



Alameda Creek Alliance

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Re: Alameda Creek Alliance Preliminary Comments on Draft EIR/EA for Niles Canyon Safety Improvement Project

Valerie Heusinkveld, Environmental Branch Chief
Attention: Oliver Iberien
Department of Transportation
Office of Environmental Analysis MS 8B
111 Grand Avenue
Oakland, CA 94612

Thank you for the opportunity to comment on the Draft Environmental Impact Report/Environmental Assessment (EIR/EA) for the Niles Canyon Safety Improvement Project proposed by the California Department of Transportation.

The Alameda Creek Alliance is a community watershed group dedicated to the protection and restoration of the natural ecosystems of the Alameda Creek watershed. We have more than 1,700 members that live in or near the watershed. The Alliance has been working to restore steelhead trout and salmon to Alameda Creek and to protect endangered species in the watershed since 1997. We have serious concerns about the impacts of the proposed project to the hydrology, water quality, riparian habitat and fisheries of Alameda Creek, and many details and questions about potentially significant environmental impacts remain undisclosed in the draft EIR/EA.

The impacts of the project on Alameda Creek, habitat for special-status species, and the scenic and aesthetic values of Niles Canyon are unacceptable. The need for the project, as proposed, is ill-defined and unproven. The environmental review for the project fails to meet the legal requirements of the California Environmental Quality Act, National Environmental Protection Act, and the Endangered Species Act. These deficiencies are discussed below. **We insist that the project and the EIR/EA be withdrawn.**

The proposed project consists of construction of a median barrier, increased curve radii, construction of eight- to ten-foot-wide roadway shoulders, metal-beam guard rail, and construction of retaining walls along an approximately 4.4-mile segment of State Route 84 in upper Niles Canyon. The proposed project would require cutting and removing 439 native trees from the Alameda Creek riparian corridor, constructing nine retaining walls running a total of 3,400 feet down-slope from the highway adjacent to Alameda Creek, cutting and filling in the canyon to install retaining walls and road shoulders, and installing rip-rap down-slope of retaining walls, including on creek banks.

Purpose and Need for the Project

The proposed project is ostensibly a highway and bicycle safety project, the purpose of which is to “incrementally improve safety on Route 84 within the project limits by improving sight distances, providing refuge for errant vehicles that might otherwise cross the centerline,

providing means of warning drivers who may approach curves at unsafe speeds or whose vehicles may stray over the center or fog lines, and providing a safer travel way for bicyclists.”

Safety statistics cited in the draft EIR show that Niles Canyon does not have higher rate of accidents than other roads in the region, and in fact the draft EIR notes that the accident rate in the project area is below the state average. The presumed need for the project is that a relatively higher than average percentage of accidents in the project area are fatal, so that reducing the number of traffic fatalities and creating safer travel for bicyclists appear to be the primary project purposes. However, the draft EIR does not discuss whether portions of the project area are more hazardous than others, does not include analysis of the causes of accidents in the project area, and does not demonstrate that the proposed project will reduce traffic fatalities. It is impossible to determine from the draft EIR whether fatal accidents are likely to be reduced by the proposed safety improvements or whether the roadway will be safer for cyclists.

The draft EIR does not discuss the very real possibility of increased fatalities that could result from implementing the preferred alternative, which would allow and likely encourage cars to travel at higher speeds through the project area, due to road widening and increased line-of-sight. This could result in increased fatalities from higher-impact collisions. The project proposes soft median barriers, so there will be no deterrents to head-on collisions.

Insufficient Analysis of Alternatives

The draft EIR does not demonstrate that the preferred project alternative is the least damaging practicable alternative to accomplish the basic project purpose. It does not adequately discuss less environmentally damaging practicable alternatives that could also reduce fatalities, such as trimming or removing selected trees, installing radar speed signs, median barriers, and rumble strips in “problem areas,” or other measures within the existing roadway footprint. Nor does the draft EIR discuss possibilities for localized safety improvements to accomplish the project purpose. Caltrans statistics show that 2.5% of the traffic in Niles Canyon is trucks, yet 38% of the accidents involve trucks. It is known locally that trucks often use the road to avoid the truck scales on Highway 680, hence the drivers are possibly afraid of being found overloaded and unsafe. One way to improve safety on the road would be to limit truck traffic, which may contribute to or be a major cause of unsafe highway conditions in the canyon.

