resource" as "physical demolition, destruction, relocation, or alteration ... such that the significance of an historical resource would be materially impaired." Petitioners do not argue that the FEIR's discussion pays short shrift to provisions in Guidelines Section 15064.5 itself. Instead, Petitioners focus on another set of standards for historical preservation, namely the "criteria of adverse effect" (Criteria) in Title 36, Section 800.5 of the Code of Federal Regulations. Federal agencies apply the Criteria to projects affecting properties eligible for listing on the National Register. The WGBL is so eligible. CEQA, however, does not require compliance with the Criteria. (Compare Guidelines § 15124(d)(1)(C) [a project description should "list related environmental review and consultation requirements required by federal, state, or local laws, regulations, or policies"], emphasis added.) Rather, the FEIR refers to the Criteria because the Trail will be federally funded, and it appears this funding is contingent on compliance with the Criteria. (See Pet., ¶ 6; 54 USC § 306108; 36 CFR § 800.5(a).)⁸

Like CEQA, the Criteria incorporate the Secretary's Standards. Title 36, Section 800.5(a)(2)(ii) lists the "alteration" of an historical property in a manner inconsistent with the Secretary's Standards as an example of an adverse effect on the property. Given her determination that the Trail complies with the Secretary's Standards, O'Neill determined that the Trail would not cause an adverse effect under the Criteria. (See AR 10905.) By agreement, CalTrans' Cultural Services Office (CSO) is authorized to review such a determination, and the CSO concurred with O'Neill in October 2018. (See AR 2343.)

Petitioners argue that the FEIR is nonetheless incomplete because it only analyzes the Trail's impact in terms of its "alteration" of the WGBL. Because the Criteria's examples of adverse effects include "destruction" of historical property, "removal" of historical property from its location, and "[c]hange of the character of the property's use," (see 36 CFR § 800.5(a)(3)(i), (iii) and (iv)), Petitioners argue that the FEIR needed to discuss the extent of any such destruction, removal and change in character of use.

Setting aside the fact that CEQA does not require compliance with the Criteria, the FEIR's discussion of the Trail's impacts on the WGBL is legally adequate. The wording in the Secretary's Standards is broad enough to flesh out changes amounting to the "destruction" or

⁸ The pleadings and the Administrative Record occasionally refer to application of the Criteria as "Section 106" compliance. (See, e.g., AR 10904.) Section 106 of the National Historic Preservation Act (NHPA) provides the statutory authority for the Criteria. The NHPA was previously codified in Title 16, Section 470 *et seq.* of the United States Code but now appears in Title 54. (See 128 Stat. 3094, P.L. 113-287.)

“removal” that the Criteria list as examples of adverse effects. (See, e.g., Secretary’s Standard for Rehabilitation No. 1 [“A property shall be used for its historic purpose or be placed in a new use that requires *minimal changes to the defining characteristics ... and its site and environment*”], emphasis added.) Consequently, the FEIR clearly discloses the changes the Trail will work upon the WGBL: (1) limited removal of track and embankment for safety or ADA compliance; (2) placement of DG between some segments of rail; (3) introduction of some landscaping, benches and lighting; (4) encasement of tracks in some roadways to increase safety; (5) replacement of a bridge; and (6) construction of berm. The FEIR then analyzes these changes in relation to the WGBL’s distinctive materials and features. Because the FEIR thoroughly discusses of impacts the Trail will have on the WGBL as a historical resource, it fostered informed public participation and enabled decision makers to consider environmental impacts necessary for a reasoned decision. (See *Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1046.) The court finds no abuse of discretion.

Impacts on Recreational Resources

As noted above, the Trial will not impact existing seasonal rides from Old Sacramento to Miller Park. The portion of the FEIR dedicated to impacts on recreational resources does note the 2014 OSSHP General Plan. Given this document’s deletion of the Segment from its scope, the FEIR concludes that the Trail will not impact planned recreational uses for the OSSHP corridor. (See AR 1970.) Petitioners dispute this conclusion and reiterate their view that the 2014 OSSHP General Plan includes plans to operate railcars on the Segment. For reasons previously explained, substantial evidence supports the determination that the 2014 OSSHP General Plan disavows such a plan. Consequently, the FEIR’s brief discussion of the 2014 OSSHP General Plan as a (non)source of recreational activity is legally adequate.

