

CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT
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Filed: May 16, 2002
 49th Day: July 4, 2002
 Staff: PTI-SF
 Staff Report: May 23, 2002
 Hearing Date: June 13, 2002
 Commission Action:

**STAFF REPORT: APPEAL
 SUBSTANTIAL ISSUE DETERMINATION**

APPEAL NO.: A-2-SMC-02-013

APPLICANTS: California Department of Transportation

AGENTS: Skip Sokow, Project Engineer

LOCAL GOVERNMENT: San Mateo County

LOCAL DECISION: Approval with Conditions

PROJECT LOCATION: Highway 1, Devil's Slide, south of Pacifica, San Mateo County

PROJECT DESCRIPTION: Exploratory geotechnical work including soil borings and access improvements at the site of the proposed Devil's Slide Tunnel (**Exhibit 1**)

APPELLANT: Oscar Braun, Executive Director, Half Moon Bay Coastside Foundation

SUBSTANTIVE FILE DOCUMENTS: San Mateo County PLN 2001-00799 (Caltrans)

STAFF RECOMMENDATION: No Substantial Issue

EXECUTIVE SUMMARY

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 appellant fails to raise a substantial issue as to the consistency of the approved project with the certified Local Coastal Program (LCP).

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The approved development consists of preliminary geotechnical exploratory work proposed by the California Department of Transportation (Caltrans) in connection with the Devil's Slide Tunnel Highway 1 bypass. The approved project specifically involves investigative borings for the north portal bridge, borings and trenchings along the proposed tunnel alignment and the north and south portals, and borings within the proposed disposal site (**Exhibit 2**). The approved project also involves the creation of new, and improvements to existing, paths and dirt roads to provide vehicle access to boring sites. The purpose of the project is to evaluate and characterize further the soil and geologic conditions along the alignment of the proposed tunnel project. The Devil's Slide Tunnel is the preferred Highway 1 bypass alternative recognized by the LCP and approved by the San Mateo County voters as part of Measure T in November 1996.¹

The appeal, without citation to specific LCP policies or allegation of specific impacts from the approved project, generally contends that the tunnel project as a whole will result in impacts to wetlands and environmentally sensitive habitat on the project site (**Exhibit 5**). Although the coastal development permit at issue relates to preliminary geotechnical exploratory work, and not to the proposed tunnel itself, the appellant presumably intends by the appeal to assert that the geotechnical work also results in similar impacts.

As finally approved by the County, all work proposed as part of the project, with the exception of Drill Site CTB9, will take place outside environmentally sensitive habitat areas, wetlands and associated buffer areas. With respect to Drill Site CTB9, which is located within the 100-foot buffer zone for the North Pond, the County conditioned its permit approval to require the removal of the boring from the buffer area, unless the applicant can provide written approval from the California Department of Fish and Game consistent with the LCP that a 50-foot buffer zone is adequate (**Exhibit 3**). Staff also notes that no alternative siting of Drill Site CTB9 is feasible. The County also conditioned its approval, *inter alia*, to (1) minimize vegetation removal, (2) implement an erosion and sediment control plan, and (3) require a revegetation plan, invasive exotic species control plan and mitigation monitoring report. As conditioned, the approved project avoids all impacts to wetlands and environmentally sensitive habitat areas consistent with the requirements of the LCP.

Staff accordingly recommends that the Commission find that the appeal raises no substantial issue concerning the conformity of the approved development with the San Mateo County LCP.

STAFF NOTES

Section 30625(b) of the Coastal Act 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 it is determined that there is no substantial issue, the Commission will continue with a full public hearing on the merits of the project at the same or subsequent hearing. If the Commission were

¹ The Coastal Commission certified LCP amendment 1-96, amending the County's LCP to reflect Measure T, on January 9, 1997. The Commission separately made a federal consistency determination for the tunnel project on October 10, 2000. The present appeal concerns the approval by the County of a coastal development permit for preliminary geotechnical investigative work in connection with the tunnel project; the tunnel project itself, which will require a separate coastal development permit, is not presently before the Commission.

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to conduct a de novo hearing on the appeal, the applicable standard of review is whether the development is in conformity with the certified LCP.

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.

1.0 STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

Pursuant to Section 30603(b) 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 appeals have been filed. The proper motion is:

Motion

I move that the Commission determine that Appeal No. A-2-SMC-00-034 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 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 motion fails and the Commission finds Substantial Issue, the Commission will hear the application de novo. The motion may pass only by an affirmative vote of a majority of the Commissioners present.

Resolution to Find Substantial Issue

The Commission finds that Appeal No. A-2-SMC-02-013 presents no 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 LCP and/or the public access and recreation policies of the Coastal Act.

2.0 FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

2.1 Local Government Action

On March 27, 2002, the San Mateo County Planning Commission approved a coastal development permit for the Devil's Slide Tunnel exploratory geotechnical work as proposed by Caltrans. Oscar Braun appealed the Planning Commission's approval the same day. On April 30, 2002, the San Mateo County Board of Supervisors, after public hearing, denied the appeal and conditionally approved the permit (**Exhibit 3**).

2.2 Appeal Process

After certification of an LCP, Coastal Act Section 30603 provides for appeals to the Coastal Commission of certain local government actions on coastal development permit (CDP) applications. Section 30603 states that an action taken by a local government on a CDP application may be appealed to the Commission for certain kinds of developments, including the approval of developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, those within 100 feet of any

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wetland, estuary or stream, those 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 such facilities are approved or denied by the local government.

This project is appealable to the California Coastal Commission because it is within 100 feet of a wetland and stream and constitutes a major public works project.

2.3 Filing of Appeal

The Commission received a Notice of Final Local Decision for the County Board of Supervisors' approval of the proposed development on May 2, 2002. In accordance with the Commission's regulations, the 10 working-day appeal period ran from May 3 through May 16, 2002 (14 CCR section 13110). Appellant Oscar Braun submitted his timely appeal to the Commission office on May 16, 2002 (**Exhibits 4 and 5**).

Pursuant to Section 30621 of the Coastal Act, the appeal hearing must be set within 49 days from the date that an appeal is filed. The 49th day from May 16, 2002 appeal filing date is July 5, 2002. Accordingly, the appeal is set for hearing on June 13, 2002, within the 49 day hearing limitation. In accordance with the Commission's regulations, on May 16, 2002 staff requested all relevant documents and materials regarding the subject permit from the County to enable staff to analyze the appeal and prepare a recommendation as to whether a substantial issue exists. The regulations provide that a local government has five working days from receipt of such a request from the Commission to provide the relevant documents and materials. The local government record was received by Commission staff on May 23, 2002.

2.4 Appellant's Contentions

The Commission received an appeal of the County of San Mateo's decision to approve the project from Oscar Braun. Appellant's contentions as submitted to the Commission are attached in full as **Exhibit 5**. Without reference to specific LCP policies or allegation of specific impacts, the appeal generally contends that the tunnel project as a whole will result in impacts to wetlands and environmentally sensitive habitat inconsistent with the LCP. For purposes of this staff report, the following construes the appellant's contentions to refer to the approved geotechnical exploration work.

2.5 Project Location and Site Description

The test borings and access road improvements which are part of the approved project are generally located along the alignment of the proposed Devil's Slide Tunnel at San Pedro Mountain, just west of Devil's Slide, and at the proposed disposal site for excavated fill located east of Highway 1 and just south of the South Portal (**Exhibit 1**).

The portion of San Pedro Mountain affected by the project consists of a series of prominent, steeply sloping ridges, covered predominantly by Northern Coastal Scrub habitat, grassland and isolated stands of Monterey cypress. The proposed disposal site is a natural bowl-shaped depression east of Highway 1, also characterized predominantly by Northern Coastal Scrub vegetation. San Pedro Mountain in the vicinity of the proposed borings is crisscrossed by

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several, existing fire and utility maintenance roads, an abandoned County road and various foot trails. At the North Portal of the proposed tunnel, San Pedro Mountain slopes down into a deep ravine on Shamrock Ranch, at the bottom of which an agricultural pond is located. The ravine is part of the San Pedro Creek drainage, and a San Pedro Creek tributary and riparian corridor connect with the agricultural pond. The South Portal of the proposed tunnel also slopes into a natural depression dominated by a riparian corridor and wetland area, which lie in the path of the proposed south tunnel entrance and would be filled as part of the tunnel project.²

The pond at the North Portal, which would eventually be spanned by the North Portal bridge as part of the tunnel project, has been identified as habitat for the California red-legged frog (CRLF). A Biological Assessment prepared by Caltrans in 1999 included protective measures for the CRLF. The proposed protective measures were approved by the U.S. Fish and Wildlife Service (USFWS) in a Biological Opinion dated December 18, 2000 concluding that the tunnel bypass and proposed conservation measures were not likely to jeopardize the CRLF's continued existence or destroy or significantly impact critical CRLF habitat (**Exhibit 6**). One of these conservation measures was removal of all CRLFs from the North Pond and their replacement in a new pond designed and constructed in collaboration with USFWS. This measure has already been implemented.³

2.6 Project Description

The approved development consists of preliminary, geotechnical exploratory work in connection with Caltrans' proposed Devil's Slide Tunnel. The approved project involves multiple, investigative borings and trenchings along the tunnel alignment and within the proposed disposal site for excavated fill material. The project also involves the creation of new, and improvements to existing, paths and dirt roads to provide vehicle access to boring sites (**Exhibit 2**). The purpose of the project is to evaluate and characterize further the soil and geologic conditions along the alignment of the proposed tunnel project as part of the final tunnel design process.

The approved project includes (1) borings at seven drilling sites on the proposed site of the North Portal bridge, (2) fifteen drilling sites and six trenches along the tunnel alignment, and (3) ten drilling sites in the proposed disposal area. To reach the drilling sites, Caltrans will regrade and repair approximately 3,200 meters of existing road and construct three, new vehicle turn around/staging areas. Caltrans will also construct approximately 600 meters of new, temporary, 3-meter wide, dirt access road with turning points to reach boring sites above and around the North Portal. An additional, narrow footpath will be cleared by hand from Drill Site 01-19 along Highway 1 to the existing pathway between Drill Sites 01-14 and 01-15 near the South Portal.

Drilling equipment will be brought to the drill sites along the new and improved access roads primarily by truck- and trailer-mounted drill rigs. For Drill Sites 01-3, 01-14 and 01-15, drill rigs on skids will be transported by helicopter.

² Adopted findings made by the Commission in certifying the Measure T LCP amendment in January 1997 recognized that the proposed tunnel alignment would result in the fill of wetlands, including the wetlands near the South Portal, and a finding made pursuant to Coastal Act Section 30007.5 that given the importance of Highway 1 for public access the tunnel project nevertheless on balance was most protective of coastal resources.

³ The Commission approved the plan to relocate the CRLF as part of the October 2000 federal consistency determination with respect to the tunnel project. The Commission separately determined at the October 2000 hearing that an appeal by Oscar Braun and Save Our Bay Foundation of the County's coastal development permit for the new CRLF pond on Shamrock Ranch (A-2-SMC-00-35, PLN 2000-00536) raised no substantial issue.

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The borings at the northern entrance to the tunnel for the North Portal Bridge are located in a steep ravine near the North Pond, but outside environmentally sensitive CRLF habitat. Borings 01-1, 01-2 and 01-19, originally located in the buffer zones of the wetlands and riparian corridor near the South Portal, as well as Boring CTB 1-4, originally located in a riparian buffer zone near the North Portal, have been either moved outside the buffer zone or eliminated from the project. Temporary tank storage area TA-3 has also been moved outside the buffer zone of the wetlands near the South Portal.

The County conditioned its permit approval of the project to require the removal of Drill Site CTB9, which was proposed to be located within the 100-foot buffer zone for the North Pond, from the buffer area, unless the applicant can provide written approval from the California Department of Fish and Game consistent with the LCP that a 50-foot buffer zone is adequate (**Exhibit 3**). The County further conditioned its approval to require Caltrans to (1) minimize vegetation removal, (2) implement an erosion and sediment control plan, and (3) submit a revegetation plan, invasive exotic species control plan and mitigation monitoring report.

No portion of the approved development, either roads, paths or drill sites, is located within either environmentally sensitive habitat, wetlands, riparian corridors, habitats of rare and endangered species or associated buffer areas as defined in the LCP. (As noted above, the County's permit approval is conditioned to require the removal of Drill Site CTB9 from within the 100-foot buffer zone for the North Pond, unless the applicant can provide written approval from the California Department of Fish and Game consistent with LCP requirements that a 50-foot buffer zone is adequate.)

2.7 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.

The appeal generally contends that the project as approved by the County would cause impacts to environmentally sensitive habitat and wetlands in a manner inconsistent with the policies of the LCP protecting those resources.

Section 30625(b) of the Coastal Act states that the Commission shall hear an appeal unless it determines

[w]ith 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" (Cal. Code Regs., title 14, section 13115(b)). In previous decisions on appeals, the Commission has been guided by the following factors:

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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 permit decision by filing petition for writ of mandate pursuant to Code of Civil Procedure Section 1094.5.

In this case, for the reasons discussed below, the Commission determines that the development approved by the County raises no substantial issue with regard to the appellants' contentions. The Commission's findings of fact apply only to the approved development at issue in this appeal and do not limit either the County or the Commission's review of Caltrans' permit application for the proposed tunnel project itself.

2.7.1 Biological Resources

The Commission finds that the appellants' contentions regarding alleged impacts to environmentally sensitive habitat and wetlands raise no substantial issue of conformity of the approved development with the certified LCP.

Contention

The appellant contends in general terms that the tunnel project will result in impacts to environmentally sensitive habitat areas (ESHAs) and wetlands. The appellant does not cite or allege inconsistencies with respect to specific LCP policies, nor does the appellant make allegations of specific impacts from the geotechnical exploratory work or access improvements which are part of the approved project.

Applicable LCP Policies

LCP 7.1 defines sensitive habitats to include

any area in which plant or animal life or their habitats are either rare or especially valuable and any area which meets one of the following criteria: (1) habitats containing or supporting "rare or endangered" species as defined by the State Fish and Game Commission, (2) all perennial and intermittent streams and their tributaries, . . . (6) lakes and ponds and adjacent shore habitat, . . .

LCP Policy 7.3 prohibits any land use or development which would have significant adverse impact on sensitive habitat areas and requires that development in areas adjacent to sensitive habitats be sited and designed to prevent impacts that could significantly degrade the sensitive habitats.

LCP Policy 7.4 limits permissible uses in sensitive habitats to resource dependent uses, as defined in the LCP.

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LCP Policy 7.7 defines "riparian corridors" by the "limit of riparian vegetation," based on a predominance of listed riparian plant species.

LCP Policy 7.11 requires buffer zones (1) on both sides of riparian corridors of 50 feet for perennial streams and 30 feet for intermittent streams from the "limit of riparian vegetation," (2) in riparian corridors where there is no riparian vegetation, of 50 feet from the predictable high water point for perennial streams and 30 feet from the midpoint of intermittent streams, and (3) of 100 feet from the high water point along lakes, ponds and other wet areas, except manmade ponds and reservoirs used for agricultural purposes.

LCP Policy 7.14 defines wetland as an area where the water table is at, near, or above the land surface long enough to bring about the formation of hydric soils or to support the growth of plants which are normally found to grow in water or wet ground.

LCP Policy 7.18 generally establishes a 100-foot buffer for wetland areas from the outermost line of wetland vegetation. This setback may be reduced to 50 feet where no alternative development site or design is possible and adequacy of the alternative setback to protect wetland resources is conclusively demonstrated by a professional biologist to the satisfaction of the County and State Department of Fish and Game.

LCP Policy 7.32 designates habitats of rare and endangered species to include without limitation those areas defined on the Sensitive Habitats Map for the Coastal Zone.

LCP Policy 7.33 limits permissible uses within habitats of rare and endangered species to certain listed uses and, where critical habitat has been identified by the Federal Office of Endangered Species, to "those uses deemed compatible by the [USFWS] in accordance with the provisions of the Endangered Species Act of 1973, as amended."

Discussion

As noted above, there are several areas on the project site which meet the LCP definitions of sensitive habitats, riparian corridors, wetlands, and/or habitats of rare and endangered species. In particular, there is an agricultural pond and a San Pedro Creek tributary riparian corridor area at the North Portal of the proposed tunnel. Near the South Portal of the proposed tunnel there is also a riparian corridor and wetland area. The pond at the North Portal, which would eventually be spanned by the North Portal bridge as part of the tunnel project, has been identified as wetlands and the pond and the upland area around it as sensitive habitat for the CRLF.

