



# California Native Plant Society

East Bay Chapter  
Conservation Committee

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September 28, 2010

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

## **RE: Niles Canyon Safety Improvement Project Draft Environmental Impact Report/Environmental Assessment [04-ALA-84 PM 13.6/18.0]**

Dear Ms. Heusinkveld:

The East Bay Chapter of the California Native Plant Society (EBCNPS) appreciates the opportunity to comment on the Niles Canyon Safety Improvement Project DEIR/EA. The California Native Plant Society is a non-profit organization of more than 10,000 laypersons, professional botanists, and academics in 33 chapters throughout California. The Society's mission is to increase the understanding and appreciation of California's native plants and to preserve them in their natural habitat through scientific activities, education, and conservation.

Niles Canyon is perhaps the quaintest and most scenic east-west transportation corridor that connects the bayside East Bay to the more rural parts of Alameda County. This Canyon has relatively little traffic compared to Highway 24 or the Highway 680 connection to San Jose. The roadway is lined with sheer canyon walls that rise steeply above the valley floor, providing an important wildlife corridor and a suitable home for one of the largest sycamore groves in the western East Bay.

### **General Considerations**

#### Lack of Documentation to Support Safety Rationale

EBCNPS supports a safe and reliable transportation system, which includes roads and bikeways. It is not clear from the document that the following project meets the goals of improving safety, nor is it clear that there is a need to "improve safety" by widening the road which could have additional unintended consequences. On page 1-5 the document clearly states that "[a]ccident rates for the period January 2005-December 2007 dropped below the statewide average for this type of highway facility." Since Chapter 1.2 actually ends with the above quoted text, we see no defensible justification in improving the roads, given that many other roads in the area have much poorer safety statistics.

### Failure to Consider All Impacts in Cost/Benefit Analysis

Given the basic background information provided in this report, it is not clear that this expenditure of public dollars provides a reasonable benefit when considering the cost of construction and the cost to the riverine and riparian ecosystem that follows this roadway. In addition, the document should consider the cost of additional impacts (i.e., increased sedimentation, increased erosion, increased runoff) to flood management, riparian habitat, fisheries, and water quality. The responsibility and costs for mitigating these impacts will be passed on to other local public agencies. We believe this document has failed to provide sound analysis on the impacts of additional sedimentation, erosion, native vegetation resource loss, flood management, and changes in driver behavior after the completion of road improvements.

EBCNPS also believes that an Environmental Assessment (EA) does not provide a satisfactory level and degree of analysis for this project due to the type of impacts and the high level of scientific uncertainty provided by the document. According to the National Environmental Policy Act (NEPA), one of the purposes of an EA is to help determine if an Environmental Impact Statement (EIS) is required. If a project is found to have significant impacts (such as this one), or an unusual amount of controversy (as observed by public reaction to this project), then the preparers should default to preparing a full Environment Impact Statement. Similarly, EBCNPS believes that this document is inadequate to meet CEQA requirements and that the EIR should be re-circulated.

### **Specific Considerations**

#### Need for Data Regarding Before and After Impacts from Changes in Driver Behavior

EBCNPS believes that this document is inadequate because it fails to consider the effect of increased traffic in this corridor due to “perceived” higher safety standards. A widened road will bring in more traffic as commuters believe it is safer, faster, and intended for greater traffic circulation. We request that the applicant include data from appropriate and relevant studies of other road widening cases that examine driving behavior before and after a road widening, and report this information in the EIR/EIS. Since we believe driver behavior will be changed, we also believe that vehicle trips will be increased and the canyon will be subject to additional impacts from dry nitrogen deposition, increased runoff of contaminants and pollutants, increased impact on wetland and riverine ecosystems, increased road kills and impacts to wildlife, and further loss of aesthetic value of this area.

#### Impacts to Soil, Vegetation, and Water Runoff from Retaining Walls

The project proposes to build some 86,500 square feet of retaining walls (from Table 1.1). This is the vertical equivalent of two acres of new pavement! We believe this amount of additional impervious surface will impact water quality and water infiltration

into the soil. Additionally, the construction of some of these retaining walls will require removal of vegetation in order to access the “construction site”. The removal of vegetation also needs to be described since at least 8 retaining walls will be 10 feet in height, with several listed as 15 feet tall. Additionally, it appears that some degree of fill will be required along the retaining walls which would create additional impacts to the existing soil and plant communities. If so, how much fill will take place? What will be its source? How will this increased level of disturbance be analyzed? We did not see these impacts appropriately reported and mitigated.

