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Arnold Schwarzenegger
Governor

August 18, 2010
CIWQS Place No.: 755703 (BT)

Sent via electronic mail: No hard copy to follow

California Department of Transportation
Attn: Valerie Heusinkveld
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SUBJECT: Draft Environmental Impact Report for the Niles Canyon Safety Improvement Project (SCH No. 2009112051)

Department EA No.: 04-2A3300

Dear Ms. Heusinkveld:

Thank you for giving San Francisco Bay Regional Water Quality Control Board (Water Board) staff the opportunity to review the *Draft Environmental Impact Report/Environmental Assessment* (DEIR) for the Niles Canyon Safety Improvement Project (Project). The Project proposed by the California Department of Transportation (Department) involves construction of a median barrier, increased curve radii, construction of eight- to ten-foot-wide roadway shoulders, and construction of retaining walls, along an approximately 4.4-mile two-lane segment of State Route 84 (SR 84) near the town of Sunol in Alameda County.

Permanent impacts to Alameda Creek and its riparian corridor are proposed due to roadway widening by up to 18 feet, increases in curve radii, and construction of approximately 3,175 linear feet of retaining walls. Proposed impacts include 1.65 acres of permanent and 2.40 acres of temporary impacts to Valley Foothill Riparian Habitat, which the DEIR 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. Alameda Creek contains habitat suitable for the federally-threatened Central California coastal steelhead. The DEIR notes that "Direct impacts on steelhead habitat or individuals are possible as a result of work below the OHWM of Alameda Creek or other streams. 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."

California Environmental Protection Agency



We are particularly concerned that the Project, with its proposed removal of 439 native trees, many of which include large oak, bay, maple, buckeye, sycamore, and cottonwood trees in the Alameda Creek riparian corridor, may have such significant impacts that our agency would be unlikely to issue the necessary approvals for this project. A Project alternative that does not include riparian tree removal to increase road and shoulder width would avoid numerous potentially significant impacts.

The following comments are to advise the Department of our concerns so they may be incorporated into the planning and design process at an early date.

Unclear Project Purpose and Insufficient Alternative Analyses

The Department has not convincingly demonstrated that the preferred project alternative is the least damaging practicable alternative to accomplish the basic project purpose(s)¹.

The basic Project purpose is not presented clearly in the DEIR. Section 1.2 of the DEIR notes that the Project purpose 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.” The DEIR then subsequently notes that “although the accident rate in the project area is below the state average, the number of fatalities has been higher than the statewide average.” The abovementioned safety improvements, with the exception of a safer travel way for bicyclists, are ostensibly being proposed in response to the higher than average fatalities on this stretch of roadway and, therefore, reducing the number of traffic fatalities appears to be the primary Project purpose.

The DEIR does not convincingly demonstrate that the proposed safety improvements will reduce traffic fatalities. According to the DEIR, an analysis included in the “Headquarters 2003 Report on cross-centerline fatal collisions under the Two-and Three Lane Highway Monitoring Program” indicated that “limited sight distance might have contributed to the majority of accidents [in] the project area.” This document is not included in the DEIR appendices, nor is it cited in the references. It is impossible to discern from the DEIR if fatal accidents may be reduced by the proposed safety improvements. Additionally, the DEIR does not discuss if some portions of the Project area are more hazardous than others, which may inform possibilities for localized safety improvements.

¹ Per Chapter 4 of the *Water Quality Control Plan for the San Francisco Bay Basin* (Basin Plan), any project with impacts to waters of the State, is evaluated by the Water Board using the *United States Environmental Protection Agency’s Section 404(b)(1) Guidelines for Specification of Disposal Sites for Dredge or Fill Material*. Use of these guidelines requires that the proposed project represent the least environmentally damaging practicable alternative that achieves the basic project purpose.

The DEIR does not discuss the possibility of increased roadway fatalities resulting from implementation of the preferred alternative. The proposed alternative will allow cars to travel at higher speeds through the Project limits, which might result in an increase in fatalities from higher-impact collisions. For instance, Figures 2.13a and 2.13b of the DEIR show an existing 30-MPH curve that will be subject to widening and improved sight distance, yet, this alteration will allow for vehicles to travel at significantly higher speeds.

The DEIR does not adequately discuss if there are less environmentally damaging practicable alternatives that may also reduce fatalities. For instance, fatal accidents might also be reduced by a combination of trimming or removing selected trees, installing radar speed signs, median barriers, and rumble strips in “problem areas,” or other measures. The Department has not demonstrated that less environmentally damaging alternatives to Alameda Creek are infeasible to accomplish the basic Project purpose.

