

No Response Yet to Highway Project Public Comments

Caltrans is Paving a Road to Litigation

By Jen Nissenbaum

After four months, the California Department of Transportation (Caltrans) has still not issued any formal response to the Committee's call for a new Draft Environmental Impact Report (DEIR) for the Mono Lake Shoulder Widening Project (Project). The Winter 2004 *Newsletter* article focused on the wide-ranging concerns raised in the many public comment letters written on the DEIR for the Project. Without committing to changes that protect Mono Lake and the sensitive habitat within the project area, Caltrans is headed down the road towards litigation.

The proposed 3.1-mile Project is located along the west shore of Mono Lake. Both build alternatives presented in the Project's DEIR result in significant impacts to wetland and riparian areas, wildlife habitat, and visual quality along the scenic highway corridor. Despite the multi-year efforts from the Committee to work with Caltrans, through attendance at Project Development Team (PDT) meetings, extensive written comments during the development of the Project, and the submission of a formal analysis of the DEIR, problems with the various highway project components have yet to be adequately addressed.

The Committee's written comments identified numerous deficiencies in the DEIR and called on Caltrans to redraft the DEIR and make the more thorough document available for public comment. To date, Caltrans has not formally responded to the Committee's request for a new environmental document. However, in a recent phone call, the Caltrans Project Manager said to expect a response to public comments within the next two months.

The Committee is also waiting for

Caltrans to fulfill its commitments to reconvene the PDT and to set up a joint public hearing between Caltrans and the Mono County Local Transportation Commission (LTC) prior to the release of the Final EIR. Without fulfilling these commitments, there is substantial risk that Caltrans will choose an alternative for the Project and publish the Final EIR without any modifications—a decision that is unacceptable given the many existing problems within both of the Project's build alternatives.

Call for a New Environmental Document

Inadequate attention to wildlife, vegetation, and visual impacts were among the reasons the Committee called on Caltrans to redraft and recirculate a new DEIR. To date, Caltrans has indicated that they have not identified enough significant issues with the DEIR that would warrant rewriting and recirculating a new environmental document.

Despite the fact that Caltrans has not determined whether or not there will be a new environmental document, the Committee maintains that the public comments submitted to Caltrans have identified a substantial number of problems that necessitate redrafting the DEIR. This is important because ignoring potential significant environmental impacts identified in public comments is a violation of the California Environmental Quality Act.

The Committee hopes that Caltrans will take advantage of the expert analysis provided in public comments and collaborate with concerned stakeholders to produce a successful project. However, it is clear that if the final project remains essentially the same as proposed in the DEIR, the

Committee must litigate in order to ensure Mono Lake's protection. In the meantime, Committee staff continue to communicate with Caltrans and Mono County staff in order to stay abreast of new developments regarding response to public comments on this project.

Upholding Commitments

Caltrans has made a commitment to hold both a PDT meeting and a public hearing prior to the release of the Final EIR—both of which are crucial if Caltrans hopes to have public support of the final project.

With over two years of experience working with Caltrans to create a balanced project, members of the PDT—comprised of public agencies, the Committee, and other stakeholders—are the most qualified in helping Caltrans identify the alternative that should be chosen for the Shoulder Widening Project. Caltrans made a commitment to reconvene the PDT prior to releasing the Final EIR; however, to date, the PDT meeting has not been scheduled.

A second commitment made by Caltrans is to hold a joint public hearing with the LTC prior to the release of the Final EIR. The LTC is responsible for allocating funds for highway projects in Mono County, which makes support for a project from the LTC important to Caltrans. The LTC requested the public hearing in order to provide an opportunity to listen to public comments once the final plan for the Project has been identified, as well as to provide direction to Caltrans before releasing the Final EIR.

While the LTC continues to request holding the public hearing, Caltrans has instead suggested holding an ordinary

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New Opportunity for Stalled Land Trade

Forest Service Action Needed

By Geoffrey McQuilkin

On March 8, the Forest Service-certified appraisal of the Cunningham property expired, opening the door for another attempt at making a land trade work. A trade would have win-win benefits for Mono Lake, the Mono Basin National Forest Scenic Area, and the Mono County community.

Previous efforts to broker a land trade have had a lot of support but little success. The Mono Lake Committee, American Lands Conservancy, Mammoth Hospital, US Forest Service, Mono County, and the Cunninghams, who own the property, have all supported a trade.

The land trade, which would add the Cunningham property to the Forest Service's holdings in the Scenic Area while making land available in nearby Mammoth Lakes for a community hospital expansion, has been stymied by disagreement over the value of the land. Last fall, a Forest Service appraisal valued the land at about half the owner's stated price.

The Cunningham property is located next to the highway near the west shore of Mono Lake, in the Mono Basin National Forest Scenic Area. The approximately 120 acres are undeveloped, with the exception of one small house, and are part of the sweeping scenic views available at Mono Lake. The property, which includes aspen groves, springs, and a small perennial stream, also provides valuable wildlife habitat.

The Forest Service has identified acquisition of parcels within the Scenic Area from willing sellers as its top land priority, and a land trade is the standard method for such acquisition.

New Opportunity

Last year's Forest Service appraisal has now expired and a new appraisal is needed. While it's not known what value a new appraisal might set for the property, it is clear that property values have been rising rapidly in Mono County.

The critical next step is for the Forest Service to bring key players together to meet and agree upon a set of fair appraisal instructions. From there, an appraisal must be done and a value certified for the property. Mammoth Hospital is ready to act quickly to purchase the property at the appraised price if the value is acceptable to the Cunninghams.

The Cunninghams, American Land Conservancy, Mono Lake Committee, and Mono County have worked together to deliver a packet of endorsement letters to elected officials, asking for their assistance in moving the process along.

The Subdivision Alternative

If the land trade is unsuccessful, a much-advertised subdivision could take place instead. Currently, however, the subdivision concept has been officially put on hold by the Cunninghams.

Should that hold be released, a subdivision would exploit a legal loophole where county zoning and Forest Service Scenic Area rules do not align and seek review and approval from Mono County planning officials while ignoring the protections put into place by Congress. The Mono Lake Committee remains extremely concerned about the subdivision possibility because it would violate the Scenic Area Management Plan and lead to lengthy public controversy. ❖

Geoff McQuilkin is the Committee's Co-Executive Director. He is looking forward to spring, and in particular, spring skiing.

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meeting with the LTC. A meeting is a much less formal alternative to a public hearing. In addition, Caltrans has not acknowledged whether the meeting will occur before or after the release of the Final EIR. By holding the meeting after the release of the Final EIR, Caltrans removes the opportunity for the LTC to be involved in choosing the final plan for the Project. Caltrans has stated that timing constraints are the reason why the meeting with the LTC may not occur prior to releasing the Final EIR.

Future Action

While the Committee has put forth great efforts in the past two and a half years towards developing a highway project that minimizes environmental impacts within the

scenic highway corridor, the Project as described in the DEIR remains unsatisfactory. The Committee hopes that Caltrans changes its course and commits to making the necessary improvements in order for the Project to move forward, otherwise, legal action will be necessary to protect Mono Lake. The Mono Lake Shoulder Widening Project is an opportunity for Caltrans to produce a model project—one that balances safety concerns and transportation goals while protecting scenic and environmental resources in the Mono Basin. ❖

Jen Nissenbaum is the Committee's Eastern Sierra Policy Coordinator. She and her dog Miller have been enjoying outdoor activities from skiing to climbing this spring.