The draft EIR has not demonstrated that alternatives less environmentally damaging to Alameda Creek, endangered species habitats and scenic values are infeasible to accomplish the basic project purpose.

Improper Segmenting of Projects and Failure to Fully Disclose Cumulative Impacts

The draft EIR briefly mentions three other Department of Transportation road projects along Highway 84 in Niles Canyon, including two pending projects, the Rosewarnes Realign and Improve Sight Distance project, scheduled for construction this year, and the Route 84 Alameda Creek Bridge (BR 33-0036) Replacement. The draft EIR does not discuss the biological impacts of these projects nor does it analyze the cumulative impacts on Alameda Creek, riparian habitat, endangered species habitat, water quality, hydrology, or scenic values from implementing these projects in conjunction with the proposed project at issue here.

For example, the Department of Transportation plans to remove an additional 101 riparian trees just downstream of the project area as part of the project to widen State Route 84 in Niles Canyon from post mile 12.1 to 13.3.

Inadequate Impact Avoidance and Minimization

The draft EIR states that “minimization of the removal of large, specimen-size riparian trees to the greatest extent feasible” is an element of the project design. However, the draft EIR makes no showing that the project is infeasible without the removal of 439 native riparian trees and severe impacts to the Alameda Creek riparian corridor. The draft EIR notes that the preferred project alternative does not include widening at several sites in the project area where historic structures are present, but makes no attempt to avoid widening or retaining walls or rip-rap in areas where biologically important riparian habitat will be destroyed.

The project proposes permanent fill in the Alameda Creek channel by placing potentially thousands of feet of riprap scour protection at the base of proposed retaining walls at creek facing locations. Riprap fills in stream habitat, alters stream hydrology and erosion, eliminates riparian vegetation and degrades stream habitat quality. The project makes no attempt to avoid this potentially severe impact by moving retaining walls away from the creek or designing retaining walls with extended footings that negate the need for riprap scour protection.

An Environmental Impact Statement is Required

The potentially significant impacts to species federally listed under the Endangered Species Act, impacts to designated critical habitat, the need for formal consultation with federal wildlife agencies and preparation of a Biological Opinion, and potentially severe impacts to water quality and hydrology in Alameda Creek, the proposed project requires the preparation of an Environmental Impact Statement under NEPA, rather than an EA.

Need for Formal Consultation and a Biological Opinion

The draft EIR contemplates an informal consultation with the National Marine Fisheries Service (NMFS) on the project. However, other proposed projects in Alameda Creek, including both construction and restoration projects, with the potential to impact steelhead trout are currently required to assess potential impacts to steelhead trout and undergo formal consultation under the Endangered Species Act with the before federal permits can be issued. For example, projects both downstream and upstream of Niles Canyon such as the San Francisco Public Utilities Commission’s Calaveras Dam Replacement Project and the Alameda County Water District and Alameda County Flood Control and Water Conservation District’s fish ladder project at the BART weir are currently undergoing environmental review and formal consultation with NMFS which will result in Biological Opinions for the projects. Formal consultation under the Endangered Species Act with NMFS regarding potential impacts to steelhead trout is required for the Department’s Niles Canyon Highway Widening project before the Army Corps of Engineers can issue a 404 federal permit for the project.

The project will also require formal consultation with the U.S. Fish and Wildlife Service regarding impacts to federally listed terrestrial species, such as the Alameda whipsnake, California red-legged frog, and California tiger salamander.

Potential Impacts to Steelhead Trout Habitat

Alameda Creek is considered by the National Marine Fisheries Service to be an ‘anchor watershed’ for steelhead trout restoration in the Central California Coast, regionally significant for restoration of steelhead to the entire Bay Area. Since 1999, the Alameda Creek Fisheries Restoration Workgroup, a stakeholder group composed of all the water districts, flood control districts, and land management agencies in the watershed, conservation and fishing groups, and

state and federal regulatory agencies, has worked to remove and remediate barriers to anadromous fish migration throughout the Alameda Creek watershed. 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, aimed at allowing steelhead trout and other anadromous fish to access suitable spawning and rearing habitat in Niles Canyon, the Sunol Valley, and the upper watershed. Several more fish passage projects in the lower creek are expected to be completed by 2011-2013, allowing steelhead to migrate freely upstream into Niles Canyon, the Sunol Valley, the Arroyo del la Laguna and Arroyo Valle tributaries, and upper Alameda Creek. A major fish ladder project in the lower watershed downstream of the project area is currently in design phase. This project will provide listed steelhead access further upstream in the watershed (including in Niles Canyon in the project area) by 2011. The numerous studies, reports, and environmental reviews that have been prepared by various participating agencies that characterize the historic and current fisheries resources of the Alameda Creek watershed, and ongoing restoration efforts are too numerous to list. The most important reports are publicly available on the Alameda Creek Alliance web site at <http://www.alamedacreek.org> or the Alameda Creek Fisheries Restoration Workgroup web site at <http://www.cemar.org/alamedacreek/alamedacreekindex.html>.