Exhibit 2 shows the location of the approved project in relation to the limits of wetlands and riparian corridors on the site, which were delimited by Caltrans based on field surveys. (As noted above, Borings 01-1, 01-2 and 01-19, and temporary tank storage area TA-3, as well as Boring CTB 1-4, have been either eliminated from the project or moved outside the wetlands and riparian corridors buffer zones.) As part of the eventual tunnel project, Caltrans proposes to build a bridge spanning the ravine from the current alignment of Highway 1 and the North Portal of the tunnel. Pursuant to LCP Policy 7.18, the 100-foot wetland buffer may be reduced to 50 feet where: (1) no alternative development site or design is possible, and (2) adequacy of the alternative setback to protect wetland resources is conclusively demonstrated by a professional biologist to the satisfaction of the County and the State Department of Fish and Game. The purpose of the approved geotechnical investigation is to allow Caltrans to complete the final design and engineering for the tunnel project itself. The preliminary design for the tunnel includes placement of a bridge support footing for the North Portal Bridge at the location of Drill

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Site CTB9. Caltrans engineers have indicated that it is necessary to take borings at Drill Site CTB9 and that it is not feasible to relocate this drill site while still providing the data necessary to determine the engineering criteria for the proposed bridge footing. As such, no alternative development site or design is possible for Drill Site CTB9 as approved by the County.

Nevertheless, the County's approval of Drill Site CTB9 in no way limits the discretion of the County in its future consideration of a coastal development permit application for the tunnel (or the Commission on appeal) to require an alternative location or design for the bridge footing if feasible. The County's permit approval, as conditioned, requires that no portion of the approved development take place within 100 feet of the North Pond. Specifically, Condition 9 of the County's approval requires that no drilling shall occur at Drill Site CTB9, unless the applicant can provide written approval from the California Department of Fish and Game consistent with the LCP that a 50-foot buffer zone is adequate, consistent with Policy 7.18 of the certified LCP (**Exhibit 3**). Per the County's record, no alternative for Drill Site CTB9 exists because the boring is exploratory work is the only feasible location to conduct the necessary testing.

As conditioned, no portion of the approved development, either access improvements or drill sites, is located within either wetlands, riparian corridors, or required LCP buffer areas in accordance with LCP policies 7.7, 7.11, 7.14 and 7.18. The approved project also avoids significant disturbance of ESHAs and habitats of rare and endangered species in conformity with LCP policies 7.1, 7.3, 7.32 and 7.33. As noted above, the North Pond and upland area around it has been identified as sensitive habitat for the CRLF. The approved project avoids impacts to adjacent ESHA, consistent with the protective measures approved by the USFWS in its consideration of the tunnel bypass project in the December 18, 2000 Biological Opinion (**Exhibit 6**). The USFWS-approved protective measures include, in particular, the relocation of all CRLFs from the North Pond to a new pond designed and constructed in collaboration with USFWS. The construction of the new pond and relocation of the CRLF has now been implemented. Other protective measures include protective frog fencing around both the North Pond and temporary access roads. The USFWS has opined that the relocation of the frogs and implementation of other protective measures will avoid all impacts to the CRLF from the proposed tunnel project.

The construction of the new pond and relocation of the CRLF were approved by the Commission in two, separate actions in October 2000. The Commission approved the plan to relocate the CRLF as part of the October 2000 federal consistency determination with respect to the tunnel project and, in addition, separately determined that an appeal of the County's coastal development permit (Local permit PLN 2000-00536) for the new CRLF pond on Shamrock Ranch (A-2-SMC-00-35) raised no substantial issue.

Because the approved project, as conditioned, will occur entirely outside of wetlands, riparian corridors and required LCP buffer zones and will avoid significant disturbance to ESHAs and rare and endangered species habitat consistent with USFWS approval, and because protective measures including the relocation of CRLF from the North Pond have already been taken to protect sensitive species on the project site, the approved project will not result in impacts to biological resource areas inconsistent with the LCP.

2.7.2 Conclusion

The Commission finds that, for the reasons stated above, the approved project will not result in impacts to biological resources inconsistent with the provisions of the certified LCP and

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therefore the appeal does not raise a substantial issue with respect to conformity of the approved project with the certified LCP.

EXHIBITS

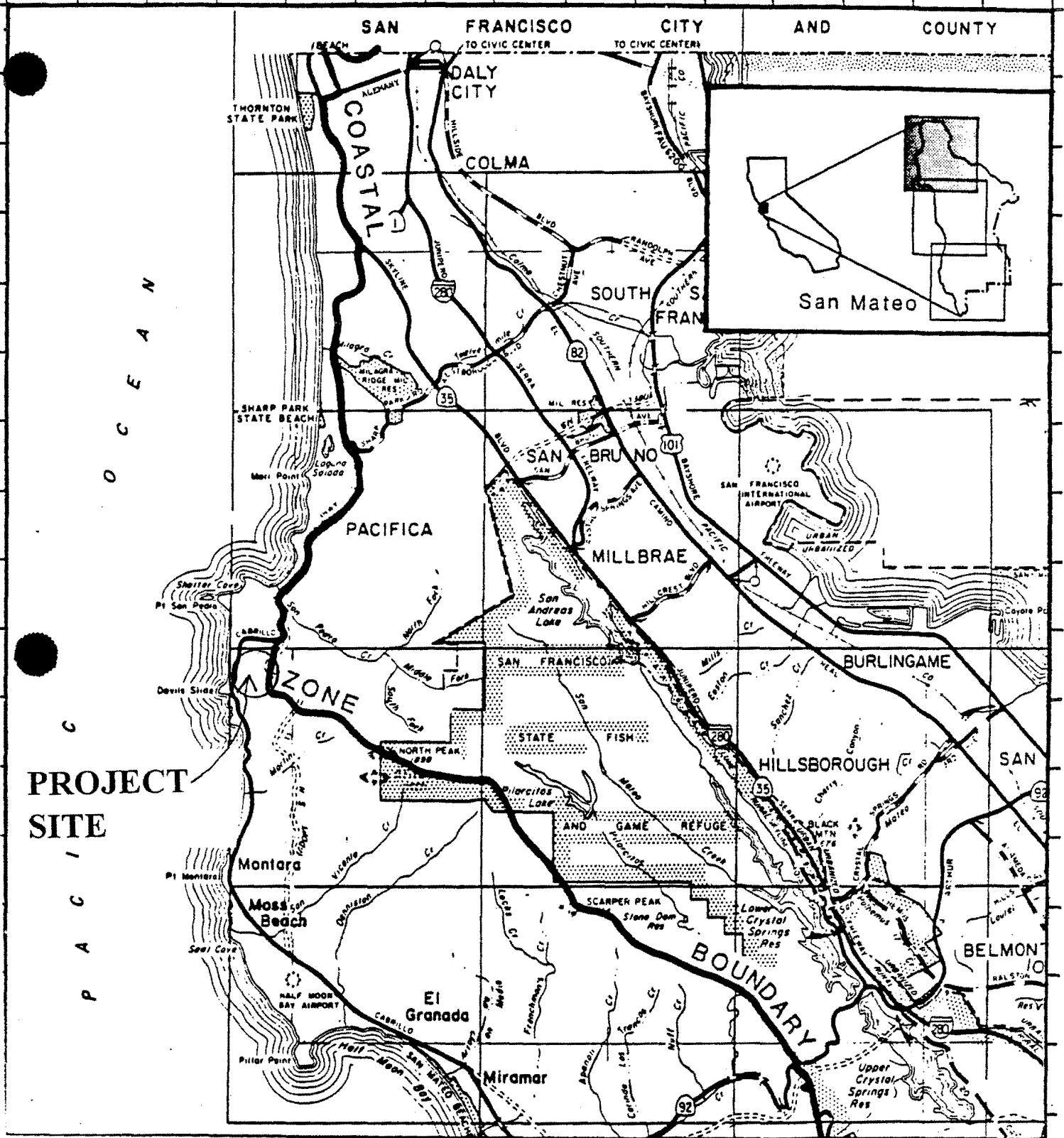
- 1 Location Map
- 2 Project Plans
- 3 San Mateo County Notice of Final Decision, Findings and Approval Conditions
- 4 Commission Notification of Oscar Braun Appeal
- 5 Appeal by Oscar Braun, Half Moon Bay Coastside Foundation
- 6 USFWS December 18, 2000 Biological Opinion

APPENDICES

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

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

SAN FRANCISCO CITY AND COUNTY



O C E A N

PROJECT SITE

LOCATION MAP



EXHIBIT NO. 1
APPLICATION NO. A-2-SMC-02-013
CALTRANS

County of San Mateo

California Coastal Commission

PACIFIC OCEAN

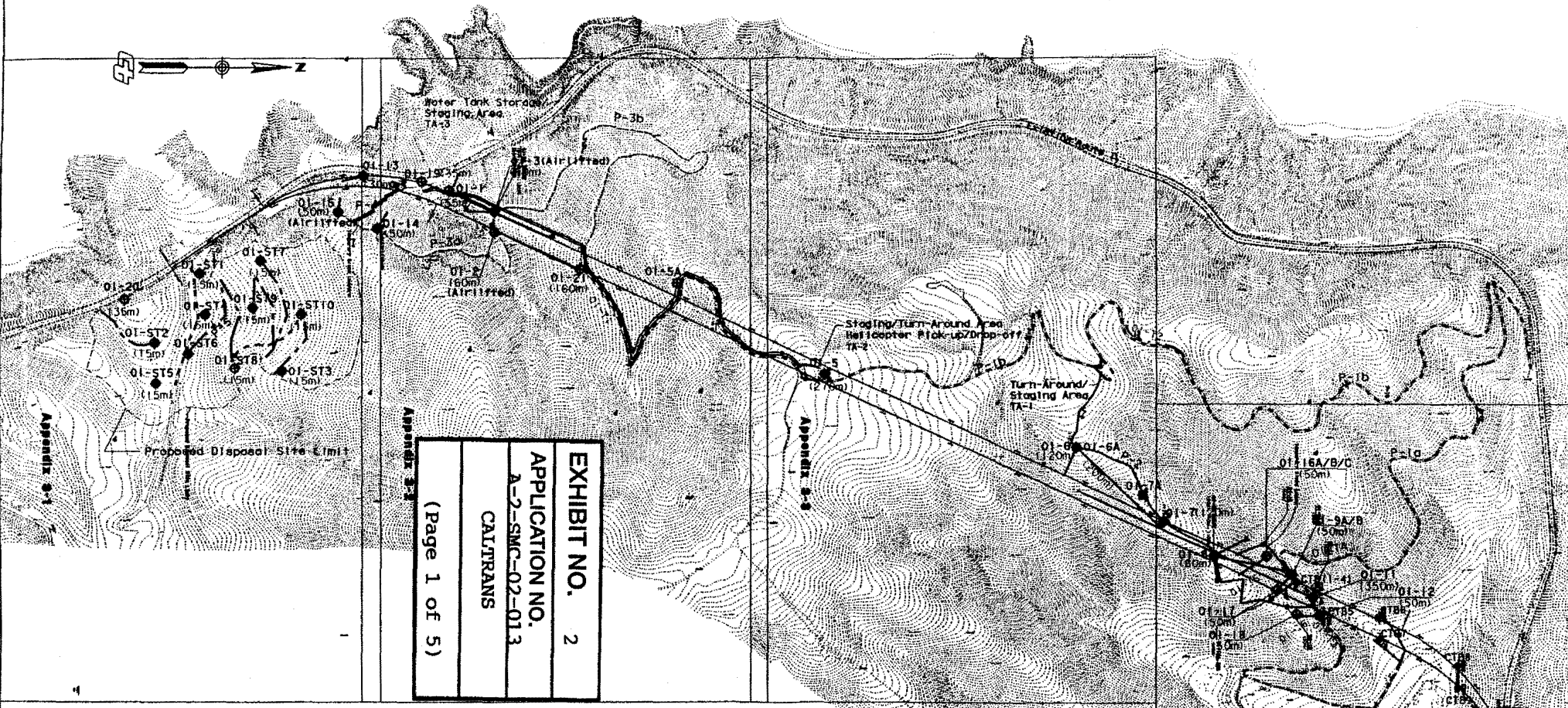
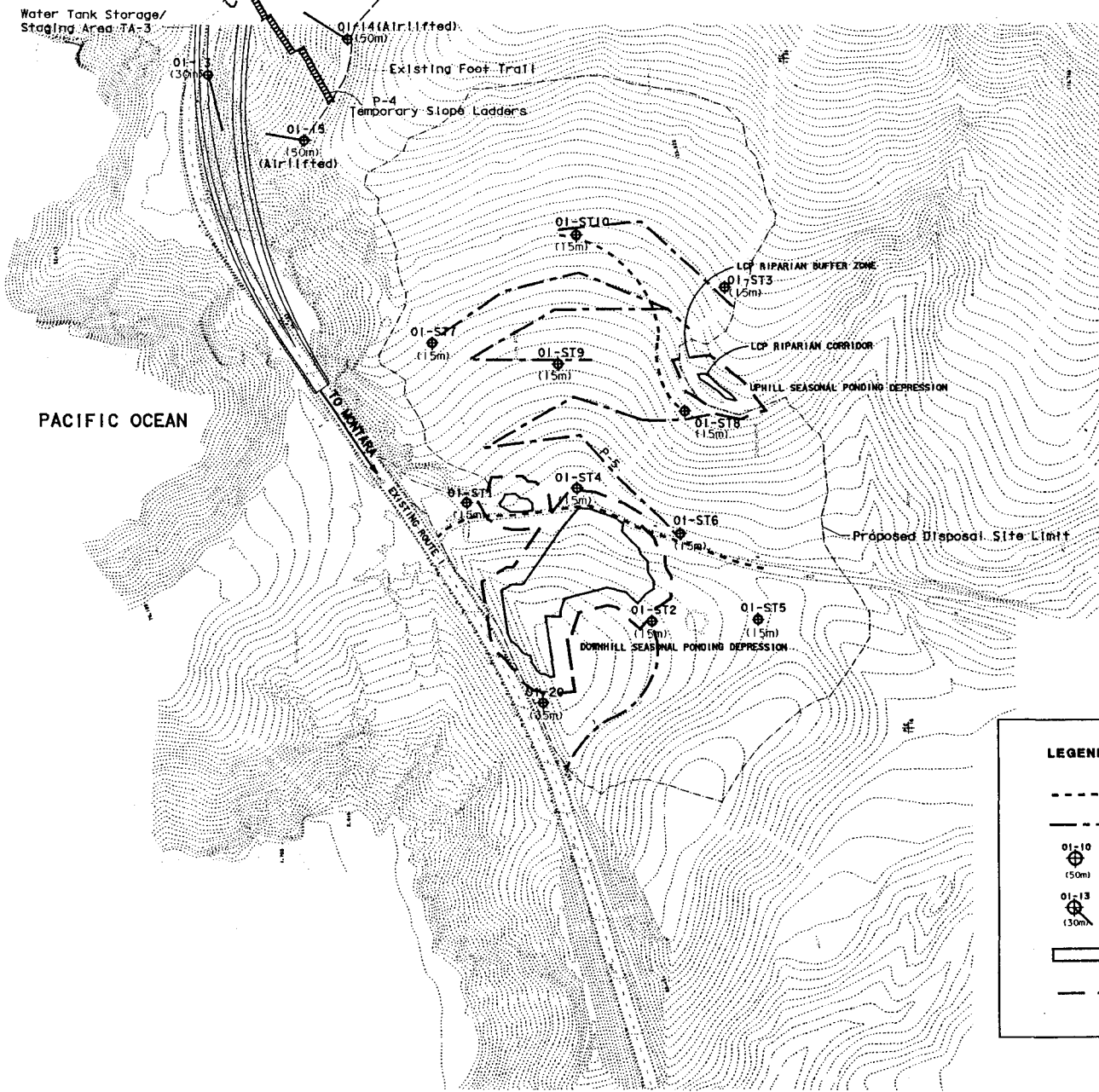


EXHIBIT NO.	2
APPLICATION NO.	A-2-SMC-02-013
CALTRANS	
(Page 1 of 5)	

Legend :	
-----	Exist. Trail/Road to be used for exploration work by Consultants/Caltrans
-----	Exist. Trail/Road to be used for exploration work only by Caltrans
-----	Proposed new access path
-----	Proposed new access road for exploration work
-----	Proposed new trench zone
-----	Existing foot trail
-----	Water Tank Storage and staging area
-----	1" dia. flexible water supply line (temporary)
-----	Proposed Caltrans boring for Bridge Structure
-----	Proposed new boring (Target depth)
-----	Proposed new Inalined boring (Target depth)
-----	Proposed alternate boring -

Appendix 3-1
 San Mateo County Local Coastal Program
 Wetland Jurisdictional Map
 Fill Disposal Drainage Area
 Geotechnical Investigation Program Impact

