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8 ALAMEDA CREEK ALLIANCE

FILED
ALAMEDA COUNTY

FEB - 9 2018

CLERK OF THE SUPERIOR COURT
By  DEPUTY

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 IN AND FOR THE COUNTY OF ALAMEDA

11 ALAMEDA CREEK ALLIANCE,
12 a non-profit California Corporation,

13 Petitioner and Plaintiff,

14 v.

15 CALIFORNIA DEPARTMENT OF
16 TRANSPORTATION, and DOES 1 through
17 20, inclusive,

18 Respondents and Defendants.

Civil Case No.

 18892683

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT
(PUB. RES. CODE § 21168.5;
CODE CIV. PROC. §§ 1085 AND 1094.5)**

**[CALIFORNIA ENVIRONMENTAL
QUALITY ACT]**

1 By this Petition and Complaint ("Petition"), Petitioner and Plaintiff alleges:

2 **INTRODUCTION**

3 1. Petitioner and plaintiff ALAMEDA CREEK ALLIANCE ("Petitioner") in bringing
4 this action challenges the certification by Respondent CALIFORNIA DEPARTMENT OF
5 TRANSPORTATION ("Caltrans") of the Niles Canyon Safety Improvement Project Environmental
6 Impact Report ("EIR") for the Niles Canyon Safety Improvement Project ("Project").

7 2. Caltrans' certification of a flawed Environmental Impact Report for the Project
8 violates the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000
9 et seq., and the CEQA Guidelines, California Code of Regulations, Title 14, section 15000 et seq.

10 3. Caltrans prejudicially abused its discretion by failing to proceed as required by law,
11 and because these violations of law precluded informed public participation and informed decision
12 making.

13 4. Caltrans' violations of CEQA, and approval of the Project based thereon, will harm
14 Petitioner, its members, and the public, as environmental values will be degraded without the level of
15 environmental review required under CEQA.

16 **PARTIES**

17 5. Petitioner Alameda Creek Alliance is a non-profit California Corporation and a
18 community watershed group with over 2,000 members, dedicated to protecting and restoring native
19 wildlife, plants, habitats and ecosystems within the Alameda Creek watershed. Alameda Creek
20 Alliance and its members are concerned about the Project's potentially significant, adverse biological
21 impacts, about the absence of concrete mitigation measures for these Project impacts, and about
22 Caltrans failure to perform adequate environmental review.

23 6. Alameda Creek Alliance was formed as an association in 1997. Alameda Creek
24 Alliance participated in the CEQA administrative proceedings by *inter alia* submitting written
25 comments in 2015 and 2016 on the Project, and on the legal inadequacies of the Draft EIR.
26 Petitioner brings this action on behalf of itself, its adversely affected members and the public at large.
27 Alameda Creek Alliance's address is P.O. Box 2626, Niles, California 94536.

28 7. Petitioner has a direct and beneficial interest in Caltrans' compliance with CEQA and

1 the CEQA Guidelines. That interest has been and will continue to be directly and adversely affected
2 by Caltrans' actions challenged herein, which actions violate provisions of law set forth in this
3 Petition, precluded informed public participation, and would cause substantial harm to the
4 environment. Petitioner will suffer concrete, actual and imminent injury from Caltrans' prejudicial
5 abuse of discretion as well as from implementation of the proposed Project without full CEQA
6 compliance.

7 8. Respondent and Defendant the CALIFORNIA DEPARTMENT OF
8 TRANSPORTATION ("Caltrans") is, and at all times herein mentioned was, a duly organized
9 governmental entity organized under the Constitution and Laws of the State of California. It is
10 responsible, *inter alia*, for complying with the Constitution of the State of California and for
11 implementing the laws of the State of California, including CEQA and the CEQA Guidelines.
12 Caltrans is the project proponent for the Niles Canyon Safety Improvement Project, issued the Draft
13 EIR, responded to comments on the Draft EIR, certified the Final EIR and issued the Notice of
14 Determination for the Project.

15 9. Petitioner is unaware of the true names and capacities of Respondents and Defendants
16 DOES 1 through 20, inclusive, and therefore sues said Respondents and Defendants under fictitious
17 names. Petitioner will amend its petition and complaint to show the true names and capacities of
18 Does 1 through 20 when the same have been ascertained. Each of the Respondents and Defendants is
19 the agent and/or employee of each other Respondents and Defendants, and each performed acts on
20 which this action is based within the course and scope of such Respondents' and Defendants' agency
21 and/or employment. Petitioner is informed and believes and therefore alleges that each of the
22 Respondents and Defendants are legally responsible in some manner for the events and happenings
23 referred to herein.

