

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200



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Addendum

Date: September 28, 2000

To: Commissioners and Interested Persons

From: Peter Douglas, Executive Director
Mark Delaplaine, Federal Consistency Staff

Subject: APPEAL NO. A-2-SMC-00-035, Caltrans, Shamrock Ranch

On September 28, 2000, the Commission staff received a second appeal of San Mateo County's decision on the above-referenced project. This second appeal is invalid, because this appellant does not have standing to appeal. Section 30801 of the Coastal Act provides:

Any aggrieved person shall have a right to judicial review of any decision or action of the commission by filing a petition for a writ of mandate in accordance with Section 1094.5 of the Code of Civil Procedure, within 60 days after the decision or action has become final.

For purposes of this section and subdivision (c) of Section 30513 and Section 30625, an "aggrieved person" means any person who, in person or through a representative, appeared at a public hearing of the commission, local government, or port governing body in connection with the decision or action appealed, or who, by other appropriate means prior to a hearing, informed the commission, local government, or port governing body of the nature of his concerns or who for good cause was unable to do either. "Aggrieved person" includes the applicant for a permit and, in the case of an approval of a local coastal program, the local government involved.

This appellant did not appear at or make his views known at the local government level on this project, and thus does not qualify as an "aggrieved person." Nevertheless, his comments are being attached so the Commission can consider them as written correspondence on the matter.

Attachment

Rural Coast Open Space Trust
2100 Lobitos Creek Road
Half Moon Bay, California 94019
Phone: (650) 726-8495 Fax: (650) 726-8494

Michael Murphy
Executive Director

September 26, 2000

Peter Douglas, Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California, 94105-2219

Re: Appeal From Coastal Permit Decision of Local Government PLN # 2000-00536
& Denial of Consistency Certification for Devil's Slide Improvement Project.

Applicant: California Department of Transportation (Caltrans)

Project Location: Between Highway 1 near Shamrock Ranch (approximately one mile south of Linda Mar Avenue in Pacifica) to the north, and Highway 1 south of Devil's Slide, San Mateo County

Project Description: Construction of two single-bore, 3/4 mile long tunnels (one in each direction) underneath San Pedro Mountain, with appurtenant approaches to the north and south connecting the tunnels with existing Highway 1

Dear Honorable Mr. Douglas and Commissioners:

On behalf of the non-profit corporation Rural Coast Open Space Trust, I am appealing a Coastal Development Permit PLN 2000-00536 decision of San Mateo County, and in addition, opposing the proposed granting by the Coastal Commission of a "Consistency Certification" for the conceptual Devil's Slide Tunnels Improvement Project.

The basis for Rural Coast Open Space Trust's requested DENIAL of the San Mateo County issued coastal development permit (CDP) and FINDING that the Tunnel Project is inconsistent with the California Coastal Act are as follows:

CCC Appeal Form: State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing.

Wetland and Biological Resources

Section 30233 (a) of the Coastal Act states that the diking, filling, or dredging of wetlands shall be permitted where there is no feasible less environmentally damaging alternative.

Reason The Tunnels Project Is Inconsistent:

In 1996, Caltrans hired an independent consulting firm, Woodward-Clyde Consultants, to conduct a tunnel feasibility study. Based upon the results of "The Devil's Slide Tunnel Study", Caltrans changed its prior position on a tunnel and determined it was a reasonable alternative that should be fully evaluated in the environmental process. Unfortunately, the bridge at the north end of the tunnel goes directly through an active wetland (I urge you to take a field trip to see the area for yourselves) that is a red-legged tree frog habitat.

Caltrans has never hired a qualified, experienced independent consulting firm to conduct a dewatering feasibility study to preserve the current alignment. Dewatering has been used for hundreds of years to solve slide problems associated with seasonal rains. The Oregon Department of Transportation permanently resolved a slide problem on the Coast Highway at the Arizona Inn slide with very similar geology to Devil's Slide. Please see that project on their website at <http://www.odot.state.or.us/geotech/ariz1.htm>.

The consulting geologist on the Arizona Inn project, Rad Squier of Squier Associates, did an informal evaluation of Devil's Slide at our request. He estimates that for less than \$1 million Caltrans could contract for a formal evaluation, including extensive test well drilling and design of the final project. The project can be completed for less than \$10 million and provide a permanent solution to keeping the current alignment open while providing a FEASIBLE LESS ENVIRONMENTALLY DAMAGING ALTERNATIVE to the twin-bore tunnels project.

The Rural Coast Open Space Trust requests that this Commission deny the Consistency Certification requested by Caltrans because that they have not adequately investigated dewatering Devil's Slide as a feasible, less environmentally damaging alternative to the Tunnel Project. Potential environmental damage from the Tunnel Project includes destruction of red-legged tree frog habitat due to shadowing of the wetlands by the new bridge, dumping of excess construction dirt, substantial additional annual power usage to run fans and lights in the tunnel, and increased pollution from automobiles travelling at a higher average speed through the tunnels than can be maintained travelling the current alignment.

To the extent the Commission can order or request Caltrans to take a specific action, the Rural Coast Open Space Trust requests that the Commission instruct or request that Caltrans to hire a qualified, experienced independent consulting firm to conduct a dewatering feasibility study to preserve the current alignment, which would eliminate all the potential sources of environmental damage associated with the Tunnel Project.

The Rural Coast Open Space Trust also notes that in regard to access trails, Caltrans has said: "The superceded portions of Highway 1 which will be relinquished to the County of San Mateo to own and manage, will continue to provide access to hikers and bicyclists." We request that this Commission inquire as to the financial capability of the County of San Mateo to repair future slides on Highway 1 if a dewatering program is not completed by Caltrans before it abandons the current alignment to the County. Access trails without the means to maintain them are a charade that do nothing for bicyclists and pedestrians. Permanent access trails require a permanent solution to the sliding problem of the current alignment, yet if Caltrans dewateres the current alignment to provide a permanent solution, the Tunnel Project then becomes unnecessary. A \$10 million road repair that will be completed quickly can be substituted for a \$155 million, environmentally destructive plan that may never be fully funded.

This Commission has a rare opportunity to bring much-needed common sense to permanently resolving the Devil's Slide problem while saving almost \$150 million in taxpayer funds, preserving the red-legged frogs' wetlands habitat undisturbed and complying with the existing Local Coastal Plan while meeting the needs of residents and visitors.

Relief Requested:

The Rural Coast Open Space Trust requests that this Commission deny the San Mateo County issued Coastal Development Permit PLN 2000-00536 and find that the Tunnel Project is inconsistent with the California Coastal Act.

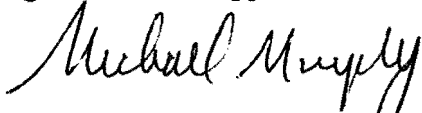
Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filling the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. CERTIFICATION

Date: September 26, 2000

The information and facts stated above are correct to the best of my/our knowledge.

Signature of the Appellant or Authorized Agent:



Michael Murphy, Executive Director, Rural Coast Open Space Trust

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200

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Filed: September 22, 2000
49th Day: Nov. 10, 2000
Staff: MPD-SF
Staff Report: Sept. 25, 2000
Hearing Date: Oct. 10, 2000

STAFF REPORT: APPEAL**SUBSTANTIAL ISSUE DETERMINATION**

APPEAL NO.: A-2-SMC-00-035

APPLICANTS: California Dept. of Transportation (Caltrans)

LOCAL GOVERNMENT: San Mateo County

PROJECT LOCATION: Shamrock Ranch, near Pacifica, unincorporated San Mateo County
APN 023-741-010

PROJECT DESCRIPTION: Construction of a 2,000-square-foot pond to provide habitat for threatened red-legged frog

APPELLANTS: Save Our Bay Foundation (Agent: Oscar Braun)

SUBSTANTIVE FILE DOCUMENTS: See Appendix A

STAFF RECOMMENDATION: No Substantial Issue

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APPENDICES

Appendix A: Substantive File Documents

Appendix B: Referenced Policies of the San Mateo County Local Coastal Program

LIST OF EXHIBITS

1. Regional Location Map
2. Project Site Location
3. Site Plan
4. Site Plan (blow-up)
5. Layout/Grading Plan
6. Concrete Junction Box
7. Appeal from Coastal Permit Decision of Local Government
8. San Mateo County's Conditions of Approval
9. Project in relation to existing ponds and proposed tunnel bridges (north approach)
10. Additional correspondence from Save Our Bay Foundation dated September 25, 2000

EXECUTIVE SUMMARY

The staff recommends that the Commission, after a public hearing, determine that no substantial issue exists with respect to the grounds on which the appeal has been filed because the appellant has not raised any substantial issue with respect to the consistency of the approved project with the certified Local Coastal Program (LCP).

The approved development is the construction of a 2,000-square-foot pond to provide habitat for the listed (under the federal Endangered Species Act) as threatened red-legged frog. The proposed pond is located immediately downslope of an existing agricultural

water storage pond (that currently contains red-legged frogs), on the western portion of Shamrock Ranch. The applicant designed the pond in collaboration with the U.S. Fish and Wildlife Service. The project is intended as a habitat impact avoidance measure to provide temporary replacement habitat for red legged frogs while Caltrans conducts further engineering feasibility studies for the Devil's Slide tunnel (see CC-94-00¹). As currently routed, the northern approach roads that would connect existing Highway 1 to the proposed tunnel would cross Shamrock Ranch near the existing agricultural ponds (see Exhibit 9). The purpose of the proposed pond is two-fold: First, Caltrans, as part of its ongoing environmental analysis for the tunnel, intends to perform further engineering feasibility studies for bridging Shamrock Ranch Valley. Because the performance of these studies has the potential to impair the habitat value of the existing pond(s), there is a need for temporary replacement habitat for the frogs. The purpose of the proposed pond is to fulfill this need. Second, if the tunnel is ultimately approved, the proposed pond is intended to serve as: (a) temporary replacement habitat during the construction phase of the project; and (b) in the long-term, as an enhancement project to provide additional permanent habitat for the frogs.

The appellant contends that the approval of the pond at this time is premature and linked to the tunnel project, which has not yet been approved or had its environmental documents finalized. The appellant further contends that the County's approval is inconsistent with the decision of the Court of Appeal in the case of *Bolsa Chica Land Trust, et al. v. Superior Court* (1999) 71 Cal.App.4th 493, which the appellant maintains does not allow destruction of environmentally sensitive habitat areas.

However, the appellant does not specifically allege an inconsistency of the project with any LCP policy, and the appellant's contentions regarding the timing or relationship of the project with either the tunnel or the Bolsa Chica decision are not valid grounds for appeal and do not bring into question the consistency of the project as approved by the County with the certified LCP.

A motion to adopt the Staff Recommendation of No Substantial Issue is contained in Section 1.0.

STAFF NOTES

Section 30625(b) of the Coastal Act (Public Resources Code (PRC), Division 20) requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised by the appeal. If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. Unless the Commission determines that there is no substantial issue, the Commission will continue

¹ Caltrans' Consistency Certification for the Devil's Slide Tunnel (No. CC-94-00), tentatively scheduled for the same Commission meeting as the subject appeal.

with a full public hearing on the merits of the project at the same or a subsequent hearing. If the Commission were to conduct a de novo hearing on the appeal, the applicable test that the Commission would employ is whether the development is in conformity with the certified LCP. (PRC § 30604(b).)

The only persons qualified to testify before the Commission on the substantial issue question are the applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. (California Code of Regulations (CCR), Title 14, § 13117.)

1.0 STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

Pursuant to Sections 30603(b) and 30625(b)(2) of the Coastal Act and as discussed in the findings below, the staff recommends that the Commission determine that no substantial issue exists with respect to the grounds on which the appeal has been filed. The proper motion is:

Motion

I move that the Commission determine that Appeal No. A-2-SMC-00-035 raises NO substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

Staff Recommendation of No Substantial Issue

Staff recommends a YES vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

Resolution to Find No Substantial Issue

The Commission finds that Appeal No. A-2-SMC-00-035 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Program (LCP).

2.0 FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

2.1 Project Description

The project approved by the County is located immediately downslope of an existing agricultural water storage (that currently contains red-legged frogs), on the western portion of Shamrock Ranch, south of Pacifica in the unincorporated area of San Mateo

County (Exhibits 1-2). The project consists of the construction of a shallow, approximately 35 ft. by 60 ft. (2,000-square-foot), oval shaped, 2 ft. deep pond (Exhibits 3-5) to provide habitat for the threatened red-legged frog. The applicant, Caltrans, designed the pond in collaboration with the U.S. Fish and Wildlife Service. Caltrans proposes to use small power equipment and hand tools to construct the pond. The project includes a concrete junction box to supply water from the upslope existing pond to the new pond (Exhibit 6). The project also includes planting native vegetation in and around the pond, to enable appropriate vegetation to be established in order to provide suitable red-legged frog habitat. Once the vegetation is established, hopefully next Spring according to Caltrans, Caltrans intends to trap red-legged frogs from the two existing ponds on the Ranch to be released into the new pond.

Caltrans and the Service determined that the new pond would be an appropriate habitat impact avoidance measure to protect frogs during construction activities, both during the currently-ongoing engineering feasibility studies for bridging Shamrock Ranch Valley (as part of Caltrans' ongoing environmental analysis for the tunnel), and, if the tunnel is ultimately approved, during the construction phase of the tunnel and northern approach roads. Also, if the tunnel is approved, the proposed pond would serve as an enhancement project to provide additional permanent habitat for the frogs.

