

JUDGE HALTS NILES CANYON ROAD WIDENING PROJECT

Court Issues Injunction; Legal Challenge to Caltrans' Inadequate Environmental Review Will Proceed to Trial



FOR IMMEDIATE RELEASE

June 23, 2011

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Oakland, CA – In a victory for environmental protection and transparency in public agency decisions, Alameda Superior Court Judge Frank Roesch today issued a preliminary injunction barring Caltrans from initiating construction on the first phase of the controversial \$80 million highway widening project in Niles Canyon along Alameda Creek. In ruling that the Alameda Creek Alliance may proceed to trial challenging the inadequate environmental review for the Route 84 “Safety Improvement” project, the judge severely lambasted Caltrans’ clandestine project approval and obstruction of the public process. The ruling effectively prevents Caltrans from construction activities until at least February 2012, and could ultimately result in a ruling that an Environmental Impact Report must be prepared for the project.

“We are grateful that any further Caltrans destruction of habitat along Alameda Creek is barred until the trial and protection of Niles Canyon will get its day in court,” said Jeff Miller, director of the Alameda Creek Alliance. “We are confident Caltrans will be required to prepare an Environmental Impact Report for the project. Fortunately the court felt strongly that Caltrans’ internal, unpublicized act of signing off on the project and efforts to conceal the project approval from the public are neither legal nor good public policy.”

The court ruled today that the [lawsuit](#) filed June 7, 2011 was within the statute of limitations to challenge the adequacy of the environmental review under the California Environmental Quality Act, even though Caltrans internally “approved” the project in June 2006. Caltrans failed to issue a notice of determination alerting the public that the project had been finalized and approved, hid project approval from permitting agencies, and did not notify the Alameda Creek Alliance of project approval even though the organization had commented on the draft environmental review document and raised concerns about environmental impacts to sensitive species such as steelhead trout, California red-legged frog and Alameda whipsnake. Caltrans filed a “Negative Declaration” for the project, claiming no significant environmental impacts, rather than preparing the required Environmental Impact Report for a project with significant impacts.

“This project would waste \$80 million in taxpayer funds and undermine a decade-long effort and millions of dollars spent on restoration projects by dozens of land and water management agencies in the watershed that are working cooperatively to restore Alameda Creek,” said Miller. “Caltrans has a one-size-fits-all approach that disregards the scenic beauty and habitat value of the canyon and devalues the communities of Niles and Sunol. We want a safer roadway, but Caltrans has not considered less ecologically damaging alternatives and their proposed project may actually make the road more dangerous for drivers and cyclists.”

The attorneys for the Alameda Creek Alliance are Brian Gaffney, Kelly Franger and Erin Ganahl of Lippe Gaffney Wagner LLP in San Francisco.

Background

Caltrans cut nearly 100 trees in the canyon this spring and had intended to resume the project June 15, including removing tree stumps and other vegetation, grading and filling in the creek channel and floodplain, and building huge retaining walls, which would cause considerable damage to wildlife habitat. The injunction will prevent any construction until after the trial, which is likely to be in fall 2011, at which point state permits prevent Caltrans from commencing work in the creek channel until spring 2012.

Caltrans began environmental review for phase two, which would cut nearly 500 more trees in the middle of the canyon and construct nearly two additional miles of retaining walls and armoring along the creek, in fall 2010. The proposal received a flood of comments and storm of protest from the community. The Water Board commented it “would be unlikely to issue the necessary approvals for this project” due to significant environmental impacts. Caltrans recently agreed to reopen the public comment period for phase two of the project through August 5, to “solicit additional input from the public in determining the possible scope of a modified project.” Construction on the second phase was scheduled to begin in 2012.

The City of Fremont sent a [letter](#) to Governor Jerry Brown in May requesting he intervene to stop the project, citing “extreme” and “shocking” environmental impacts and “blatant disregard for getting input from the public.” Fremont is investigating a ban on large trucks in the canyon, since trucks cause a disproportionate number (38%) of traffic accidents and most of the fatal accidents. Fremont joined conservation and community groups in calling for a halt to the project and reevaluation of the need for road widening when a truck ban is in place. Nearly 400 residents showed up to oppose the project at meetings with Caltrans this spring and community groups held several protests against the tree cutting. Save Niles Canyon, Save Our Sunol, Friends of Coyote Hills, Southern Alameda County Sierra Club, East Bay Chapter of the California Native Plant Society and Tri-City Ecology Center are also opposing the project.

Save Niles Canyon reviewed safety data Caltrans used to justify the road widening, premised on a need for safety upgrade due to high numbers of fatal accidents. Caltrans cited 13 fatalities in the canyon the past decade, but several incidents were outside the canyon or project area. The majority involved driving under the influence as a major or contributing cause of the accident, unlikely to be prevented by road widening. Save Niles Canyon concluded that Niles Canyon Road is statistically safer than the average state road, there is no safety justification for road widening, and the project may actually make the canyon more dangerous for drivers and cyclists. There are less destructive alternatives Caltrans has not evaluated such as installing flashing lights, radar speed signs, median barriers, and rumble strips, focusing on localized problem areas, trimming or removing selected trees, or other measures within the existing roadway.

The three phases of the project would widen much of Niles Canyon Road between Fremont and Interstate 680 to provide 12-foot lanes, a 2-foot median, and up to 8-foot shoulders. Caltrans proposes cutting 600 trees along Alameda Creek and filling the creek and floodplain with over four miles of cement retaining walls and rip-rap. This would significantly damage wildlife habitat and remove rare sycamore forest.

Alameda Creek is an ‘anchor watershed’ considered regionally significant for restoration of threatened steelhead trout to the entire Bay Area. Since 1997, numerous organizations and agencies have cooperated on restoration projects to allow migratory fish from the Bay to reach spawning habitat in upper Alameda Creek. Thirteen fish passage improvement projects, including dam removals, construction of fish ladders, and installation of fish screens, have been completed in the watershed since 2001. Several more projects in the lower creek are expected to be completed by 2013, allowing steelhead to migrate upstream into Niles Canyon in the project area and into the upper watershed for the first time in half a century.