24 STATEMENT OF FACTS

25 *The Project and the Surrounding Area*

26 10. State Route 84 is a designated Scenic Highway that follows Alameda Creek as it flows
27 through the sparsely developed valley and wooded hillsides of Niles Canyon. Alameda Creek
28 provides important and unique habitat for sensitive species including the federally threatened

1 California red-legged frog, Alameda whipsnake, and steelhead trout. Alameda Creek is the largest
2 drainage in the South San Francisco Bay region, with a watershed area of almost 700 square miles.
3 Alameda Creek enters Niles Canyon near the Town of Sunol, and exits the canyon in the Niles
4 District of Fremont as it winds to San Francisco Bay.

5 11. Caltrans' proposed Project would make various changes to scenic State Route 84
6 between State Route 238/Mission Boulevard to Interstate 680 in Alameda County. Caltrans'
7 previous "Route 84 Safety Improvement Project (Niles 1)" - for the same stretch of road - was
8 enjoined by the Alameda Creek Alliance after Caltrans began logging riparian trees without
9 completing environmental review or issuing a Notice of Determination as required by CEQA.
10 Caltrans has two other projects proposed for Niles Canyon: the Alameda Creek Bridge Replacement
11 Project (which EIR the Alameda Creek Alliance has challenged in Alameda Superior Court), and the
12 proposed Arroyo de La Laguna Bridge Project.

13 12. According to Caltrans the Project would impact threatened and endangered species
14 and their habitat, including the California red-legged frog and the Alameda whipsnake. The Project
15 would result in 2.47 acres of permanent impacts and 7.38 acres of temporary impacts to various
16 habitat types including California bay and Coast live oak, wetland, riparian, riverine, California
17 grassland, and coastal scrub habitat. The Project would log or otherwise impact at least 260 trees with
18 diameters 4 inches DBH or larger, including 74 Coast live oak trees, 40 California bay trees and 38
19 Western sycamores - a rare and regionally significant native tree species. At least 39 of the trees
20 impacted are native trees with a diameter of 20 inches DBH or greater.

21 *Public Review and Project Approval*

22 13. Caltrans began the scoping process for the Niles Canyon Safety Improvement Project
23 on September 30, 2015. The Alameda Creek Alliance submitted scoping comments on the proposed
24 Project on October 28, 2015.

25 14. On October 17, 2016, Caltrans circulated the Draft Environmental Impact Report
26 (Draft EIR) for the proposed Project. The Alameda Creek Alliance submitted extensive comments on
27 the Draft EIR on November 3, 2016. The San Francisco Public Utility Commission, the San
28 Francisco Regional Water Quality Control Board, Trout Unlimited, Citizens Committee to Complete

1 the Refuge and others submitted comments on the Draft EIR.

2 15. On January 30, 2018, Caltrans notified Alameda Creek Alliance by email that it had
3 released the Final EIR. The Final EIR states that the EIR was "approved" on January 18, 2018.

4 16. On January 26, 2018 a Notice of Determination for the Project was filed. The Notice
5 of Determination states that the Project was approved on January 18, 2018. The Notice of
6 Determination states that findings were made pursuant to CEQA, a Statement of Overriding
7 Considerations were adopted for the Project, and mitigation measures were made a condition of
8 project approval. However, Caltrans has not made the Project Findings, Statement of Overriding
9 Considerations, or the Mitigation Monitoring and Reporting Plan available to the public as of the date
10 of this filing.

11 PROCEDURAL ALLEGATIONS

12 17. Petitioner, through its representative and members, has performed any and all
13 conditions precedent to filing the instant action and has exhausted any and all available
14 administrative remedies to the extent required by law, *inter alia*, submitting written and oral
15 comments on the Project and its environmental review during the administrative process.

16 18. Petitioner timely raised each and every significant substantive and procedural issue
17 known to them in compliance with Public Resources Code section 21177 during the review process
18 for this Project. Petitioner requested that Respondent not approve the EIR based on its CEQA
19 violations. Petitioner requested Respondent not approve this Project until Respondent fully complies
20 with CEQA. Any further exhaustion would be futile.