Additionally, the document states that “[r]iprap or large rock protection will be placed at the base of the retaining walls at creek facing locations to protect against damage during floods. (page 1-6)” Large rocks and riprap in an active stream can alter flow and reduce bank stability in high flow events, especially if those “engineered” rocks start to move down stream, or worse yet, cause a log jam leading to additional road flooding and unsafe conditions. EBCNPS fails to see how the addition of these materials is considered in the EIR/EA. With the additional potential impacts from climate change (i.e., higher storm flows, higher rainfall events in short periods of time), we believe the “engineering” changes offered in this document need to be considered in the face of changing environmental conditions, specifically with respect to flooding. The only portion of this EA that addresses this issue is page A-7, Section IX. HYDROLOGY AND WATER QUALITY, section d, where the applicant claims the project will have “No Impact” on “Substantially alter[ing] the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site”. We fail to see information that presents impacts of potential flooding and stream flow changes due to an increase in impermeable ground.

Page 2-49 includes a critical typographical error, and therefore we cannot understand whether this statement is in present or future tense: “Alameda Creek [is? will be?] susceptible to the erosive flows resulting from an increase in runoff rate and volume resulting from an increase in impervious area.” If this statement indicates that additional erosive flows will occur with this project (because of an increase in impervious area), we believe this impact needs to be modeled for the Water Board and for the Flood Management District, since this project may be creating new potential hazards for people and structures both within and downstream of this corridor.

#### Impacts to Valley Foothill Riparian Vegetation, Stream Corridor, and Oak Woodland

Section 2.3.1.2 states that 1.65 acres of valley foothill riparian will be permanently impacted and another 2.40 acres fall into the “temporary impact zone”. Given the rarity of this vegetation type, and that the California Department of Fish and Game lists Fremont Cottonwood Riparian Forests and Woodland [DFG code 61.130.00] as “rare and worthy of consideration by the California Natural Diversity Database” (List of California Terrestrial Natural Communities Recognized by the California Natural Diversity Database, 2003), we believe this impact to be significant. Notably the impact

to this vegetation type, which only occurs locally in this highly specialized environment (deep canyon bottom), is un-mitigable on-site:

“it is possible that the required acreage of valley foothill riparian provision may not be possible in the immediate project vicinity. Some compensation may need to be provided offsite.” [page 2-57]

It is clear that given the impact to the Cottonwood riparian vegetation, the EIR/EA document cannot support a Negative Declaration of Impact or the equivalent Finding of No Significant Impact (FONSI). EBCNPS believes that impacts to this vegetation type should be wholly avoided, not simply mitigated somewhere off-site, in order for this impact to be considered less than significant.

Given the sensitivity and rarity of wetlands and other waters of the US, EBCNPS believes that an impact of 2,410 linear feet of stream corridor is significant in this area due to potential impact on state protected fish, fish habitat, and riparian vegetation. Impacts totaling nearly ½ of a mile of important waterways cannot be overlooked and should not be downplayed. We do not perceive adequate mitigation is in place for stream impacts

EBCNPS is not convinced by the project proponent's assessment of the “health” of the coastal oak woodland (disturbed) in the project area and the resulting justification of impacts. The factors listed that contribute to the “disturbed woodland” are: “location between SR-84 and the railroad, existing fragmentation, invasion by non-native trees and a pervasive non-native annual grassland understory” [page 2-55]. Woodlands are becoming fragmented in many areas of the state, a fact that should argue for greater conservation and not be used as justification for impacts. Additionally, many woodlands invaded by non-native grasses and trees can be managed and treated to remove or minimize the impact of the non-native species.

The applicant cannot argue for lower mitigation standards for “disturbed woodlands” that simply require some small degree of stewardship in order to be returned to a healthier condition. We believe that the project’s coastal oak woodland (disturbed) is still protected fully by the California State Concurrent Resolution Number 17. The expansion of SR-84 to the detriment of 5.73 acres of Oak Woodland is in conflict with CSC Resolution 17 that declares that California state agencies must protect this habitat “to the maximum extent feasible”.

## **Conclusions**

EBCNPS believes the project's impact to 439 native trees, including the permanent loss of 262 of them [page 2-63], is extraordinary and abusive for the stated goals and public benefit derived from this project. The proposed project fails to comply with California State Concurrent Resolution 17, and with both CEQA and NEPA guidelines, nor does it offer reasonable and clearly defined mitigation for rare California vegetation. The

document fails to report any analysis on increased probability of flooding or public safety impacts. The EIR/EA is woefully inadequate and we request that a new draft EIR/EIS be circulated before any final documents.

Please feel free to contact us for more information.

Sincerely,

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CC:  
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