Petitioners further argue that the FEIR’s discussion of recreational impacts is inadequate because other planning documents envision extended railway excursions into the Delta. Petitioners cite the 1991 Steam Excursion Train EIR as one such document. As noted above, substantial evidence supports the conclusion that the 2014 OSSHP General Plan, not the 1991 EIR, is State Parks’ current planning document for extended excursions.

Finally, Petitioners argue that the FEIR should have disclosed and discussed another document, the Museum’s 2017 Strategic Plan. Petitioners cite a single page from this document as evidence that it describes non-speculative future excursions over the Segment. The page in question, AR 22423, describes “Goals” and related “Major Initiatives,” including an initiative to “[c]onduct a professional review of the ongoing and deferred maintenance costs and capital investments required for return to operation of right-of-way from the Zoo to Walnut Grove.” Other identified initiatives describe preliminary planning and coordination. Nothing in the cited page indicates that a particular project has been selected for development.

The Museum’s 2017 Strategic Plan aspires to future excursions. It lays out some exploratory steps toward realizing such excursions. Yet CEQA defines the “environment” as the “physical

conditions which exist within the area which will be affected by a proposed project," (Pub. Res. Code § 21060.5), not conditions which might exist in the future. In turn, CEQA requires disclosure and discussion of impacts on the environment, i.e., "changes in the existing physical conditions in the affected area[.]" (Guidelines § 15126.2(a); see also *Chaparral Greens v. City of Chula Vista* (1996) 50 Cal.App.4th 1134, 1145 ["Agencies are not required to engage in 'sheer speculation' as to future environmental consequences of the project"].) Guidelines Section 15125(e) does require discussion of "potential future conditions" discussed in an adopted plan, but such a plan must be a general plan, a specific plan or a regional plan that is "applicable" to the project. The Museum's 2017 Strategic Plan is not a general plan, a specific plan or a regional plan, and Petitioners have not explained how it could be enforced against or otherwise applied to the Trail. Nor do Petitioners cite legal authority generally requiring an environmental impact report to disclose and/or discuss a project's impacts on a potential future environment.

The FEIR's failure to disclose or discuss the Museum's 2017 Strategic Plan was not an abuse of discretion. Nor was the conclusion that the Trail will not significantly impact recreational resources.

Impacts on Aesthetic Resources

Petitioners argue that the FEIR does not sufficiently identify or discuss aesthetic impacts. The court disagrees.

Appendix G to the Guidelines poses a series of questions that lead agencies can ask to identify impacts on aesthetic resources. Among these questions are, Would the project:

Substantially damage scenic resources, including, but not limited to trees, rock outcroppings, and historical buildings within a state scenic highway?

Substantially degrade the existing visual character or quality of the site and its surroundings?

The FEIR recites these questions and provides corresponding analysis. (See AR 1731-1732.) In response to the first question, the FEIR indicates that background investigations and literature searches did not identify any scenic resources. The FEIR thus indicates "no impact." Petitioners have not demonstrated the absence of substantial evidence to support the determination that the Segment lacks "scenic resources." Nor have Petitioners explained why the WGBL or its components must be considered "scenic resources" as a matter of law. Consequently, the City did not run afoul of CEQA by concluding that the Trail will have no impact on scenic resources.

In response to the second question captioned above, the FEIR provides a lengthy discussion, including the following:

The visual character of the Build Alternative would be compatible with the existing visual character of the corridor. The Project proposes to construct 4.8 miles of Class I

multi-use trail along the abandoned railway corridor; however, the overall character of the area would not change. The Build Alternative would maintain the linear form of the abandoned railway corridor. [...] The Build Alternative would be consistent with the form, line, color, and texture of the corridor, and would be compatible with the composite of mixed urban visual character of the corridor.

The visual quality of the existing corridor would not be significantly altered by the Build Alternative. Vividness, or memorability, within the abandoned railway corridor is low as the Build Alternative corridor is disturbed by vegetation, urban, and barren landscape. The landscape is not memorable, distinctive or diverse from other land cover types.