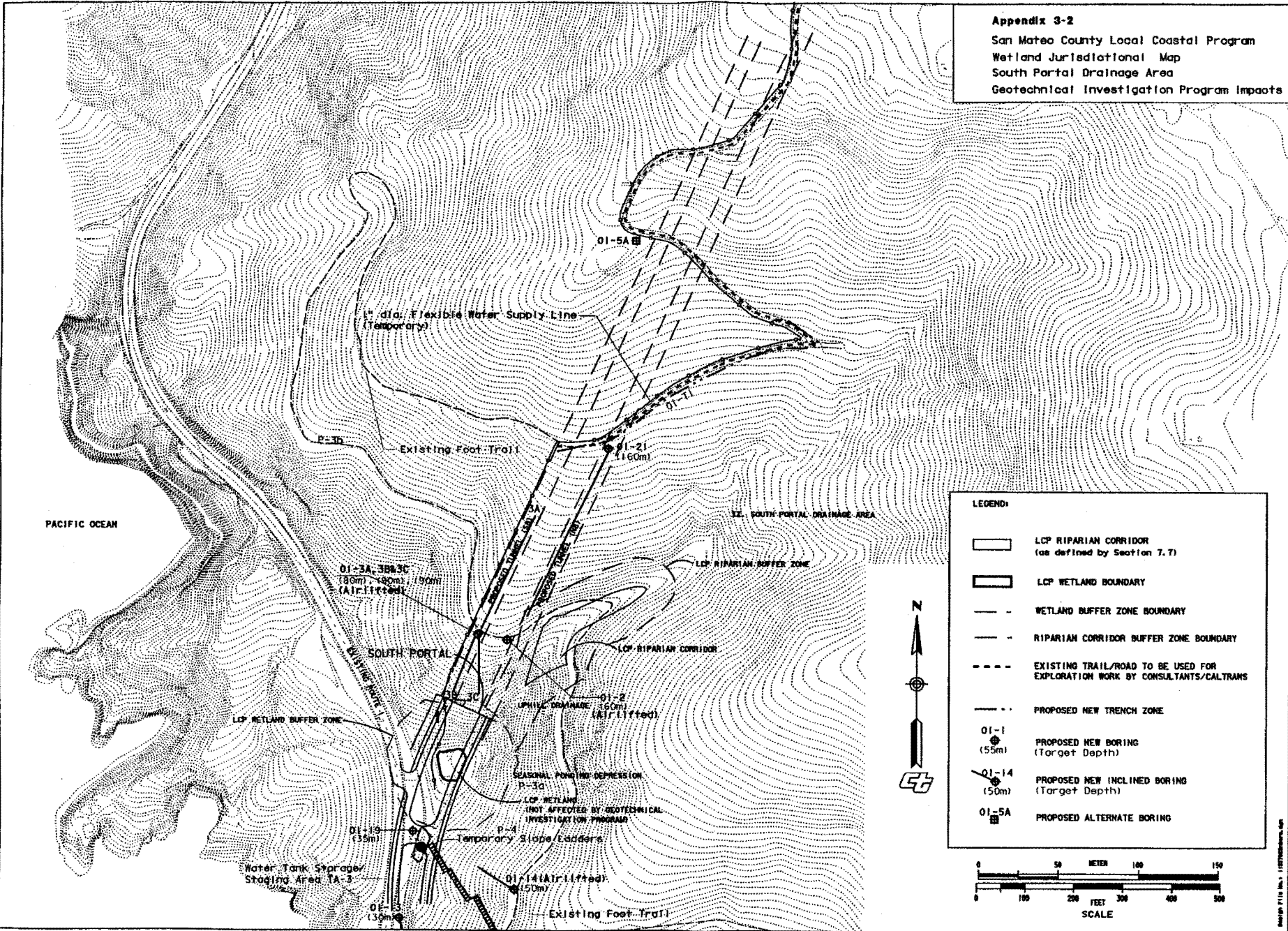


LEGEND:

- Existing Trail/Road to be used for exploration work by Consultants/Caltrans
- - - Proposed new access path
- 01-10 (50m) Proposed new boring (Target depth)
- 01-13 (30m) Proposed new Inclined boring (Target depth)
- [Solid Line] LCP RIPARIAN CORRIDOR (as defined by Section 7.7)
- - - RIPARIAN CORRIDOR BUFFER ZONE BOUNDARY

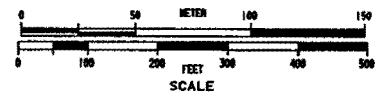
Appendix 3-2

San Mateo County Local Coastal Program
 Wetland Jurisdictional Map
 South Portal Drainage Area
 Geotechnical Investigation Program Impacts



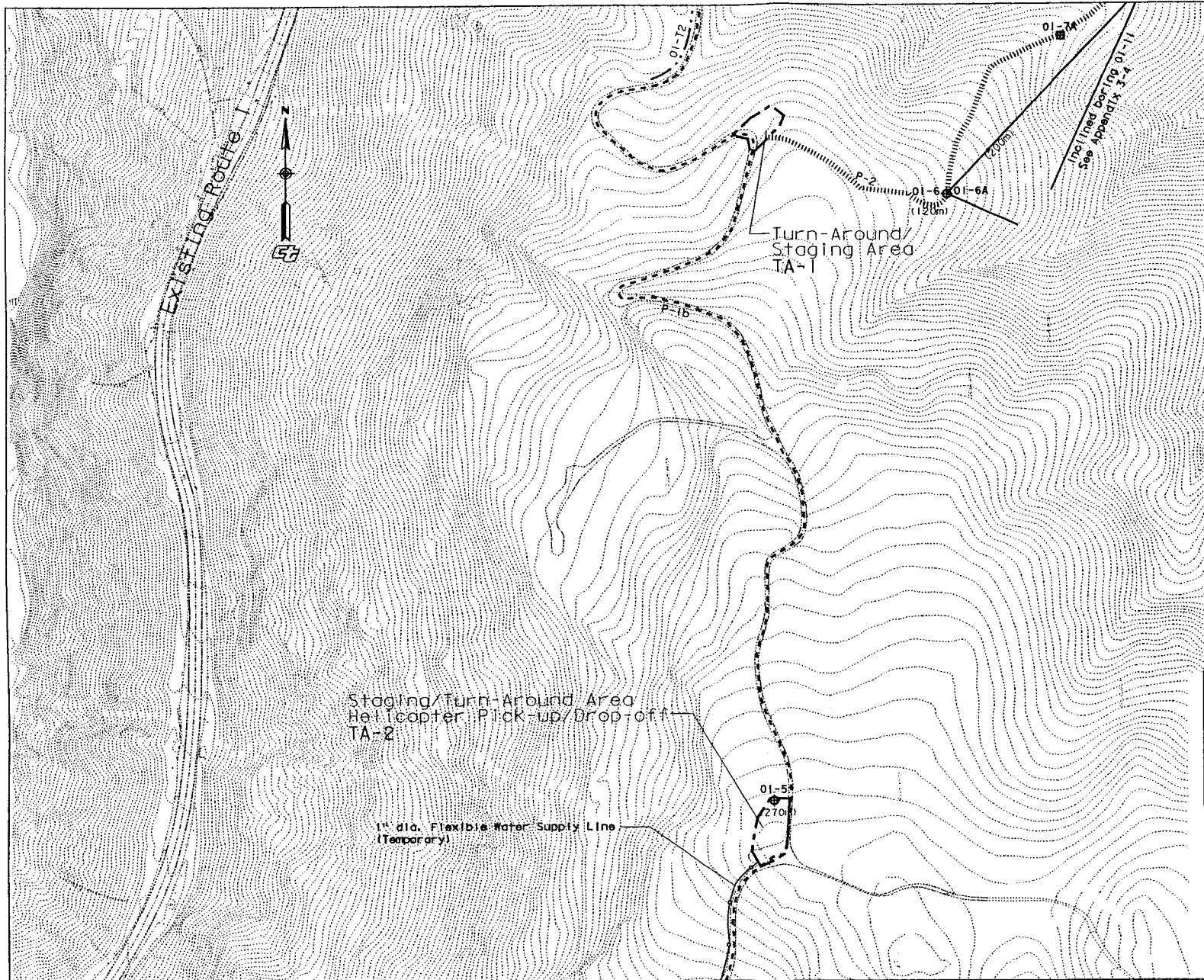
LEGEND:

- LCP RIPARIAN CORRIDOR (as defined by Section 7.7)
- LCP WETLAND BOUNDARY
- WETLAND BUFFER ZONE BOUNDARY
- RIPARIAN CORRIDOR BUFFER ZONE BOUNDARY
- EXISTING TRAIL/ROAD TO BE USED FOR EXPLORATION WORK BY CONSULTANTS/CALTRANS
- PROPOSED NEW TRENCH ZONE
- 01-1 (55m) PROPOSED NEW BORING (Target Depth)
- 01-14 (50m) PROPOSED NEW INCLINED BORING (Target Depth)
- 01-5A PROPOSED ALTERNATE BORING



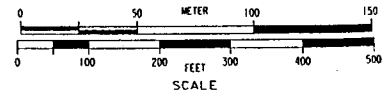
Map 9110, Rev. 1/19/78, 11/87

Appendix 3-3
 San Mateo County Local Coastal Program
 Section 404 Jurisdictional Map
 North Portal/Shamrock Ranch Drainage Area
 Geotechnical Investigation Impacts
 (No Impact on This Sheet)



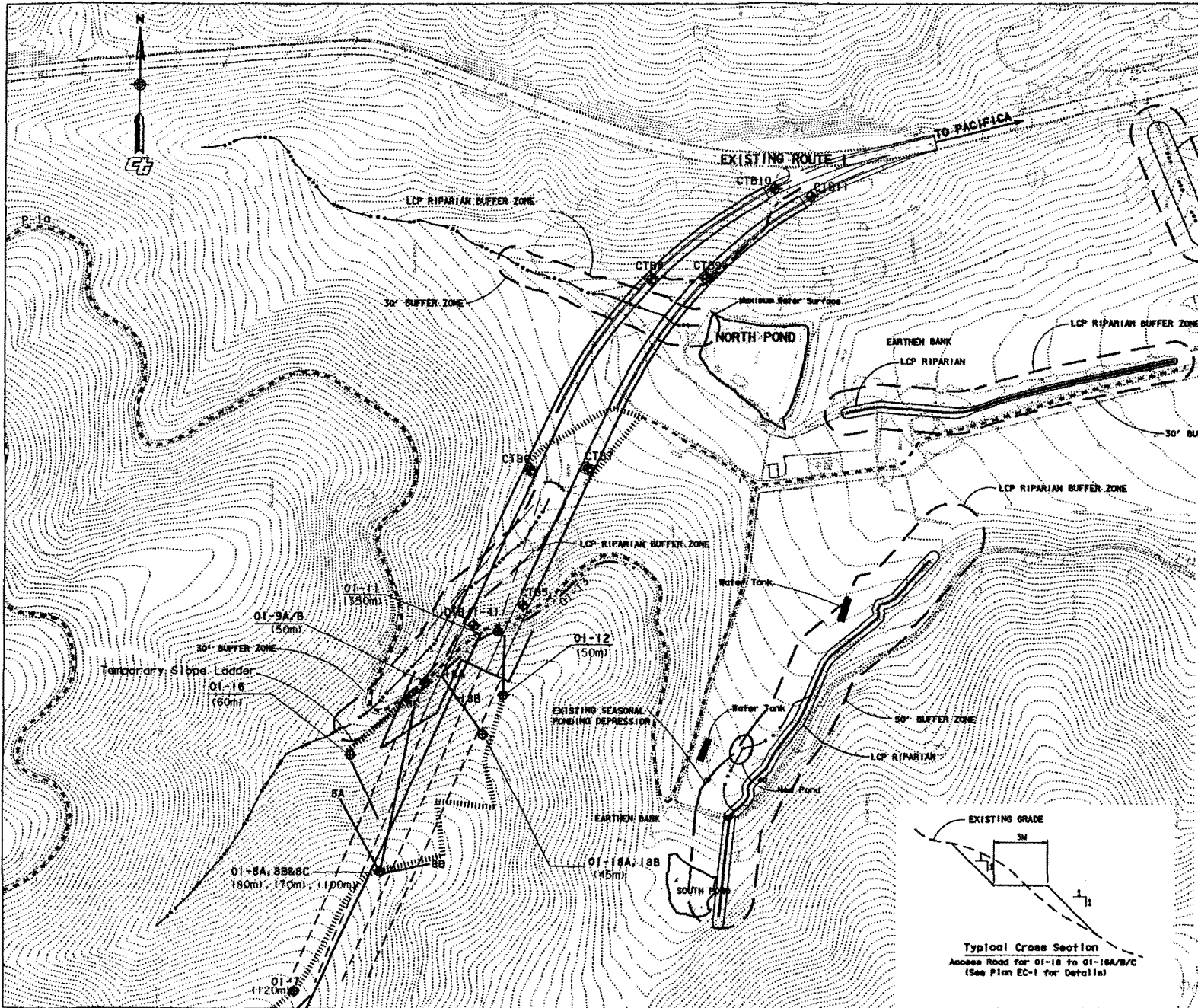
LEGEND

- EXISTING TRAIL/ROAD TO BE USED FOR EXPLORATION WORK BY CONSULTANTS/CALTRANS
- - - PROPOSED NEW TRENCH ZONE
- ||||| PROPOSED NEW ACCESS ROAD FOR EXPLORATION WORK
- 01-5 (270m) PROPOSED NEW BORING (Target Depth)
- 01-6 (120m) PROPOSED NEW INCLINED BORING (Target Depth)
- 01-7A PROPOSED ALTERNATE BORING



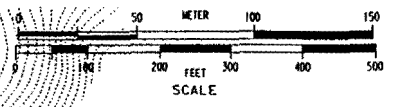
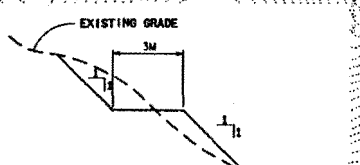
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Appendix 3-4
San Mateo County Local Coastal Program
Wetland Jurisdictional Map
North Portal/Shamrock Ranch Drainage Area
Geotechnical Investigation Impacts



LEGEND

- INTERMITTENT CREEK
- PERENNIAL CREEK
- LCP RIPARIAN CORRIDOR (as defined by Section 7.7)
- RIPARIAN CORRIDOR BUFFER ZONE BOUNDARY
- MAN-MADE POND BOUNDARY
- EXISTING TRAIL/ROAD TO BE USED FOR EXPLORATION WORK BY CONSULTANTS/CALTRANS
- EXISTING TRAIL/ROAD TO BE USED FOR EXPLORATION WORK ONLY BY CALTRANS
- PROPOSED NEW ACCESS PATH
- PROPOSED NEW TRENCH ZONE
- PROPOSED NEW ACCESS ROAD FOR EXPLORATION WORK
- 01-18 (150m) PROPOSED NEW BORING (Target Depth)
- 01-8 (80m) PROPOSED NEW INCLINED BORING (Target Depth)
- CT88 PROPOSED CALTRANS BORING FOR BRIDGE STRUCTURE





Please reply to: Mike Schaller
650/363-1849

April 30, 2002

RECEIVED

MAY 07 2002

CALIFORNIA
COASTAL COMMISSION

Oscar Braun
1589 Higgins Canyon Road
Half Moon Bay, CA 94019

Notice of Final Local Decision

**ENVIRONMENTAL
SERVICES
AGENCY**

Subject: Appeal of File Number PLN 2001-00799
Location: Devil's Slide, Near Pacifica
APN(s): 023-731-020; 023-741-010, -020; 036-380-060, -070, -080, -120

Dear Mr. Braun:

On April 30, 2002, the San Mateo County Board of Supervisors considered your request of an appeal of the Planning Commission's decision to approve a Coastal Development Permit to authorize exploratory geotechnical work for the proposed Devil's Slide Tunnel.

Based on the information provided by staff and evidence presented at the hearing, the Board of Supervisors denied the appeal and upheld the decision of the Planning Commission by making the findings and adopting the conditions of approval as attached.

This item is appealable to the California Coastal Commission. The Coastal Commission will begin its appeal period upon receipt of the Notice of Final Local Decision. For questions or concerns regarding the Coastal Commission's appeal period and its process, please call 415/904-5260.

Sincerely,

KD Rud
Kan Dee Rud
Planning Commission Secretary
bosdec0430m.devilsld.fc.doc

Attachment

cc: Supervisor Richard Gordon
Marcia Raines, Director of
Environmental Services
Marie Shanks, Agenda Coordinator
Pete Bentley, Public Works
Jim Eggemeyer, Planning and
Building Division

Bill Cameron, Building Inspection Section
Planning Director, City of Pacifica
California Coastal Commission
Skip Sowko, CalTrans
Dana Denmen
Lennie Roberts
John Plock
Other Interested Parties

EXHIBIT NO. 3
APPLICATION NO. A-2-SMC-02-013
CALTRANS
(Page 1 of 3)

Agricultural
Commissioner/ Sealer of
Weights & Measures

Animal Control

Cooperative Extension

Fire Protection

LAFCo

Library

Parks & Recreation

Planning & Building

PLANNING AND BUILDING

COUNTY OF SAN MATEO
ENVIRONMENTAL SERVICES AGENCY

FINDINGS AND CONDITIONS OF APPROVAL

Permit or Project File Number: PLN 2001-00799

Hearing Date: April 30, 2002

Prepared By: Michael Schaller

Adopted By: Board of Supervisors

FINDINGS

Regarding the Environmental Review:

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:

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 LCP.
3. That the project conforms to the specific findings required by policies of the San Mateo County LCP.

