



Alameda Creek Alliance

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Sent via e-mail to nilescanyonprojects@dot.ca.gov on 11/3/16

Attn: Elizabeth White
Caltrans District 4
Office of Environmental Analysis
111 Grand Avenue, MS 8B
Oakland, CA 94612

Re: Comments on Niles Canyon Safety Improvements Project DEIR

These are the comments of the Alameda Creek Alliance on the Draft Environmental Impact Report/Environmental Assessment (“DEIR”) for Caltrans' proposed Niles Canyon Safety Improvements Project (“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 protect and restore wildlife habitat in Niles Canyon since 1997.

We appreciate Caltrans scaling back the scope of highway projects in Niles Canyon from the excessive and unnecessary highway widening that was proposed a decade ago. However, we still have concerns that the Niles Canyon Safety Improvements Project will have unnecessary localized environmental impacts, and that these impacts could be avoided while still meeting the project goals.

The draft EIR/EA for the project is deficient due to questions about the supposed need for the project, reliance on misleading traffic accident data, insufficient information about the project, failure to consider a meaningful range of project alternatives or to consider alternatives with reduced environmental impacts, failure to address formal scoping comments, reliance on unfeasible mitigation measures for impacts to riparian trees, and improper double use of mitigation measures that are supposed to mitigate for impacts from a separate Caltrans project.

Purpose and Need for the Project

Caltrans states that the purpose of the project is to “improve safety at spot locations and address structural and operational deficiencies along SR-84.” Caltrans claims that the need for the project is that “certain spot locations in Niles Canyon continue to have a higher than state average rate of accidents throughout the Niles Canyon Corridor” since the partial installation in 2007 of centerline rumble strips, citing 166 accidents between pm 10.8 to 18.0, from November 2007 to September 2014.

The DEIR appears misleading regarding the presentation of accident data and the rationale for the need for the project. Caltrans does not claim or conclude that the need for the project is because the entire project area has a higher than state average rate of accidents, nor that the canyon itself has a higher than state average rate of accidents. The intersections in Sunol, Paloma Way, and Mission Boulevard are not in Niles Canyon but are included in the project. The DEIR does not make it clear whether Highway 84 through Niles Canyon, post centerline

rumble strip installation, is more or less dangerous than the average state highway.

By picking a project reach that includes locations outside of Niles Canyon, specifically the Mission Blvd intersection, Paloma Way and the Sunol intersections, the data from these locations appears to skew the accident rate statistics. Nowhere does the DEIR show the specific locations of the 166 accidents that occurred in the project reach from 2007 to 2014. The EIR should detail specifically where the 166 accidents occurred, and how many of those 166 were in the canyon portion of Niles Canyon, where Caltrans' proposed "improvements" to road geometry and tree cutting will have the most impact and are most controversial. Accident data for the Mission Blvd. intersection, Paloma Way and the SR 84 intersections in Sunol should be presented separately, as these areas are outside of Niles Canyon, and the safety treatments proposed for these locations are less controversial and have considerably lesser environmental impacts. The EIR should compare the overall accident rate in Niles Canyon with the statewide average. Figure S-2 of the DEIR shows accidents grouped by locations to the nearest mile marker, but only gives a range of accident frequency. It is impossible to determine from the information in the DEIR whether Caltrans' assertion that "certain spot locations in Niles Canyon continue to have a higher than state average rate of accidents" is in fact true, and what those locations are. What is clear from Figure S-2 is that Paloma Way, Sunol, and the Mission Blvd. intersection are accident hot spots, and if Caltrans had not included these locations, the accident rate for Niles Canyon would go way down, likely well below the statewide average.

The DEIR demonstrates (Table 11, page 54) that the installation of 5.6 miles of grooved centerline rumble strips (from pm 11.1 to pm 16.7) in 2007 dramatically reduced the number of accidents, fatalities and injuries in the project reach. Table 11 shows accidents from pm 10.8 to 18.0 from 2000-2014. A meaningful analysis of accident rates would compare the 7 years before the rumble strips were installed (2000-2007) to the 7 years since they were installed (2008-2014), and should exclude 2007, the year the rumble strips were installed. From 2000-2006, before the rumble strips, there were 314 accidents (44.8/year) in this reach. From 2008-2014 (Caltrans should provide complete data through the end of 2014), after the rumble strips, there were 157 accidents (22.4/year) in the same reach. Pre- and post-installation of the rumble strips, there was a reduction in the accident rate of 50%. Fatal accidents in this reach went from 8 in 2000-2006, to 2 in 2008-2014, a 75% reduction. Accident injuries went from 154 in 2000-2006, to 88 in 2008-2014, a 43% reduction. Those significant reductions were achieved without centerline rumble strips being installed through the entirety of the canyon – the DEIR notes that grooved centerline rumble strips were not installed in the remaining segments of the corridor from pm 10.8 to pm 18.0 until September 2016. The DEIR does not have any data or projections on whether the completion of the rumble strips will further reduce the accident rate. Further reductions in the accident rate due to rumble strips may make some of the more environmentally damaging elements of the proposed project unnecessary.