(AR 1732.) According to Petitioners, the City was required to analyze aesthetic impacts by focusing specifically on the removal of track and the damaged trestle bridge. Petitioners, however, do not cite any case or CEQA provision dictating that level of analytical specificity. (Compare Guidelines § 15151 [“An EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences”].) Because the FEIR incorporates the questions in Appendix G to the Guidelines, and because it provides reasons for its conclusions, it did not violate CEQA by failing more specifically to discuss any aesthetic impact in removing portions of track, the trestle bridge or other discrete materials comprising the WGBL. (See *Eureka Citizens for Responsible Gov’t v. City of Eureka* (2007) 147 Cal.App.4th 357, 375-376.)

Petitioners’ reliance on *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928, 931 is misplaced. The question there was whether an environmental impact report was required in the first place. The necessity of an environmental impact report depends on the existence of substantial evidence supporting a fair argument that a project entails significant impacts on the environment. In a case such as the one at bench, where an environmental impact report was prepared, the standard is whether substantial evidence supports a finding of no significant impact. (See *Protect Niles v. City of Fremont* (2018) 25 Cal.App.5th 1129, 1144.) Petitioners have not demonstrated the absence of substantial evidence.

Next, Petitioners assail the FEIR’s analysis of the aesthetic impact in removing mature trees along the Trail. The FEIR explains in this regard:

The Build Alternative would require the removal of approximately 161 trees within City right of way... The Build Alternative would also require the removal of approximately 59 trees within State Parks right of way. No trees on private property are anticipated to be removed. While the elimination of large existing trees would temporarily impact the existing visual quality of the corridor, new trees and vegetation would be planted and allowed to grow; therefore, this impact would be temporary and ultimately result in a similar visual quality. The Build Alternative would also be designed to avoid oak trees to the greatest extent feasible. The City would comply with City Code 12.56.040

and establish a replacement plan prior to removal of the protected trees pursuant to Sacramento City Ordinance 2016-0026, Chapter 12.56 City and Private Protected Trees.

(AR 1735.) The FEIR goes on to state that a minimum of 700 trees will be planted to offset removals.

Petitioners contend that the FEIR's analysis is insufficient because it does not identify the specific trees that will be removed and does not "contextualize the removal of trees in terms of aesthetic impacts." (See OB at 29:9.) The City counters that it elected to remove some of the trees at issue to maximize track retention, partly in response to Petitioners' concerns. (See Opp. at 28:18-21.)

The FEIR's analysis passes muster. The City's conclusion is that the removal of protected and other trees at the Trail will be mitigated to a less than significant impact. Among the mitigation measures cited is the planting of at least 700 trees, far more than the approximately 220 trees to be removed. Petitioners do not explain why substantial evidence does not support the City's finding of mitigation. (See *Laurel Heights Improvement Assn. v. Regents of Univ. of Calif.* (1988) 47 Cal.3d 376, 408, 420 [findings of mitigation are reviewed for substantial evidence]; cf. *Sierra Club v. County of Fresno, supra*, 6 Cal.5th at 526 [mitigation measure instructing that "[t]rees selected to shade paved areas should be varieties that will shade 25% of the paved area within 20 years" was not impermissibly vague even though measure did not identify person who would select trees].) Consequently, Petitioners have not met their burden, and the court rejects their argument.

Impacts on Air Quality

The FEIR addresses potential impacts to air quality by reference to federal and state air quality standards as well as the Sacramento Metropolitan Air Quality Management District's (SMAQMD) "thresholds of significance" developed to meet such standards. The City derived its estimates from the SMAQMD's Emissions Model.

The DEIR concluded that emissions would not create significant impacts, or would present impacts that may be mitigated to less than significant levels. The City's initial emissions estimates were memorialized in Appendix D to the DEIR. (See AR 685.) During the public comment period, Petitioners' counsel submitted a letter arguing among other things that the DEIR failed adequately to disclose the Trail's impacts on air quality. Petitioners' counsel wrote:

Appendix D of the DEIR includes an incomplete Road Construction Emissions Model summary table. No additional supporting materials, such as assumptions, and standard inputs, were included in the DEIR. The table values identify that no material would be imported or exported by the project; yet the project contemplates construction along an almost 5 mile right of way, including the importation of large quantities of fill material [Citations.] The source of this material, the distance necessary to transport it

to the project's site, and return vehicle trips are not accounted for in the emissions calculations or transportation impacts analysis. Depending on the source of these construction materials, identified as possibly decomposed granite, could come from sources with serpentinite (or other harmful particles).