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 Board of Supervisors. Minor revisions or modifications to the project may be made subject to the review and approval of the Planning Director.
2. 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.
3. The applicant shall minimize the removal of vegetation. The applicant is allowed to remove or trim only that vegetation which is necessary to conduct the geotechnical investigation program.

4. The applicant shall implement the erosion and sediment control plan as proposed. All disturbed areas which are not a part of future projects shall be restored to the satisfaction of the Planning Administrator.
5. Prior to the beginning of any work associated with this permit, the applicant shall submit a revegetation plan for review and approval by the Planning Division. The revegetation plan shall consist of native plant species endemic to the project area. The plan shall outline species to be used, their percentage at each location, and the source of the plant material. Success criteria for each location shall be established and shall be based upon percent survival and coverage.
6. Prior to the beginning of any work associated with this permit, the applicant shall take photographs of all areas to be disturbed by this project. Additionally, photos will be taken of each boring or trenching area at the time of completion of work, and then at subsequent 1-, 3-, and 5-year intervals. These photos shall be submitted to the Planning Division for inclusion in the project file. Said photos shall be used to gauge the effectiveness of restoration efforts.
7. Prior to the beginning of any work associated with this permit, the applicant shall submit an invasive exotic species control plan for review and approval by the Planning Division. Said plan shall describe how exotic species will be controlled and establish success criteria to be measured at 1-, 3-, and 5-year intervals.
8. At the completion of this project, the applicant shall submit a mitigation monitoring report, outlining in detail, what measures were taken to restore each disturbed area. The applicant shall submit monitoring report updates at 1-, 3-, and 5-year intervals.
9. No drilling shall occur at proposed Bridge Boring Site 9, unless the applicant can provide a written confirmation from the State Department of Fish and Game stating their approval of a 50 feet buffer zone for this pond

CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT OFFICE
 FREMONT, SUITE 2000
 SAN FRANCISCO, CA 94105-2219
 (415) 904-5260



COMMISSION NOTIFICATION OF APPEAL

DATE: May 16, 2002

TO: Mike Schaller, Project Planner
 County of San Mateo, Building & Planning
 455 County Center
 Redwood City, CA 94063

FROM: Peter T. Imhof, Coastal Planner 

RE: **Commission Appeal No. A-2-SMC-02-013**

EXHIBIT NO.	4
APPLICATION NO.	A-2-SMC-02-013
CALTRANS	

Please be advised that the coastal development permit decision described below has been appealed to the California Coastal Commission pursuant to Public Resources Code Section 30602 or 30625. Therefore, the decision has been stayed pending Commission action on the appeal pursuant to Public Resources Code Section 30623.

Local Permit #: PLN2001-00799
 Applicant(s): Department Of Transportation, District 4
 Description: To authorize exploratory geotechnical work for the proposed Devil's Slide Tunnel.
 Location: Route 1 (from Half Moon Bay Airport to Linda Mar Boulevard), Pacifica (San Mateo County) (APN(s) 023-731-020, 023-741-010, 023-741-020, 036-380-060, 036-380-070, 036-380-080, 036-380-120)
 Local Decision: Approved w/ Conditions
 Appellant(s): Half Moon Bay Coastside Foundation, Attn: Oscar Braun
 Date Appeal Filed: 5/16/2002

The Commission appeal number assigned to this appeal is A-2-SMC-02-013. The Commission hearing date has not yet been established for this appeal. Within 5 working days of receipt of this Commission Notification of Appeal, copies of all relevant documents and materials used in the County of San Mateo's consideration of this coastal development permit must be delivered to the North Central Coast District office of the Coastal Commission (California Administrative Code Section 13112). Please include copies of plans, relevant photographs, staff reports and related documents, findings (if not already forwarded), all correspondence, and a list, with addresses, of all who provided verbal testimony.

A Commission staff report and notice of the hearing will be forwarded to you prior to the hearing. If you have any questions, please contact Peter T. Imhof at the North Central Coast District office.

Half Moon Bay

Coastside Foundation

Water Quality Protection Program

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To: California Coastal Commission
 From: Oscar Braun, Executive Director, 1589 Higgins Canyon Rd, Half Moon Bay, CA 94019,
 Telephone: 650-726-3307 Email: oscarb@pacbell.net Fax: 650-726-2799
 Subject: Appeal of San Mateo County CDP File Number PLN 2001-00799
 Location: Devil's Slide Improvement Project, Route 1 from Hwy 1 from Half Moon Bay Airport to Linda
 Mar Boulevard in Pacifica, San Mateo County, California

OSB

EXHIBIT NO. 5
APPLICATION NO. A-2-SMC-02-013
CALTRANS
(Page 1 of 18)

Section II Decision Being Appealed

1. Name of local government. San Mateo County .
2. Brief description of development being appealed. *"In 1996, the applicant, CalTrans, prepared a geotechnical investigation of the proposed tunnel alignment to determine the feasibility of such a project. The tunnel has since become the applicant's preferred alternative to address the Devils Slide problem. The applicant is now proposing additional boring and trenching to further evaluate and characterize soils and geologic conditions at the north and south tunnel portals, along the tunnel alignment, and at the proposed disposal area. Improvements to existing paths, trails, and dirt roads, and the creation of additional paths and trails, are proposed to provide vehicular and foot access to the boring and trenching sites. All areas disturbed by the proposed project will be restored upon the completion of the geotechnical work. The overall project consists of three distinct parts: investigative borings for the north portal bridge, borings and trenchings along the proposed tunnel alignment and borings with the proposed disposal s area." Quotation from SMC document dated April 10, 2002 County File # PLN-2001-00799 (CalTrans)*
3. Development location: Devil's Slide Improvement Project, Shamrock Ranch near Pacifica.
4. Description of decision being appealed. See Attachment A Dated April 30, 2002
5. Decision being appealed was made by: San Mateo County Board of Supervisors
6. Date of local government decision: April 30, 2002
7. Local government file number: Appeal of File Number PLN 2001-00799

SECTION III. Identification of Other Interested Persons

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Name and address of permit applicant:

Caltrans, Department of Transportation, District 4, 111 Grand Ave, Oakland CA. 94623

Names and addresses of those that testified at the county hearing:

Oscar Braun, Executive Director, 1589 Higgins Canyon Road, Half Moon Bay, CA. 94019

John Plock, (RCE 26066) P.O. Box 2136, El Granada, CA 94018

Victor H. Abadie III, (Consulting Geologist) P.O. Box 81, Montara CA. 94037-0081

SECTION IV. Reasons Supporting This Appeal

All reasons supporting this appeal are quotations found in the California Coastal Commissions **Adopted Finding for the San Mateo County LCP Amendment No. 1-96 (Devil's Slide Tunnel Initiative) and the CCC Consistency Certification (CC-94-00). These documents consolidates all of the findings into one document and provides a complete record of the resolution and finding that the Commission actually adopted at its January 9, 1997 hearing. All Commission Adopted Findings quotations are presented here in "Italics".**

Federal Highway Administration (FHWA) procedures require Commission concurrence in a consistency certification prior to finalization of an Environmental Impact Statement (EIS) and issuance of a record of decision (ROD) Accordingly, Caltrans has now submitted to the Commission for its review a consistency certification for the Devil's Slide tunnel project. Yet another (third) Commission review may also occur because, once the environmental documents are finalized, Caltrans will apply to San Mateo County for a coastal development permit (CDP) and that permit would be appealable to the Commission. Given the historic controversy surrounding Devil's Slide issues, such an appeal appears likely. (CC-94-00, CalTrans page 2)
All construction activities regarding the 1986 Devil's Slide Route 1 Improvement Project require a CDP issued by San Mateo County and are appealable to the Coastal Commission.

In these situations, the Commission performs its federal consistency review in a "phased" manner. The "phase" of the Commission's review that is before it at the present time is for a limited purpose of assuring that the fundamental concept, goals and objectives of the project are consistent with the applicable California Coastal Management Program (CCMP) Coastal Act policies. (The standard of review for the subsequent coastal development will be the policies of the San Mateo County LCP) More detail review at this time is precluded by the fact that final design, engineering, and final mitigation measures and monitoring plans have not been fully developed, although they have been substantially more fully developed than when the Commission reviewed the Measure T LCP amendment. (CC-94-00, CalTrans page 2) "Timing and Capacity of Later Phases 2.54 c. Require that roadway improvement be consistent with policies of the Local Coastal Plan, particularly the Sensitive Habitat and Agriculture Components." (SMC LCP #1-96 Page 4) The San Mateo County Local Coastal Program requires that the preferred alternative be the most protective and least environmentally damaging alternative. The "No Project" alternative (aka repair/dewatering of the current Devil's Slide Route 1 alignment) is the least environmentally damaging feasible alternative

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and therefore is the **ONLY** alternative "Consistent" with the CCC certified Measure-T Amendment 1-96 of the Local Coastal Program for the San Mateo County Devil's Slide Route 1 Improvement Project.

Wetland and ESHA Impacts

The Commission acknowledged that the tunnel raised concern over potential adverse effects on wetlands environmentally sensitive habitat, including: (1) direct displacement of wetlands; (2) potential elimination or degradation of habitat of endangered species habitat; and (3) sedimentation into environmentally sensitive wetland habitat. The Commission determined that while a tunnel could be found environmentally preferable to the far more environmentally damaging Devil's Slide bypass through McNee Ranch State Park, design details, alternatives, and mitigation measures would need to be refined, and the ultimate tunnel design and alignment would need to constitute the least environmentally damaging feasible alternative. (CC-94-00, CalTrans page 2 &3) The San Mateo County Local Coastal Program requires that the preferred alternative be the most protective and least environmentally damaging alternative. The "No Project" alternative (aka repair/dewatering of the current Devil's Slide Route 1 alignment) is the least environmentally damaging feasible alternative and therefore is the **ONLY** alternative "Consistent" with the CCC certified Measure-T Amendment 1-96 of the Local Coastal Program for the San Mateo County Devil's Slide Route 1 Improvement Project.

*"Based on a review of this information, (Woodward-Clyde feasibility study) construction of a tunnel pursuant to the proposed LCP amendment would result in the following three kinds of environmentally sensitive wetland fill impacts, including (1) the direct displacement of wetland, (2) the elimination or degradation of habitat of the endangered species habitat, and (3) the sedimentation of sensitive wetland habitat." (SMC LCP 1-96 paragraph #2 page 16) Balanced against these beneficial aspects of the project is the competing fact that the project also will fill wetlands and environmentally sensitive habitat for a use that is not allowed by either Sections 30233 and 30240 of the Coast Act. (CC-94-00 page 3 CalTrans) The CalTrans Tunnels/Bridges/Fill/Mitigation Preferred Alternative design are inconsistent with Section 30230, 30321, 30233, and 30240 of the Coastal Act and would result in "elimination or degradation of the habitat of the endangered species red-legged frogs in the north pond area under the Tunnels/Bridges ESHA. The San Mateo County Local Coastal Program requires that the preferred alternative be the most protective and least environmentally damaging alternative. The "No Project" alternative (aka repair/dewatering of the current Devil's Slide Route 1 alignment) is the "least environmentally damaging feasible alternative" and therefore is the **ONLY** alternative "Consistent" with the CCC certified Measure-T Amendment 1-96 of the Local Coastal Program for the San Mateo County Devil's Slide Route 1 Improvement Project.*

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Policy 7.34 states, among other things, that "any development must not impact the functional capacity of the habitat". and recommend mitigation if development is permitted within or adjacent to identified habitats of rare and endangered species. "Policy 7.35 states that the County must require preservation of all habitat of rare and endangered species..." Thus, an applicant for the tunnel project would need to demonstrate how the particular design chosen for any necessary fill for the tunnel project will ensure the habitat of the red-legged frog is not compromised. (Adopted Findings SMC LCP 1-96 page 23) CalTrans has not demonstrated that their preferred alternative Tunnels/Bridges/Fill/Mitigation design will not negatively impact the functional and biological capacity of the environmentally sensitive habitat area (ESHA) or ensure the habitat of the red-legged frog is not compromised. The San Mateo County Local Coastal Program requires that the preferred alternative be the most protective and least environmentally damaging alternative. The "No Project" alternative (aka repair/dewatering of the current Devil's Slide Route 1 alignment) is the "least environmentally damaging alternative" and therefore is the ONLY alternative "Consistent" with the CCC certified Measure-T Amendment 1-96 of the Local Coastal Program for the San Mateo County Devil's Slide Route 1 Improvement Project

2 Elimination or Degradation of Endangered Species Habitat

*"Construction of the tunnel project could adversely affect the habitat of the red-legged frog (*Rana aurora draytonii*), an endangered species that lives in or near riparian corridors or freshwater ponds and marshes. A survey of red-legged frog habitat in the Devil's Slide area was conducted by Caltrans in 1996 as part of the environmental studies conducted for the previously proposed Martini Creek Bypass. The resulting report, dated April 7, 1996, and prepared by Biologist Dr. Samuel McGinnis, is entitled: The Status of the San Francisco Garter Snake and the California Red-Legged Frog Within or Adjacent to the Proposed Right of Way of the Route 1 Devils Slide Bypass. The report identifies red-legged frog habitat existing at three locations in the vicinity, including the two ponds at Shamrock Ranch to the north with the proposed alignment of the proposed North Portal approach road as well as small pools in the Green Valley drainage, which would be unaffected by the preferred tunnel alternative. These sites were also identified as having the potential to support a second endangered species, the San Francisco garter snake (*Thamnophis sirtalis tetrataenia*), because the red-legged frog is the primary prey of the snake. No San Francisco garter snakes have yet been identified at these locations, however."* (SMC LCP 1-96(page 17)

"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

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bridge could either permanently block or destroy the spring sites that serve as the water source of the ponds, cause siltation in the ponds, and temporarily disrupt adjacent upland foraging/retreat area for the frogs." (SMC LCP 1-96 page 18) CalTrans has not demonstrated that their preferred alternative Tunnels/Bridges/Fill/Mitigation design will not negatively impact the functional and biological capacity of the environmentally sensitive habitat area (ESHA) or ensure the habitat of the red-legged frog is not compromised. CalTrans Tunnels/Bridges/Fill/Mitigation Preferred Alternative design with its geotechnical borings and trenching construction activities are inconsistent with Section 30230, 30321, 30233, and 30240 of the Coastal Act and would result in "elimination or degradation of the habitat of the endangered species red-legged frogs in the north pond area under their Tunnels/Bridges/Fill/Mitigation project." The San Mateo County Local Coastal Program requires that the preferred alternative be the most protective and least environmentally damaging alternative. The "No Project" alternative (aka repair/dewatering of the current Devil's Slide Route 1 alignment) is the "least environmentally damaging feasible alternative" and therefore is the ONLY alternative "Consistent" with the CCC certified Measure-T Amendment 1-96 of the Local Coastal Program for the San Mateo County Devil's Slide Route 1 Improvement Project.

Tunnels/Bridges/Fill/Mitigation Within A Environmentally Sensitive Habitat Area (ESHA)

Balanced against these beneficial aspects of the project is the competing fact that the project also will fill wetlands and environmentally sensitive habitat for a use that is not allowed by either Sections 30233 and 30240 of the Coastal Act. However, the impacts of this fill can be mitigated by a wetland replacement and environmentally sensitive habitat restoration program that will be required through the coastal development permit that must be obtained for the project, pursuant to the wetland fill and habitat protection policies of the certified San Mateo County LCP. The Commission also notes that the placement of the fill and the encroachment into environmentally sensitive habitat is the least environmentally damaging feasible alternative. (CC-94-00, CalTrans page 4) The Coastal Act and the San Mateo County Local Coastal Program requires CalTrans to explore the "No Project alternative as most protective and least environmentally damaging. The "No Project" alternative could mean taking no action, or possible intensifying efforts to dewater the landslide at Devil's Slide. As the highly respected Coastside Consulting Geologist Victor H. Abadie III stated in his enclosed April 27, 2002 letter to the San Mateo Board of Supervisors: "Dewatering the landslide and repairing the existing roadway violates no law, create no impact on the wetlands or ESHA, and are is explicitly authorized under the San Mateo County Measure-T Local Coastal Program. Lastly, a geotechnical study of the landslide will violate no wetland laws, because there are no wetlands on the landslide itself."