21 19. Petitioner has complied with the requirements of Public Resources Code section
22 21167.5 by mailing a written notice of the commencement of this action to Respondent prior to filing
23 this petition and complaint. A copy of the prior written notice provided to Respondent, with proof of
24 service thereof, is attached hereto as Exhibit "1".

25 20. Petitioner has complied with the requirements of Public Resources Code section
26 21167.7 and Code of Civil Procedure section 388 by mailing a copy of the Petition and Complaint to
27 the state Attorney General. A copy of the notice to the Attorney General is attached hereto as Exhibit
28 "2".

1 21. Petitioner has complied with Public Resources Code section 21167.6 by filing a
2 Request for Preparation of the Administrative Record at the time of filing this Petition and
3 Complaint. The request notified Respondent that Petitioner would elect to prepare the record or that
4 the parties would agree to an alternative method of preparation.

5 22. This Court has jurisdiction over this action pursuant to Code of Civil Procedure
6 sections 1085 (traditional mandate), and 1094.5 (administrative mandate); Public Resource Code
7 section 21168.5 (California Environmental Quality Act); and Article VI, section 10, of the California
8 Constitution.

9 23. Venue is proper in Alameda County pursuant to Code of Civil Procedure section 395
10 because Caltrans has its office within Alameda County, the Project site is located in Alameda County
11 and because the actions complained of herein occurred within this County.

12 24. Petitioner has no plain, speedy or adequate remedy in the ordinary course of law
13 unless this Court enjoins and mandates that Respondent comply with their duties and set aside the
14 certification of the EIR. In the absence of such remedies, Respondents' approvals will remain in
15 effect in violation of CEQA.

16 25. If Respondent and its agents are not enjoined from implementing the Project, and from
17 undertaking acts in furtherance thereof, Petitioner will suffer irreparable harm from which there is no
18 adequate remedy at law in that the Project area and surrounding areas would be irrevocably altered
19 and significant unmitigated adverse environmental impacts would occur. Petitioner and the general
20 public have also been harmed by Respondent's failure to prepare a valid EIR for this Project.

21 26. In pursuing this action, which involves enforcement of important rights affecting the
22 public interest, Petitioner will confer a substantial benefit on the general public and citizens of
23 Alameda County, the San Francisco Bay Area and the State of California, and therefore will be
24 entitled to attorney's fees and costs pursuant to, inter alia, Code of Civil Procedure section 1021.5.

25 27. This petition is timely filed within all applicable statutes of limitations.

26 28. Petitioners bring this action pursuant to Public Resources Code section 21168.5 and
27 Code of Civil Procedure sections 1085 and 1094.5 which require that an agency's approval of a
28 Project be set aside if the agency has prejudicially abused its discretion. Respondent has prejudicially

1 abused their discretion because Respondent has failed to proceed according to the law, and their
2 decision is not supported by substantial evidence, and Respondents have failed to make proper and
3 adequate findings.

4 STATEMENT OF LAW

5 29. CEQA is an integral part of every public agency's decision making process. (Pub.
6 Res. Code § 21006.) CEQA was enacted to protect the environment by the establishment of
7 administrative procedures to ensure that long-term protection of the environment shall be the guiding
8 criterion in public decisions.

9 30. CEQA requires agencies to integrate CEQA's requirements with environmental
10 review procedures otherwise required by law so that all those procedures run concurrently. (Pub. Res.
11 Code § 21003, subd. (a); CEQA Guidelines 15080 and 15124, subd. (d)(1)(C).

12 31. An EIR must evaluate all significant environmental effects of a proposed project.
13 (Pub. Res. Code §§ 21100(b) (1), 21061; CEQA Guidelines 15126(a), 15143.) EIRs "should be
14 prepared with a sufficient degree of analysis to provide decision-makers with information which
15 enables them to make a decision which intelligently takes account of environmental consequences."
16 (CEQA Guideline 15151; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997)
17 60 Cal.App.4th 1109, 1123.) Disclosing project impacts is essential for the EIR to analyze how
18 adverse the Project's adverse impacts will be. (Ibid.) "Absent a determination regarding the
19 significance of the impacts ...it is impossible to evaluate whether other more effective measures than
20 those proposed should be considered, or to properly consider a range of "specifically targeted
21 mitigation measures, including analysis of whether the project itself could be modified to lessen the
22 impact." (*Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 655-56.)

