

Judge grants injunction to stop Niles Canyon roadwork

By Matthew Artz
Oakland Tribune

6/24/2011

FREMONT -- A judge on Thursday indefinitely blocked Caltrans from beginning roadwork on the first of three safety projects in Niles Canyon.

Alameda County Superior Court Judge Frank Roesch, in issuing a preliminary injunction, said that Caltrans had failed to notify the public upon approving the project. He also ruled that the nonprofit Alameda Creek Alliance may proceed with a lawsuit charging that Caltrans approved the roadwork without performing adequate environmental studies.

"We're very pleased that we're going to get to challenge this in court," said the group's director, Jeff Miller. "I think it's clear that the environmental review was insufficient, and the public notification was a joke."

Caltrans declined to comment on the ruling, which is certain to push back construction by at least a year, Miller said.

The transportation agency has proposed three projects, totaling \$80 million, to widen Niles Canyon Road, a winding two-lane state highway connecting Fremont and Interstate 680 near Sunol. Studies show that road has an above-average number of fatal auto collisions.

But environmentalists, citizen groups and the city of Fremont oppose much of the proposed work, which they say will destroy sensitive habitat and ruin the canyon's beauty by removing hundreds of trees and adding more than two miles of concrete retaining walls.

The first project is slated to improve the intersection at Palomares Road and widen a small stretch of Niles Canyon Road. A much larger project that would involve far more tree removal and retaining wall construction is still under environmental review and tentatively scheduled to start next year.

Caltrans, which already had chopped down at least 81 trees in preparation for the first project to begin in earnest this month, must now wait until a judge determines if it performed an adequate environmental review.

If Caltrans loses that case, which isn't likely to go to trial until the end of this year, it could be forced to perform a more extensive environmental impact report, further delaying the start of construction.

An attorney for Caltrans argued Thursday that the lawsuit should be thrown out because it was filed well after Caltrans approved the project in 2006 -- even though the transportation agency failed to file a formal notice approving the project or to notify the public that the project had been approved.

"I just can't believe that an entity of the state can make this argument," Judge Roesch replied. "Nobody outside of Caltrans ever had notice that this had been approved. How can anyone be put on notice to file a lawsuit if the public isn't given notice?"