For these reason the Commission finds, pursuant to Sections 30007.5 and 30200 of the Coastal Act, that on balance it is more protective of coastal resources to resolve this conflict by approving the project and allowing the proposed wetland fill and encroachment into

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environmentally sensitive habitat. Based on Caltrans incorporation into the project design of 1) a number of features intended to avoid wetland impacts, including alignment refinements and the bridging rather than filling of the more environmentally sensitive wetlands at the north portal, and 2) further mitigation measures (including wetland mitigation (on-site restoration and off-site mitigation as described on pages 14-18), restoring trail crossings, water quality measures, and re-vegetation of disturbed slopes), the Commission again concludes that, while inconsistent with the allowable use test of Section 30233(a) of the Coastal Act, the tunnel is consistent with the Coastal Act based on the conflict resolution section (Section 30007.5) of the Coastal Act (CC-94-00 CalTrans) The Commission is citing the findings adopted in 1997 in the CCC Staff Report, San Mateo County LCP No. 1-86 (1997), CCC Staff Report No. 1-96, pp 24 (1997), CCC Staff Report No.1-96, pp.28-29 (1997). Those citing were found inconsistent by the California Court of Appeals in 1999.

The Court's Bolsa Chica Land Trust ruling clearly found against the Commission use of 30007.5 as "inconsistent with the Coastal Act" in the resolving of conflicts among competing Coastal Act policies under Section 30240. *"The reasoning Commission employed is seductive but, in the end, unpersuasive. The interpretation was not contemporaneous with enactment of section 30240 or the result of any considered official interpretative effort and it did not carry any other of the indicia of reliability which normally requires deference to an administrative interpretation. Secondly, the language of section 30240 does not permit a process by which the habitat values of an ESHA can be isolated and then recreated in another location. Rather, a literal reading of the statute protects the area of an ESHA from uses which threaten the habitat values which exist in the ESHA. Importantly, while the obvious goal of section 30240 is to protect habitat values, the express terms of the statute do not provide that protection by treating those values as intangibles which can be moved from place to place to suit the needs of development. Rather, the terms of the statute protect habitat values by placing strict limits on the uses which may occur in an ESHA and by carefully controlling the manner uses in the area around the ESHA are developed. The Commission has decided that an area is an ESHA, section 30240 does not itself provide Commission power to alter its strict limitations. There is simple no reference in section 30240 which can be interpreted as diminished the level of protection an ESHA receives based on its viability. Rather, under the statutory scheme, ESHA's whether they are pristine and growing or fouled and threatened, receive uniform treatment and protection. In short, while compromise and balancing in light of existing conditions is appropriate and indeed encourage under other applicable portions of the Coastal Act, the power to balance and compromise conflicting interest cannot be found in section 30240."* CalTrans has not demonstrated that their preferred alternative Tunnels/Bridges/Fill/Mitigation design will not negatively impact the functional and biological capacity of the environmentally sensitive habitat area (ESHA) or ensure the habitat of the red-legged frog is not compromised. CalTrans Tunnels/Bridges/Fill/Mitigation Preferred Alternative design with it's geotechnical borings and trenching construction activities are inconsistent with Section 30230, 30321, 30233, and 30240 of the Coastal Act and would result in "elimination or degradation of the habitat of the endangered species red-legged frogs in the north pond area under their Tunnels/ Bridges/Fill/Mitigation project. The San Mateo County Local

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Coastal Program requires that the preferred alternative be the most protective and least environmentally damaging alternative. The "No Project" alternative (aka repair/dewatering of the current Devil's Slide Route 1 alignment) is the "least environmentally damaging feasible alternative" and therefore is the ONLY alternative "Consistent" with the CCC certified Measure-T Amendment 1-96 of the Local Coastal Program for the San Mateo County Devil's Slide Route 1 Improvement Project.

CalTrans has violated Section 30240 of the Coastal Act as well as the terms of an off-site mitigation breeding pond scheme meant to negate impacts caused by the Tunnel/Bridges/Fill/Mitigation project filling and bridges shading that would adversely affect resident federally listed threatened species by "elimination or degradation of the habitat of the endangered species red-legged frogs in the ponds area under the proposed Tunnels/ Bridges on Shamrock Ranch. CalTrans off-site mitigation scheme was jointly developed and implemented in consultation with the Sierra Club/San Mateo County Tunnel Task Force, County of San Mateo Planning Commissions, and U.S. Fish and Wildlife Service for the sole purpose of providing off-site mitigation for the red-legged frogs residing in the north and south ponds on Shamrock Ranch. The terms of the off-site mitigation pond construction was memorialized in the U.S. Fish and Wildlife Service authorization letter dated September 26, 2000 to CalTrans. (Attachment Tu 12a) The Services letter does not authorize off-site mitigation for the Tunnels/Bridges/Fill/Mitigation project or authorize an incidental "take", a Section 9 violation of the Endangered Species Act. CalTrans has demonstrated that their filling and mitigation schemes placed the listed species in jeopardy and in fact facilitated an unauthorized incidental "take" reported in November 2000 by the Half Moon Bay Coastside Watershed Pesse volunteer frog expert Dave Cohn. CalTrans Tunnels/Bridges/Fill/Mitigation Preferred Alternative design with it's "geotechnical borings and trenching construction activities" are inconsistent with Section 30230, 30321, 30233, and 30240 of the Coastal Act and has resulted in "elimination or degradation of the habitat of the endangered species red-legged frogs in the north pond area under their Tunnels".

On August 23, 2000, Lenny Roberts, renown lobbyist/professional land use planning consultant and leading proponent of the Devil's Slide Tunnels/Bridges/Filling/Mitigation alternative, addressed the San Mateo County Planning Commission in support of Caltrans' frog pond "Tunnels/Bridges Mitigation" project. Below is the entire transcript of Ms. Roberts comments.

"Good Morning Mr. Chairman, I'm Lenny Roberts speaking for the Committee for Green Foothills, and we support this project. Aaaa, it would be nice to have had something in the staff report to the fact this is being done in conjunction with the U.S. Fish & Wildlife Service and because this has been a long negotiated process with the CalTrans engineers and the U.S. Wildlife Service. How they've been in consultation with the frog and other issues, "this is mitigation for the Tunnel" and so I think it would be helpful if we put that somewhere because it is part of a very broad extensive process that has gone through with the tunnel construction. So,

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so this is one of the issues that occurs with the endanger species is that if you are going to take the endangered species or effect their habitat and you're going to first do "mitigation" to first avoid the impact aaa which the Tunnel project has done to the greatest degree possible by building a bridge over this valley. Originally this valley was going to be filled to go across, so that would have impacted the frog pond habitat, so they're bridging instead and they're creating this new frog habitat and one of the issues always is ...will that work? And by doing this ahead of time, ahead of the project itself, a there will be, I think, sufficient assurance that the project will be a successful "mitigation"! We hope so...a perhaps one thing you might want to put in here is the additional condition that there will be monitoring of project as it goes through the construction and afterwards to make sure that the re-vegetation is successful and that the habitat is successfully established. I think that would be a good conditional condition to put in there. So we are very supportive of this and we appreciate the County expediting this and I know everybody is trying to expedite this project, in spite of everybody's attempts it has taken a lot longer than everybody thought. Aaa so those are my comments and yeah I believe that the way they capture the frogs is at night with flash lights, a time honored technique (laughter) or the tadpoles in the spring time. But to successfully get the adults you have to do that I believe. Thank you. The Devil's Slide Tunnels/Bridges Freeway leading lobbyist Lenny Roberts neglected to tell the San Mateo County Planning Commission that Off-Site Mitigation had been declared "inconsistent" with the Local Coastal Program and the Coastal Act: The California Court of Appeal ruled in March 1999.

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 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."

By letter dated May 11, 1999, Paul Koenig, Director of Environmental Services for the County of San Mateo, notified CalTrans "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."

By Letter on May 12, 1999, Jack Liebster, Coastal Planner for California Coastal Commission, advised Caltrans of the Commission staff's principal concerns. Of particular

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Survival is not."*

note is his discussion of the impact of the tunnel project on the wetlands and his conclusion that "the County, and the Commission, if the project is appealed, will have to assess the appropriateness of any fill proposed in wetlands as defined under the LCP using wetland policies." He further states: "It is not clear that the proposed use of wetland areas as a site for which the LCP indicates fill can be allowed. In addition, the LCP wetlands policies require an examination of alternatives to projects which impacts wetland fill."

On November 24, 2000, the Half Moon Bay Coastside Watershed Posse conducted a native species field survey at the location of the CalTrans Tunnels/Bridges mitigation construction site, Devil's Slide Highway 1 Project site, Pacifica, San Mateo County, California. After the three hour native species field survey was concluded, (attached please find survey form for dates 7/27/000 & 11/24/000) it was found by the C.W.Posse staff that the Tunnels/Bridges mitigation project activities conducted by Caltrans, their agents or others has resulted in a "take" of federally listed *Rana Avrora Draytonii*, .. aka California Red-Legged Frog. Take is defined by the Endangered Species Act as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect any listed wildlife species. "Harm" in this definition includes significant habitat modification or degradation where it actually kills or injures wildlife, by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering." (50 CFR & 17.3) The Foundation's Executive Director reported the take to Sheila Larson of the U.S. Fish & Wildlife Service on Friday the 24th of November by telephone. On Monday November 27th, by telephone, Oscar Braun filed the notice of violation with U.S. Fish & Wildlife Service Agent Scott Pierson and provided him via fax the field survey forms and mitigation project site location map. The Foundation also inform Agent Pierson that they have photos of the ESHA starting 7/27/2000 up to and including 11/24/2000. On the 24th, the Foundation also notified the California Department of Fish & Game and San Mateo County Environmental Services Agency.

CONCLUSION:

CalTrans mitigation scheme has demonstrated that their preferred alternative design for Tunnels/Bridges/Fill/Mitigation project will negatively impacted the functional and biological capacity of the environmentally sensitive habitat (ESHA) and will cause the elimination or degradation of the habitat of the endangered species red-legged frogs in the ponds area under the Tunnels/ Bridges on Shamrock Ranch. The environmental sensitive habitat of the red-legged frog has been negatively compromised resulting in an unauthorized incidental "take" by CalTrans while attempting to implement their "ESHA mitigation scheme" for the Devil's Slide Tunnels/Bridges/Fill/Mitigation Project Alternative. CalTrans has demonstrated that their fill and ESHA mitigation schemes places the Shamrock Ranch frog ponds and wetlands located listed endangered species in "jeopardy".

The Coastal Act and the San Mateo County Local Coastal Program requires CalTrans to explore the "No Project alternative as most protective and least environmentally damaging.

Half Moon Bay Coastside Foundation

Water Quality Protection Program Mission : Implementation



"Change is inevitable...

Survival is not."

The "No Project" alternative could mean taking no action, or possible intensifying efforts to dewater the landslide at Devil's Slide. As the highly respected San Mateo County Consulting Geologist Victor H. Abadie III stated in his April 27, 2002 appeal letter to the San Mateo Board of Supervisors: "Dewatering the landslide and repairing the existing roadway violates no law, create no impact on the wetlands or ESHA, and are is explicitly authorized under the San Mateo County Measure-T Local Coastal Program. Lastly, a geotechnical study of the landslide will violate no wetland laws, because there are no wetlands on the current landslide alignment itself." The San Mateo County Local Coastal Program requires that the preferred alternative be the most protective and least environmentally damaging alternative. The "No Project" alternative (aka repair/dewatering of the current Devil's Slide Route 1 alignment) is the "least environmentally damaging feasible alternative" and therefore is the ONLY alternative "Consistent" with the CCC certified Measure-T Amendment 1-96 of the Local Coastal Program for the San Mateo County Devil's Slide Route 1 Improvement Project. We ask the California Coastal Commission to uphold our Appeal of San Mateo County CDP File Number PLN 2001-00799 and Deny CalTrans their CDP for their Devil's Slide Highway 1 Tunnels/Bridges/Fill/Mitigation Alternative project design.

Attachment A



Please reply to: Mike Schaller
650/363-1849

April 30, 2002

Oscar Braun
1589 Higgins Canyon Road
Half Moon Bay, CA 94019

Notice of Final Local Decision

**ENVIRONMENTAL
SERVICES
AGENCY**

Subject: Appeal of File Number PLN 2001-00799
Location: Devil's Slide, Near Pacifica
APN(s): 023-731-020; 023-741-010, -020; 036-380-060, -070, -080, -120

Dear Mr. Braun:

Agricultural
Commissioner/ Sealer of
Weights & Measures

On April 30, 2002, the San Mateo County Board of Supervisors considered your request of an appeal of the Planning Commission's decision to approve a Coastal Development Permit to authorize exploratory geotechnical work for the proposed Devil's Slide Tunnel.

Animal Control

Based on the information provided by staff and evidence presented at the hearing, the Board of Supervisors denied the appeal and upheld the decision of the Planning Commission by making the findings and adopting the conditions of approval as attached.

Cooperative Extension

This item is appealable to the California Coastal Commission. The Coastal Commission will begin its appeal period upon receipt of the Notice of Final Local Decision. For questions or concerns regarding the Coastal Commission's appeal period and its process, please call 415/904-5260.

Fire Protection

Sincerely,

LAFCo

KD Rud
Kan Dee Rud
Planning Commission Secretary
bosdec0430m.devilsld.fc.doc

Library

Attachment

Parks & Recreation

cc: Supervisor Richard Gordon
Marcia Raines, Director of
Environmental Services
Marie Shanks, Agenda Coordinator
Pete Bentley, Public Works
Jim Eggemeyer, Planning and
Building Division

Bill Cameron, Building Inspection Section
Planning Director, City of Pacifica
California Coastal Commission
Skip Sowko, CalTrans
Dana Denmen
Lennie Roberts
John Plock
Other Interested Parties

Planning & Building

PLANNING AND BUILDING

Attachment A

COUNTY OF SAN MATEO
ENVIRONMENTAL SERVICES AGENCY

FINDINGS AND CONDITIONS OF APPROVAL

Permit or Project File Number: PLN 2001-00799

Hearing Date: April 30, 2002

Prepared By: Michael Schaller

Adopted By: Board of Supervisors

FINDINGS

Regarding the Environmental Review:

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:

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 LCP.
3. That the project conforms to the specific findings required by policies of the San Mateo County LCP.

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 Board of Supervisors. Minor revisions or modifications to the project may be made subject to the review and approval of the Planning Director.
2. 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.
3. The applicant shall minimize the removal of vegetation. The applicant is allowed to remove or trim only that vegetation which is necessary to conduct the geotechnical investigation program.

Attachment A

4. The applicant shall implement the erosion and sediment control plan as proposed. All disturbed areas which are not a part of future projects shall be restored to the satisfaction of the Planning Administrator.
5. Prior to the beginning of any work associated with this permit, the applicant shall submit a revegetation plan for review and approval by the Planning Division. The revegetation plan shall consist of native plant species endemic to the project area. The plan shall outline species to be used, their percentage at each location, and the source of the plant material. Success criteria for each location shall be established and shall be based upon percent survival and coverage.
6. Prior to the beginning of any work associated with this permit, the applicant shall take photographs of all areas to be disturbed by this project. Additionally, photos will be taken of each boring or trenching area at the time of completion of work, and then at subsequent 1-, 3-, and 5-year intervals. These photos shall be submitted to the Planning Division for inclusion in the project file. Said photos shall be used to gauge the effectiveness of restoration efforts.
7. Prior to the beginning of any work associated with this permit, the applicant shall submit an invasive exotic species control plan for review and approval by the Planning Division. Said plan shall describe how exotic species will be controlled and establish success criteria to be measured at 1-, 3-, and 5-year intervals.
8. At the completion of this project, the applicant shall submit a mitigation monitoring report, outlining in detail, what measures were taken to restore each disturbed area. The applicant shall submit monitoring report updates at 1-, 3-, and 5-year intervals.
9. No drilling shall occur at proposed Bridge Boring Site 9, unless the applicant can provide a written confirmation from the State Department of Fish and Game stating their approval of a 50 feet buffer zone for this pond

Tu 12a



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Sacramento Fish and Wildlife Office
2900 Cottage Way, Room W-2605
Sacramento, California 95825-1846

RECEIVED

OCT 05 2000

CALIFORNIA
COASTAL COMMISSION

September 26, 2000

IN REPLY REFER TO:
I-1-00-TA-2980

Mr. Sid Shadle
California Department of Transportation
Office of Environmental Planning South
P.O. Box 23660
Oakland, California 94623-0660

RECEIVED
OCT 05 2000
Office of Environmental Planning,
South

Subject: Pond Construction, Devil's Slide Highway 1 Project Site, Pacifica, San
Mateo County, California

Dear Mr. Shadle:

This is in response to your July 20, 2000, request for review of the construction of a pond suitable for breeding of California red-legged frog (*Rana aurora draytoni*) on the Shamrock Ranch in Pacifica, San Mateo County, California, relative to requirements of the Endangered Species Act of 1973, as amended (Act). The Service has reviewed the information you provided and concluded that the proposed project would not result in incidental take of any federally listed species. Your request was received in our office July 21, 2000.