23 32. The purpose of an EIR is to provide public agencies and the public with "detailed
24 information" about the likely significant environmental effect of a proposed and ways in which the
25 significant effects might be minimized. (Pub. Res. Code §§ 21061, 21002.1, subd. (a).) Evaluation of
26 project mitigation measures is at "the core" of an EIR. (*Banning Ranch Conservancy v. City of*
27 *Newport Beach* (2017) 2 Cal. 5th 918, 937.) CEQA procedures are intended to assist public agencies
28 to "systematically identify" the feasible mitigation measures which will avoid or substantially lessen

1 significant effects. (Pub. Res. Code § 21002; see CEQA Guidelines §§ 15126.4, 15126.6.)

2 33. An EIR is inadequate where mitigation efforts largely depend upon management plans
3 that have not yet been formulated, and have not been subject to analysis and review within the EIR
4 (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92; *San*
5 *Joaquin Raptor Rescue Ctr. v. Cty. of Merced* (2007) 149 Cal. App. 4th 645, 670.) An agency
6 violates CEQA by deferring the formulation of mitigation measures without committing to specific
7 performance criteria for judging the efficacy of the future mitigation measures.” (*POET, LLC v.*
8 *California Air Resources Board* (2013) 218 Cal.App.4th 681, 698-99.)

9 34. CEQA requires that agencies not approve projects unless feasible mitigation measures
10 have been adopted to reduce significant impacts. (Pub. Resources Code §§ 21002; 21002.1, subd (b);
11 21081, subd (b)(3).) CEQA requires that an EIR determine “whether and how” a project’s effects can
12 feasibly be mitigated (Pub. Res. Code § 21081, subd. (a)(1)-(3)). *City of San Diego v. Bd. of Trustees*
13 *of California State Univ.*, 61 Cal. 4th 945, 961 (2015). To be feasible, a mitigation measure must be
14 “capable of being accomplished in a successful manner” (Pub. Res. Code, § 21061.1), i.e., it must
15 actually be effective in mitigating the identified environmental effect. The likelihood of a mitigation
16 being implemented is relevant to assessing a proposed mitigation measure’s likely success in
17 achieving the goal of protecting the environment. CEQA requires consideration of mitigation
18 effectiveness when determining mitigation feasibility.

19 35. An EIR proposed by a state agency must also include a detailed statement of
20 alternatives to the proposed project. (Pub. Res. Code § 21000.) One of an EIR’s major functions is to
21 ensure that all reasonable alternatives to proposed projects are thoroughly assessed. (*Laurel Heights*
22 *Improvement Assn. v. Regents of Univ. of California*, 47 Cal. 3d 376, 400 (1988).) Without
23 meaningful analysis of alternatives in the EIR, the public can not fulfill its proper role in the CEQA
24 process.

25 36. An EIR serves not only to protect the environment but also to demonstrate to an
26 apprehensive public that it is being protected. (CEQA Guideline § 15003, subd. (b).)

27 **FIRST CAUSE OF ACTION FOR VIOLATION OF CEQA (Pub. Res. Code, § 21000 et seq.)**

28 37. Petitioner incorporates by reference herein the preceding paragraphs, as if fully set

1 forth.

2 **Count One – The EIR Fails to Analyze the Whole of the Project.**

3 38. Numerous permits will be required for the Project. These include a Clean Water Act
4 Section 401 Certification from the San Francisco Regional Water Quality Control Board, a 1602
5 Streambed Alteration Agreement and an Incidental Take Permit from the California Department of
6 Fish and Wildlife, an Alameda County Water District drilling permit, and a Clean Water Act Section
7 404 permit from the United States Army Corps of Engineers. The San Francisco Regional Water
8 Quality Control Board raised the issue of the EIR's failure to discuss compliance with the Clean
9 Water Act Section 401 and Section 404.

10 39. The EIR fails to consider the Project's compliance with the other permits required for
11 this project. *Banning Ranch Conservancy v. City Of Newport Beach* 2 Cal. 5th 918, 936 (2017).

12 40. By certifying an EIR which failed to integrate the requirements of CEQA with
13 environmental review procedures otherwise required by law so that all procedures run concurrently to
14 the maximum extent feasible, Caltrans failed to proceed as required by law and prejudicially abused
15 its discretion..