(AR 2428.) When it responded to Petitioners' counsel, the City indicated that it had updated Appendix D to account for "all import/export material." (See AR 2446.)⁹ It also indicated that the total daily truck trips would be 34. (*Id.*) The FEIR and its Appendix E reflect these updates. (Compare AR 171 and 685 with AR 1750 and 2303.) In addition, the FEIR identifies the overall sources of emissions as "construction equipment, earth-movement activities, construction workers' commutes, and construction material hauling for the entire construction period." (AR 1759.) The FEIR also indicates that "[a]ir quality modeling was performed ... using Project-specific details[.]" (*Id.*)

Petitioners assert that the FEIR still does not account for emissions from hauling DG and material needed to create new embankment. As the City points out, the Emissions Model does not tether emissions to particular materials hauled. Instead, it generally describes "Material Imported/Exported" as either "soil" or "asphalt." (See AR 2303.) Petitioners essentially ask the court to infer that the City did not include DG or embankment material as "soil" to be hauled to the Trail. Because the court must draw reasonable inferences in favor of the City, (see *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 117), and because substantial evidence supports an inference that the City did count DG as soil, Petitioners' request for an adverse inference is denied.

Petitioners likewise assert that the FEIR does not account for emissions associated with construction tasks other than paving, such as the removal of rails from the site, and the construction of a bridge. Petitioners point out that the City's Emissions Model is for "road construction." The suggestion is that the model could not have accounted for emissions associated with construction of Trail elements other than the paved portion.

⁹ The paragraph in which the City describes the update reads in full:

The Road Construction Emissions model has been updated to include all import/export material. Approximately 5,410 CY of dirt and asphalt would be excavated, and 35,500 CY of dirt would be imported/borrowed over a period of 6 months. The estimated truck trips for construction is 34 per day. The contractor would determine where the import/borrow material would come from prior to construction. As shown in the updated model and Table 5 of Section 2.2, because temporary construction emissions are expected to be well below the thresholds of significance for all criteria pollutants, the proposed project would not violate any air quality standards. No long-term, operational emissions would occur. The updated construction emissions model and supporting data is now included in Section 2.2 and Appendix D of the EIR.

(AR 2446.)

As noted above, the FEIR indicates that emission modeling was based on “project specific details.” Furthermore, the worksheet attached to the Emissions Model captures emissions from all manner of machinery and equipment, and Petitioners do not point to any evidence that the City failed to designate machinery and equipment used to construct bridges, remove rails, or perform tasks aside from paving. As a result, the court infers from the record that the City’s Emissions Model accounts for construction activities other than paving. Given this inference, the court rejects Petitioners’ argument that the FEIR fails adequately to account for air quality impacts.

Impacts on Land Use

Appendix G to the Guidelines prompts lead agencies to ask whether a project will “[c]onflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental impact.”¹⁰ Petitioners continue to argue that the FEIR falls short because it does not account for the Trail’s inconsistencies with the 2014 OSSHP General Plan and the Museum’s 2017 Strategic Plan. For reasons explained above, neither of these plans gives rise to an inconsistency that the City was required to discuss in the FEIR.

Next, Petitioners argue that, as a legal matter, the Southern Sacramento Railroad never abandoned the WGBL right-of-way. Petitioners cite 49 U.S.C. Section 10903 to support this argument. The court’s research discloses that 49 U.S.C. Section 10903 was not enacted until 1995, when the Interstate Commerce Commission (ICC) was abolished. (See 109 Stat. 803, 104 P.L. 88.) Substantial evidence establishes that the Southern Pacific Railroad applied to abandon the Segment in 1976, and that the ICC granted the application in 1978. (See AR 11077, 18123.) Given this, the City was within its discretion to determine that the Segment was abandoned. (See *Napa Valley Wine Train, Inc. v. Public Utilities Com.* (1990) 50 Cal.3d 370, 380 [“[R]eal property law preserves a rail right-of-way from destruction so long as it has been put into use by the construction of a rail line, and so long as the operator has not intentionally abandoned it”].)¹¹

Petitioners argue more generally that the FEIR is inadequate because it misstates property rights affecting the Segment. (See OB at 31:20-27 [FEIR ignores that Southern Pacific Railroad’s successor maintains an easement, and inaccurately indicates that the City owns parcels owned by State Parks].) The City counters that the FEIR adequately discloses the potential need to acquire certain parcels, as well as temporary easements during construction, to complete the

¹⁰ Appendix G posits two further questions about impacts on land use and planning, but these other questions do not apply to this case.