Section 9 of the Act and its implementing regulations prohibit the "take" of federally listed fish and wildlife species. Take is defined by the Act as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect" any listed wildlife species. "Harm" in this definition includes significant habitat modification or degradation where it actually kills or injures wildlife, by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR § 17.3).

The project as proposed involves the excavation of an upland area between two existing ponds. The pond will be deep enough to hold water of a quantity and temperature. Flows would be diverted from an adjacent creek into this pond. Erosion control structures will be placed around the construction area to protect adjacent aquatic resources. Aquatic emergent vegetation, previously cultivated in wooden flats, would be placed in the pond. Biologists will monitor vegetative growth in the new pond and replant as necessary to ensure success.

OBJECT 05 100 43:55PM CA CORP...L COMM

B 286 6374

P: 3/5/03

0002

Mr. Sid Shadle

2

Based on the project description and corresponding avoidance measures proposed in your correspondence, the Service has determined that take of the California red-legged frog is not likely to occur. Therefore, the project as proposed is in compliance with the Act, with the understanding that take is not authorized under this agreement.

No further action pursuant to the Act is necessary, unless: (1) the species is discovered within the project area; (2) new information reveals effects of the proposed action may affect listed species in a manner or to an extent not considered; or (3) a new species or critical habitat is designated that may be affected by the proposed project.

No further action pursuant to the Endangered Species Act is necessary, unless new information reveals effects of the project that may affect federally listed species or critical habitat in a manner not identified to date. In addition, if a new species is listed or critical habitat is designated that may be affected by the proposed action, this office should be contacted immediately for further guidance.

If you have any questions regarding this response, please contact Cecilia Brown or Ken Sanchez at (916) 414-6625.

Sincerely,

for
Karen J. Miller
Chief, Endangered Species Division

California Native Species Field Survey Form

Mail to:
 Natural Diversity Database
 California Department of Fish and Game
 1807 13th Street, Suite 202
 Sacramento, CA 95814

For Office Use Only

Source Code _____ Quad Code _____
 Elm Code _____ Occ. No. _____
 EO Index No. _____ Map Index No. _____

Date of Field Work: 7-20-2000

Scientific Name: RAIA REIDOLM TATONIA
 Common Name: RED LEGGED POA

Species Found? 0 15 ADULTS
 Total No. Individuals 56 41 small if not why? FRESH HATCHED 2000
 Is this an existing NDDB occurrence? no unk.
 Collection? If yes: _____
 Number _____ Museum / Herbarium _____

Plant Information

Phenology: 50 50 50
 % vegetative % flowering % fruiting
FERTILE FROM SPRING THROUGH FALL

Animal Information

Age Structure: # adults # juveniles # unknown
 breeding wintering burrow site rookery nesting other

Location (please also attach or draw map on back) ESA

County: SAN MATEO Landowner / Mgr.: DANA DERMAN - SHAMROCK RANCH
 Quad Name: USGS MONTARA MTN. 7*1 QUAD T4S, R4W Elevation: _____
 T _____ R _____ 1/4 of _____ 1/4 of Section _____ T _____ R _____ 1/4 of _____ 1/4 of Section _____
 UTM: Zone: _____ (10, 11) Datum: _____ (NAD83, NAD27, WG584, other)
 Source: _____ (GPS, map & type, etc.) Point Accuracy: _____ Meters
 UTM Coordinates _____

Habitat Description (plant communities, dominants, associates, substrates/soils, aspects/slope) _____

Other rare species? TARICHA TOROSA - CALIFORNIA NEWT - 200+

Site Information Overall site quality: Excellent Good Fair Poor

Current / surrounding land use: HORSE RANCH - DICK KEMUELS

Visible disturbances / possible threats: ANY CONSTRUCTION WITHIN 200 FEET OF ROAD

Comments: CALTRANS WANTS TO BUILD AN APPROACH TO THE PROPOSED TUNNEL PROJECT OVER RED LEGGED FROG ROAD - IT IS MY OPINION THAT ANY DISTURBANCE IN THIS AREA COULD RESULT IN A SUBSTANTIAL LOSS OF THIS SPECIES IN THIS AREA

Determinations: (check one or more, and fill in blanks)

Keyed (cite reference): _____
 Compared with specimen housed at: _____
 Compared with photo / drawing in: RC STEBBINS FIELD GUIDE
 By another person (name): _____
 Other: _____

Photographs: (check one or more)

Plant / animal _____
 Habitat _____
 Diagnostic feature _____

May we obtain duplicates at our expense? Yes No

May 15 02 04:08p

Oscar Braun

(650) 726-2799

p. 18

Mail to:
Natural Diversity Database
California Department of Fish and Game
1807 13th Street, Suite 202
Sacramento, CA 95814

For Office Use Only

Source Code _____ Quad Code _____
 Elm Code _____ Occ. No. _____
 EO Index No. _____ Map Index No. _____

Date of Field Work: 11-29-2000

SEARCHED NOVA NORTON BRANTON
SPECIES NAME CALIFORNIA RED LEGGED FROG

Species Found? yes no POND HAS BEEN DRAINED
 Total No. Individuals 0 Subsequent Visit? yes no
 Is this an existing NODB occurrence? no unk.
 Collection? If yes: _____
 Number _____ Museum / Herbarium _____

Plant Information

Phenology: 50 50 50
 % vegetative % flowering % fruiting

Animal Information

Age Structure: # adults # juveniles # unknown
 breeding wintering burrow site rookery nesting other

Location (please also attach or draw map on back)

County: SAN MATEO Landowner / Mgr.: DANA DERMAN SHAMROCK R
 Quad Name: USGS MONTERA MIN. 7 1/2 QUAD T 4 S R 6 W Elevation: JUST AT SEA LEVEL
 T 4 S R 6 W 1/4 of _____ 1/4 of Section _____ T 4 S R 6 W 1/4 of _____ 1/4 of Section _____
 UTM: Zone: _____ (10, 11) Datum: _____ (NAD83, NAD27, WG584, other)
 Source: USGS MAP (GPS, map & type, etc.) Point Accuracy: _____ Meters
 UTM Coordinates _____

Habitat Description (plant communities, dominants, associates, substrates/soils, aspects/slope)
THIS SITE ON LAST SURVEY RICH WITH C R F BOTH ADULT AND SMALL AND TADPOLES - CALIFORNIA NEWTS 200+
41 ↑ ? MANY
-TARICHA TOROSA-

Other rare species? _____

Site Information Overall site quality: WAS Excellent Good Fair Poor

Current / surrounding land use: DOG KENNELS + HORSES

Possible disturbances / possible threats: WORK STARTING FOR A FUTURE TUNNEL
NORTH POND HAS BEEN DRAINED - NO SIGN OF FROGS AND NEWTS -
ARTIFICIAL POND HAS BEEN DUG 100 YARDS SOUTH EAST WITH NO COVER NO PLANTS
ONE FORTH OF THE SIZE OF THE NORTH POND - OPEN TO BIRDS AND OTHER PREY -

Verification: (check one or more, and fill in blanks)

Keyed (cite reference): _____
 Compared with specimen housed at: _____
 Compared with photo / drawing in: _____
 By another person (name): _____
 Other: _____

Photographs: (check one or more) Side Pri

Plant / animal _____
 Habitat _____
 Diagnostic feature _____

May we obtain duplicates at our expense? yes no

*John -
Comments
?
- Vic*

P.O. Box 81
Petaluma, CA 94037 0081

VICTOR H. ABADIE III
CONSULTING GEOLOGIST
27 April 2002

1300 MAIN STREET
(650) 728-3373

FAX TO: San Mateo County Board of Supervisors, 650.599.1027, and
Supervisor Rich Gordon, 650.363.1856
FR: Vic Abadie, 650.728.3374

RE: Support, appeal of Planning Commission approval of Coastal Development Permit
for Cal Trans to conduct geotechnical study of two proposed tunnels, Devil's Slide,
and deny Cal Trans's permit to do the study.

Hearing on 30 April 2002, 10:00 am

**PLEASE ENTER THIS LETTER INTO THE RECORD OF THE PUBLIC MEETING
CAPTIONED ABOVE.**

Support the appeal and deny Cal Trans the permit to do the subject geotechnical study. The reason to deny Cal Trans the permit is to insist Cal Trans instead propose a geotechnical study of "dewatering" the Devil's Slide landslide. A new study of dewatering should encompass the entire landslide. Cal Trans admits that its 1998 dewatering study was insufficient to evaluate dewatering, largely because Cal Trans gathered data only along the Highway 1 corridor and ignored the majority of the landslide, which extends for hundreds of feet above and below the highway.

You Board members have a responsibility to County residents and businesses to safeguard Highway 1 at Devil's Slide. Repair of the existing roadway is the only alternative that complies with law. Dewatering, or draining groundwater from the landslide, is the only way to increase landslide stability enough to repair the existing roadway. We will have to rely on dewatering to keep the highway open for many years, even if tunnel construction eventually proceeds. Thus it is essential that you require Cal Trans to study dewatering the landslide instead of studying the tunnel alignment and that you do so immediately. Deny the present permit and insist Cal Trans substitute a landslide study in place of its proposed tunnels study.

The proposed tunnels and the present, proposed geotechnical study violate statutory and case law, including restrictions on disturbing wetlands. This is a reason to deny the subject geotechnical study. Dewatering the landslide and repair of the existing roadway violate no law, create no impact on wetland, and are explicitly authorized under County Measure T.

Uphold the appeal, deny the application, and require Cal Trans to do a complete study of dewatering the Devil's Slide landslide.

Yours truly,

Victor H. Abadie III

Richard



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Sacramento Fish and Wildlife Office
2000 Cottage Way, Room V-2610
Sacramento, California 95827-1000

WEBSITENUMBER:
1-1-00-1032

December 18, 2000

Mr. David Nichol
Federal Highway Administration
(Attn: Ms. Joan Zellman)
980 Ninth Street, Suite 600
Sacramento, California 95814-3724

EXHIBIT NO. 6
APPLICATION NO. A-2-SMC-02-013
CALTRANS
(Page 1 of 21)

Subject: Formal Endangered Species Consultation on the Proposed Devil's Slide Tunnel Bypass Project, State Highway 1, San Mateo County, California

Dear Mr. Nichol:

This document represents the U.S. Fish and Wildlife Service's biological opinion on Federal Highway Administration's (FHWA) proposal, in consultation with California Department of Transportation (Caltrans), to construct the Devil's Slide Tunnels on Highway 1 in San Mateo County, (and project effects on the federally threatened California red-legged frog (*Rana aurora draytoni*) (red-legged frog) and conference on the proposed project habitat for this species. The project, as proposed, is not likely to adversely affect the federally endangered San Francisco garter snake (*Thamnophis sirtalis sistracenia*) and will affect the endangered American peregrine falcon (*Falco peregrinus anatum*). This opinion is provided in accordance with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (Act). Your January 27, 2000, request to initiate consultation was received in our office January 31, 2000, and your October 17, 2000, request for conferencing on the red-legged frog critical habitat was received in our office on the same day, October 17, 2000.

This biological opinion is based on information provided in (1) the December 15, 1999, Biological Assessment, (2) information in Service files; (3) numerous field visits, meetings, and telephone conversations with Cecilia Brown, Sheila Larsen, and Michael Thabault of my staff, Sid Shadle and Richard Vonzar of Caltrans, and Dr. Samuel McGinnis, biological consultant.

Consultation History

August 25, 1986: The Service issued a biological opinion on the Martini Creek alignment alternative (Service file 1-1-86-F-88).

Mr. David Nichol

2

November 1996: Service staff met with Caltrans staff and passed a resolution to allow construction of the tunnel bypass alternative.

January 1997: Caltrans Board of Directors specified the tunnel as the preferred bypass alternative for Devil's Slide.

1997-2000: Service staff met with staff from Caltrans, FHWA, and with Dr. McGinnis to discuss minimization measures appropriate to protect the red-legged frog from adverse effects during and after highway construction.

January 27, 2000: FHWA initiated formal consultation on the tunnel bypass alternative.

March 16, 1999: FHWA published the Second Supplement to the 1996 Final Environmental Impact Statement/Environmental Impact Report for the project.

June 16, 2000: Service staff met with Caltrans staff and consultants to discuss location and construction details of the third pond.

July 20, 2000: Caltrans submitted additional information on construction and red-legged frog impact minimization measures to the Service.

September 26, 2000: The Service determined that construction of a third pond and diversion structure at the project site and the planting of aquatic emergent vegetation was not likely to result in take of the red-legged frog (Service file no.: 1-1-CO-TA-2980).

October 17, 2000: FHWA requested a formal conference on the effects of the project on proposed critical habitat for the red-legged frog.

BIOLOGICAL OPINION

Description of Proposed Action

Action Area

Highway capacity will not increase, so tunnel construction will not facilitate growth. Therefore, the action area of the project is confined to Shamrock Ranch and the construction footprint.

Project Overview and Tunnel

Caltrans proposes to construct a permanent new highway to bypass the Devil's Slide portion of California State Highway 1. Devil's Slide is geologically unstable and has been subjected to numerous landslides, rock falls, and subsidence events since construction of the highway in

Mr. David N. ...

3

1937. Proceeding north from Paradise the new alignment will depart from the existing Highway 1 and bridge a small valley on Shamrock Ranch approximately 0.5 km (0.5 mi.) south of Linda Mar Boulevard in Paradise (Figure 1). The tunnel would pass through San Pedro Mountain approximately 1.4 km (0.2 mi.) north of the existing Highway.

Two parallel tunnels of 1,510 meters (4,954 feet) each will be drilled and blasted through the hill. Each tunnel will be 9.1 m (30 feet) wide and will provide a single traffic lane. An estimated 724,000 cubic yards of material will be excavated. The majority of the tunnel excavation will occur from the south portal. Some blasting and excavation will occur at the north end of the tunnel when the north portal is constructed. Caltrans will dispose of excavated material on an upland site approximately 50 m (300 ft.) from the south tunnel portal. When construction is completed, the disposal site will be graded and planted with native coastal scrub species.

Bridge Construction

Two bridges, one for each traffic lane, will connect the existing highway to the tunnel and cross the small valley on Shamrock Ranch. The proposed bridges would be approximately 36.5 m (120 ft.) above the valley floor. Bridges will be constructed in a manner as to avoid direct impacts to aquatic habitat. They will be constructed by a segmented balanced cantilever method. Four bridge piers will be constructed on uplands, and the bridges will be built out from these piers, then connected to the existing highway and the north tunnel portal. The northbound lane will shade a portion of Shamrock Ranch's north pond. The bridges will be constructed so that roadway runoff will be contained and directed northward to a drainage on the existing Highway 1. This drainage does not enter the red-legged frog ponds.

Access Road

Caltrans will construct dirt roads on uplands through Shamrock Ranch for access to the four bridge pier sites and the north tunnel portal. The road will consist of a single lane, 6.5 m (21 ft.) wide with traffic controllers and limited turnouts. The access road lies between the two ponds; therefore, the entire length of the road will be surrounded with protective fencing to prevent red-legged frogs from crossing the road (Figure 1). Where side slopes are steep, Caltrans will construct timber retaining walls to eliminate the necessity of cut and fill on the hillsides. The portion of the road providing access to the north tunnel portal will pass within 18 m (59 ft.) of the south pond.

Construction of the temporary access roads will be limited to the dry season (April 15 to October 15). A solid fence will surround the entire road to minimize impacts to red-legged frogs. The fence will also direct surface runoff to small temporary desilting basins. Caltrans will remove silt from these basins when they become one-third full. After the bridges are complete, access roads will be regraded to match original ground contours as closely as possible. The site will be revegetated over a three-year period and monitored for an additional two years.

Mr. David Nichol

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Conservation Measures

To avoid and minimize impacts to listed and sensitive species, Caltrans has proposed the following measures:

- A. During the fall of 2000, Caltrans will construct a new pond, and is referred to as the "new pond" (Permit File No. 1-10-71-2000). The new pond will contain locally collected native aquatic emergent vegetation propagated from plant lists during the summer and fall of 2000. Frog-proof fencing will be installed around the new pond to contain resident adults. There will be an electric fence component to the frog-proof fencing to keep raccoons and other mammalian predators away from the pond.
- B. The Service will conduct a field inspection of the new pond on or about April 15, 2001. If the Service approves the new pond habitat, red-legged frog adults will be trapped from the north pond between April 15 and June 30, 2001, and moved to the new pond, constructed in the fall of 2000. Traps will consist of a five-gallon plastic bucket with a hardware cloth funnel. Buckets will be placed at each end of an aquatic drift fence consisting of two-foot-high fine mesh hardware cloth. Traps will be checked daily. Prior to transfer to the new pond, all captured red-legged frogs will be measured, weighed, sexed, and marked.
- C. Biologists, hired or contracted by Caltrans, will conduct weekly shorelines surveys of the north pond from January through March 2001, to search red-legged frog egg masses. If any are found, they and the vegetation to which they are attached, will be moved to the inshore zone of the new pond.
- D. Prior to project initiation, a qualified biologist will capture all red-legged frogs from the north pond area and move them to the new pond. The fence around the new pond will remain in place during the construction project to prevent red-legged frogs from reentering the work area. Entrance funnels and traps will be used every fall to trap any adult red-legged frogs which migrate to the north pond during all subsequent construction years.
- E. Caltrans will designate an environmentally sensitive area where no construction activities will occur. The north pond will be fenced, as will the temporary access roads. The fence will consist of 4-ft. by 3-ft. sheets of wafer board or pressure treated plywood and be supported by metal T-shaped farm fence posts placed at approximately 4-ft. intervals.
- F. Qualified biologists will be on site during construction activities to remove any remaining red-legged frogs and tadpoles. All captured bullfrogs (*Rana catesbeiana*) and other nonnative aquatic species will be euthanized and/or disposed of in a manner complying with California Department of Fish and Game Codes. Japanese koi carp will be captured from the south pond and disposed of in a manner in compliance with California Department of Fish and Game Codes and agreeable to the Shamrock Ranch owner.