Table S-3 of the DEIR shows that the proposed rock drapery system area (around pm 12) is the only location in Niles Canyon with a higher than statewide average accident rate. The proposed rock drapery system area is along an extended straightaway where motorists can speed, which may be a contributing factor to the higher accident rate. The DEIR presents no evidence or information that rock fall has caused any accidents in this project reach, or that rock fall protection measures will decrease accident rates. Table 1 of the DEIR categorizes the causes of the 166 collisions in the project area, and not one of them is purported to have been caused by rock fall. Figures 4 and 5 of the DEIR (page 11) provide misleading photos about rock fall. The photos show rock fall in the roadway that has been created by Caltrans during annual maintenance, not natural rock fall that has affected highway safety conditions.

The SR-84 and Main Street Intersection, and the SR-84 & Pleasanton-Sunol Road Intersection, which have higher than statewide average accident rates, are not in Niles Canyon. It is clear from Figure S-2 and Table S-3 that the most dangerous locations in Niles Canyon since 2007 and the real accident hot spots are: in and around the Palomares Road intersection; the west end of the Alameda Creek bridge (for which Caltrans has proposed a separate safety project);

and the Rosewornes Underpass and the long straightaway east of it. A Federal Highway Administration Road Safety Analysis conducted in 2012 (*Final Quantitative Road Safety Analysis Study Report SR 84 – Niles Canyon Road Corridor*) also identified the Rosewornes Underpass and its approaches as the top priority spot location in Niles Canyon most in need of safety improvement. Why is this current project that is supposedly “improving safety at spot locations” not addressing or focusing on the Rosewornes accident hot spot?

Insufficient Information in the DEIR

As discussed above, it is impossible to determine from the information in the DEIR whether Caltrans’ assertion that “certain spot locations in Niles Canyon continue to have a higher than state average rate of accidents” is in fact true, and what those locations are.

The DEIR does not adequately describe the safety measures proposed for the Palomares Road intersection and the safety benefits from proposed measures. The DEIR briefly mentions (pages 83-84) the visual impacts of proposed safety measures at Palomares Road, including: widening the bridge over Stonybrook Creek and approximately 80 feet of the roadway to ensure a standard eight foot shoulder and accommodate a left-turn lane at Palomares Road; adding 240 feet of concrete barriers on either side of the roadway outside the shoulder; installing a dynamic active warning system at the Palomares Road intersection to signal to motorists on SR-84 that vehicles on Palomares Road are waiting to make a left turn; and relocating flashing beacons. However, the DEIR contains no other information about the proposed left turn lane.

The Alameda Creek Alliance has repeatedly requested that Caltrans provide photos of existing conditions at proposed construction and tree cutting locations from the center of the creek, as well as simulated views of post-project conditions, also from the creek view. This information would help us assess the potential impacts of the project on creek banks, stream and riparian habitat, hydrology, and floodplains. The DEIR does not contain this visual information. The DEIR references three studies conducted in 2014 and 2015, the *Niles Canyon Safety Improvements Project Location Hydraulic Study*, but this study is not attached to the DEIR nor is it available on Caltrans’ project web site for the public to review.

The DEIR does not provide an analysis or simulations of the visual impacts of the proposed project relative to future users of the proposed Niles Canyon hiking and biking trail. The build alternative may have significant impacts on aesthetics and visual resources for trail users.

Failure to Consider a Meaningful Range of Project Alternatives

The requirement to identify and discuss alternatives to the project arises from California’s stated policy that state agencies, such as Caltrans, should not approve proposed projects if there are feasible alternatives available which would substantially lessen a project’s significant environmental effects (Pub. Res. Code §21002). An EIR must focus on alternatives that would avoid or substantially lessen a project’s significant effects, “even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly” (*Mira Mar Mobile Cmty. v. City of Oceanside* (2004) 119 Cal. App. 4th 477, 487, citing CEQA Guideline 15126.6, subd. (a) & (b); see also *Habitat & Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal. App. 4th 1277, 1283). Thus, alternatives must be able to implement most project objectives, but they need not be able to implement all of them.