¹¹ Public Resources Code § 21080.04 was enacted to supersede *Napa Valley Wine Train, Inc.* on another point.

Trail. (See AR 1942-1943.) In addition, the City argues that CEQA does not require it to acquire property rights to the Trail before completing environmental review.

Petitioners do not cite any provision in the Public Resources Code, any CEQA Guideline or Appendix, or any judicial decision requiring the accurate determination of property rights in an environmental impact report. The case Petitioners do cite, *Banning Ranch Conservancy v. City of Newport* (2017) 2 Cal.5th 918, 940, holds that an environmental impact report must identify areas within a project site potentially qualifying as environmentally sensitive habitat under the California Coastal Act of 1976. This holding was based on CEQA commands to include in a project description a list of related environmental review and consultation requirements in state regulations and policies, and to integrate CEQA review with these related requirements. (See 2 Cal.5th at 936.) *Banning Ranch Conservancy* is also predicated on CEQA provisions requiring consideration of related regulatory regimes when discussing project alternatives. (See *id.*, pp. 936-937.)

Petitioners broadly characterize *Banning Ranch Conservancy* as requiring discussion of a project's impacts on all resources in another agency's jurisdiction, including ownership of real property. But the only environmental impact Petitioners suggest was affected by the FEIR's discussion of property rights is the impact on State Parks' purported plan to provide excursions across the Segment. As previously explained, the FEIR does discuss the 2014 OSSHP General Plan and, based on substantial evidence, concludes that the Segment is not within the plan's scope. The City was not required to disclose or discuss the Museum's 2017 Strategic Plan because that is an aspirational document that may not be enforced against or applied to the Trail.

Banning Ranch Conservancy does not hold that an inaccurate description of property rights is an abuse of discretion under CEQA. Given this, and given that the City addressed applicable land use plans, the court finds no abuse of discretion.

Next, Petitioners assail the FEIR's discussion of potential inconsistencies with the City's own land use policies and goals. In the section of the FEIR focused on impacts to historical resources, several goals and policies in the Historical and Cultural Resources Element of the City's 2035 General Plan are listed, including:

Identify and preserve the City's historic and cultural resources to enrich our sense of place and our understanding of the city's prehistory and history.

The City shall ensure compliance with City, State, and Federal Historic preservation laws, regulations, and codes to protect and assist in the preservation of historic and archaeological resources.

The City shall minimize potential impacts to historic and cultural resources by consulting with property owners, land developers, and building industry early in the development review process.

The City shall review proposed new development, alterations, and rehabilitation/remodels for compatibility with the surrounding historic context.

The City shall develop or ensure compliance with protocols that protect or mitigate impacts to ... cultural resources including prehistory resources.

(See AR 1825.) The FEIR also recites the City's Historic Preservation Zoning Ordinance:

The purpose of the Historic Preservation Ordinance is to do the following: identify, protect, and encourage the preservation of significant resources; maintain an inventory and ensure the preservation of these resources; encourage maintenance and rehabilitation of the resources; encourage retention, preservation, and re-use of the resources; safeguard city resources; provide consistency with state and federal regulations; protect and enhance the city's attraction to tourists; foster civic pride in the city's resources; and encourage new development to be aesthetically compatible.

(AR 1825-1826.) Petitioners argue that the FEIR is incomplete because it does not discuss inconsistencies with the following two additional policies in the 2035 General Plan's Historic and Cultural Resources Element:

The City shall promote the preservation, rehabilitation, restoration, and/or reconstruction, as appropriate, of contextual features (e.g., structures, landscapes, street lamps, signs) related to historic resources.

The City shall consider demolition of historic resources as a last resort, to be permitted only if the rehabilitation of the resource is not feasible, demolition is necessary to protect the health, safety, and welfare of its residents, or public benefits outweigh the loss of the historic resource.

In light of the many policies, goals and other standards for historic preservation that are listed and discussed in the FEIR, there was no prejudicial abuse of discretion in failing to discuss potential inconsistencies with the two policies at issue. As to the policy against demolition, the FEIR was not required to disclose or discuss it because the Trail will not demolish the WGBL. (See Guidelines § 15125(d) ["The EIR shall discuss any *inconsistencies* between the proposed project and applicable general plans..."], emphasis added.)