Again, assuming it receives all the necessary approvals for the Devil's Slide Tunnel, Caltrans would restore and enhance the two existing ponds, including vegetation improvements and predator deterrence, and ultimately there would be three ponds available for habitat for red-legged frogs (whereas now there are two). In addition, a ditch would be dug between the new pond and the existing upslope (to the south) pond, which would provide an easy migration path for the frogs between the two ponds.

The property is zoned in the County's LUP as Planned Agricultural Development (PAD). Existing use on this portion of the property is an open horse pasture, which supports primarily disturbed (intensively grazed) and non-native vegetation. To the east of the proposed pond is a manmade irrigation ditch, within which riparian vegetation has developed.

2.2 Local Government Action and Findings

On August 23, 2000, the San Mateo County Planning Commission approved with conditions the application of the California Department of Transportation (Caltrans) for a coastal development permit (CDP) PLN 2000—00536 for construction of a 2,000-square-foot pond to provide habitat for threatened red-legged frogs (as described above).

The County approved the project with conditions (Exhibit 8), including:

1. Submittal of erosion control plans for County review, including stabilizing all disturbed areas and maintaining erosion controls, covering stockpiled material during the rainy season, and addressing vehicle maintenance and fueling concerns.

2. Minimizing noise impacts and limiting construction to weekday and daytime hours.
3. Minimizing use of power equipment within the riparian corridor.
4. Submittal of revegetation plans for County review.
5. Diversion of water within the drainage ditch around the construction area to minimize sedimentation.
6. Monitoring and reporting to the County until the U.S. Fish and Wildlife Service concludes the project is successful.

On August 29, 2000, the Save Our Bay Foundation filed an appeal of the Planning Commission's decision to the Board of Supervisors. On September 12, 2000, the Board of Supervisors denied the appeal and upheld the decision of the Planning Commission to approve the coastal development permit with conditions. The County's appeal summary noted:

The appellant ... discusses at great length the Devil's Slide Tunnel and the merits of that project, the pond. However, at no time does the appellant state what his point of appeal is about this project. While the pond does provide a resource for potentially mitigating impacts associated with the construction of the Tunnel, this Coastal Development Permit is not for that project. The pros and cons of the tunnel project are not under consideration at this time. As discussed in the attached report, the pond complies with the County's Local Coastal Program and, therefore, qualifies for a Coastal Development Permit.

In approving the project with conditions, the County found:

Sensitive Habitats Component

Policy 7.5 (Permit Conditions). This policy requires, as part of the development review process, that the applicant demonstrate that there will be no significant impact on sensitive habitats. This is achieved by having the applicant submit a biological report outlining what resources exist at the project location and how the project may impact those resources. The applicant has submitted biological reports for the project site and surrounding area. The biologist found that there was no evidence of wetland or riparian conditions at the immediate project site, however the adjacent drainage ditch had riparian vegetation and hydric soil conditions. Construction of the pond should have no direct impact upon the adjacent habitat provided that power equipment is used judiciously within the pond feature and hand tools only are used for the required work within the riparian corridor. A condition has been added reflecting these requirements.

This policy also requires the restoration of damaged habitat when feasible. There is the possibility that there could be some minor damage to the riparian habitat in and around the drainage ditch adjacent to the pond site. This would be the result of work conducted within this zone to construct the junction box. Any damage to

riparian vegetation shall be mitigated by the applicant via the vegetation plan for the pond. A condition has been added to require this vegetation plan to include any needed repair of the adjacent riparian vegetation due to construction activities.

Policy 7.7 (Definition of Riparian Corridors). The LCP defines riparian corridors by the "limit of riparian vegetation" (i.e., a line determined by the association of plant and animal species normally found near streams, and other bodies of freshwater). A portion of the project will occur within a riparian corridor as defined by this policy. This would be the installation of the concrete junction box to divert a portion of the ditch's water into the proposed pond. This intrusion into a riparian corridor is allowed under Policy 7.9 (Permitted Uses in Riparian Corridors), which allows fish and wildlife management activities within corridors. The junction box is part of a larger project to create and enhance habitat for the endangered California red-legged frog.

Policy 7.10 (Performance Standards in Riparian Corridors). Permitted development within riparian corridors must minimize removal of vegetation; minimize erosion, sedimentation, and runoff; and maintain natural vegetation buffer areas. A condition will be added requiring the applicant to divert any water within the drainage ditch around the area of construction to avoid entrainment of sediment during the construction phase of the project. Additionally, a condition will be added which requires the applicant to remove or trim only that vegetation which is necessary to construct the pond and junction box.

Policy 7.11 (Establishment of Buffer Zones). This policy requires the establishment of a 50-foot buffer zone outward for perennial streams. This buffer zone is established from the "limit of riparian vegetation." The proposed location of the pond would be within this required buffer zone. However, fish and wildlife management activities are an allowed use in the buffer zone [Policy 7.12 (Permitted Uses in Buffer Zones)].

2.3 Appeal Process

After certification of LCPs, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permit (Coastal Act Section 30603.)

Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, or within 300 feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff, or those located in a sensitive coastal resource area.

Furthermore, developments approved by counties may be appealed if they are not designated the "principal permitted use" under the certified zoning ordinance or zoning district map. Finally, developments that constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county.

The project is appealable to the California Coastal Commission because the approved development is not the principal permitted use in the property's zoning designation (Planned Agricultural Development (PAD)).

2.4 Filing of Appeal

On September 15, 2000, the Commission received the Notice of Final Local Decision for the County's approval of the proposed development. PRC § 30603(c) establishes a 10 working day period during which aggrieved persons may appeal to the Commission decisions by local governments on applications for permits under the Coastal Act. In accordance with section 13110 of the Commission's regulations, the 10-working-day appeal period ran from September 16, 2000, through September 29, 2000. On September 22, 2000, the appellant (Save Our Bay Foundation) submitted its appeal to the Commission (see Exhibit 7, Appeal From Coastal Permit Decision of Local Government).

Pursuant to Section 30621 of the Coastal Act, the appeal hearing must be set within 49 days from the date an appeal of a locally-issued CDP is filed. The 49th day from the date the appeal was filed is November 10, 2000. Accordingly, the staff has scheduled a hearing on the appeal at the Commission's October meeting because the November Commission meeting will fall outside of this 49 day period.

2.5 Appellant's Contentions

The full text of the appellant's initial contentions as submitted to the Commission is presented in Exhibit 7. (The appellant elaborates on these arguments in a subsequent letter (dated September 25, 2000 (Exhibit 10)). The staff has directly quoted excerpts from the initial contentions as follows:

1. Project is inconsistent ... [with] Section 30231 ... [because]: On April 16, 1999, the Court of Appeal of California, Fourth Appellate District, Division One filed their [sic] *Bolsa Chica Land Trust et al., v. The Superior Court of San Diego County* ruling that stated: "The Coastal Act does not permit destruction of an environmentally sensitive habitat area (ESHA) simply because the destruction is mitigated offsite. At the very least, there must be some showing the destruction is needed to serve some other environmental or economic interest recognized by the act."
2. Project is inconsistent ... [with] Section 30233(a) ... [because]: Caltrans has not provided in the Tunnels alternative record any evidence that the destruction of the ESHA is a prerequisite to creation of the red legged frog or other wetland habitat. In the absence of evidence as to why preservation of the

Environmentally Sensitive Habitat Area at its current location is unworkable, we cannot reasonably conclude that any genuine conflict exists between long-term and short-term goals exists. The 1997 CCC Adopted Findings (page 19, last paragraph) support the conclusion of the Save Our Bay Foundation. "Without having the results of comprehensive wetland surveys available for either the bypass alternative or the tunnel alternative, and without having a final design for a tunnel alternative available, it is impossible to state with certainty exactly how much more wetland fill would be associated with the bypass than with a tunnel alternative."

3. Project is inconsistent ... [with] Section 30240 ... [because]: In 1999, the State Court of Appeal further ruled: "Section 30240 Under the Coastal Act, Commission is required to protect the coastal zone's delicately balanced ecosystem. In short, while compromise and balancing in light of existing conditions is appropriate and indeed encouraged under other applicable portions of the Coastal Act, the power to balance resource and compromise (Section 30007.5) cannot be found in section 30240."

2.6 Substantial Issue Analysis

Section 30603(b)(1) of the Coastal Act states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

2.6.1 Appellant's Contentions Are Not Valid Grounds for Appeal

As discussed below the contentions raised in the appeal do not present potentially valid grounds for appeal in that they do not allege the project's inconsistency with policies and standards of the LCP.

Relationship of the Proposed Project to the Devil's Slide Tunnel and the Bolsa Chica Decision

The Commission finds that the appellant's contentions regarding the status of the Devil's Slide Tunnel and the applicability of the Bolsa Chica decision do not address the consistency of the approved pond with the certified LCP for San Mateo County, and are therefore not valid grounds for appeal.

The appellant contends that it is premature for the County to have approved the proposed pond, because such approval presumes that a related project (i.e., the tunnel) will be found consistent with the County's LCP. The appellant also contends that the County's decision conflicts with court rulings in the *Bolsa Chica* decision, which the appellant maintains prohibits offsite mitigation of adverse effects on wetlands and environmentally sensitive habitat. The appellant further contends that Caltrans has not provided evidence

that the tunnel is the least environmentally damaging alternative or that a conflict exists between resource protection policies that would allow such conflict to be resolved in favor of approval of the tunnel.

None of these contentions address conformance of the development approved by the County with the policies of the certified LCP. The County properly reviewed the proposed frog pond on its own merits, finding it consistent with the sensitive habitat policies of the LCP. As discussed above, the County's appeal summary noted:

While the pond does provide a resource for potentially mitigating impacts associated with the construction of the Tunnel, this Coastal Development Permit is not for that project. The pros and cons of the tunnel project are not under consideration at this time. As discussed in the attached report, the pond complies with the County's Local Coastal Program and, therefore, qualifies for a Coastal Development Permit.

The Commission agrees. Whether or not the pond will ultimately serve as a mitigation measure for the tunnel (or, for that matter, any above-ground bypass or other solution to the Devil's Slide problems) is not relevant to the question of whether a substantial issue exists as to the consistency of the pond with the County's LCP. The approved project and can serve and stand alone as a separate habitat enhancement measure, whether or not the tunnel or another bypass is ultimately authorized. In addition, in order to conduct further engineering feasibility studies for bridging Shamrock Ranch Valley, in support of ongoing NEPA/CEQA analysis for the tunnel, the proposed frog pond is a habitat impact avoidance and protection measure deemed necessary and appropriate by the U.S. Fish and Wildlife Service. In other words, the pond is inherently needed in order to finalize the environmental review process for the tunnel, and, therefore, must *necessarily* pre-date any final environmental review or permit action on the tunnel. Therefore, the Commission finds that the appellant's contentions regarding the status of the Devil's Slide Tunnel and the pond's relationship to that project are not relevant to the issue of the consistency of the pond with the County's LCP, and, therefore, are not legally valid grounds for appeal.

2.6.2 Substantial Issue Considerations

Regardless of whether the appellant has presented valid grounds for an appeal, the project does not raise a substantial issue with respect to the project's consistency with the policies of the certified LUP.

Public Resources Code section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

The term substantial issue is not defined in the Coastal Act. The Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no significant question as to conformity with the certified local coastal program" (Cal. Code Regs., tit. 14, section 13115(b).) In previous determinations of substantial issue, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretation of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even where the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal development permit decision by filing a petition for a writ of mandate pursuant to PRC § 30802 and Code of Civil Procedure, Section 1094.5.

2.6.3 Appellant's Contentions Do Not Raise A Substantial Issue

As discussed above, the appellant's contentions focus on arguments other than whether the project is consistent with policies and standards of the LCP.

Consistency of the Proposed Project to the County's LCP

The Commission finds that the project as approved by the County does not raise a substantial issue regarding the consistency of the proposed pond with the LCP for San Mateo County.

As discussed in the discussion above, the County properly reviewed the proposed frog pond based on the applicable policies of the LCP. Sections 7.3 and 7.5 require proposed development to protect sensitive habitat, through conditions, including requiring submittal of reports prepared by qualified professionals, and also including monitoring programs designed to assure the effectiveness of the protection measures. As discussed in the Project Description of this report, Caltrans is proposing the pond as a habitat impact avoidance measure to provide temporary replacement habitat for red legged frogs. Thus, the extent and scope of development approved by the County is limited to a habitat

creation project. In support of its project, Caltrans not only submitted a report to the County prepared by qualified biologists, but also designed the proposed pond in collaboration with the U.S. Fish and Wildlife Service. The U.S. Fish and Wildlife Service supports the project (pers. comm. Cecelia Brown, 9/21/00), and this support represents independent professional support for the County's findings that the project is consistent with the Sensitive Habitat component of the LCP. The County also imposed conditions requiring monitoring impacts as required under the LCP. Thus, there is a high degree of factual and legal support for the consistency of the project as approved by the County with all applicable policies of the certified LCP.

The junction box component of the project will be located within a riparian corridor. The County determined that under LCP Policy 7.9 (Permitted Uses in Riparian Corridor), this use is an allowable one (because the policy allows fish and wildlife management activities within corridors). The County's finding is supported by the fact that the junction box is part of a larger project to create and enhance habitat for the threatened California red-legged frog.