Mr. David Nichol

5

- G. When bridge construction is complete, the north pond's earthen dam, which currently leaks, will be repaired and reinforced. The pond will not be drained until late fall to allow metamorphosis of red-legged frog tadpoles. Any log scrap which might remain will be removed.
- H. When bridge construction is complete, the frog fencing will be removed from the north pond. The north pond will be dredged to a depth where it will provide water at sufficient quantity and temperature to support breeding red-legged frogs. A pressurized water line and a float valve system will be installed to deliver water to the pond during dry years so the pond will continue to support breeding throughout the project. Biologists will monitor the north pond for evidence of breeding for three years following project completion.
- I. Caltrans will seek a conservation easement from the owner of Shamrock Ranch for the three ponds to protect the red-legged frog in perpetuity. The conservation easement will be reviewed and approved by the Service. Caltrans or its representatives will conduct a three-year monitoring program to assess and evaluate the effects of the enhancement measures.
- J. The tunnel's south outlet is near a peregrine falcon eyrie with a single nesting pair. Caltrans will minimize disturbance to the falcon during the breeding season. If the nesting pair produces young during construction, Caltrans will contract with the Santa Cruz Predatory Bird Research Center to hack the chicks to other nests.

Status of the Species

California red-legged frog

The red-legged frog was federally listed as threatened on May 23, 1996, (61 FR 25813) effective June 24, 1996. A detailed account of the taxonomy, ecology, and biology of the red-legged frog is presented in the *Draft Recovery Plan for the California Red-legged Frog (Rana aurora draytoni)* (Service 2000). This species is the largest native frog in the western United States (Wright and Wright 1949), ranging from 4 to 13 centimeters (1.5 to 5.1 inches) in length (Stebbins 1985). The abdomen and hind legs of adults are largely red; the back is characterized by small black flecks and larger irregular dark blotches with indistinct outlines on a brown, gray, olive, or reddish background color. Dorsal spots usually have light centers (Stebbins 1985), and dorsolateral folds are prominent on the back. Larvae (tadpoles) range from 14 to 80 millimeters (0.6 to 3.1 inches) in length, and the background color of the body is dark brown and yellow with darker spots (Storer 1925).

Female frogs deposit egg masses on emergent vegetation so the egg mass floats on the surface of the water (Hayes and Miyamoto 1984). Red-legged frogs breed from November through March with earlier breeding records occurring in southern localities (Storer 1925). Individuals occurring in coastal drainages are active year-round (Jennings *et al.* 1992), whereas those found in interior sites are normally less active during the cold season.

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The largest densities of red-legged frogs currently are associated with deep pools with stands of overhanging willows and other emergent plants of the genus (*Lythra latifolia*) (Jennings 1988). However, red-legged frogs also have been found in riparian creeks and drainages and in ponds that may or may not have riparian vegetation. Red-legged frogs disperse upstream and downstream of their breeding habitat to forage and seek sheltering habitat. Sheltering habitat for red-legged frogs potentially includes all aquatic, riparian, and upland areas within the range of the species and any landscape features that provide cover such as existing animal burrows, boulders or rocks, organic debris such as downed trees or logs, and industrial debris. Agricultural features such as drains, watering troughs, spring boxes, abandoned sheds, or hay ricks may also be used. Incised stream channels with portions narrower than 18 inches and depths greater than 10 inches also may provide important summer sheltering habitat. Accessibility to sheltering habitat is essential for the survival of red-legged frogs within a watershed and can be a factor limiting frog population numbers and survival. During winter rain events, juvenile and adult red-legged frogs are known to disperse up to 1-2 km (Rathbun and Holland, unpublished data, cited in Rathbun *et al.* 1991).

Egg masses contain about 2,000 to 4,000 moderate sized (2.0 to 2.8 mm (0.08 to 0.11 inches) in diameter), dark reddish brown eggs and are typically attached to vertical emergent vegetation, such as bulrushes (*Scirpus* spp.) or cattails (Jennings *et al.* 1992). Red-legged frogs are often prolific breeders, laying their eggs during or shortly after large rainfall events in late winter and early spring (Hayes and Miyamoto 1984). Eggs hatch in 6 to 14 days (Jennings 1988). Increased siltation during the breeding season can cause asphyxiation of eggs and small larvae. Larvae undergo metamorphosis 3.5 to 7 months after hatching (Storer 1925, Wright and Wright 1949, Jennings and Hayes 1990). Of the various life stages, larvae probably experience the highest mortality rates, with less than 1 percent of eggs laid reaching metamorphosis (Jennings *et al.* 1992). Sexual maturity normally is reached at 3 to 4 years of age (Storer 1925, Jennings and Hayes 1985). Red-legged frogs may live eight to 10 years (Jennings *et al.* 1992).

The diet of red-legged frogs is highly variable. Hayes and Tennant (1985) found invertebrates to be the most common food items. Vertebrates, such as Pacific tree frogs (*Hyla regilla*) and California mice (*Peromyscus californicus*), represented over half the prey mass eaten by larger frogs (Hayes and Tennant 1985). Hayes and Tennant (1985) found juvenile frogs to be active diurnally and nocturnally, whereas adult frogs were largely nocturnal. Feeding activity probably occurs along the shoreline and on the surface of the water (Hayes and Tennant 1985). Larvae likely eat algae (Jennings *et al.* 1992).

Several researchers in central California have noted the decline and eventual disappearance of red-legged frog populations once bullfrogs became established at the same site (L. Hunt, in litt. 1993, S. Barry, in litt. 1992, S. Sweet, in litt. 1993). This has been attributed to both predation and competition. Twedt (1993) documented bullfrog predation of juvenile northern red-legged frogs, and suggested that bullfrogs could prey on subadult red-legged frogs as well. In addition to predation, bullfrogs may have a competitive advantage over red-legged frogs: bullfrogs are larger, possess more generalized food habits (Bury and Whelan 1984), possess an extended

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breeding season (Storer 1957) where an individual female can produce as many as 20,000 eggs during a breeding season (Storer 1957), and larvae are unpalatable to predatory fish (Kruse and Francis 1977). In addition to competition, bullfrogs also interfere with red-legged frog reproduction. Both California and northern red-legged frogs have been observed in amplexus with (mounted on) both male and female bullfrogs (Jennings and Hayes 1990, Twedt 1993, M. Jennings, in lit. 1993, R. Stebbins in lit. 1993).

Proposed Critical Habitat

On August 31, 2000, a proposed rule designating critical habitat for the red-legged frog was published in the *Federal Register* (65 FR 54322; Service 2000a). A detailed account of the primary constituent elements for red-legged frog critical habitat is found in the proposed rule (Service 2000a). In designating critical habitat, the Service identified the following primary constituent elements essential to the conservation of the red-legged frog: suitable aquatic habitat, associated uplands, and suitable dispersal habitat connecting suitable aquatic habitat.

Aquatic Habitat: Suitable aquatic habitat consists of virtually all permanent still or slow-moving fresh water bodies, including natural and manmade ponds, backwaters within streams and creeks, marshes, lagoons, and dune ponds, except deep lacustrine habitat. Aquatic habitat suitable for breeding must have a minimum depth of 30 cm and maintain water during the entire tadpole rearing season (at least March through July). To be considered a critical habitat, the aquatic component must consist of two or more breeding sites located within 2 km of each other, if at least one of the sites is also a permanent water source, or two or more breeding sites and a permanent water source located within 2 km, if the breeding sites are not permanent water sources.

The south pond contains sufficient permanent water, space, food, and cover needed to sustain red-legged frog eggs, tadpoles, metamorphosing juveniles, subadults, and adults. In addition, this pond is located less than 2 km from San Pedro Creek, which supports breeding red-legged frogs. Caltrans will ensure that the new pond has sufficient water depth and vegetative cover to provide aquatic habitat for the species. The north pond does not sustain sufficient water at appropriate depth and temperature to sustain tadpoles until metamorphosis and, therefore, would not be considered critical habitat.

Associated Uplands: Associated uplands must provide food, nutrients, and protection from disturbance necessary for normal behavior. Key conditions include the timing, duration, and extent of water moving within the system, filtering capacity, and maintaining of habitat to favor red-legged frogs. Suitable upland habitat consists of all upland areas within 150 m (492 ft.), or no further from the watershed boundary, from the edge of suitable aquatic habitat. Uplands within 150 m (492 ft.) of the red-legged frog ponds on Shamrock Ranch consist of horse pastures surrounded by coastal scrub. Ground cover at the ponds and in the pasture have improved dramatically over the past five years, and the pasture provides sufficient cover and foraging area for normal behavior. The pasture also provides sufficient filtering capacity to prevent sediment-

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laden runoff from entering any of the three ponds. The north pond has filled with silt to the point that it does not support red-legged frog breeding, the source of this sediment is not the horse pasture but rather the drainage that provides the water source for this pond.

Dispersal Habitat: Suitable dispersal habitat must be least 150 m (492 ft.) wide, consisting of all upland and wetland areas that are free of barriers connecting two or more patches of suitable aquatic habitat within 2 km (1.24 mi.) of one another. Dispersal barriers include, but are not limited to, heavily-traveled roads, moderate to high density urban or industrial developments, and large reservoirs. Agricultural lands such as row crops, orchards, vineyards, and pastures do not constitute barriers to red-legged frog dispersal. Shamrock Ranch is a large property with moderately dense development on less than ten acres of land located northeast of the ponds. The remainder of the property and the area south and east of the ranch is undeveloped and rural. The ponds drain into a tributary that flows both above and below ground into San Pedro Creek. Red-legged frogs can disperse down the drainage and travel overland to reach San Pedro Creek. Red-legged frogs can also disperse to the San Pedro Creek drainage to the northeast, where the species is known to occur.

Environmental Baseline

The environmental baseline used in this analysis includes past and ongoing impacts of Federal, State, Tribal, and private actions and other human activities in the vicinity of the project that have impacted, or are impacting the listed species.

Red-legged frogs have been extirpated or nearly extirpated from more than 70 percent of their historic range. Historically, this species was found throughout the Central Valley and Sierra Nevada foothills. As of 1996, red-legged frogs were known to occur in approximately 240 streams or drainages from 23 counties, primarily in central coastal California, Monterey, San Luis Obispo, and Santa Barbara counties support the largest extent of currently occupied habitat. The most secure aggregations of red-legged frogs are found in aquatic sites that support riparian and aquatic vegetation and lack non-native predators. Several researchers in Central California have noted the decline and eventual local disappearance of red-legged frogs in systems supporting bullfrogs (Jennings and Hayes 1990), red swamp crayfish (*Procambarus clarkii*), signal crayfish (*Pacifastacus leniusculus*), and several species of warm water fish including sunfish (*Lepomis* spp.), goldfish (*Carassius auratus*), common carp (*Cyprinus carpio*), and mosquitofish (*Gambusia affinis*) (L. Hunt, in litt. 1993, S. Barry, in litt. 1992, S. Sweet, in litt. 1993). Habitat loss, non-native species introduction, and urban encroachment are primary factors that currently pose the greatest threats to the red-legged frog throughout its range.

The draft recovery plan for the red-legged frog identifies eight Recovery Units. Within each Recovery Unit, core areas have been delineated and represent areas of moderate to high red-legged frog densities and are identified as areas where recovery actions will be focused. This project is located within a Core Area of the Central Coast Recovery Unit, which includes western

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San Mateo and Santa Clara Counties, and portions of Santa Cruz, Monterey, and San Luis Obispo Counties.

The Core Area extends from Crystal Springs Reservoir west to Half Moon Bay and Pacifica. Within this Core Area, red-legged frogs historically bred in sag ponds which were common within this area. However, few sag ponds remain as they have been filled for urban development. The lack of available breeding sites within the Core Area has led to the decline of the red-legged frog.

The red-legged frog has been found in two ponds, referred to as the north pond and south pond, at the western end of Shamrock Ranch near the north tunnel portal. The south pond appears to retain water year round of sufficient quantity and temperature to support breeding of red-legged frogs. However, successful breeding was not documented at this site during surveys for this project (McGinnis 1998). This pond contains a population of introduced Japanese koi carp, which may be preying upon eggs and tadpoles. The north pond covers a larger area. However, it is shallow and the water levels drop rapidly during the summer. Early drying of ponds increases the likelihood of predation by waterfowl and raccoons. McGinnis (1998) has concluded that in many years water levels in this pond are not of sufficient depth to support tadpoles through metamorphosis. Lands surrounding the project area are undeveloped and support primarily coastal scrub, which provides suitable habitat for upland cover and forage, and suitable habitat for dispersal.

The most recent surveys by qualified biologists at the site occurred from March 1997 through February 1998 (McGinnis 1998). The south pond retains sufficient water to support tadpoles through the metamorphosis; however, a population of introduced koi carp may be preying upon the eggs, severely reducing the likelihood of successful reproduction. The north pond, although larger in area, is shallower, and water temperatures probably get too high in the summer to allow red-legged frog tadpoles to mature. Red-legged frog adults are documented routinely at this pond.

Within the greater Pacifica area, which is within the Core Area of the Central Coast Recovery Unit, the Service issued a biological opinion to the U.S. Army Corps of Engineers (Corps) addressing the impacts of the Calera Creek Water Recycling Plant and Wetland Restoration project (Service file no. 1-1-96-F-163) to the U.S. Army Corps of Engineers. The project included realigning and restoring Calera Creek as well as constructing two new ponds to replace two quarry ponds that had previously been drained and filled without incidental take authorization. Red-legged frog surveys conducted in 1999 found frogs breeding within the new ponds and they were also found in Calera Creek. It is believed that these ponds may have been recolonized, in part, from red-legged frogs that moved from Laguna Salada to Calera Creek over uplands commonly known as Mori Point. During fall of 2000, a portion of Mori Point was purchased by The Trust for Public Lands for the purpose of maintaining open space. Red-legged frogs found in Laguna Salada and the lower section of Calera Creek may move up the Calera Creek watershed and disperse to Crystal Springs and Shamrock Ranch, and vice versa, thereby

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providing genetic interchange between populations found in this portion of the Central Coast Recovery Unit.

The Service issued a biological dated March 27, 1997, to the Corps for the San Pedro Creek Flood Control Project (Service File no. 1-1-96-F-164). Project construction began in the fall of 2000. The project involves the reconfiguring and restoration of the San Pedro Creek from below the Adobe Drive bridge to the Pacific Ocean. The project included widening the flood plain, recreating sinuosity and backwaters, and removal of instream barriers. After construction the area will be planted with native vegetation. This project is expected to provide habitat for red-legged frogs.

Effects of the Proposed Action

Effects to the red-legged frog include direct effects to individual frogs and habitat during construction, indirect effects to frogs and their habitat within the project area vicinity, and cumulative effects to the local red-legged frog population. This project also will have direct and indirect effects on proposed critical habitat.

Direct Effects

Direct effects include the potential for harassment, injury, and mortality of juveniles and adults. Red-legged frogs will be affected directly when they are captured from the north pond and moved to the newly created third pond. Red-legged frogs that are moved may be subjected to physiological stress and may be disoriented and attempt to leave the pond. While attempting to leave the pond, frogs may be exposed to an increased stress level, which may decrease the physical fitness of individuals. In addition, frogs attempting to leave may expose themselves to avian predators. In the unlikely event that frogs enter the environmentally sensitive area, the possibility exists that individual frogs may be crushed if they disperse across the construction access road. No aquatic or wetland habitat will be disturbed while constructing the environmentally sensitive area fence construction, and this fence will keep construction activities from directly impacting the habitat.

The project will result in the temporary loss of red-legged frog nonbreeding and foraging habitat, specifically 0.4 acre in the north pond. This effect will be offset by the creation of the new pond, which will provide dispersal, foraging and breeding habitat. Because the north pond will be deepened after completion of the bridge construction, there will be a net increase in red-legged frog breeding habitat at the site as a result of this project. Long-term impacts from shading following bridge construction are expected to be minimal, as the bridges have a north-south alignment and will be perpendicular to the direction of the sun's travel.