The same may be said of the policy of promoting preservation, rehabilitation, restoration, and/or reconstruction of contextual features related to historic resources. The FEIR contains an extensive discussion of the Trail's conformity with the Secretary's Standards for Rehabilitation, and the City was within its discretion to omit a separate discussion about consistency with the policy. (See *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 142 ["When we review an agency's decision for consistency with its own general plan, we accord great deference to the agency's determination"].)

Description of DG and Its Impacts

Petitioners argue that the FEIR's project description is inadequate because it does not reference the use of DG within portions of rail. Under the Guidelines, a project description must include a project's location and boundaries; a statement of objectives; a general description of technical, economic and environmental characteristics; and a brief statement of the intended uses of the environmental impact report. (Guidelines § 15124.) The project description, however, "should not supply extensive detail beyond that needed for evaluation and review of the environmental impact." (*Id.*; see also *Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 28 ["There must be sufficient information to understand the environmental impacts of the proposed project"].)

Petitioners argue that the project description's failure to mention the use of DG between portions of rail impaired an understanding of the Trail's impacts on the WGBL's value as an historical resource. But the project description indicates that Trail is planned on "an abandoned railway corridor." (AR 777.) The description also refers readers to an appendix that depicts portions of the unpaved shoulder within rails. To convey more specifically the DG's potential impact on the WGBL as a historical resource, the project description would have needed to include information about the WGBL and its history, which appears later in Chapter 2. The inclusion of additional detail about the WGBL in the project description would have exceeded the requirements in Guidelines Section 15124, and the City did not abuse its discretion by excluding more detail about the use of DG.

Petitioners argue next that the City misled the public during the comment period, when it indicated that the Trail had been revised to exclude a separate, unpaved walking trail. Petitioners argue that, as presented, this revision was taken to mean that DG would no longer be placed within any rails in the Segment. In fact, DG will be placed between some portions of rail, but only to provide a shoulder to the paved trail, not as a separate walking trail. Petitioners argue that the City contradicted itself and violated CEQA.

The court has reviewed the pages in the Administrative Record cited by Petitioners and does not find a promise that DG would not be placed between any portions of rail in the Segment. The City's responses to comments do indicate that elimination of the walking trail would eliminate the use of DG to that extent, (see AR 2398, 2438), but the City did not state that it had ruled out any placement of DG within rails. In fact, Response 7G on page 2398 of the Administrative Record contains a discussion about the compatibility of DG -- as a traversable surface -- with the WGBL. (See AR 2398 ["[T]here is no evidence to suggest that adding surface between the ties would cause any accelerated degrading of existing ballast or timber"].) As a result, the court rejects Petitioners' argument that the City misled the public by referencing the elimination of a separate walking trail.

The court notes Petitioners' stated concerns over the safety of placing of DG, and perhaps inviting pedestrians, between rails. Petitioners do not explain how project safety (or lack of safety) gives rise to an environmental impact requiring disclosure or analysis under CEQA. In

the absence of such an explanation, the court disregards Petitioners' safety concerns related to the use of DG.

In the Reply Brief, Petitioners analogize this case to *California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219. The lead agency in *California Oak Foundation* added a last-minute appendix to its final environmental impact report, and the appendix disclosed some important water-supply information not otherwise discussed in the report. (See 133 Cal.App.4th at 1239.) The appendix was also misleading. As Petitioners see it, the last-minute, misleading appendix in *California Oak Foundation* is like Appendix D to the FEIR.

Appendix D to the FEIR is not problematic. Although Petitioners assert that the DEIR did not include an appendix like Appendix D, they do not assert that the FEIR excluded Appendix D when it was circulated. Unlike Appendix D, the appendix in *California Oak Foundation* was not circulated with the final environmental impact report and was appended to the report months later, shortly before certification. (See *id.*, pp. 1233, 1239.) Furthermore, unlike the appendix in *California Oak Foundation*, Appendix D is not the only place in the FEIR in which the placement of DG between rails is mentioned or discussed. (See AR 1705 ["Continuing south, the trail would parallel the east side of the tracks with a 12-foot paved multi-use trail, a two-foot shoulder on the east and a 5-foot shoulder on the west (between the rails)"]; *id.* ["South of 43rd Avenue, the trail would parallel the east side of the tracks with a 12-foot paved multi-use trail, a 2-foot shoulder on the east and a 5-foot shoulder on the west (between the rails)"]; AR 1708 ["At the top of the embankment, the trail would parallel the existing railroad tracks to the east with a configuration consisting of 12 feet of pavement, a 2-foot unpaved shoulder to the east and a 5-foot unpaved shoulder (between the rails) on the west"].) *California Oak Foundation* is distinguishable.