The County also determined that the project is consistent with LCP Policy 7.10 (Performance Standard in Riparian Corridors), because it imposed conditions requiring the applicant to divert any water within the drainage ditch around the area of construction to avoid entrainment of sediment during the construction phase of the project, and to limit trimming or removal of vegetation to the minimum needed to construct the pond and junction box. The County approval also requires that the applicant mitigate for any incidental unavoidable impacts caused by the allowable use within the riparian corridor, by requiring Caltrans to include in its revegetation plan a specific contingency plan to address any vegetation removal within the riparian corridor.

Finally, the County determined, pursuant to LCP Policies 7.11 and 7.12 (Establishment of Buffer Zones and Permitted Uses in Buffer Zones), that the proposed wildlife management activity is an allowable use in the buffer zone.

The Commission therefore finds that the County's action does not raise a substantial issue with regard to the project's consistency with the LCP.

2.6.4 Conclusion

The Commission finds that, for all of the reasons stated above, that even if the appellant had raised valid grounds for appeal, the appeal raises no substantial issue with respect to conformance of the approved project with the certified LCP.

APPENDIX A

Substantive File Documents

1. San Mateo County 2000 Administrative Record for coastal development permit CDP PLN 2000—00536 (Caltrans), with cover letter dated September 13, 2000.
2. Coastal Commission Staff Recommendation on Consistency Certification CC-94-00 (Caltrans, Devil's Slide Tunnel), dated September 21, 2000.

APPENDIX B

Referenced Policies of the San Mateo Local Coastal Program

7.3 Protection of Sensitive Habitats

a. Prohibit any land use or development which would have significant adverse impact on sensitive habitat areas.

b. Development in areas adjacent to sensitive habitats shall be sited and designed to prevent impacts that could significantly degrade the sensitive habitats. All uses shall be compatible with the maintenance of biologic productivity of the habitats.

7.5 Permit Conditions

a. As part of the development review process, require the applicant to demonstrate that there will be no significant impact on sensitive habitats. When it is determined that significant impacts may occur, require the applicant to provide a report prepared by a qualified professional which provides: (1) mitigation measures which protect resources and comply with the policies of the Shoreline Access, Recreation/Visitor-Serving Facilities and Sensitive Habitats Components, and (2) a program for monitoring and evaluating the effectiveness of mitigation measures. Develop an appropriate program to inspect the adequacy of the applicant's mitigation measures.

b. When applicable, require as a condition of permit approval the restoration of damaged habitat(s) when in the judgment of the Planning Director restoration is partially or wholly feasible.

7.7 Definition of Riparian Corridors

Define riparian corridors by the limit of riparian vegetation (i.e., a line determined by the association of plant and animal species normally found near streams, lakes and other bodies of freshwater: red alder, jaumea, pickleweed, big leaf maple, narrow-leaf cattail, arroyo willow, broadleaf cattail, horsetail, creek dogwood, black cottonwood, and box elder). Such a corridor must contain at least a 50% cover of some combination of the plants listed.

7.10 Performance Standards in Riparian Corridors

Require development permitted in corridors to: (1) minimize removal of vegetation, (2) minimize land exposure during construction and use temporary vegetation or mulching to protect critical areas, (3) minimize erosion, sedimentation, and runoff by appropriately grading and replanting modified areas, (4) use only adapted native or non-invasive exotic plant species when replanting, (5) provide sufficient passage for native and anadromous fish as specified by the State Department of Fish and Game, (6) minimize adverse effects of waste water discharges and entrainment, (7) prevent depletion of groundwater supplies and substantial interference with surface and subsurface waterflows, (8) encourage waste water reclamation, (9) maintain natural vegetation buffer areas that protect riparian habitats, and (10) minimize alteration of natural streams.

7.11 Establishment of Buffer Zones

a. On both sides of riparian corridors, from the limit of riparian vegetation extend buffer zones 50 feet outward for perennial streams and 30 feet outward for intermittent streams.

b. Where no riparian vegetation exists along both sides of riparian corridors, extend buffer zones 50 feet from the predictable high water point for perennial streams and 30 feet from the midpoint of intermittent streams.

c. Along lakes, ponds, and other wet areas, extend buffer zones 100 feet from the high water point except for manmade ponds and reservoirs used for agricultural purposes for which no buffer zone is designated.

7.12 Permitted Uses in Buffer Zones

Within buffer zones, permit only the following uses: (1) uses permitted in riparian corridors, (2) residential uses on existing legal building sites, set back 20 feet from the limit of riparian vegetation, only if no feasible alternative exists, and only if no other building site on the parcel exists, (3) in Planned Agricultural,

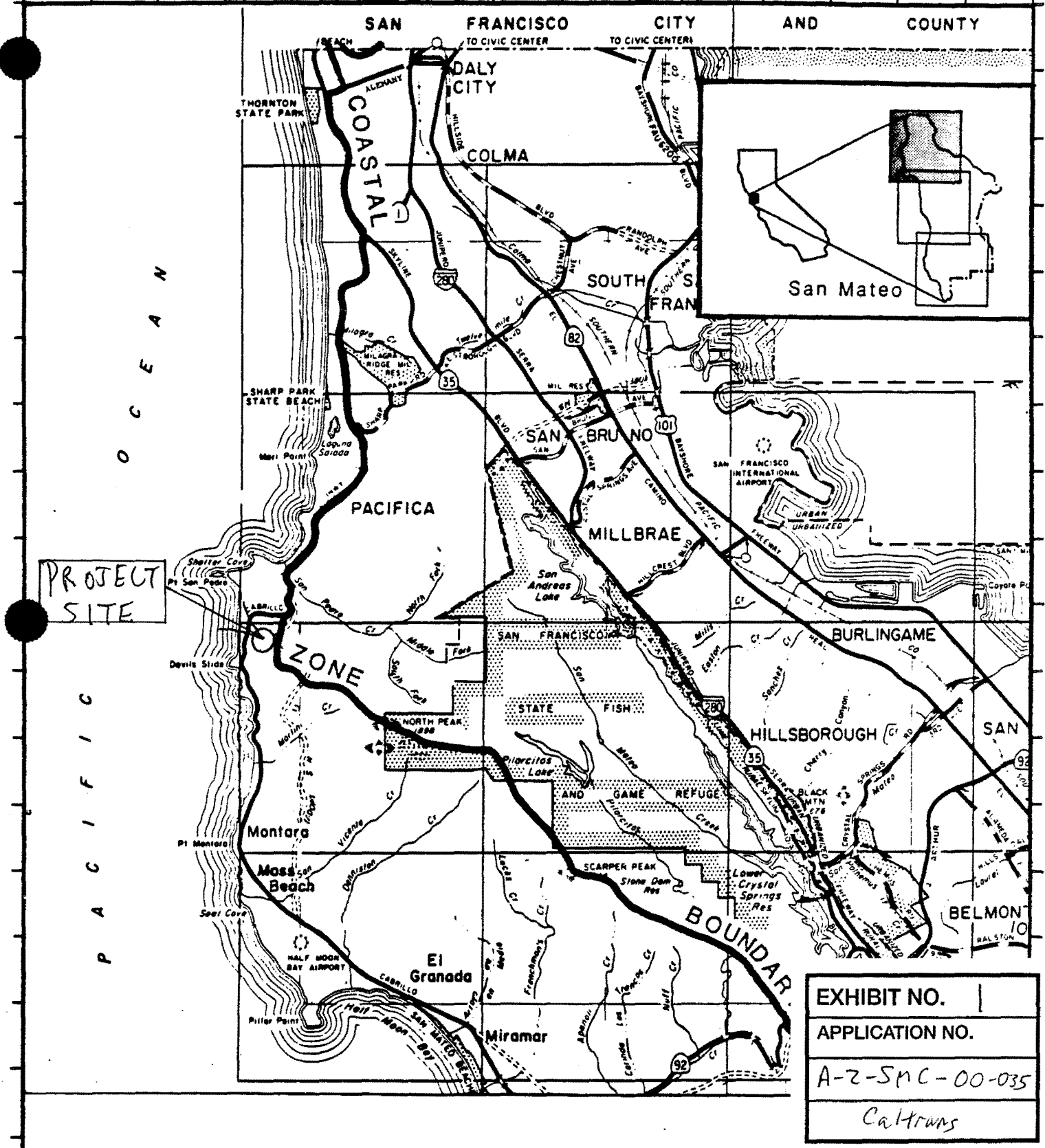
Resource Management and Timber Preserve Districts, residential structures or impervious surfaces only if no feasible alternative exists, (4) crop growing and grazing consistent with Policy 7.9, (5) timbering in streamside corridors as defined and controlled by State and County regulations for timber harvesting, and (6) no new residential parcels shall be created whose only building site is in the buffer area.

G: Land Use/Federal Consistency/Staff Reports/2000/A-2-SMC-00-035



A B C D E F G H I J K L M N O

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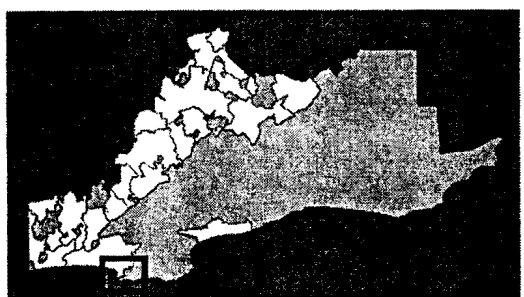
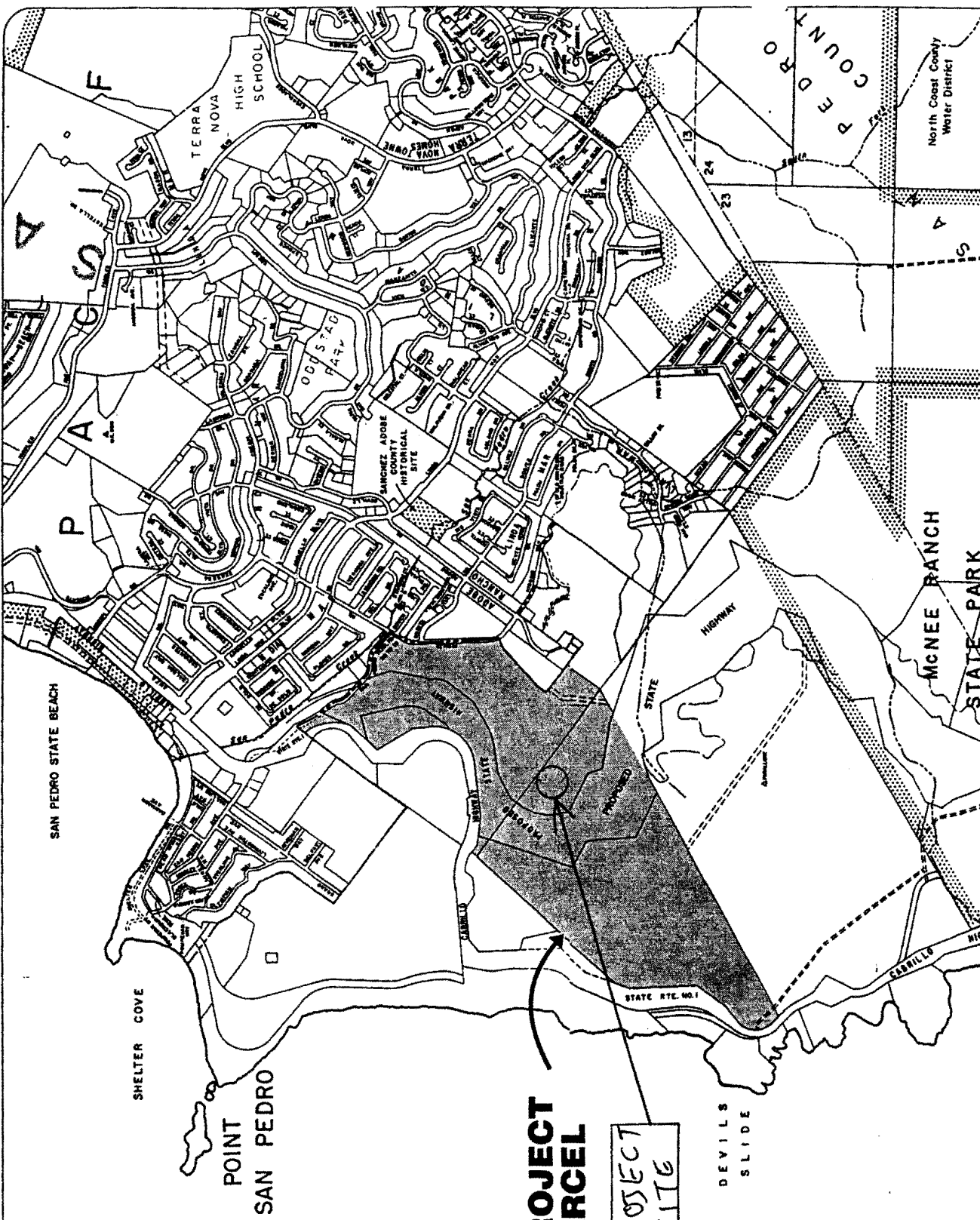