16 **Count Two – The EIR Fails to Analyze Project Impacts.**

17 41. The EIR fails to evaluate hydromodification impacts from the Project. The EIR does
18 not discuss whether the Project will cause increased stream flows and sediment transport, stream
19 bank erosion, or steep stream banks. The EIR further fails to analyze if such impacts will be adverse
20 or significant.

21 42. As the San Francisco Regional Water Quality Control Board commented upon review
22 of the Draft EIR, "hydromodification impacts will need to be evaluated."

23 43. Instead of evaluating such impacts, the EIR impermissibly compresses the analysis of
24 hydromodification impacts and mitigation measures into a single issue. Even after disclosing
25 mitigation measures WATER-1, WATER-2 AND WATER-3, the EIR does not disclose if the
26 impacts will be significant or insignificant

27 44. By failing to prepare an EIR which properly evaluated hydromodification impacts,
28 Caltrans failed to proceed as required by law and prejudicially abused its discretion.

1 **Count Three – The EIR Improperly Defers Formulation Of Mitigation Measures.**

2 45. The EIR impermissibly defers the formulation of mitigation measures. Caltrans
3 will only determine mitigation measures after project approval and EIR certification.

4 46. Mitigation measures, including *inter alia* measures UPLAND TREES-1 and
5 RIPARIAN TREES-1 and NATURAL COMMUNITIES-30, depend upon management plans that
6 have not yet been formulated, and have not been subject to analysis and review within the EIR. A
7 plan to determine how these measures would be implemented will only be completed after Project
8 approval and after EIR certification. Who will be responsible for implementing the Niles Canyon
9 Tree Planting Plan, where planting will occur, and what performance standards apply will only be
10 determined after Project approval and EIR certification. The mitigation plans do not set specific
11 deadlines for completion. The EIR does not include a commitment to what happens if mitigation tree
12 mortality exceeds 30%.

13 47. The EIR defers formulation of mitigation measures without committing to
14 specific performance criteria for judging the efficacy of the future mitigation measures. The
15 EIR does not include criteria for which trees will be preserved, or the number of trees to be
16 preserved. The EIR does not include criteria for designating Environmentally Sensitive Area
17 for reducing impacts. Details for off-site planting and riparian tree planting success criteria
18 would be determined after Project approval and EIR certification.

19 48. Failure to properly formulate mitigation measures in the EIR is prejudicial as it
20 precluded the public and decision makers from assessing the proposed mitigation measures,
21 deprived the public of a meaningful opportunity to comment, and fell short of CEQA's
22 mandate to mitigate and avoid significant adverse environmental impacts.

23 49. By certifying an EIR which defers the formulation of mitigation measures, which
24 depends upon management plans that have not yet been formulated, and which fails to commit to
25 performance criteria to mitigation efficacy, Caltrans failed to proceed as required by law and
26 prejudicially abused its discretion.

27 //

28 //

Count Four – The EIR Did Not Properly Consider or Discuss the Feasibility of Proposed Mitigation Measures.

40. The EIR fails to disclose to the public and decision makers that Caltrans has failed to implement promised tree planting mitigation for past logging of trees in 2011 in Niles Canyon in the uplands and riparian habitat of Alameda Creek as part of the Niles 1 project.

42. The EIR fails to analyze the feasibility of mitigation measures UPLAND TREES-1 and RIPARIAN TREES-1 in light of Caltrans' failure to implement such past promised mitigations.

43. The EIR fails to analyze the feasibility of proposed off-site tree planting given that the San Francisco Public Utility Commission and other agencies generally do not allow others to mitigate project impacts on their property.

44. The EIR fails to determine "whether and how" the Project's significant effects can successfully be accomplished, the likelihood of the mitigation being implemented, and mitigation effectiveness.

45. The EIR's failure to properly consider the feasibility of proposed mitigation measures is prejudicial as it precluded the public and decision makers from assessing the measures, and deprived the public of a meaningful opportunity to comment.

46. By failing to prepare an EIR which properly considered the feasibility of proposed mitigation measures, Caltrans failed to proceed as required by law and prejudicially abused its discretion.

Count Five – The EIR Fails to Properly Evaluate Alternatives.

47. The EIR fails to consider a range of feasible alternatives that would meet the project's goals. The EIR only includes a single "no-build" alternative.

48. The San Francisco Regional Water Quality Control Board commented that the Draft EIR failed to evaluate design and construction alternatives that will minimize the removal of riparian vegetation and impacts to waters and wetlands throughout the Project limits.