Discussion of Feasible Alternatives

Petitioners argue that the City failed adequately to consider alternatives to the Trail. "An EIR shall describe a range of reasonable 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 § 15126.6(a).) "The range of alternatives required in an EIR is governed by a 'rule of reason' that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice." (*Id.*, § 15126.6(f).) An environmental impact report need not consider alternatives to discrete components of a project, and should instead focus on alternatives to the project as a whole. (See *California Native Plant Soc'y v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 993.)

The DEIR discussed the Trail as adopted, a no-project alternative, a project requiring less tree removal, and a project with a separate walking trail. The reduced-tree-removal alternative was rejected because it would have required significantly more removal of track from the Segment. The no-project alternative was rejected for failing to meet project objectives.

Discussion of the alternative involving a separate, unpaved walking trail was somewhat vague. The DEIR described this as the preferred alternative because it presented the same potential impacts as the no-walking-trail alternative. The DEIR appeared to reject the no-walking-trail alternative because it would not meet all project objectives. (See AR 295.) The FEIR, however, indicates that the no-walking-trail alternative was initially rejected because it did not reduce impacts to the environment any more than the walking-trail alternative. The FEIR describes the ultimate decision to embrace the no-walking-trail alternative as a response to public comments and "an effort to further minimize environmental impacts." (AR 2019.) The public comments in question appear to include comments from Petitioners and the Museum, both of which/whom asked the City to adopt a no-walking-trail alternative to reduce impacts on the WGBL.

In any event, Petitioners do not fault the City for rejecting the walking-trail alternative. Instead, they argue that additional alternatives should have been discussed to reduce further the impacts on the WGBL. Petitioners assert that they proposed rubber flanges to obviate encasement of track in concrete. They also assert that they submitted photographs showing that the right-of-way is sufficiently wide to accommodate an unpaved shoulder outside the rails, rather than between them. Petitioners thus argue that the FEIR should have discussed the use of rubber flanges and shoulder outside rails as project alternatives.

The range of alternatives that the City considered was reasonable under the circumstances. The alternatives discussed did flesh out impacts on the WGBL, and substantial evidence establishes that the adopted Trail reduces impacts to less than significant levels. Consequently, any failure to discuss additional reductions in the use of DG or the intermittent encasement of track did not preclude informed decision making, and there was no prejudicial abuse of discretion.

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Disposition

The petition is denied.

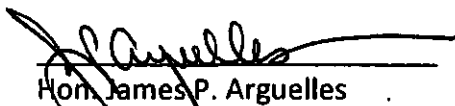
Pursuant to CRC 3.1312, counsel for the City shall lodge for the court's signature a judgment to which this ruling is attached as an exhibit.

Unless otherwise ordered, any administrative record, exhibit, deposition, or other original document offered in evidence or otherwise presented at trial, will be returned at the conclusion of the matter to the custody of the offering party. The custodial party must maintain the administrative record and all exhibits and other materials in the same condition as received from the clerk until 60 days after a final judgment or dismissal of the entire case is entered.

SO ORDERED.

Dated: October 1, 2020




Hon. James P. Arguelles
California Superior Court Judge,
County of Sacramento

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

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above entitled **Petition for Writ of Mandate – Final Ruling** in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at Sacramento, California.

SUSANA ALCALA WOOD, City Attorney
LESLIE Z. WALKER, Sr. Deputy City Attorney
CITY OF SACRAMENTO
915 I Street, Room 4010
Sacramento, CA 95814-2608

Osha R. Meserve
SOLURI MESERVE, A LAW CORP.
510 8th Street
Sacramento, CA 95814

Dated: October 1, 2020

Superior Court of California,
County of Sacramento

By: 
Deputy Clerk