Inadequate Demonstration of Impact Avoidance and Minimization

In general, the Department must further minimize impacts to the Alameda Creek riparian corridor. The DEIR mentions that “A preferred project alternative has been identified that does not include widening at several sites in the project area, generally at sites where historic structures are present.” The Department must revise the Project design to not only avoid and minimize impacts to historic structures, but to the Alameda Creek riparian corridor, as well. The DEIR says that “minimization of the removal of large, specimen-size riparian trees to the greatest extent feasible” is an element of the Project design. However, this statement is not a meaningful representation of the Department’s minimization efforts, as it is not substantiated with specific examples or an explanation of how the Department defines feasibility. Below we have listed some opportunities for impact minimization that were omitted from the DEIR.

The Department is proposing permanent fill to Alameda Creek by placement of riprap scour protection at the base of the planned retaining walls. Riprap fills in stream habitat, eliminates riparian vegetation and degrades stream habitat quality. The Department must demonstrate avoidance of this potential impact by moving retaining walls away from the creek and designing retaining walls with extended footings that negate the need for riprap scour protection.

The DEIR notes that visually transparent barriers (e.g., metal beam guard rail) will be constructed on the sides of the highway adjacent to the proposed retaining walls. The Department may minimize impacts to Alameda Creek and the Alameda Creek riparian corridor by constructing barriers atop the retaining walls, thereby allowing the retaining walls to be placed closer to the roadway and away from Alameda Creek. The Department must evaluate this option.

The DEIR notes that a temporary construction access road adjacent to the proposed retaining walls is likely to be required. Construction of a temporary construction access road in many locations would require removal of riparian trees. The Department must minimize these

impacts by requiring construction staging and access to take place from the roadway. In instances where this is not possible, the Department must demonstrate that impacts to riparian vegetation for construction access is the only feasible option. The Department does acknowledge on page 2-37 of the DEIR that “a technique of constructing from the road should be considered” where “outstanding riparian tree stands are identified.”

The DEIR notes that removed riparian vegetation will be replaced in-kind and that on-site re-vegetation may not be possible on-site. Please note that the Water Board 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.

Retaining Walls, Roadway Encroachment and Impacts to Creek Hydrology and Riparian Habitat

On page 2-61 of the DEIR, it is noted that “the proposed retaining wall 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 DEIR does not explain how arrived at this conclusion.

Additionally, eight other retaining walls will be placed between the existing roadway and Alameda Creek. It is unclear in the DEIR how close the proposed Project would bring the road and its shoulders to Alameda Creek throughout the Project limits. The Water Board is concerned with impacts to the Creek from walls placed above the limits of the U.S. Army Corps of Engineers jurisdiction. In many locations where the road has a setback from the creek, these impacts would most likely be minor, provided that tree removal is not necessary. However, 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, we are concerned about impacts associated with short and long-term bank stability, creek bed scour, and loss of habitat in Alameda Creek, including thermal effects from loss of shade and loss of fish refuge. The Department must provide an evaluation of these potential impacts.

Wetland Mitigation

The Department notes in the DEIR that approximately 0.01 acres of wetland are proposed to be permanently filled. The DEIR also notes that “as the impacts to 0.01 acres of wetlands are considered de minimis, Caltrans is not proposing replacement measures or compensation for the expected impacts.” Although the Department considers these impacts to be de minimis, it does not necessarily follow that the Water Board considers these impacts to be minimis. The Water Board refers to the California Wetlands Conservation Policy (CWCP) when permitting projects proposing permanent impacts to wetlands. The CWCP includes a goal to ensure “no overall net loss” of wetlands. As such, the Department must propose compensatory mitigation as part of its 401 water quality certification application for impacts to wetlands.

Post-Construction Stormwater Runoff

Section 2.2.2.3 of the DEIR notes that “the new and reworked impervious areas are anticipated to be 5.18 and 3.95 acres, respectively. The net increase in impervious area is expected to be 9.13 acres.” It appears that the proposed net increase in impervious area is 5.18 acres, not 9.13. However, the Water Board will require the Department provide treatment of stormwater runoff from the Project’s new and reworked impervious areas, which is currently proposed as 9.13 acres.

The DEIR also notes that storage pipe treatment is proposed for removing pollutants from stormwater. Although storage pipes are appropriate for hydromodification mitigation, they are not appropriate for stormwater treatment because they only remove coarse sediment and the contaminants that may attach to those particles.

If you have any questions, comments, or concerns, please contact Brendan Thompson of my staff at (510) 622-2506, or via e-mail to BThompson@waterboards.ca.gov.

Sincerely,

Shin-Roei Lee
Chief, Watershed Division

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