PROJECT SITE

EXHIBIT NO.	1
APPLICATION NO.	A-2-SMC-00-035
Caltrans	

LOCATION MAP

1 0 1 2 3 4 5 6 7 8 9 10
miles IN



PROJECT PARCEL

PROJECT SITE

EXHIBIT NO.	2
APPLICATION NO.	A-2-SNC-00-035

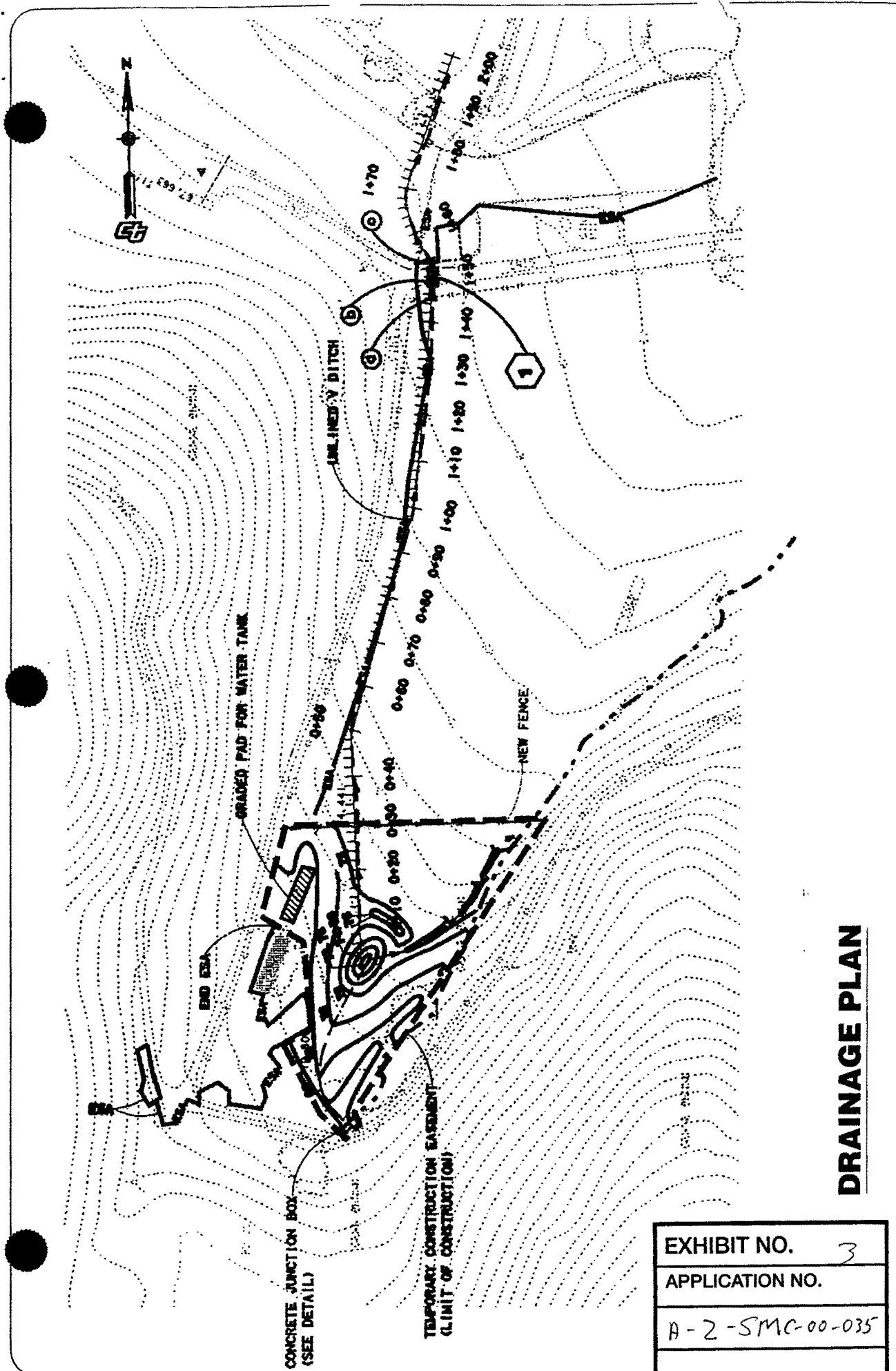
San Mateo County Board of Supervisors Meeting

Applicant: CALTRANS

File Numbers: PUN2000-00536

Attachment: C





DRAINAGE PLAN

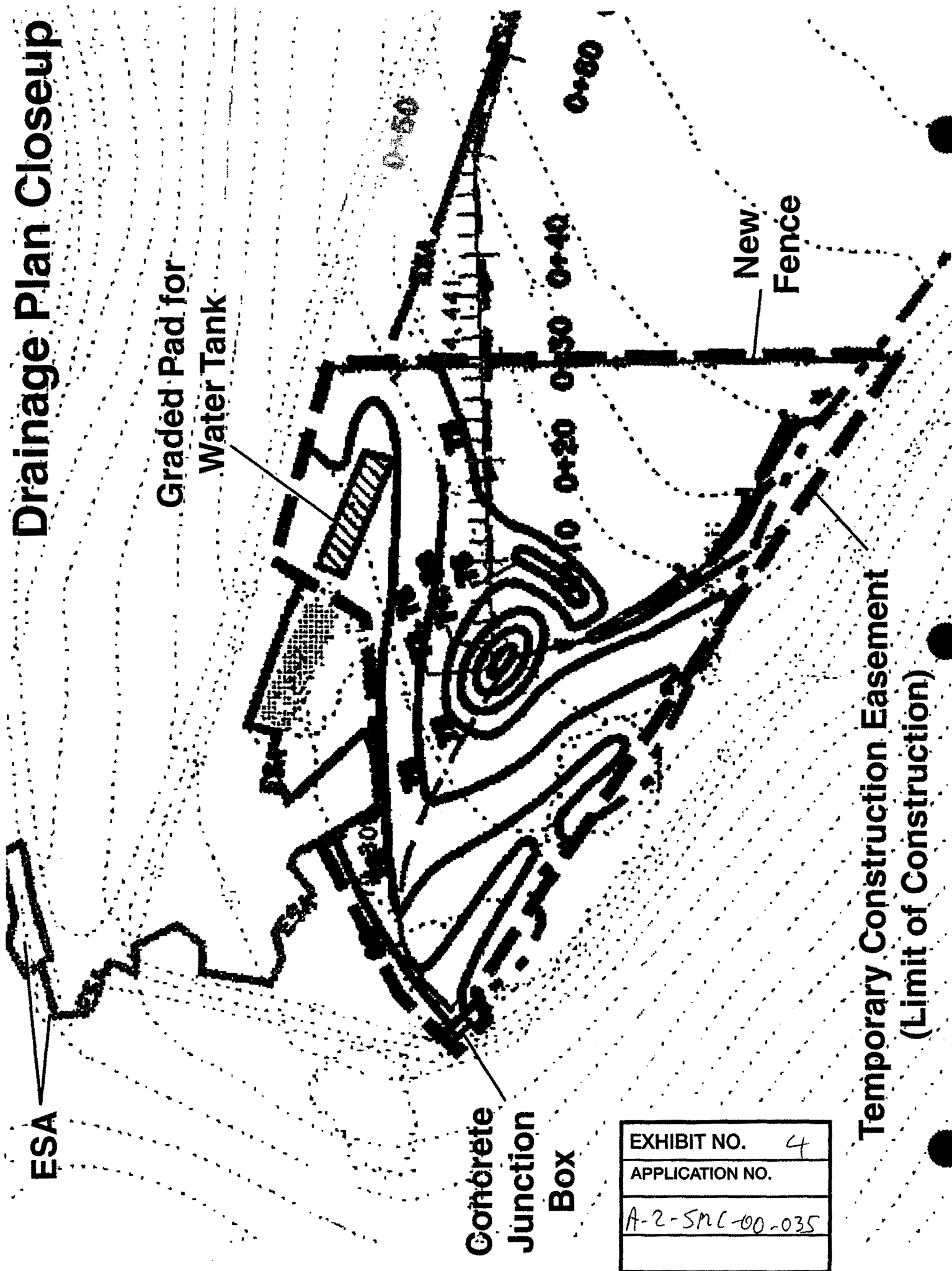
EXHIBIT NO.	3
APPLICATION NO.	
A-2-SMC-00-035	

San Mateo County Board of Supervisors Meeting

Applicant: CALTRANS Attachment: D

File Numbers: PLN2000-00536

Drainage Plan Closeup



ESA

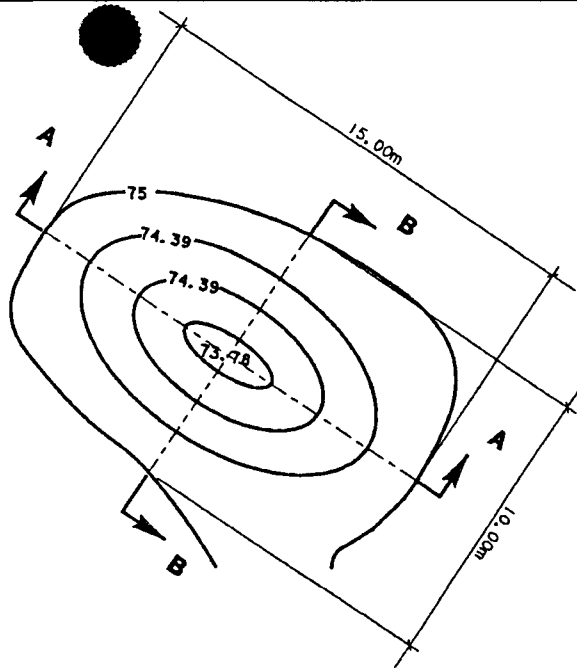
Graded Pad for
Water Tank

Concrete
Junction
Box

New
Fence

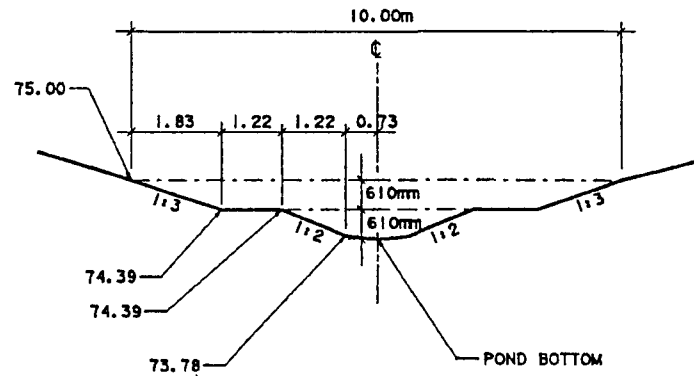
Temporary Construction Easement
(Limit of Construction)

EXHIBIT NO.	4
APPLICATION NO.	
A-2-SMC-00-035	

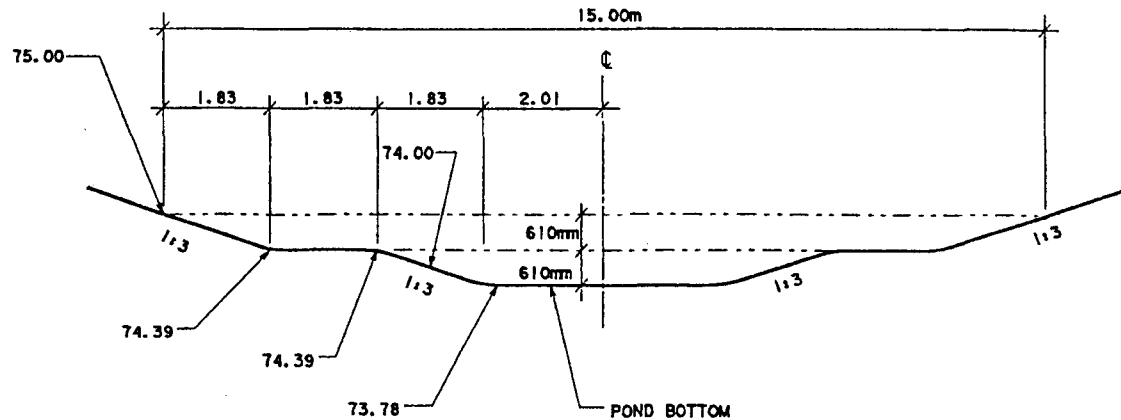


FROG POND LAYOUT

SCALE: 1:100



SECTION B-B



SECTION A-A

CONTOUR GRADING PLAN

EXHIBIT NO.	S
APPLICATION NO.	
A-2-SMC-00-035	

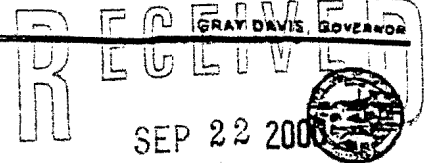
San Mateo County Board of Supervisors Meeting

Applicant: CALTRANS

Attachment: D

File Numbers: PLN 2000-00536

STATE OF CALIFORNIA—THE RESOURCES AGENCY



CALIFORNIA COASTAL COMMISSION

REMONT, SUITE 2000
FRANCISCO, CA 94105-2219
TELEPHONE AND TDD (415) 904-6200
FAX (415) 904-6400

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

CALIFORNIA
COASTAL COMMISSION

Please Review Attached Appeal Information Sheet Prior To Completing
This Form.