49. By failing to prepare an EIR which properly evaluated alternatives, Caltrans failed to proceed as required by law and prejudicially abused its discretion.

//

1 **Count Six - Failure to Make Adequate Findings in Violation of CEQA.**

2 50. Under CEQA, an agency must not approve or carry out a project where the certified
3 EIR identifies a significant impact unless the agency adopts specific statutorily defined findings with
4 respect to each significant effect.

5 51. Caltrans failed to make findings required by CEQA for each of the significant impacts
6 identified in the EIR.

7 52. By failing to make adequate findings, Caltrans violated CEQA and prejudicially
8 abused its discretion.

9 **Count Seven - Failure to Adopt a Mitigation Monitoring Plan for All Changes to Mitigate**
10 **Project Impacts.**

11 53. With Project approval, the agency must adopt a reporting or monitoring program
12 ("MMRP") for the changes made by the project and for conditions of project approval which are
13 adopted to mitigate or avoid significant impacts. The MMRP must be designed to ensure compliance
14 during project implementation. The agency must provide that measures to mitigate or avoid
15 significant impacts are fully enforceable through permit conditions, agreements, or other measures as
16 set forth in referenced documents which address required mitigation measures.

17 54. Caltrans failed to adopt an MMRP for the Project.

18 55. Caltrans failed to adopt measures to mitigate significant impacts which are fully
19 enforceable through permit conditions, agreements, or other measures.

20 56. By failing to adopt an MMRP, Caltrans violated CEQA and prejudicially abused its
21 discretion.

22 **Count Eight - Failure to Adopt a Statement of Overriding Considerations.**

23 57. When an agency approves a project which will result in significant effects identified in
24 the EIR but which are not avoided or substantially lessened, the agency must state in writing the
25 specific reasons to support its action based on the EIR and/or other information in the record. The
26 statement of overriding considerations must be supported by substantial evidence in the record.
27 Findings do not substitute for the statement of overriding considerations.

28 //

1 58. Caltrans failed to adopt a statement of overriding considerations to explain how or
2 why specific benefits will outweigh each significant unavoidable environmental effect.

3 59. By failing to adopt a statement of overriding considerations, Caltrans violated CEQA
4 and prejudicially abused its discretion.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Petitioner and Plaintiff prays for relief as follows:

7 1. For a peremptory writ of mandate directing Respondent to void the EIR certification,
8 and to void any and all approvals given for the Project in reliance thereon;

9 2. For a peremptory writ of mandate directing Respondent to fully comply with CEQA
10 prior to Project approval, and take any other action required pursuant to Public Resources Code
11 section 21168.9;

12 3. For a temporary restraining order, preliminary injunction, and a permanent injunction
13 restraining Respondent and its agents, servants and employees, and all others acting in concert with
14 them or on their behalf, from undertaking any tree cutting, grading, construction, development,
15 improvements, issuing any construction, building or development approvals or permits, or taking any
16 other action to implement in any way the Project, pending full compliance with CEQA and other
17 requirements of law;

18 4. For costs of the suit incurred herein;

19 5. For attorneys' fees pursuant to section 1021.5 of the Code of Civil Procedure; and

20 6. For such other and further relief as the Court deems just and proper.

21
22 DATED: February 9, 2018

LAW OFFICES OF BRIAN GAFFNEY, APC

23 *Brian Gaffney*
24 _____

25 Brian Gaffney
26 Attorneys for Petitioner / Plaintiff
27
28

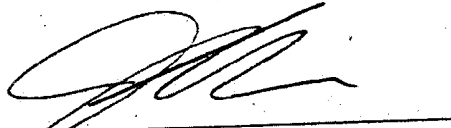
VERIFICATION

I, Jeffrey Miller, declare as follows:

1. I am a member of Alameda Creek Alliance and am authorized to sign this verification.
2. I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT and know the contents thereof. The factual allegations therein are true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed February 9, 2018 at Guerneville, California.



Jeffrey Miller

EXHIBIT 1

Proof Of Service by Mail

Alameda Creek Alliance v. California Department of Transportation

I am over the age of 18 years and not a party to the above entitled action. My business address is 446 Old County Road, Suite 100-310, Pacifica, CA 94044.

