



Alameda Creek Alliance

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Bijan Sartipi
District 4 Director
California Department of Transportation
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Niles Canyon Highway Widening Project

Director Sartipi:

Thank you for holding the public hearing on March 9 regarding the Niles Canyon Safety Improvement Project. As you could see from the turnout during work hours on a weekday and the public comments and questions during the hearing, the local community is quite adamantly opposed to the project and has many questions about the need for the project, the purported safety benefits and severe environmental impacts. We appreciate your offer to hold another public hearing on the project in the evening so that more of the community can attend and understand the project. We hope the question and answer format will be a bit more organized and focused for this upcoming meeting.

Since time was short at the last hearing, I neglected to adequately thank your staff and publicly acknowledge their work to change the portions of the "Phase 1" project relating to the box culvert and fish passage into Stonybrook Creek at Palomares Road. We sincerely appreciate Caltrans' plans to replace the undersized existing box culvert with a free-span bridge that will allow for a natural stream channel and migratory fish passage into Stonybrook Creek.

That said, we continue to question the need for the extensive tree cutting and placement of hardscape within the active Alameda Creek floodplain such as retaining walls and rip-rap that will cause hydrologic and habitat impacts to an important stream for steelhead trout and other wildlife. These issues should properly have been fully evaluated and the project design changed as part of the environmental review process.

Unfortunately, the Alameda Creek Alliance has been improperly denied the opportunity to fully participate in the environmental review for the project. We formally commented and still feel that the use of a Negative Declaration was inappropriate for the project and the environmental review and analysis, particularly for hydrologic and wildlife habitat impacts, was completely inadequate. Thus we have the 1950s-era mentality environmentally damaging project Caltrans has begun rather than pursuing other less destructive methods to make Niles Canyon more safe.

I have an important question I hope you will answer, which is why was the Alameda Creek Alliance not notified of the final project approval and a final environmental review document and response to comments? We never received any Notice of Determination on the project despite the fact that we formally commented on the draft. Did Caltrans make an

effort to contact us? If not, why not? If so, can you document this effort and explain why we never received notification?

The Alameda Creek Alliance began interacting with this project in 2000 - 11 years ago. We formally commented on the draft Negative Declaration, requested a public hearing, and continued to correspond with Caltrans, yet were never notified that there was a final CEQA document. I have attached at the end of this letter a chronology of our organization's involvement with this project.

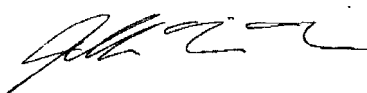
This project was improperly piecemealed under CEQA, but our opportunity to challenge the use of a Negative Declaration or piecemealing was taken away from us by Caltrans failure to notify us of a final CEQA document. Apparently other important stakeholders were not notified of this project, such as the City of Fremont and the SFPUC, major landowners in Niles Canyon. We are researching whether other organizations and agencies that formally commented on the draft CEQA document were notified of the final approval.

As you are aware, the Alameda Creek Alliance last fall submitted comments on the draft EIR for "Phase 2" of the project. Until that time, it was unclear to us how the two projects were related or what had happened with the previous project and the fish passage at Stonybrook Creek. There is a lot of confusion in the community about this project, the three phases, and how an inadequate environmental review slipped by and was permitted without proper CEQA analysis. This confusion rests squarely on the shoulders of Caltrans for failing to conduct an honest and thorough environmental review, failing to be transparent about the project, failing to disseminate information to the public about the project, and by separating the project into three phases, now being characterized as three projects.

The public perception is that Caltrans has deceitfully slipped this project by public scrutiny. Caltrans' failure to be transparent or to engage the community to get input on whether this project is needed or wanted has angered the community and Caltrans has earned the distrust of Niles and Sunol residents, who feel this project is being jammed down their throats without due process.

We feel the project unnecessarily jeopardizes the Alameda Creek environment. Over 20 agencies have spent millions of dollars and a decade and a half of efforts to restore steelhead trout to Alameda Creek. The Niles Canyon stream reach is critically important for steelhead restoration efforts. The Alameda Creek Fisheries Restoration Group, the multi-agency stakeholder group working to restore the creek, repeatedly asked Caltrans to come meet with us over the past decade to explain the project and get feedback on the project. Caltrans has refused to do so. Our primary concern is with the impacts on the riparian corridor and habitat for native wildlife. A project with over two miles of retaining walls and rip-rap along the creek and floodplain, that will cut over 500 native trees, will cause unacceptable damage to the creek, aquatic habitat and hydrology. Why is Caltrans spending \$80 million on an environmentally damaging project rather than pursuing other less destructive methods to make Niles Canyon more safe?

Sincerely,



Jeff Miller
Executive Director

Chronology of Alameda Creek Alliance involvement in the project

From 2000, when we first heard about the project, until 2005 The ACA tried to give Caltrans input on the project, specifically about the need for fish passage at the Stonybrook culvert. The ACA met with, called, and did several site visits with Caltrans staff on the project, including Melissa Barrow, Gary Winters, Ed Pang, and Ron Kiaaina. It was never clear whether Caltrans was going to use our input. When the Department of Fish and Game got involved it seemed more hopeful the fish passage issues would be addressed.

The draft Negative Declaration for Phase 1 was issued in May 2005. The ACA submitted formal comments in June 2005. We formally opposed the use of a Negative Declaration as inappropriate due to the failure to provide adequate fish passage and the severe environmental impacts and requested that an EIR/EIS be prepared. We formally requested a public hearing on the project in July 2005. We never got a response from Caltrans.

From 2005 to 2009 I called Ed Pang and Ron Kiaaina of Caltrans every six months to try to find out the status of the project, but Caltrans representatives rarely returned phone calls. We never got back any written response, phone call, response to comments, or notification of a final CEQA document, and we assumed the project had been abandoned or indefinitely delayed. The one or two times I was able to get a call back, no one from Caltrans ever informed us that there were other phases to the project or that the final CEQA document for phase 1 had come out in June of 2006.

In January 2009 I got a phone call update from Ron Kiaaina of Caltrans that project design activities had resumed and promising Caltrans would provide draft structure and grading plans for review and comment in summer of 2009. No mention was made of the final CEQA document approval in June of 2006.

In fall of 2010 the draft EIR for Phase 2 of the project was released and the ACA commented on the project, still not knowing "Phase 1" had been approved. In fall of 2010 the ACA was notified of a pending Regional Water Board permit and reviewed the conditions of the permit, and realized the Phase 1 project had been approved. We had long given up expecting a return phone call from Caltrans, and the final CEQA document for Phase 1 could not be found anywhere on the Caltrans web site.

This month, in March 2011, the ACA saw for the first time the final CEQA document for Phase 1, when it was forwarded to us by Save Niles Canyon. Thus it was 4½ years after the final CEQA document was released that we were able to see responses to our comments and what the final project consisted of.