Petrochemicals, soaps or solvents that are spilled or may be leaking from vehicles could kill red-legged frogs during all life stages. Sediment washing downstream after storm events could

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suffocate embryos and tadpoles. Trapping or relocating red-legged frogs during the breeding season could cause reproductive failures as a result of stress.

Normal construction activities are likely to result in direct effects to red-legged frogs through spills and intrusion into habitat areas by crews and equipment. Noise and vibration from blasting at the north tunnel portal and the use of heavy equipment is expected to harass red-legged frog adults foraging near the project area. Frogs displaced by construction or other disturbance may be required to compete for food and living space with animals in adjacent areas. Petrochemicals, soaps or solvents leaking or spilled from vehicles could kill red-legged frog adults, embryos or tadpoles. Sediment washing downstream after storm events could suffocate embryos or tadpoles.

Draining the south pond is likely to harass red-legged frogs, and they may be killed or injured during the koi removal effort. There is expected to be some level of trap mortality associated with trapping and translocating frogs. The frog exclusion fences may fail, or trap frogs on the wrong side, leading to increased mortality. Eggs may coddle as a result of inadvertent inversion or desiccation during transport. Adult frogs being transported may be subjected to diseases as a result of stress and desiccation.

Indirect Effects

The grading and regrading at the site is likely to alter the soil horizon to such an extent that reestablishment of existing vegetation type may be difficult and problematic. In addition, disrupted soil profiles tend to favor establishment of exotic, noxious weeds.

Adverse indirect effects include the potential for increased sedimentation downstream from the project as a result of the construction activities. Runoff from the dirt access road and regraded portions of the access road may carry sediment to the north pond. The presence of construction crews on site could result in an increase in on-site trash and could attract potential predators, such as skunks and racoons.

Red-legged frogs are likely to benefit over time by the removal of koi from the south pond. Red-legged frogs placed in the new pond may be subjected to increased predation and decreased foraging until the pond establishes a well-established shoreline cover and prey-base. Once the new pond becomes fully established, the local red-legged frog population is expected to benefit. However, without targeted management actions and maintenance, the ponds are likely to sediment in and become overgrown over time.

Effects to Proposed Critical Habitat

The construction access roads will cover portions of the upland and dispersal elements of red-legged critical habitat. The portion of the road providing access to the tunnel portal will pass within 18 m (59 ft.) of the south pond at its closest point. The existing Highway 1, which already

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constitutes a significant barrier to red-legged frog dispersal to the north and west, is parallel to the construction access road. Therefore, the addition of the access road will not appreciably reduce red-legged frog dispersal. Deepening the north pond to make it appropriate for red-legged frog breeding and creating the new pond will enhance the quality of critical habitat on site.

Cumulative Effects

Cumulative effects include the effects of future State, Tribal, local or private actions that are reasonably certain to occur in the action area considered in this biological opinion. Future Federal actions unrelated to the proposed action are not considered in this section because they require separate consultation pursuant to section 7 of the Act.

The proposed raising of Crystal Springs Reservoir will significantly impact a known breeding population of red-legged frogs within the central coast range. The increase in water level will further subject the remaining breeding habitat to periods of flooding and drying related to water use by the San Francisco Public Utility Company. The loss of breeding habitat at Crystal Springs would severely decrease the red-legged frog population within this Core Area.

Continued urban growth in coastal cities such as Pacifica and Half Moon Bay, such as home construction, roads, and flood control projects, threaten remaining red-legged frog aquatic habitat, upland habitat, and dispersal corridors. Aside from the direct loss of habitat from construction, subsequent irrigation of lawns may cause an intermittent streams to become perennial, providing breeding habitat for the bullfrog. Urban development results in increased numbers of cars and dogs. Both feral and tame cats and dogs prey on aquatic and riparian species such as the red-legged frog. People exploring creeks can harass, collect and kill red-legged frogs. Many flood control projects enlarge stream channels and isolate them from their natural floodplains, disrupting natural hydrologic processes and degrading stream habitat. Flood channel maintenance often requires the removal of emergent aquatic and riparian vegetation, making these channels less suitable for red-legged frogs. Row crops grown in the small valleys along the coast load pollutants such as sediment, fertilizers, and pesticides to area creeks and ponds. Some streams may be channelized or moved to provide more space for crop production. Some hills along the coast are severely overgrazed, which can be detrimental to upland and aquatic habitat essential for red-legged frog survival.

Non-native species that prey upon, or compete with, red-legged frogs continue to be released in red-legged frog critical habitat. Bullfrogs, koi, goldfish, mosquito fish and warm water game fish species are all expected to continue to degrade the quality of red-legged frog habitat and prey upon red-legged frogs.

Conclusion

After reviewing the current status of the species, the environmental baseline for the action area, the effects of the proposed action and the cumulative effects, it is the Service's biological opinion

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that the Devils Slide Tunnel Bypass, including the conservation measures proposed, is not likely to jeopardize the continued existence of the red-legged frog or destroy or adversely modify proposed critical habitat.

INCIDENTAL TAKE STATEMENT

Section 9 of the Act and Federal regulations pursuant to section 4(d) of the Act prohibit the take of endangered and threatened species, respectively, without special exemption. Take is defined as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. The Service defines harass as an intentional or negligent act or omission which creates the likelihood of injury to a listed species by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. Harm is defined to include significant habitat modification or degradation that results in death or injury to listed species by impairing behavioral patterns including breeding, feeding, or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered to be prohibited under the Act, provided such taking is in compliance with this Incidental Take Statement.

The measures described below are non-discretionary and must be implemented by FHWA so that they become binding conditions of any grant or permit issued to Caltrans, as appropriate, in order for the exemption in section 7(o)(2) to apply. FHWA has a continuing duty to regulate the activity covered by this incidental take statement. If FHWA (1) fails to require Caltrans to adhere to the terms and conditions of the incidental take statement through enforceable terms that are added to the permit or grant document, and/or (2) fails to retain oversight to ensure compliance with these terms and conditions, the protective coverage of section 7(o)(2) may lapse.

Amount or Extent of Take

The Service anticipates incidental take of the red-legged frog will be difficult to detect or quantify because of: the elusive nature of this species, its small size, and cryptic coloration make the finding of a dead specimen unlikely. Therefore, take is estimated by the number of acres in which red-legged frogs could be killed, harassed, or harmed through trapping, capture and collection associated with this project. Upon implementation of the reasonable and prudent measures, take in the form of killing, harming, and harassing resulting from trapping, capturing and collecting and construction activities of red-legged frogs on approximately 10.67 acres of habitat, of which 0.85 acre is aquatic or wetland, as a result of the activities associated with the project will become exempt from the prohibitions described under section 9 of the Act for direct and indirect impacts. This exemption only applies to Caltrans staff whose duties involve implementation of the proposed project; individuals or contractors hired or contracted by

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Caltrans to perform duties described in this opinion; or biologists hired using trust funds held for the conservation of red-legged frogs. The Service has developed the following incidental take statement based on the premise that the reasonable and prudent measures will be implemented. Upon implementation of the following reasonable and prudent measures, incidental take associated with the Devil's Slide tunnel project will become exempt from the prohibitions described under section 9 of the Act for direct and indirect impacts.

Effect of the Take

The Service has determined that this level of anticipated take is not likely to result in jeopardy to the red-legged frog or destruction or adverse modification of proposed critical habitat.

Reasonable and Prudent Measures

The Service believes the following reasonable and prudent measures are necessary and appropriate to minimize the impacts of take on the listed species:

1. Minimize the impact of direct effects to all life stages of the red-legged frog and its proposed critical habitat from construction.
2. Minimize the impact of indirect effects to red-legged frogs from construction.
3. Minimize the impact of take of red-legged frogs from future bridge maintenance activities.

Terms and Conditions

To be exempt from the prohibitions of section 9 of the Act, FHWA must comply with the following terms and conditions, which implement the reasonable and prudent measures described above. These terms and conditions are nondiscretionary.

1. To implement reasonable and prudent measure number one FHWA shall ensure the following terms and conditions are met:
 - a. Caltrans shall implement the project, along with the proposed protection measures for red-legged frogs, as described in the proposed project description.
 - b. Individuals that handle and remove red-legged frogs, tadpoles or egg masses must be pre-approved by the Service prior to trapping, capturing or collecting on-site.
 - c. Red-legged frogs shall be marked only with Service approval. The method of marking red-legged frogs must be approved by the Service.

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- d. Annual management at the mitigation pond shall be determined each year based on the anticipated carrying capacity of the pond. The determination as whether or not to move egg masses, where those egg masses shall be moved to, or allow the red-legged frogs to disperse from the new pond shall be at the Service's discretion. Experimental releases of adult and newly metamorphosed red-legged frogs fitted with radio-transmitters or PIT tags shall be at the Service's discretion in cooperation with Caltrans.
- e. All translocated or moved egg masses shall be monitored daily to determine the level of coddling.
- f. Regular inspection of the fence around the construction access road and the north pond shall ensure that red-legged frogs do not cross the road or enter the north pond. Caltrans shall install an electric fence around the new pond fence to prevent mammalian predation.
- g. The trapping dates of April 15 through June 30, 2000, set forth in the Minimization Measures may be changed at the Service's discretion.
- h. Caltrans shall install sediment control structures around the perimeter of the dirt access road where runoff is likely to drain to any of the three ponds or the creek. Any silt control structures that breach or become damaged during a storm event shall be repaired or replaced within 24 hours. Any straw/hay bales that may be used for sediment control shall be free of star thistle seed.
- i. Caltrans personnel shall inspect the environmentally sensitive area fence every day when construction activities are being conducted for openings and/or breaks in the fence that would allow red-legged frogs to enter the construction area. The exception to this is when construction activities are occurring solely on the bridges and no traffic is within the environmentally sensitive area. Any openings in the fence where red-legged frogs could enter the environmentally sensitive area shall be repaired within 12 hours.
- j. Before any construction activities begin on the project, a Service-approved biologist shall conduct a training session for all construction personnel. At a minimum, the training shall include a description of the natural history red-legged frog and its habitat, the importance of the red-legged frog and its habitat, the general measures that are being implemented to conserve the red-legged frog as they relate to the project, the penalties for non-compliance, and the boundaries (work area) within which the project may be accomplished. Training sessions shall be repeated for all new employees before they access the project site. Sign up sheets identifying attendees and the contractor/company they represent shall be provided to the Service within one week of such training.

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- k. A Service-approved biologist shall be present at the work site until all red-legged frog removal and worker instruction have been completed.
 - l. Stockpiling of construction materials, including portable equipment, vehicles and supplies, including chemicals, will be restricted to the designated construction staging areas.
 - m. Refueling of construction equipment and vehicles may not occur within 300 feet of any water body or anywhere that spilled fuel could drain to a water body. Caltrans shall check and maintain equipment and vehicles operated in the project area daily to prevent leaks of fuels, lubricants or other fluids.
 - n. Equipment may not be washed in a place where wash water could drain to the creek or the ponds.
 - o. Caltrans shall clean hazardous material spills immediately. Such spills shall be reported to the Service immediately. Spill cleanup and remediation shall be detailed in post-construction compliance reports.
 - p. Caltrans shall comply with all reporting requirements in this opinion, including those proposed in the project description.
2. To implement reasonable and prudent measure number two FHWA shall ensure the following terms and conditions are met:
 - a. Caltrans shall remove litter and construction debris from the construction site daily and contain the waste at an appropriate site. All trash that may attract predators shall be securely covered at all times in locking metal containers, removed from the work site and disposed of regularly. Following construction, all trash and construction debris shall be removed from the work areas.
 - b. No captured bullfrogs shall be released back into the wild.
 3. To implement reasonable and prudent measure number three FHWA shall ensure the following terms and conditions are met:
 - a. Prior to implementation, future bridge maintenance activities and remedial actions that may impact red-legged frog habitat must be reviewed and approved by the Service.
 - b. If Caltrans is unable to secure a Service approved conservation easement as proposed in the *Conservation Measures*, Caltrans must secure a Service approved off-site mitigation area or other agreement satisfactory to the Service.

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- c. Caltrans shall provide an endowment to provide for management of the conservation easement area and a copy of the endowment agreement to the Service for review and approval prior to construction. The agreement shall contain specific information on the endowment to manage the site for the red-legged frog in perpetuity.
- d. Caltrans shall prepare and implement a detailed habitat monitoring plan within the proposed conservation easement. The plan shall provide, but not be limited to, specific performance standards, monitoring methods and requirements, exotic species control (plant and animal), and contingency measures for habitat to be restored and managed for red-legged frogs. The site shall provide hydrologic stability, habitat complexity, and food production potential. Caltrans shall submit the final plan to the Service for review and approval prior to initiation of any project work.

The reasonable and prudent measures, with their implementing terms and conditions, are designed to minimize the impact of incidental take that might otherwise result from the proposed action. With implementation of these measures, the Service believes that take of all individuals within ~~7.75~~ ^{10.67} acres of red-legged frog habitat will be minimized.

If during the course of the action, this level of incidental take is exceeded, or take in a form not described in this opinion occurs, such incidental take represents new information requiring review of the reasonable and prudent measures. FHWA must immediately provide an explanation of the causes of the taking and review with the Service the need for possible modification of the reasonable and prudent measures.

Reporting Requirements

The Service must be notified within 24 hours of the finding of any injured or dead red-legged frogs, or any unanticipated damage to the species habitat associated with project construction, minimization measures, or operation. Notification must include the date, time, and precise location of the specimen/incident, and any other pertinent information. The Service contact person is Karen J. Miller, Chief, Endangered Species Division in the SFWO, at (916) 414-6620. Any dead or injured specimens will be repositied with the Service's Division of Law Enforcement, 2800 Cottage Way, Sacramento, California 95825, telephone (916) 414-6660.

Caltrans shall notify the Service within 90 days after completion of the project. A written report shall be submitted containing, at a minimum, the following information: (1) a brief summary of project actions; construction methods and materials used in the environmentally sensitive area fence; (2) the number of nonnative species removed from the project site; (3) the number and age class of red-legged frogs removed from the north pond; (4) any problems that occurred which might have prevented compliance with this biological opinion; and (5) methods to avoid these problems in the future. Photographs documenting the frog fencing and work progress should be included. Please reference the Service's file number in the subject line of the report. The report

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should be sent to: U.S. Fish and Wildlife Service, Endangered Species Division, 2800 Cottage Way, Room W-2605, Sacramento, California 95825-1846.

The Service shall be notified within twenty-four (24) hours of the finding of any injured or dead red-legged frogs or any unanticipated harm to their habitat addressed in this biological opinion. Notification shall include the date, time, and precise location of the specimen/incident, and any other pertinent information. The Service contact person is Karen J. Miller, Chief, Endangered Species Division in the SFWO (916-414-6620). Any dead or injured specimen shall be deposited with the Service's Division of Law Enforcement, 2800 Cottage Way, Sacramento, California 95825, telephone (916) 414-6660.

CONSERVATION RECOMMENDATIONS

Section 7(a)(1) of the Act directs Federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to implement recovery actions, to help implement recovery plans, to develop information, or otherwise further the purposes of the Act.

In order for the Service to be kept informed of actions minimizing or avoiding adverse effects or benefitting listed species or their habitats, the Service requests notification of the implementation of any conservation recommendations. We have the following recommendations:

1. The FHWA should host a series of meetings with Caltrans, the San Mateo County, California Department of Fish and Game, and the Service to discuss issues related to ongoing impacts to numerous federally listed species found within the Highway 1 corridor.
2. FHWA should implement conditions from the draft *Recovery Plan for the California red-legged frog* where their action(s) may affect the red-legged frog or its habitat. Some conditions for implementation include best management practices to maintain natural riparian habitat, compensation for habitat lost or impacted, and reduction in or avoidance of rock or concrete in streams and other water bodies.
3. FHWA should participate in the recovery planning process for the red-legged frog.
4. FHWA should participate in the recovery planning process for the San Francisco garter snake.

Mr. David Nichol

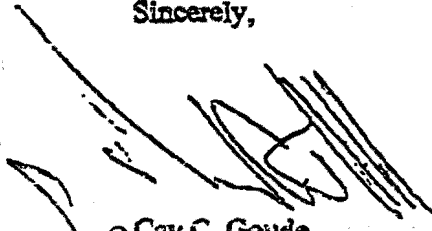
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REINITIATION-CLOSING STATEMENT

This concludes formal consultation on the actions outlined in the request. As provided in 50 CFR §402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been maintained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation.

If you have any questions regarding this opinion, please contact Sheila Larsen or Ken Sanchez at (916) 414-6625.


Sincerely,



Cay C. Goude
Acting Field Supervisor

Enclosures

cc: ARD (ES), Portland, OR

 California Department of Transportation, Oakland, CA

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