Much of Alameda Creek in Niles Canyon, including the proposed project area, is considered suitable spawning and/or rearing habitat for Central California Coast steelhead trout, which are listed as threatened under the federal Endangered Species Act. The draft EIR notes that direct impacts on steelhead habitat or individual fish are possible as a result of work below the high water mark of Alameda Creek. The removal of trees for construction of the retaining walls within the riparian corridor of Alameda Creek could also result in an indirect effect to the species through habitat loss or alteration. The proposed impacts to the Alameda Creek riparian corridor from cutting native trees and fill of the Alameda Creek channel with rip-rap and retaining walls will have potentially significant impacts on hydrology, scour, erosion, riparian habitat, food, shade, fish migration, and water quality that could affect steelhead trout that are not discussed in the draft EIR.

Unauthorized Impacts to Designated Critical Habitat

The draft EIR contemplates a project that would destroy or adversely modify 7.55 acres of designated critical habitat for the Alameda whipsnake (5.33 acres of permanent impacts and 2.22 acres of temporary impact). Critical habitats are areas with special conservation value and protected status due to habitat attributes essential for the conservation and the recovery of listed species. It is unlawful under the Endangered Species Act for any federal agency to permit or fund any project which would destroy or adversely modify designated critical habitat, and the Army Corps of Engineers cannot lawfully issue a permit for the proposed activities in the project which will destroy or adversely modify whipsnake critical habitat.

Proposed Destruction and Modification of Future Critical Habitat

It is highly likely that portions of Alameda Creek within and adjacent to the project area are very likely to be designated as critical habitat for Central California steelhead trout in the near future. In December 2004 (69 FR 71880; see also 69 FR 33101, June 14, 2004), portions of Alameda Creek and a riparian corridor buffer – including areas within and adjacent to the project area – were proposed by NMFS as critical habitat for Central California Coast steelhead trout. In June 2005 NMFS proposed to include resident trout and landlocked steelhead in Alameda Creek as part of the listed central coast steelhead trout population, based on compelling genetic evidence that landlocked populations of steelhead/rainbow trout in Calaveras and San Antonio Dams and resident rainbow trout in Alameda Creek are descendants of wild steelhead. However, NMFS

separated Alameda Creek resident trout and landlocked steelhead from the listed population, which in turn resulted in NMFS in September 2005 excluding Alameda Creek from the final designated critical habitat for central coast steelhead.

The original critical habitat proposal was premised on the upper Alameda Creek watershed being occupied by resident fish that were part of the central coast steelhead ESU. NMFS has indicated it will consider Alameda Creek occupied by listed central coast steelhead trout when migration barriers in lower Alameda Creek are remediated, which could be as early as 2011. The Alameda Creek Alliance will immediately petition to list resident and landlocked trout populations in Alameda Creek as part of the listed central coast steelhead trout population and include Alameda Creek as part of designated critical habitat for central coast steelhead trout when migration barriers in lower Alameda Creek are remediated.

The proposed project includes activities that are likely to destroy or degrade creek and riparian habitat that is essential to the recovery of central coast steelhead and will be likely reincorporated into designated critical habitat for the central coast steelhead population.

Riparian Habitat Impacts and Mitigation

The proposed project involves cutting 439 native trees, many of which include large oak, bay, maple, buckeye, sycamore, and cottonwood trees, and many of which are in the Alameda Creek riparian corridor. Proposed impacts include 1.65 acres of permanent and 2.40 acres of temporary impacts to Valley Foothill Riparian Habitat, which the draft EIR cites as containing “some of the most important wildlife habitat in the region,” and 0.56 acres of permanent and 0.82 acres of temporary impacts to California Bay/Coast Live Oak Forest. This would be a significant impact on Alameda Creek and its riparian corridor, which provides important habitat for steelhead trout, California red-legged frog, and other wildlife. In fact, the Regional Water Quality Control Board notified the Department that it would be unlikely to issue the necessary approvals for this project, due to the severity of proposed impacts.