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

SAVE OUR BAY FOUNDATION
1579 HIGGINS CANYON RD
HALEMOON BAY, CA, 94019 (650) 726-3307
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: SAN MATEO COUNTY

2. Brief description of development being appealed: ESHA MITIGATION DEWIL'S SLIDE IMPROVEMENT PROJECT, SCH. NO. 83052706 CCC POST-COAST. NOI-SMPC-99-15C LOCAL PERMIT # PMN 2000-00536

3. Development's location (street address, assessor's parcel no., cross street, etc.): SHAMACK RANCH (near Pacifica) SAN MATEO COUNTY (APH) 023-741-010

4. Description of decision being appealed:

a. Approval; no special conditions: _____

b. Approval with special conditions: Local Permit # PMN 2000-00536

c. Denial: _____

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-2-SMC-00-35

DATE FILED: 9/25/00

DISTRICT: NORTH CENTRAL COAST

H5: 4/88

EXHIBIT NO.	7
APPLICATION NO.	
A-2-SMC-00-035	

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- a. Planning Director/Zoning Administrator c. Planning Commission
- b. City Council/Board of Supervisors d. Other: _____

6. Date of local government's decision: August 23, 20007. Local government's file number (if any): PLAN 2000-00536SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

CALTRANS - ATTENTION SKIP SOWKO
P.O. Box 23660, OAKLAND CA 94623

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) OSCAR BRAUN, SAUS OUR BAY FOUNDATION
1589 HIGGINS CANYON ROAD
HALF MOON BAY, CA 94019

(2) John Plock, SAUS OUR BAY FOUNDATION
1589 HIGGINS CANYON ROAD
HALF MOON BAY, CA 94019

(3) TERRY BURNES, PLANNING ADMINISTRATOR
FOR THE COUNTY OF SAN MATEO

(4) Lenny Roberts, COMMITTEE FOR GREEN FOOTHILLS
339 LA GUESTA
PORTOLA VALLEY, CA 94025

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

Attachment : Appeal From Coastal Permit Decision of Local Government (page 3)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing.

Wetland and Biological Resources

Section 30231 of the Coastal Act states the biological productivity and the quality of coastal waters, streams, wetlands, estuaries and lakes shall be protected and where feasible, restored. **Project is Inconsistent Reason:** On April 16, 1999, the Court of Appeal of California, Fourth Appellate District, Division One filed their Bolsa Chica Land Trust vs. The Superior Court of San Diego County ruling that stated: "The Coastal Act does not permit destruction of an environmentally sensitive habitat area (ESHA) simply because the destruction is mitigated offsite. At the very least, there must be some showing the destruction is needed to serve some other environmental or economic interest recognized by the act."

Section 30233(a) does not authorize wetland fill unless it meets the "allowable-use" test. It further states that the diking, filling, or dredging of open coastal waters, wetlands, estuaries and lakes shall be permitted in accordance with other applicable provisions of the Coastal Act, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects. **Project is Inconsistent Reason:** CalTrans has not provided in the Tunnels alternative record any evidence that the destruction of the ESHA is a prerequisite to creation of the red legged frog or other wetland habitat. In the absence of evidence as to why preservation of the Environmentally Sensitive Habitat Area at its current location is unworkable, we cannot reasonably conclude that any genuine conflict between long-term and short-term goals exists. The 1997 CCC Adopted Findings (page 19 last paragraph) support the conclusion of the Save Our Bay Foundation. "Without having the results of comprehensive wetland surveys available for either the bypass alternative or the tunnel alternative, and without having a final design for a tunnel alternative available, it is impossible to state with certainty exactly how much wetland fill would be associated with the bypass than with a tunnel alternative."

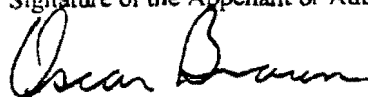
Section 30240 further identifies environmentally sensitive habitat areas that shall be protected against significant disruption of habitat values, and requires that development in these areas be sited and designed to prevent impacts which might significantly degrade such areas. **Project is Inconsistent Reason:** In 1999, the State Court of Appeal further ruled: "Section 30240 Under the Coastal Act, Commission is required to protect the coastal zone's delicately balanced ecosystem. In short, while compromise and balancing in light of existing conditions is appropriate and indeed encouraged under other applicable portions of the Coastal Act, the power to balance and compromise (Section 30007.5) cannot be found in section 30240."

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. CERTIFICATION

The information and facts stated above are correct to the best of my/our knowledge.

Signature of the Appellant or Authorized Agent:



Oscar Braun, Executive Director, Save Our Bay Foundation,

Date: September 22, 2000

County of San Mateo
Planning and Building Division

RECOMMENDED FINDINGS AND CONDITIONS OF APPROVAL

Permit or Project File Number:
PLN 2000-00536

Hearing Date: September 12, 2000

Prepared By: Michael Schaller

For Adoption By: Board of Supervisors

RECOMMENDED FINDINGS

Regarding the Environmental Review, Find:

1. That the Board, acting as a responsible agency, has reviewed and considered the Categorical Exemption, prepared by CalTrans as Lead Agency.

Regarding the Coastal Development Permit, Find:

2. That the project, as described in the application and accompanying materials required by Zoning Regulations Section 6328.7 and as conditioned in accordance with Section 6328.14, conforms with the plans, policies, requirements and standards of the San Mateo County Local Coastal Program.
3. That the project conforms to the specific findings required by policies of the San Mateo County Local Coastal Program.

RECOMMENDED CONDITIONS OF APPROVAL

Planning Division

1. This approval applies only to the proposal, documents and plans described in this report and submitted to and approved by the Planning Commission. Minor revisions or modifications to the project may be made subject to the review and approval of the Planning Director.
2. The applicant shall submit an Erosion Control Plan to the Planning Division for review and approval, prior to the beginning of project construction. Said Plans shall conform to the San Mateo County Wide Storm Water Pollution Prevention Program "General Construction and Site Supervision Guidelines" including:
 - a. Stabilizing all denuded areas and maintaining erosion control measures continuously between October 15 and April 15.

EXHIBIT NO.	8
APPLICATION NO.	
A-2-SMC-00-035	

- b Removing spoils promptly, and avoiding stockpiling of fill materials when rain is forecast. If rain threatens, stockpiled soils and other materials shall be covered with a tarp or other waterproof material.
- c. Storing, handling, and disposing of construction materials and wastes so as to avoid their entry to a local storm drain system or water body.
- d. Avoiding cleaning, fueling or maintaining vehicles on-site, except in an area designated to contain and treat runoff.

The applicant is responsible for ensuring that all contractors minimize the transport and discharge of pollutants from the project site into local water bodies and adhere to the above-referenced Erosion Control Plan.

- 3. Noise levels produced by proposed construction activities shall not exceed the 80 dBA level at any one moment. Construction activities shall be limited to the hours from 7:00 a.m. to 6:00 p.m., Monday through Friday, and 9:00 a.m. to 5:00 p.m. on Saturday. Construction operations shall be prohibited on Sunday and any national holiday.
- 4. This permit shall be valid for one year. Any extension of this permit shall require submittal of an application for permit extension and payment of applicable permit extension fees.
- 5. The applicant shall minimize the use of power equipment within the riparian corridor. Hand tools only shall be used within the stream corridor. The applicant is allowed to remove or trim only that vegetation which is necessary to construct the pond and junction box.
- 6. Prior to the beginning of construction, the applicant shall submit, to the Planning Division for review and approval, a re-vegetation plan for the project site. Said plan shall include contingencies to address any vegetation removal within the riparian corridor. The approved plan shall be implemented within 30 days of completion of earthmoving activities.
- 7. The applicant shall divert any water within the drainage ditch around the area of construction for the junction box to avoid entrainment of sediment during the construction phase of the project.
- 8. CalTrans shall monitor the project and submit reports to the County every six months on the progress and success of the project until such time as U.S. Fish and Wildlife Service concludes it is successful.

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Existing South Pond

Proposed Pond Site

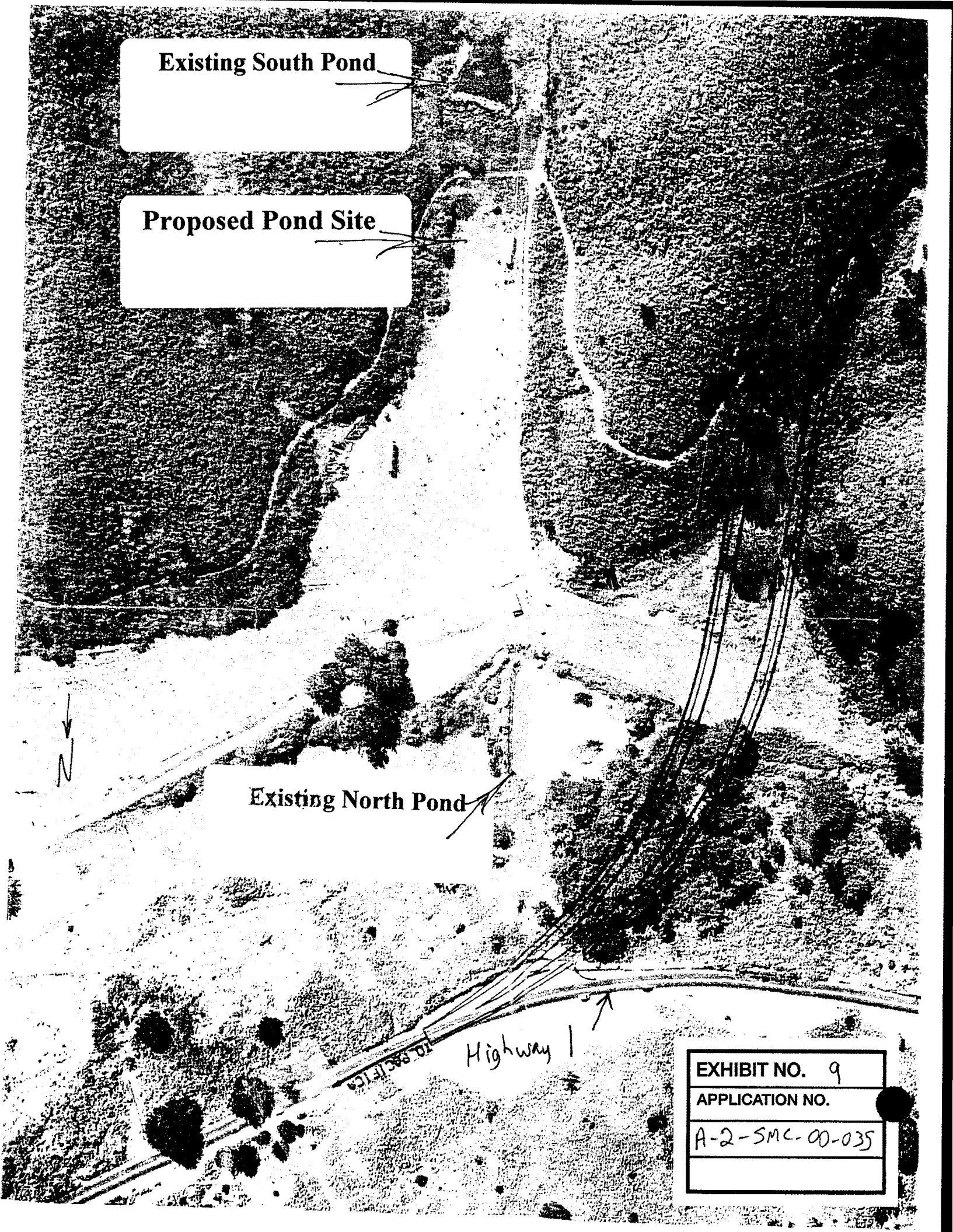
Existing North Pond

Highway 1

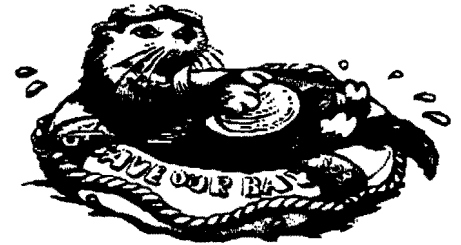
EXHIBIT NO. 9

APPLICATION NO.

A-2-SMC-00-035



"Change is inevitable...
Survival is not."



September 25, 2000

California Coastal Commission
 C/O Peter Douglas, Executive Director
 45 Fremont Street, Suite 2000
 San Francisco, California, 94105-2219
 Re: Appeal From Coastal Permit Decision of Local Government PLN # 2000-00536
 & Denial of Consistency Certification for Devil's Slide Improvement Project.

Applicant: California Department of Transportation (Caltrans)

Project Location: Between Highway 1 near Shamrock Ranch (approximately one mile south of Linda Mar Avenue in Pacifica) to the north, and Highway 1 south of Devil's Slide, San Mateo County (Exhibits 1-2)

Project Description: Construction of two single-bore, ¾ mile long tunnels (one in each direction) Underneath San Pedro Mountain, with appurtenant approaches to the north and south Connecting the tunnels with existing Highway 1 (Exhibits 3, 4,5,9,10 & 11)

Dear Honorable Mr. Douglas and Commissioners,

On behalf of the non-profit 501(c)3 public benefit corporation Half Moon Bay Coastside Foundation, dba Save Our Bay, I write to you today an appeal from a Coastal Development Permit PLN 2000-00536 decision of San Mateo County, and in addition, to the proposed granting by the Coastal Commission of a "Consistency Certification for the conceptual Devil's Slide Tunnels Improvement Project. The basis for Save Our Bay's requested DENIAL of the San Mateo County issued coastal development permit (CDP) and finding that the Tunnel project is Inconsistency with the California Coastal Act are as follows:

CCC Appeal Form: State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing.

Wetland and Biological Resources

Section 30231 of the Coastal Act states the biological productivity and the quality of coastal waters, streams, wetlands, estuaries and lakes shall be protected and where feasible, restored.

