

Big Victory for Niles Canyon Protesters

December 16, 2011

A court settlement has stopped CalTrans from further work on the first phase of its Niles Canyon Road improvements. As a result, the first phase went back to square one.

The agency will be pulling up asphalt that it already had installed, re-striping the roadway to its original configuration, and putting rumble strips back, said Bob Haus, public information branch chief for CalTrans District 4.

The settlement comes six months after the Alameda Creek Alliance (ACA) filed suit against CalTrans over the project.

"This is a victory both for protecting Alameda Creek and forcing transparency in public agency decisions," declared ACA director Jeff Miller.

"CalTrans must mitigate for damaged trees along Alameda Creek, and cannot pursue a highway project in lower Niles Canyon without adequate environmental review and full public participation," added Miller.

"If CalTrans comes back with a revised project, we strongly suggest it not involve significant highway widening or unnecessary damage to trout habitat," said Miller.

CalTrans had planned to spend \$80 million on three segments, including widening the roadway to provide two 12-foot lanes, a 2-foot median, and shoulders up to 8 feet wide. A CalTrans contractor cut down 99 trees to make room for the road widening in phase 1. In phase 2 of the project, CalTrans has plans to cut down more than 400 trees.

The sudden removal of trees along the road was the lightning bolt that shocked Sunol and Niles residents into impromptu action. They picketed along the roadway while the trees were being removed.

Once they found out about the overall project, the residents organized politically, and formed Save Niles Canyon. With the help of Senate Majority Leader Ellen Corbett and Assemblyman Bob Wieckowski, they held large public meetings with CalTrans officials.

The protests led to the lawsuit by ACA, whose main interest is to prevent a project that would damage fish habitat in Niles Creek, because of the increased muddy runoff and bank erosion that the ACA says the changes would cause.

CALTRANS PLEDGES ITS COOPERATION

Asked about CalTrans' future plans for phase 1, Haus replied, "We'll work with the Alameda Creek Alliance. We will work with our local partners and the community, while improving the safety of the scenic highway, and will continue to consider the canyon's natural resources and beauty."

CalTrans puts safety first, in view of the "high incidence of traffic accidents and the high fatality rate" on the road, said Haus.

Such statements were challenged at public meetings by residents. They referred to CalTrans' own data to show that traffic safety has actually improved toward the end of the period to which CalTrans was referring.

The ACA sued CalTrans in June. The suit contended that CalTrans made a unilateral decision internally to go ahead with the project, without providing proper public notice about the project during its environmental review phase. CalTrans said it did run small classified ads in two daily newspapers about the environmental review. There were a dozen comments, but no public hearings. There was a negative declaration issued for the project.

Superior Court Judge Frank Roesch agreed with ACA that public notice was insufficient, and directed that a settlement be reached.

Miller said that the ACA will ask to leave the enforcement of the settlement in Roesch's court, since he is familiar with the case.

According to the settlement, CalTrans must return all permits that it obtained for the project. The agency must go through the entire permitting process again for phase 1.

One condition of one of the permits, which was granted by the state water board, said that 68 trees must be planted as mitigation for the 99 that were cut down in phase 1. In addition, CalTrans must mitigate more trees on 5 acres of stream-side habitat along Alameda Creek. Those mitigation conditions in the permit will remain an obligation, although the permit itself would no longer be in effect.

PHASE 2 THREATENS MANY MORE TREES

There is potential for the removal of more than 400 more trees in phase 2 of the project, said Miller. That phase of the roadway, in the middle segment of the canyon, has been the subject of public hearings that were attended by as many as 200 people.

CalTrans is still researching its answers for phase 2. Miller said that the prepared response was expected to be issued next summer. CalTrans spokesman Haus was not able to confirm any estimated date.

Miller said, "ACA is monitoring any project approval for phase 2, since the environmental review for that project was also severely flawed."

Sunol resident Bob Foster, a former school board member there, said, "CalTrans has to be watched. They do not have a record of good transparency."

Commenting on the settlement, Foster said, "I'm thrilled that CalTrans seems to see the writing on the wall. They realize we won't go away." If they want to do something that impacts any of us, they will have to work with us.

"Those of us who live in Sunol can be worked with, but not ignored," added Foster.

WORK ON RESTORATION

CalTrans will be working on State Route 84 in Niles Canyon beginning Tuesday night, December 13 to restore the road to pre-Phase 1 conditions. Weather permitting, there will be one-way traffic control as necessary from the Rosewarnes Underpass to Alameda Creek/Richmond Bridge through Thursday night, December 15, from 9 p.m. to 5 a.m., and Friday night, December 16, from 9 p.m. to 6 a.m. Flaggers will be on location to assist with traffic flow.