On February 7, 2018, I served the Notice of Commencement of CEQA Action attached hereto by emailing a copy and placing a true copy thereof enclosed in a sealed envelope with postage thereon fully paid, in the United State mail at Pacifica, California addressed as follows:

Mr. Bijan Sartipi
Caltrans District 4 Director
P.O. Box 23660
Oakland, CA 94623-0660
bijan_sartipi@dot.ca.gov

Derek S. van Hoften
Caltrans Legal Division
111 Grand Avenue, Suite 11-100
Oakland, CA 94612
derek_vanhoften@dot.ca.gov

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 9, 2018 at Pacifica, California



Brian Gaffney

LAW OFFICES OF BRIAN GAFFNEY, A Professional Corporation
446 Old County Road, Suite 100-310
Pacifica, California 94044
(650) 219 3187 Phone
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February 7, 2018

Via Email and U.S. Mail

Mr. Bijan Sartipi
Caltrans District 4 Director
P.O. Box 23660
Oakland, CA 94623-0660
bijan_sartipi@dot.ca.gov

Derek S. van Hoften
Caltrans Legal Division
111 Grand Avenue, Suite 11-100
Oakland, CA 94612
derek_vanhofen@dot.ca.gov

**Re: Notice of Commencement of CEQA Action (Pub. Resources Code
§ 21167.5) Niles Canyon Safety Improvements Project EIR**

This letter provides written notice pursuant to Public Resources Code section 21167.5 that Alameda Creek Alliance ("ACA") will file suit on or before February 9, 2018 challenging the California Department of Transportation's (Caltrans) certification of the Niles Canyon Safety Improvements Project Environmental Impact Report (EIR) and approval of the Niles Canyon Safety Improvements Project (Project) in reliance thereon.

The grounds for this lawsuit include, *inter alia*, that Caltrans has violated CEQA as the EIR failed to analyze hydromodification impacts, improperly defers formulation of mitigation measures UPLAND TREES-1 and RIPARIAN TREES-1, failed to properly discuss the feasibility of proposed mitigation measures, and failed to properly evaluate alternatives. Further, Caltrans has failed to integrate other permits needed for this Project with the CEQA review, failed to make findings required by CEQA for each significant impact identified in the EIR, failed to adopt a reporting or monitoring program, and failed to adopt a statement of overriding considerations.

ACA is willing to begin discussing terms to settle this dispute that could either obviate the need to file this lawsuit or provide for resolution of the lawsuit once filed. ACA presents the following settlement demand, in the form of principles that would have to be embodied in a formal written settlement agreement:

1. Caltrans rescinds its certification of the EIR and Project approvals in furtherance thereof;

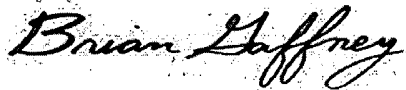
2. Caltrans revises the EIR to address the CEQA violations listed above, and circulates this revised EIR for public comment and response thereto prior to EIR certification;

3. Caltrans agrees to stay Project implementation until and unless an adequate EIR for the Project is certified, or alternatively, Caltrans agrees to issuance of a writ of mandate commanding that it prepare such an EIR.

This letter and ACA's prior participation in Caltrans's administrative process satisfy ACA's obligations under California Civil Code of Procedure section 1021.5, as interpreted by the California Supreme Court in *Graham v. DaimlerChrysler* (2004) 34 Cal.4th 553, 577.

Thank you for your attention to this matter.

Very Truly Yours,



Brian Gaffney

cc: Alameda Creek Alliance

EXHIBIT 2

LAW OFFICES OF BRIAN GAFFNEY, A Professional Corporation
446 Old County Road, Suite 100-310
Pacifica, California 94044
(650) 219 3187 Phone
brian@gaffneylegal.com

February 9, 2018

Office of the Attorney General
455 Golden Gate, Suite 11000
San Francisco, CA 94102-7004

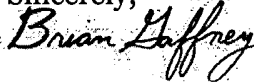
RE: *Alameda Creek Alliance v. California Department of Transportation.*
Niles Canyon Safety Improvement Project EIR

Dear Attorney General:

Enclosed is a copy of a CEQA Petition for Writ of Mandate and Complaint which will be filed today in the above-captioned matter. This copy is being furnished to you pursuant to Code of Civil Procedure section 388 and Public Resources Code section 21167.7.

Please acknowledge receipt of the enclosed petition by return letter.

Sincerely,



Brian Gaffney

cc: Alameda Creek Alliance