The Tunnels Project is Inconsistent Reason: *The Coastal Act's mandated Statutory Delineation ESHA Maps, Exhibit # 9, #10, #11 clearly show that the Sierra Club proposed Devil's Slide Tunnels Alternative project is well within a California Coastal Act defined Environmentally Sensitive Habitat Area. On April 16, 1999, the Court of Appeal of California, Fourth Appellate District, Division One filed their Bolsa Chica Land Trust vs. The Superior Court of San Diego County ruling that stated: "The Coastal Act does not permit destruction of an environmentally sensitive habitat area (ESHA) simply because the destruction is mitigated offsite. At the very least, there must be some showing the destruction is needed to serve some other environmental or economic interest recognized by the act." The 1997 CCC Tunnels Alternative Adopted Findings on page 18 states: "Construction of the North Portal approach road could fill portions of the two red-legged frog ponds in that location. Even constructing a bridge that did not directly fill the ponds would adversely affect the red-legged frog by shading portions of the pond during most of the day, thereby reducing the basking opportunities for frogs and possibly lowering the spring pond water temperatures. The latter could in turn affect the development of time of frog eggs and larvae. Any one or combination of the above possible events could result in the reduction or negation of the red-legged frog population at the site. Furthermore, construction and grading activities for the bridge could either permanently block or destroy the spring sites that serve as the water source for the ponds, cause siltation in*

EXHIBIT NO.	10
APPLICATION NO.	A-2-SMC-00-035

the ponds, and temporarily disrupt adjacent upland foraging/retreat area for the frogs. Both of these possibilities could result in a temporary degradation of red-legged frog habitat at the site and reduction of the species."

Section 30233 (a) does not authorize wetland fill unless it meets the "allowable-use" test. It further states that the diking, filling, or dredging of open coastal waters, wetlands, estuaries and lakes shall be permitted in accordance with other applicable provisions of the Coastal Act, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects.

The Tunnels Project is Inconsistent Reason: CalTrans has not provided in the Tunnels alternative record any evidence that the destruction of the ESHA is a prerequisite to creation of the red legged frog or other wetland habitat. In the absence of evidence as to why preservation of the Environmentally Sensitive Habitat Area at its current location is unworkable, we cannot reasonably conclude that any genuine conflict between long-term and short-term goals exists. The 1997 CCC Adopted Findings (page 19 last paragraph) support the conclusion of the Save Our Bay Foundation. "Without having the results of comprehensive wetland surveys (statutory wetland or ESHA delineation maps) available for either the bypass alternative or the tunnel alternative, and without having a final design for a tunnel alternative available, it is impossible to state with certainty exactly how much wetland fill would be associated with the bypass than with a tunnel alternative." Staff added to their recommendation on Consistency Certification a footnote on page 20 stating, " Army Corps" wetlands were used because "Coastal Act" wetlands were not available for a direct comparison; Coastal Act wetland impacts for the Martini Creek bypass have not been calculated. Aside from this comparison, the remainder of the Commission's wetland analysis is based on Coastal Act wetland definition." Save Our Bay would like to point out to the Commission that it is ONLY the Coastal Act definition that matters. The U.S. Fish & Wildlife , Corp of Engineers or State Fish and Game definitions are not at issue with regard to the consistency certification with the California Coastal Act.

Section 30240 further identifies environmentally sensitive habitat areas that shall be protected against significant disruption of habitat values, and requires that development in these areas be sited and designed to prevent impacts which might significantly degrade such areas,

The Tunnels Project is Inconsistent Reason: In 1999, the California State Court of Appeal further ruled in the Bolsa Chica Land Trust : "Section 30240 Under the Coastal Act, Commission is required to protect the coastal zone's delicately balanced ecosystem. In short, while compromise and balancing in light of existing conditions is appropriate and indeed encouraged under other applicable portions of the Coastal Act, the power to balance and compromise (Section 30007.5) cannot be found in section 30240." In addition, by letter Paul Koenig wrote to Caltrans on May 11, 1999 the following, "As Director of the San Mateo County Environmental Services Agency, I am writing on behalf of the County to comment on the Second Supplemental Environmental Impact Statement Environmental Impact Report that was prepared for the Devil's Slide Improvement Project located along Highway1. I would like to offer the following comments regarding this document: The FEIS/EIR on pages 74 and 75 describe the impacts of the proposed tunnel on wetland and riparian habitats. We want to bring to your attention the potential conflicts between this discussion and the Coastal Act and Local Coastal Program. The tunnel will fill approximately 5,500 square feet of wetlands and 9,700 feet of riparian habitat. Off-site mitigation of such an impact is not currently allowed under the Coastal Act or Local Coastal Program. As a result, we cannot at this time find that the proposed tunnel design complies with the Local Coastal Program." The Court's ruling is the final determination on Section 30240. Since there is no conflict with other sections of the Coastal Act, the use of Section 30007.5 is NOT permitted.

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

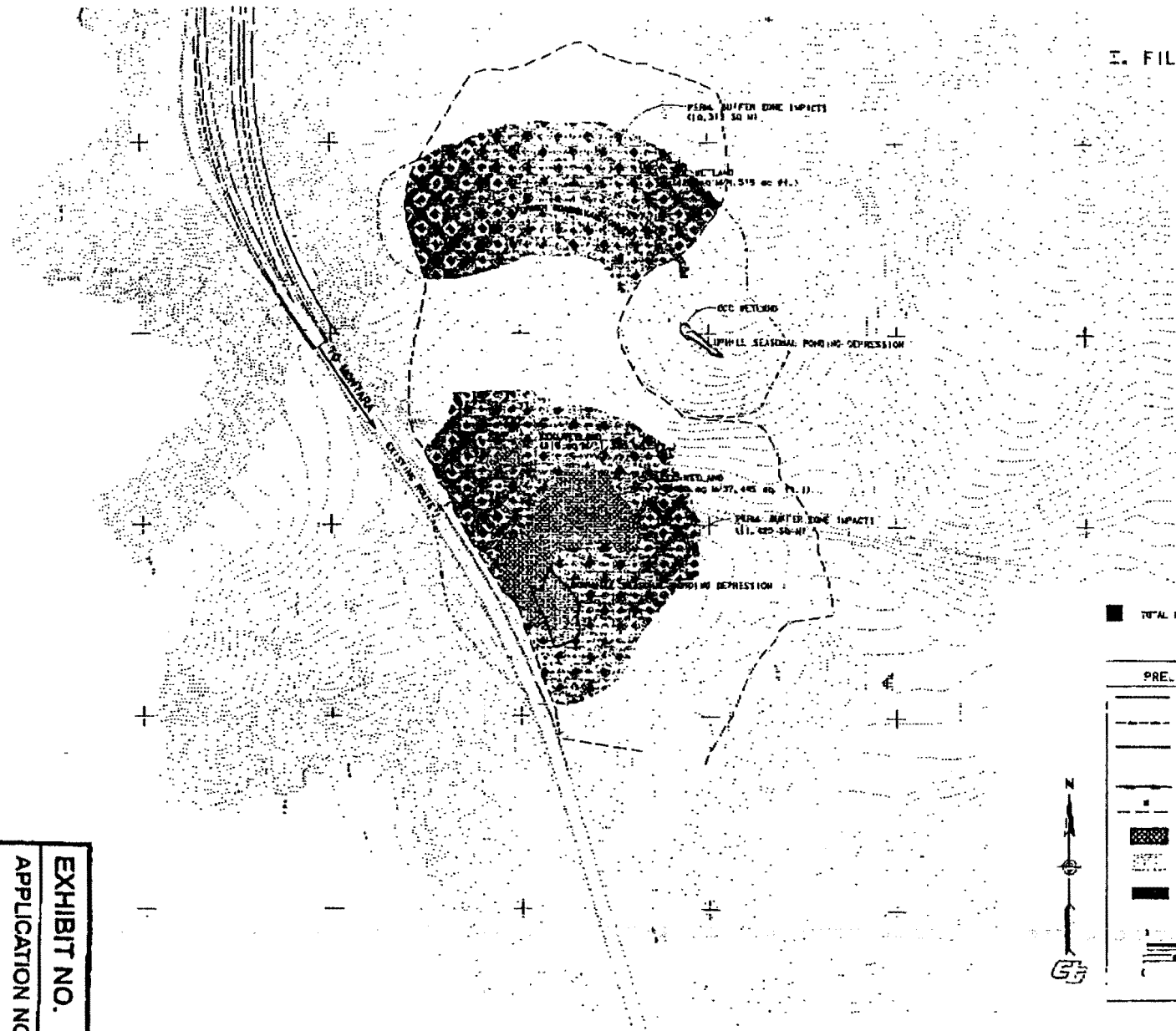
SECTION V. CERTIFICATION Date: September 25,2000

The information and facts stated above are correct to the best of my/our knowledge.

Signature of the Appellant or Authorized Agent:

Oscar Braun, Executive Director, Save Our Bay Foundation,

EXHIBIT C I. FILL DISPOSAL DRAINAGE AREA



TOTAL PERM. BUFFER ZONE IMPACTS 121,775 SQ. FT.

PRELIMINARY WETLAND DELINEATION MAP

- CCC WETLAND BOUNDARY
- - - - - CCC BUFFER ZONE BOUNDARY
- COE WETLAND BOUNDARY
- COE WETLAND PATCH
- ENVIRONMENTALLY SENSITIVE AREA
- - - - - FILL DISPOSAL BOUNDARY
- PERM. CCC WETLAND IMPACT
- TEMP. CCC WETLAND IMPACT
- PERM. BUFFER ZONE IMPACT

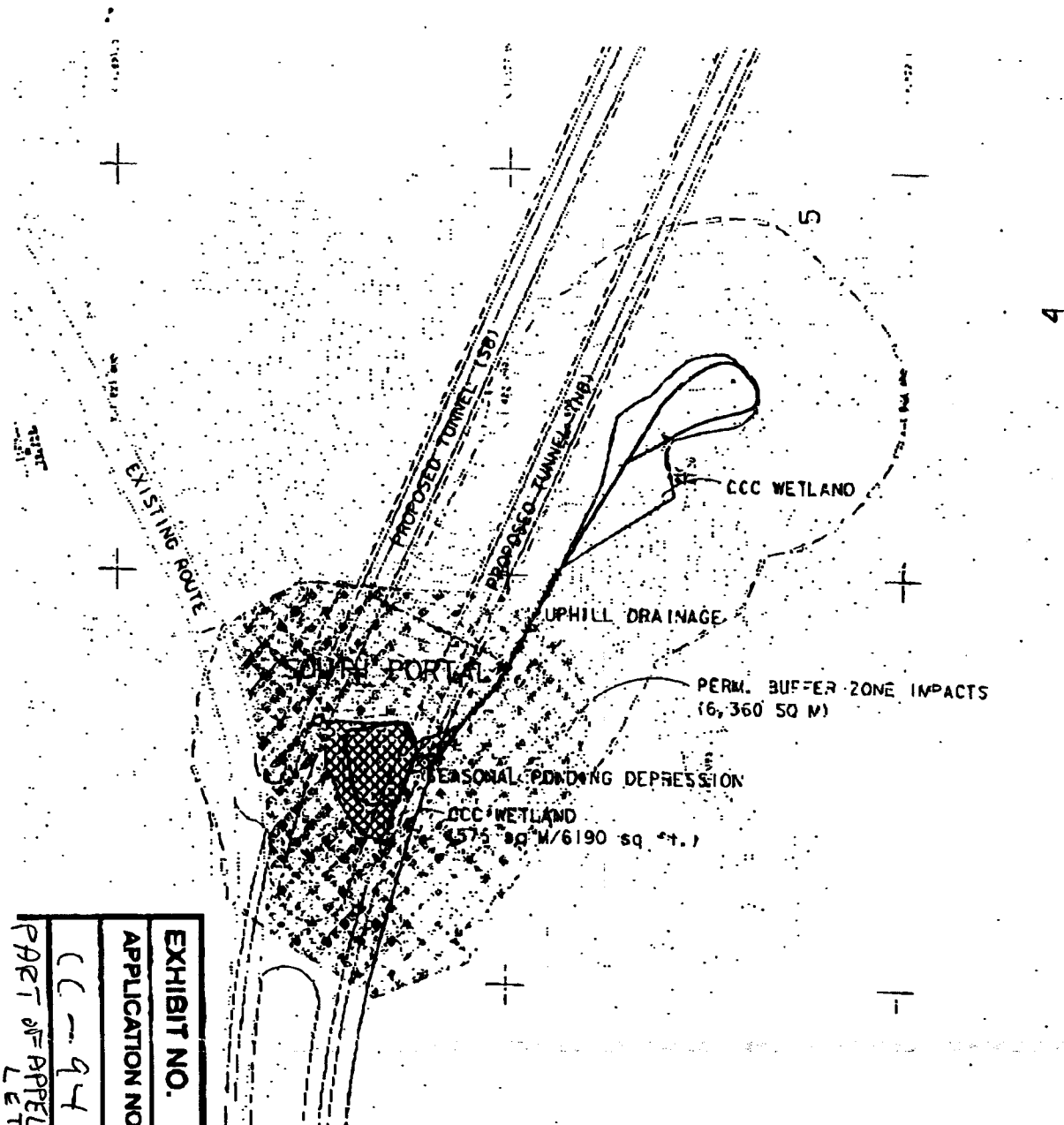
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1 OF 3 PAGES

EXHIBIT NO. 9
APPLICATION NO.
CC-94-00
PART OF AERIAL LETTER

EXHIBIT D SOUTH PORTAL DRAINAGE AREA



TOTAL PERM. BUFFER ZONE IMPACTS (6,360 SQ M)