The DEIR for the current project fails to consider an actual range of feasible alternatives that would meet the project’s safety goals. Instead, the DEIR includes and analyzes only build and no-build alternatives. The DEIR (pages 21-22) briefly mentions project elements that were considered but rejected, under the misleading header of project “alternatives” that were considered but rejected. The rejected project elements included: replacing the Alameda Creek Bridge and Overhead; other means of rock fall protection; installing a roundabout at the SR-84 and Pleasanton-Sunol Road Intersection; and Transportation System Management and

Transportation Demand Management measures. These are not “project alternatives” as defined by CEQA and NEPA, they are merely project elements presented as non-viable straw-man “alternatives” that were considered and discarded. None of these “alternatives” would have fully or meaningfully met the project purpose and need. An EIR is also required to explain how project alternatives were selected for analysis (14 CCR 15126.6(c)). The DEIR for the current project does not do this.

The DEIR does not mention or address formal scoping comments submitted by the Alameda Creek Alliance on October 28, 2015 regarding the proposed project and the need for an additional project design alternative. Our scoping comments requested that Caltrans include and evaluate an alternative in the EIR for the project that would not increase design speed and traffic speeds at the low-speed curve, to reduce environmental impacts from rock cuts, retaining walls and tree cutting. The DEIR does not include such an alternative. The final EIR must evaluate whether it is feasible to improve safety at the low-speed curve without increasing design and traffic speeds. The final EIR must also fully analyze the negative safety impacts that could result from increasing design speed, thus allowing increased motorist speeds at the low-speed curve.

Reliance on Unfeasible Mitigation Measures

The proposed project will impact 281 native trees along Alameda Creek (Table 20). The proposed mitigation for these impacts in the DEIR are: UPLAND TREES-1, which proposes replacement of upland trees on-site at a minimum 1:1 ratio, but anticipates a need for off-site upland tree planting; and RIPARIAN TREES-1 which proposes replacement riparian trees on-site at a minimum 3:1 ratio (to the maximum extent possible), but anticipates a need for off-site riparian tree planting. Both mitigation measures promise replacement trees will be planted within two years of project completion and monitoring of trees for three years following planting.

These promised mitigations constitute improperly deferred mitigation, since the DEIR gives no specifics about where the replacement trees will be located, nor their habitat value relative to those trees removed for the project. The sufficiency of these promised mitigations cannot be assessed. Formulation of mitigation measures should not be deferred until some future time, but measures may specify performance standards which would mitigate the project’s effects (CEQA Guideline 15126.4(a)(1)(B)). An EIR is inadequate where mitigation efforts largely depend upon management plans that have not yet been formulated, and have not been subject to analysis and review within the EIR (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92, citing *San Joaquin Raptor II*, supra, 149 Cal.App.4th at 670). “In the First District, an agency violates CEQA by deferring the formulation of mitigation measures without committing to specific performance criteria for judging the efficacy of the future mitigation measures” (*POET, LLC v. California Air Resources Board* (2013) 218 Cal.App.4th 681, 698-99).

These promised mitigations for tree cutting are neither credible nor feasible. The Alameda Creek Alliance has met repeatedly with Caltrans since 2011 regarding promised mitigations for the impacts of cutting 143 riparian trees along Alameda Creek as part of the now-abandoned Niles I Project. After 5½ years, Caltrans has failed to complete any of the promised mitigation measures for the significant, illegal impacts from the Niles I project. See the attached December 2015 memo from Caltrans, *Caltrans Niles I Safety Project Tree Cutting Impacts and Remediation*, promising the Alameda Creek Alliance and the local community mitigation measures for the Niles I tree-cutting, including: replacing the Stonybrook Creek culvert under Palomares Road with a free-span bridge; removing invasive plants from the reaches with cut trees in the Niles I project area; conducting restoration tree plantings in the areas where trees were cut; monitoring restoration planting and invasive plant removal locations; monitoring cut sycamores in the Niles I project reach; and conducting public outreach. Caltrans has not followed through on any of the promised tree planting and invasives removal mitigations.

Caltrans has acknowledged at public hearings on the Alameda Creek Bridge Replacement Project, this current project and other Niles Canyon projects that the agency is unable to mitigate in-kind in Niles Canyon or along Alameda Creek for loss of riparian trees. Caltrans has had difficulty finding suitable locations and projects that regulatory agencies will accept as mitigation for loss of riparian trees. Caltrans is unable to “replace” in habitat value any mature riparian trees that would be cut. CEQA requires that agencies not approve projects unless feasible mitigation measures have been adopted to reduce significant impacts (§§ 21002; 21002.1, subd (b); 21081, subd (b)(3)). “Feasible” means capable of being accomplished in a successful manner within a reasonable period of time taking into account economic, environmental, legal, social, and technological factors (CEQA Guideline 15364). Caltrans has demonstrated from its failure to mitigate for the Niles I project and has admitted in the environmental review for the Alameda Creek Bridge Replacement Project that replacement planting of cut riparian trees is not feasible. The UPLAND TREES-1 and RIPARIAN TREES-1 mitigations are not feasible mitigations. The promise that replacement trees will be planted within two years of project completion and monitoring of trees will occur for three years following planting is not credible, as Caltrans promises similar mitigations for the Niles I project and has not yet provided these mitigations after 5½ years. For these reasons, Caltrans should focus on avoidance of impacts to native upland trees and riparian trees in this project, rather than promise mitigation it cannot deliver.