The draft EIR does not adequately map or identify where the trees that are proposed to be cut are located. The draft EIR also does not adequately consider a project alternative that does not include riparian tree removal.

The Department states it will mitigate for native trees that are lost, but has confirmed that much of the replanting will not be along Alameda Creek. Because of the importance of the riparian habitat in Alameda Creek, any riparian impacts absolutely should be mitigated within Niles Canyon, and should include long-term monitoring to ensure the successful establishment of planted trees, since in many areas, mature trees will be cut. The Regional Water Quality Control Board has notified the Department that it will require a higher level of compensatory mitigation for permanent impacts to Alameda Creek riparian vegetation if mitigation must be provided at an off-site location. The draft EIR contemplates an inadequate monitoring period for reestablishing riparian habitat as part of mitigation. The Regional Water Quality Control Board has notified the Department that it will not accept a mitigation plan that does not include a ten- to twenty-year minimum monitoring period for areas of impact to riparian habitat.

Retaining Walls, Roadway Encroachment and Impacts to Creek Hydrology

The draft EIR states that one of the proposed retaining walls “would be placed closer to Alameda Creek and would consume some natural streambank, but the dynamics of the local hydrology and habitat are not expected to change.” The draft EIR does not explain how the Department arrived at this conclusion. Eight other retaining walls are proposed between the existing roadway

and Alameda Creek. In fact, the proposed extensive concrete retaining walls down-slope of the roadway will have a significant potential to alter the hydrology of the creek. It is unclear in the draft EIR how close the proposed project would locate the road and its shoulders to the Alameda Creek channel throughout the project area.

There are potential impacts to the hydrology of the creek even from walls placed above the limits of the Army Corps of Engineers jurisdiction. In locations where the road is already close to the creek, and there is already an inadequate buffer between the road and Alameda Creek, these changes would be significant impacts. In addition to the direct water quality impacts from a reduced buffer width, the retaining walls could impact short and long-term bank stability, creek bed scour, and cause loss of habitat in Alameda Creek, including thermal effects from loss of shade and loss of fish refuge. The EIR must provide an evaluation of these potential impacts

Wetland Mitigation

The draft EIR notes that approximately 0.01 acres of wetlands will be permanently filled as part of the project, and characterizes this impact as “de minimis,” and proposes there is no need for replacement or mitigation for this impact. The Water Board has notified the Department that it does not consider these impacts to be minimal and referred to the California Wetlands Conservation Policy of “no overall net loss” of wetlands. The Department must propose compensatory mitigation for any wetlands impacts.

Special-Status Species Impacts and Mitigations

The Department proposes onsite compensation for temporary impacts to habitat for special-status species and offsite compensation for permanent impacts to such habitat.

The proposed retaining walls along the creek could have a significant impact on migration and movement of listed species, specifically the Alameda whipsnake, California red-legged frog, and California tiger salamander. These amphibians and reptiles are likely to have their movement blocked by such barriers. Niles Canyon has been identified by the U.S. Fish and Wildlife Service as a critical migration corridor for the Alameda whipsnake, in particular.

The draft EIR notes that the project area is a significant for the San Francisco dusky-footed woodrat, with over 70 active and inactive nests in the project footprint. Any nest dismantling and relocation should ensure that the species persists in the project area after any construction is completed, and should include a monitoring component.

The draft EIR discusses potential impacts to river lamprey, which have the potential to occur in Alameda Creek, but we note that most sightings of lamprey in the watershed on recent years have been of Pacific lamprey.

Bicycle Safety

The draft EIR does not demonstrate that the proposed project is necessary for or will actually result in increased safety for bicyclists in Niles Canyon. The draft EIR does not discuss future plans by the East Bay Regional Park District to extend the Alameda Creek Trail through Niles Canyon, which could provide an alternative bike route through the canyon that is not adjacent to the roadway, eliminating the need for the bike lanes.

We request a credible and documented analysis under CEQA and NEPA of the following potentially significant impacts of the project:

- Hydrologic impacts on Alameda Creek from retaining wall construction and roadway widening;
- Cumulative impacts on riparian habitat and effects on feeding, breeding, cover, and migration for special-status fish, amphibians and other wildlife;
- Water quality and temperature impacts to Alameda Creek in Niles Canyon

Sincerely,

Ralph Kanz
Conservation Director