PRELIMINARY WETLAND DELINEATION MAP

- CCC WETLAND BOUNDARY
- CCC BUFFER ZONE BOUNDARY
- COE WETLAND BOUNDARY
- ENVIRONMENTALLY SENSITIVE AREA
- PERM. CCC WETLAND IMPACT
- TEMP. CCC WETLAND IMPACT
- PERM. BUFFER ZONE IMPACT

SCALE

0 50 100 150 200 FEET

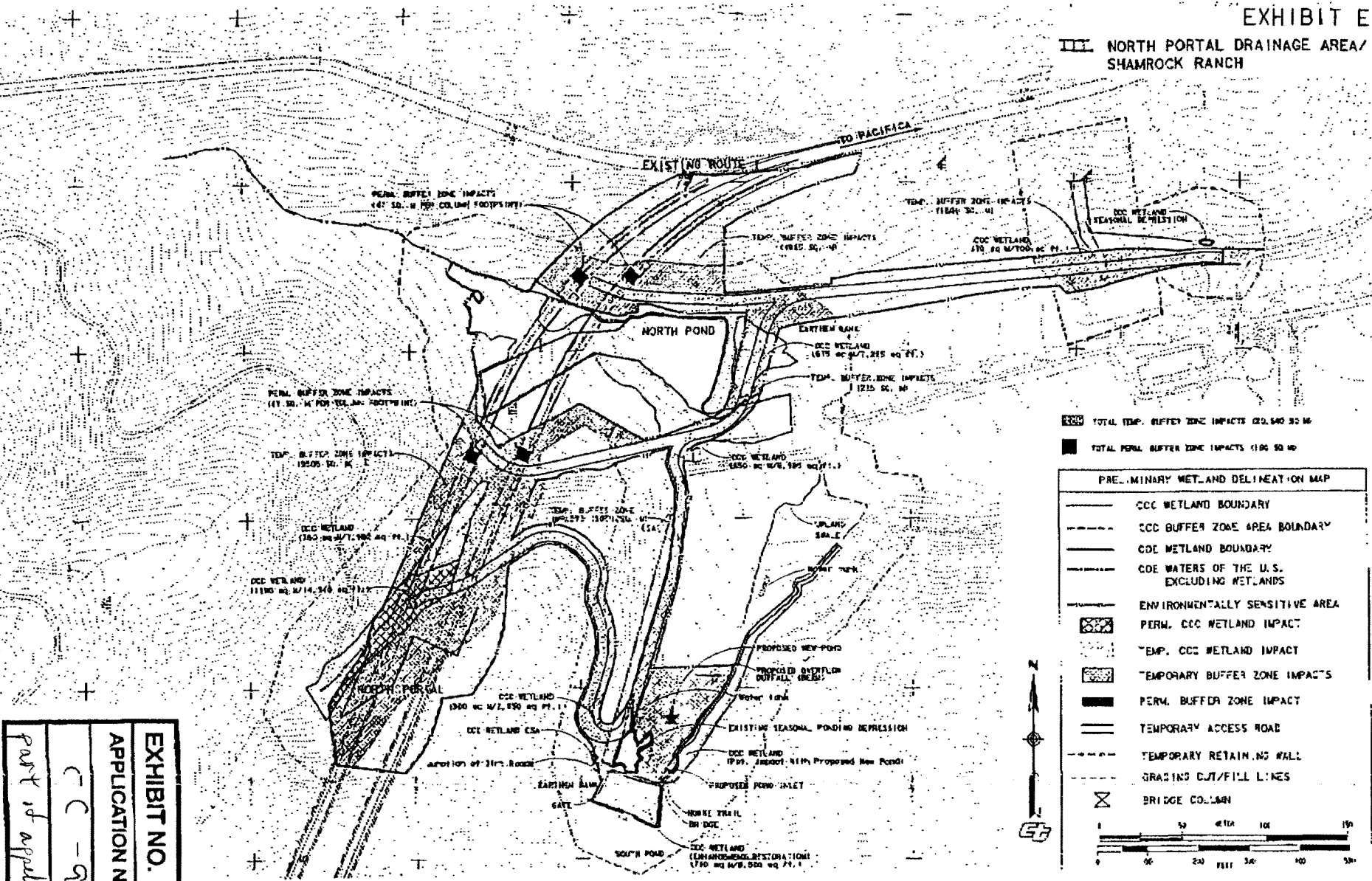


2 OF 3 PAGES

EXHIBIT NO. 10
APPLICATION NO. CC-94-00
PART OF APPELLANT LETTER

EXHIBIT E

III NORTH PORTAL DRAINAGE AREA/
SHAMROCK RANCH



TOTAL TEMP. BUFFER ZONE IMPACTS (20,540 sq. ft.)
 TOTAL PERM. BUFFER ZONE IMPACTS (100 sq. ft.)

PRELIMINARY WETLAND DELINEATION MAP

- CCC WETLAND BOUNDARY
- CCC BUFFER ZONE AREA BOUNDARY
- COE WETLAND BOUNDARY
- COE WATERS OF THE U.S. EXCLUDING WETLANDS
- ENVIRONMENTALLY SENSITIVE AREA
- PERM. CCC WETLAND IMPACT
- TEMP. CCC WETLAND IMPACT
- TEMPORARY BUFFER ZONE IMPACTS
- PERM. BUFFER ZONE IMPACT
- TEMPORARY ACCESS ROAD
- TEMPORARY RETAINING WALL
- GRASSING CUT/FILL LINES
- BRIDGE COLLAR

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EXHIBIT NO. 11
 APPLICATION NO. CC-94-00
 Part of application #7.

Purpose and Need

FIGURE 2-2: Project Area Map

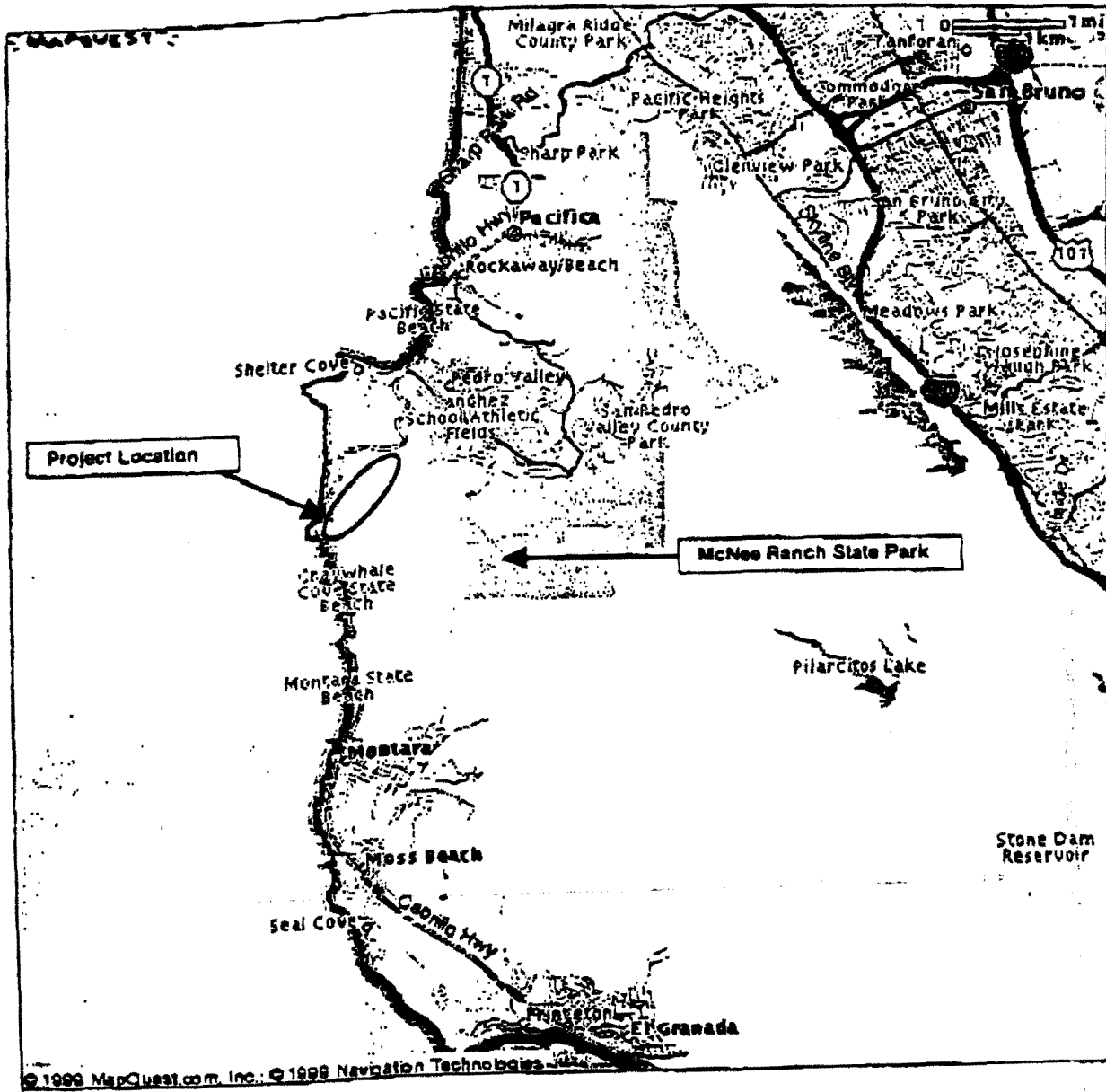


EXHIBIT NO.	1
APPLICATION NO.	CC-94-00
	Caltrans

PART OF APPELLANT LTR.