Improper Double Use of Mitigation Measures

The Alameda Creek Alliance supports the removal of the Stonybrook Creek Culvert and its replacement with a clear span bridge, to facilitate migratory fish passage. This measure is a legally required mitigation measure that Caltrans is already obligated to complete to compensate for the tree cutting impacts that have already occurred from a separate Caltrans project, caused by Caltrans in 2011 during the now-abandoned Niles I project. Why the culvert removal is included as part of this safety project is unclear, unless Caltrans is trying to improperly use it as mitigation for this current project as well. Indeed, Caltrans cites the Stonybrook culvert removal as mitigation in the current project to reduce the impact threshold to “less than significant” for the current project’s impacts to wetlands, lamprey, steelhead trout, and pond turtles (DEIR pages 221-224). It is improper for Caltrans to use the Stonybrook culvert removal as mitigation simultaneously for the Niles I impacts and for the current project impacts. This fish passage project should be uncoupled from objectionable highway widening projects and completed by Caltrans.

Project Elements with Minimal Environmental Impact

We consider the following proposed project elements to have minimal or benign environmental impacts, with significant safety benefits: signalization at SR-84 and Main Street and SR-84 and Pleasanton-Sunol Road; shoulder widening eastbound side of Paloma Way and near Silver Springs underpass; installation and removal of traffic signs; installation of K-rail; barrier rail replacement on Alameda Creek Bridge and overhead; installation and replacement of metal beam guardrail; installation of active warning system, speed feedback signs, and dynamic active warning systems.

Project Elements That Should Be Scaled Back

Low Speed Curve. We appreciate that Caltrans has changed the proposed design for the low-speed curve so that the curve will be banked rather than changing the existing highway geometry, thus reducing the need for tree cutting, cut-and-fill, and construction of retaining walls. However, the DEIR still does not adequately explain the rationale for increasing the design speed of the low-speed curve. The Caltrans Highway Design Manual (Caltrans 2014, page 100-1, topic *Highway Design Speed*) allows for lower than standard design speeds due to environmental impact considerations. Such an allowance would be justified in this case. The proposed project would still have significant localized impacts due to widening of the road and

shoulder, rock cuts, construction of concrete barriers and retaining walls. A lower design speed coupled with signage, speed feedback signs, and lateral rumble strips could accomplish the project need at this location without requiring significant environmental impacts.

Rockfall Protection Systems. As discussed above, the DEIR does not justify the need for the proposed rockfall system. The project proposes a 250-foot-long steel cable net drapery system at pm 12.1, anchored at the top of the slope; and a rockfall fence, approximately eight feet tall and 400 feet long, installed approximately 40 feet above the roadway at pm 12.6. The DEIR (pages 69-78) dismisses the aesthetic impacts of adding the mesh drapery and fencing and the incompatibility with the designation of Highway 84 through Niles Canyon as a scenic highway with an unconvincing argument that the actions are small in scale and have minor visual impacts. The proposed rockfall protections are not small in scale nor would they have minor visual effects, even with using black or brown mesh for the rock drapery. The DEIR also has a very minimal discussion of other means of rock fall protection (page 22), which dismisses the use of concrete barriers to prevent rock fall from entering the roadway as infeasible. Given the significant negative aesthetic and environmental impacts of the proposed mesh drapery, the EIR needs to further analyze whether in fact one or two rows of concrete barriers could provide adequate rock fall protection to prevent large boulders from reaching the roadway.

Stonybrook Culvert Replacement with Clear Span Bridge. The Alameda Creek Alliance supports the removal of the Stonybrook Creek Culvert and its replacement with a clear span bridge, to facilitate migratory fish passage. We note that Caltrans has improved the bridge design based on comments from regulatory agencies, to pass the 100-year design discharge, align the bridge abutments with the creek channel, restore the natural creek channel, and allow Stonybrook Creek to flow unimpeded beneath the new bridge. However, we continue to object to the proposed removal of two large western sycamore trees that were cut during the Niles 1 project downstream of the culvert. These re-sprouting sycamores provide more than just shade, but also fish habitat and bank stability for lower Stonybrook Creek. We request that Caltrans design the bridge in a way that preserves these trees.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Miller", written in a cursive style.

Jeff Miller
Director