EXHIBIT A

CALIFORNIA

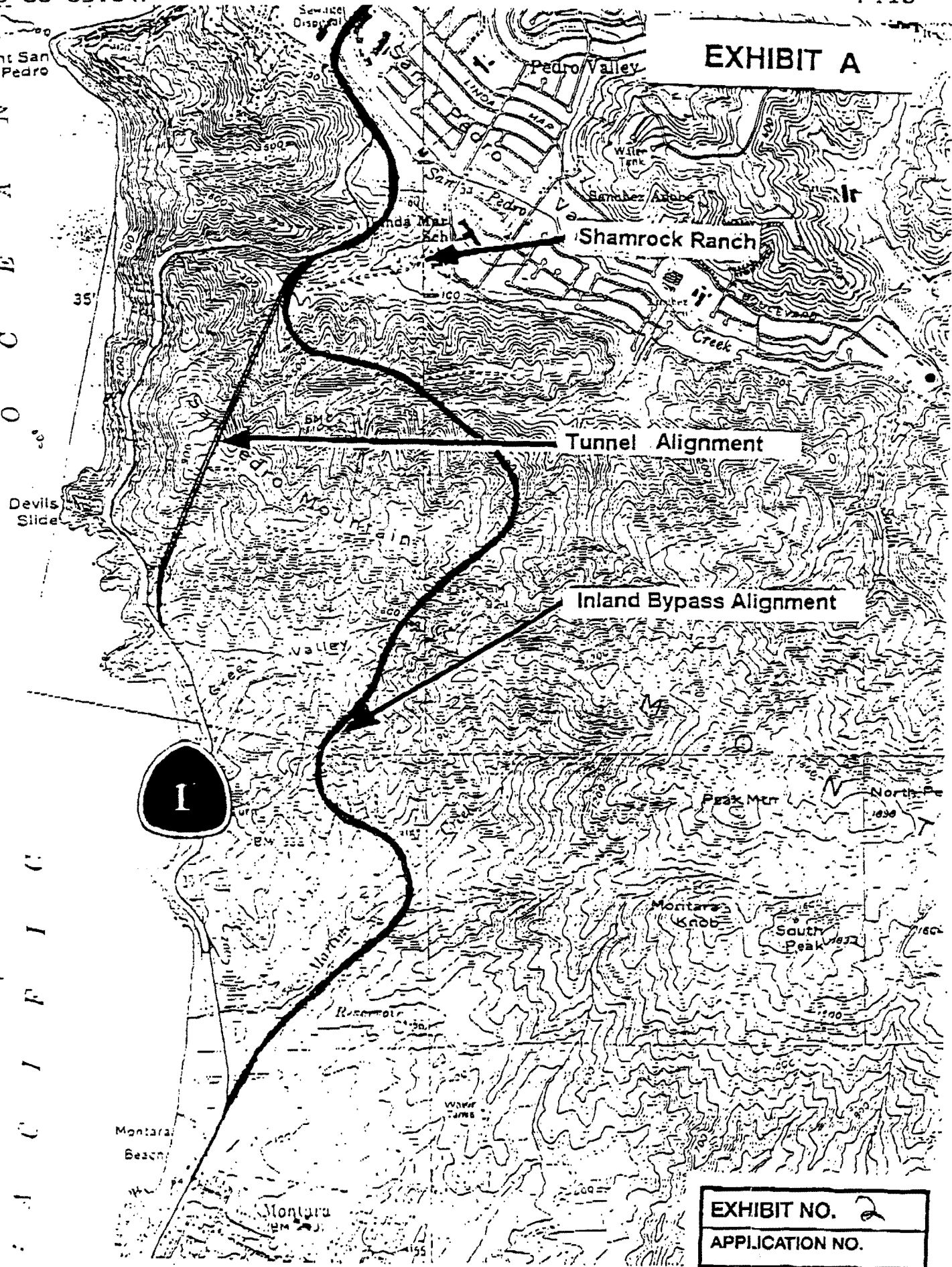


EXHIBIT NO. 2
APPLICATION NO.
CC-94-00
PART OF APPELLANT LTR

04-SM-
4243-1
Devil's



EXHIBIT B

PROPOSED TUNNEL PLAN

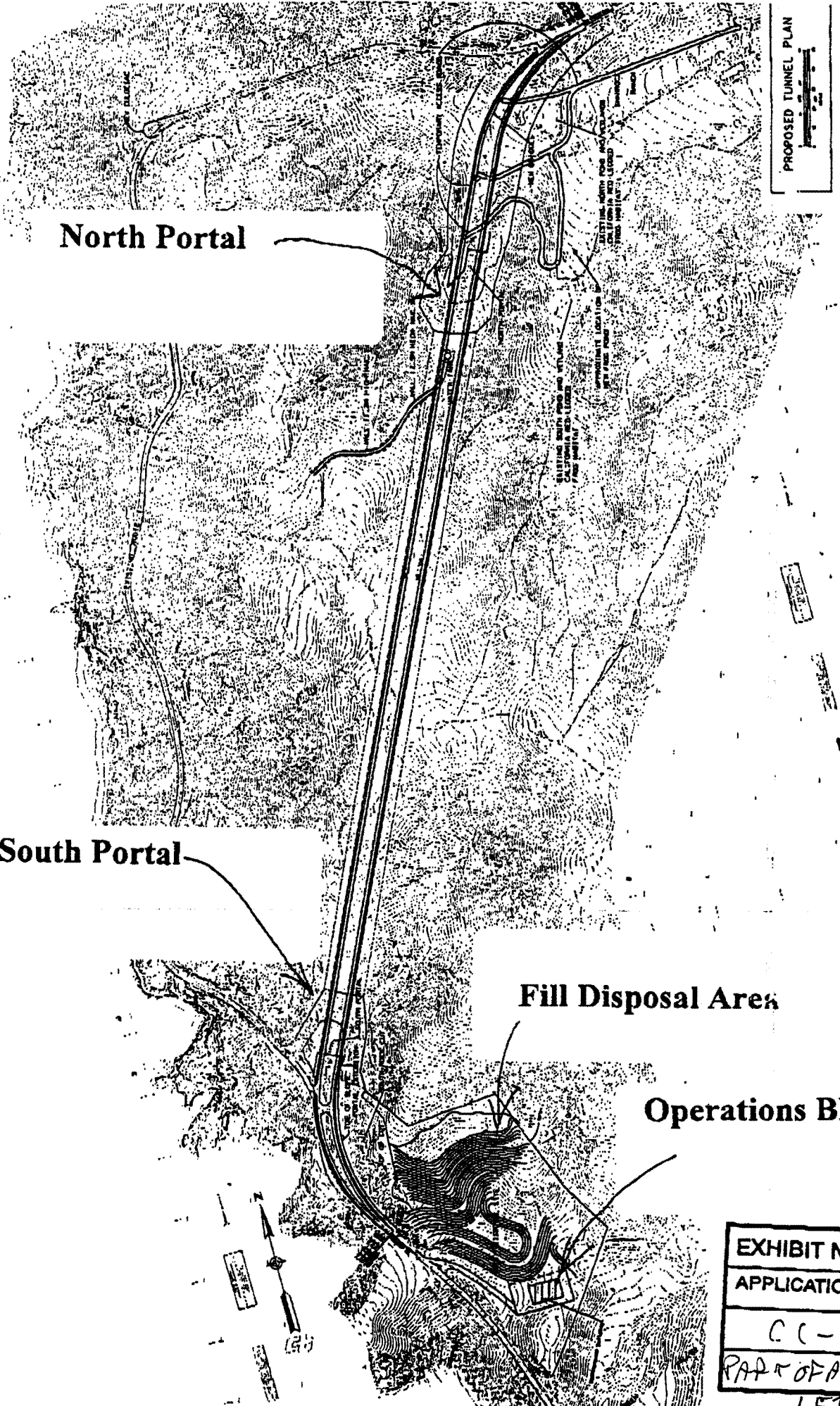
North Portal

South Portal

Fill Disposal Area

Operations Bldg.

EXHIBIT NO. 3
APPLICATION NO.
CC-94-00
PART OF APPELLANT LETTER



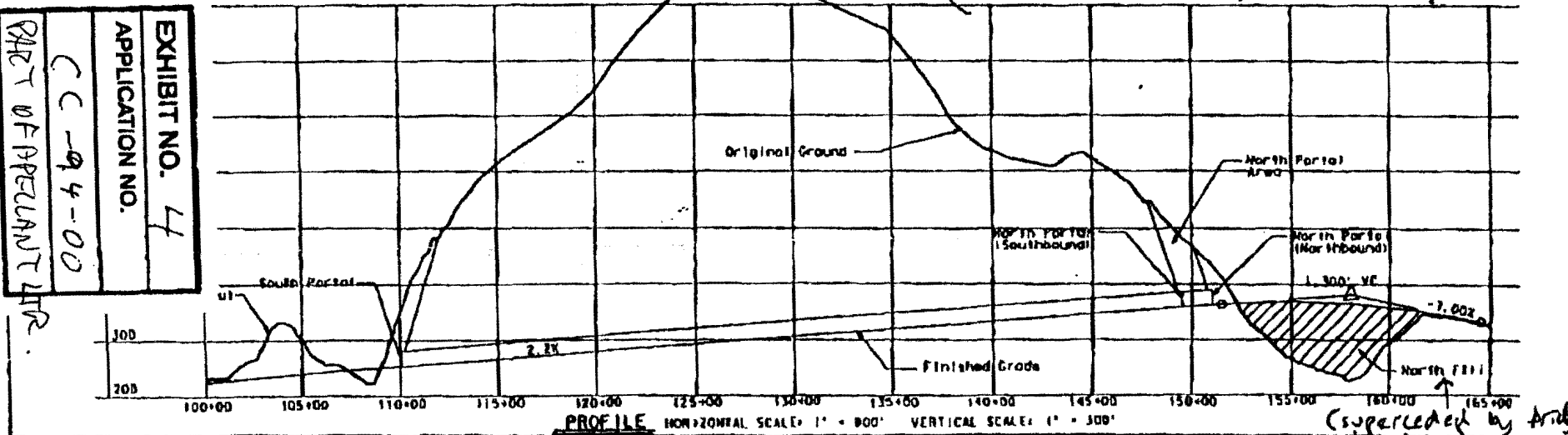
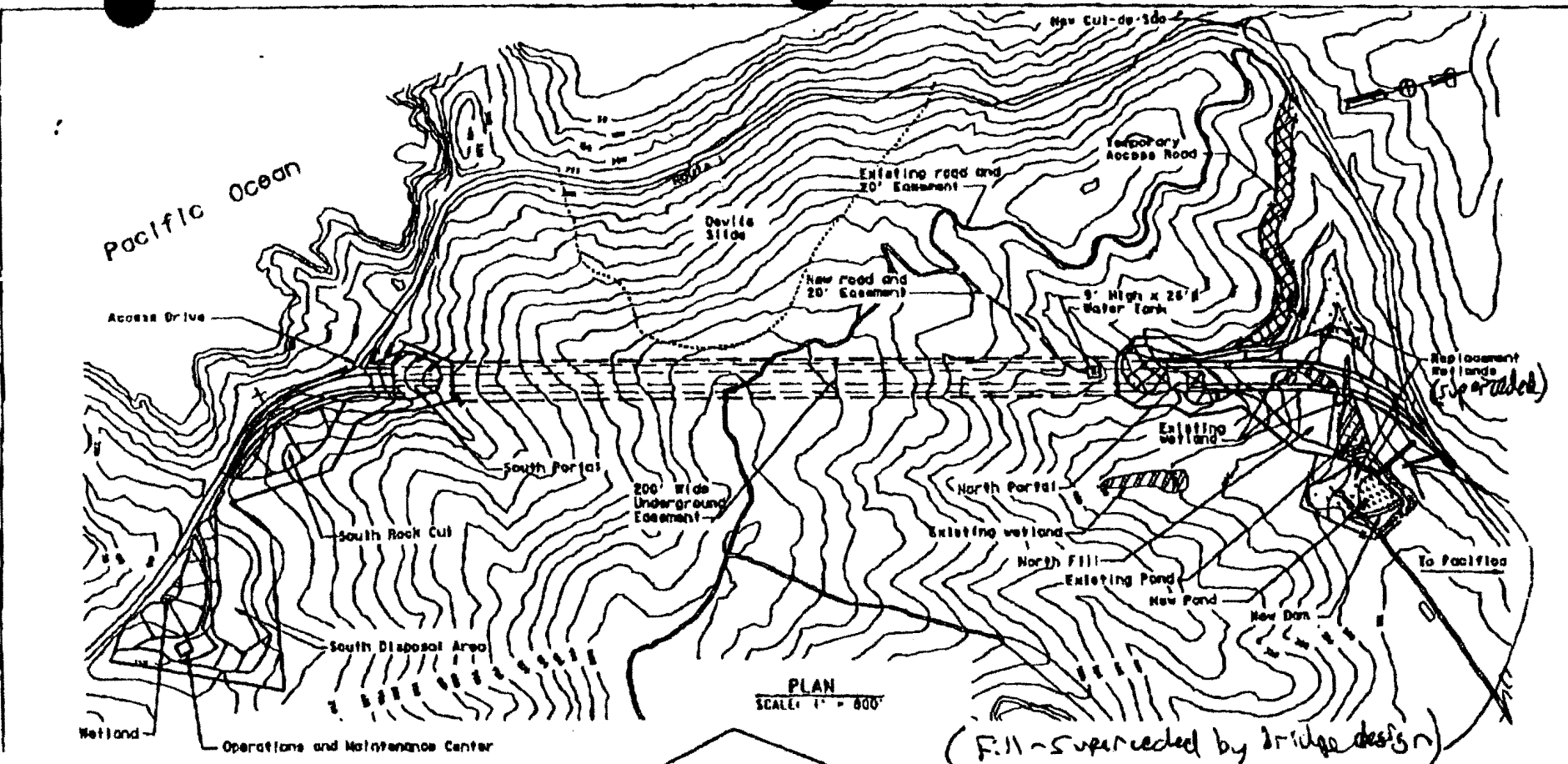


EXHIBIT NO. 4
 APPLICATION NO. CC-94-00
 PART OF PRELIMINARY

DOUBLE BORE TUNNELS PLAN AND PROFILE

(Superceded by bridge design)
 DEVIL'S SLIDE TUNNEL STUDY

RECEIVED
SEP 26 2000

"Change is inevitable...
Survival is not."



September 12, 2000

Peter Douglas, Executive Director
California Coastal Commission
45 Fremont, Suite 2000
San Francisco, California 94105-2219
Fax 415-804-5400

CALIFORNIA
COASTAL COMMISSION

Re: Devil's Slide Improvement Project, Draft Second Supplemental EIS/EIR
SCH No. 83051706
CCC Post-Cert No. 1-SMC-99-156

Dear Mr. Douglas,

This project will be subject to the requirement for a Coastal Development Permit to be issued by San Mateo County under its Local Coastal Program. The standard of review for that will be the consistency of the project with the certified LCP and with the public access policies of the Coastal Act. That permit will be appealable to the Coastal Commission. The project is also subject to review by the Coastal Commission for consistency with the federally-approved State Coastal Zone Management Program (CZMP), including the policies of the Coastal Act. The Half Moon Bay Coastside Foundation (dba Save Our Bay) has a few questions regarding the Procedural Guidance for the Review of Wetland Projects in the Coastal Zone (June 14, 1994) which has previously been distributed to Caltrans and the 1999 Bolsa Chica Appellate Court ruling on Environmentally Sensitive Habitat Area (ESHA) covered under the Coastal Act.

1. Is it consistent with the Coastal Act for the County of San Mateo to grant a CDP for development within 100 feet of wetlands as defined under the Coastal Act prior to the approval of the project EIS/EIR or the Record of Decision?
2. Under what circumstance does the Coastal Act allow highway development or fill in delineated wetland or ESHA as defined under the Coastal Act?
3. Has the Coastal Commission issued the certification of consistency for the captioned project?
4. Has San Mateo County or Caltrans been granted a "special exemption" to conduct wetland mitigation or highway development with in an ESHA as defined under the Coastal Act?
5. Can the Coastal Commission hear or even review a CDP appeal prior to the conclusion of a Brown Act violation hearing demanded on the Devil's Slide Tunnel Project CDP File # 2000-200536?
6. Has the County of San Mateo or the Coastal Commission notified Caltrans in writing since their May 11 and 12th 1999 statutory NEPA/CEQA public comment period letters (enclosed) that the LCP and Coastal Act now permit highway development and off-site mitigation of statutory delineated wetlands and riparian habitats?
7. Will the Commission please advise the SOB Foundation on how they want us to proceed with a timely appeal of Caltrans Devil's Slide Tunnels Frog Pond Mitigation Project, CDP Permit File # 2000-200536?

Your prompt written response and answers to the above questions would be very much appreciated.

Sincerely Yours,

John Plock

John Plock, Conservation/Environmental Review Director, PE

CC: Terry Burnes, Planning Administrator, San Mateo County
Robert Gross, Office of Environmental Planning South
Ging Bill Wong, Senior Transportation Engineer, FHWA
Cecilia Brown, U.S. Fish & Wildlife Service
Media Release

NOTE: 4:45 pm - 9-25-2000

Peter Douglas left
John Plock a message
Today STATING: "they
"simply didn't have
time to answer his
questions in writing."