

CALIFORNIA COASTAL COMMISSION

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Staff: MPD – SF
Staff Report: August 20, 2004
Hearing Date: September 8, 2004

**STAFF REPORT – APPEAL
SUBSTANTIAL ISSUE DETERMINATION**

APPEAL NO.: ~~A-2-SMC-04-11~~

APPLICANT: California Department of Transportation
(Caltrans)

LOCAL GOVERNMENT: San Mateo County

ACTION: Approval with Conditions

PROJECT LOCATION: Highway 1 at Devil's Slide, north of Montara, San
Mateo County
APNs 023-731-020, 023-741-010, 023-741-020,
036-380-060, 036-380-070, 036-380-080, 036-380-
120

PROJECT DESCRIPTION: Inland realignment of Highway 1 and construction
of a double-bore, 4,000-foot long tunnel with
approach bridges, an operations and maintenance
building, and public access improvements

APPELLANTS: Oscar Braun for Coastal Family Alliance and Save
Our Bay Foundation
Coastal Commissioners Mike Reilly and Meg
Caldwell

**SUBSTANTIVE FILE
DOCUMENTS:** Appendix A

STAFF RECOMMENDATION: **No Substantial Issue**

STAFF NOTE

This staff report addresses only the appeal of the Devil's Slide Tunnel Project that was filed by Oscar Braun for the Coastal Family Alliance and the Save Our Bay Foundation. However, a separate appeal of this project has been filed by Coastal Commissioners Reilly and Caldwell. The Commissioners' appeal solely concerns the status of the inland bypass alignment that, pursuant to the LCP amendment known as Measure T, will no longer be needed to accomplish the realignment of Highway 1. Over the past year, the Commission, State Parks and Caltrans staff have been coordinating to effect the transfer of this land from Caltrans to State Parks, including a pursuit of legislation (SB 792 Sher) that is currently pending approval. Both the Commissioners' decision to appeal the County approval and the staff's recommendation on the Commissioners' appeal may be affected by events that post-date the writing of this report, including whether or not the bill authorizing the land transfer is approved and whether the applicant chooses to waive the time for the Commission to set a hearing on the appeal to a subsequent month. Staff will provide the Commission with its recommendation on any Commissioner appeal still pending prior to the September 8, 2004 hearing or any later hearing agreed to by the applicants.

If the Commissioners withdraw their appeal before a hearing on substantial issue, the staff's recommendation of "No Substantial Issue" on the Coastal Family Alliance and the Save Our Bay Foundation appeal will stand. If the Commission then determines that "No Substantial Issue" exists with respect to the Coastal Family Alliance and Save Our Bay Foundation appeal, the County's approval will be effective and the County, rather than the Commission, will issue the permit.

If the Commissioners do not withdraw their appeal before a hearing on substantial issue, then the staff will recommend substantial issue and, unless the Commission finds "No Substantial Issue" on both the appeal by the Commissioners and the appeal by the Coastal Family Alliance and the Save the Bay Foundation, Section 30625 of the Coastal Act requires that the Commission hold a de novo hearing on the proposed project. In this case, unless the Commission finds no substantial issue on both appeals, the local government's approval will no longer be effective and the Commission will continue its de novo review of the entire project to a subsequent hearing.

With regard to the pending legislation, if the bill is to pass this session, the legislature must vote to approve it before the end of the 2004 legislative session on August 31, and the bill must then be signed by Governor Schwarzenegger.

EXECUTIVE SUMMARY

The staff recommends that the Commission, after public hearing, determine that the local government's approval of the local coastal development permit for the proposed development raises no substantial issue with regards to the conformity of the project approved by the County with either the Local Coastal Program or with the public access policies of the Coastal Act for the following reasons:

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1. Contrary to the requirements of Coastal Act sections 30625 and 30603, the appeal by the Coastal Family Alliance and the Save Our Bay Foundation that was timely filed within the 10-working day appeal period did not include any claim that the local government action is inconsistent with either the certified LCP or the public access policies of the Coastal Act. Therefore, the appeal raises no issues that could justify a decision by the Commission to hear the appeal.
2. The appeal by the Coastal Family Alliance and the Save Our Bay Foundation that was filed within the 10-working day appeal period did not include a statement of facts on which the appeal was based, as is required by Section 13111(a)(8) of Title 14 of the California Code of Regulations.
3. Although the appeal by the Coastal Family Alliance and the Save Our Bay Foundation indicated that the appellants would subsequently provide "written documentation and reason for the appeal," since the appellants had failed to make any allegations within the 10-working day appeal period prescribed by section 30603(c) of the Coastal Act, the documentation filed beyond the 10-working day appeal period does not constitute valid grounds for appeal.
4. Even if timely filed, the supporting documentation that was subsequently provided by the Coastal Family Alliance and the Save Our Bay Foundation after the close of the 10-working day appeal period does not establish any substantial issue with respect to conformity of the approved project with the LCP or the access policies of the Coastal Act. Most problematic, rather than provide the Commission with any specific reasons for appealing the County's action, as required by Coastal Act Coastal Act Sections 30625(b)(1) and 30603 as well as County Zoning Code Section 6328.16(e), the appellants merely provided copies of a collection of news articles and correspondence. Nonetheless, after examining the materials that the appellants submitted, it appears that the appellants' concerns may be liberally construed to fall into eight general arguments that: (1) the project would result in wetland fill in conflict with the wetland protection policies of the LCP; (2) the project would result in impacts to environmentally sensitive habitat areas (ESHA) in conflict with the sensitive habitat protection policies of the LCP; (3) the project is not the least environmentally damaging alternative; (4) the project would provide four highway lanes in conflict with the LCP requirement that Highway 1 remain a scenic two-lane roadway; (5) the project does not comply with the requirements of the National Environmental Policy Act (NEPA) or the California Environmental Quality Act (CEQA); (6) the project is too expensive; (7) the tunnel alternative is less safe than other project alternatives; and (8) various actions by Caltrans and the County concerning the project are in violation of environmental protection and federal anti-racketeering laws.

The first four issues noted above, had they been raised specifically in a timely filed appeal, would potentially be valid grounds for an appeal of the County's action on the coastal development permit for the approved development because they include contentions that the tunnel project is inconsistent with the coastal

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resource protection policies of the County's LCP. However, even assuming these four contentions to be otherwise valid, none of them raise a substantial issue of conformity of the approved development with the County's LCP for the following reasons:

- With respect to the appellants' first two concerns listed above, the San Mateo County LCP, as amended through the Measure T initiative and certified by the Commission, specifically permits the limited and unavoidable wetland fill and ESHA impacts related to the Devil's Slide Tunnel project. As such, the wetland and ESHA impacts resulting from the approved development are allowable under the certified LCP and the appellant's concerns regarding these project impacts do not therefore raise a substantial issue concerning the conformity of the approved development with the County's LCP.
- The appellants' concern that the tunnel is not the least environmentally damaging feasible alternative does not raise a substantial issue because the Commission in its prior actions on the Measure T LCP amendment and the federal consistency certification for the Federal Highway Administration funding approval of the tunnel already determined that the tunnel project is the least environmentally damaging feasible alternative. It was therefore reasonable for the County to rely on the substantial evidence in the record for these prior Commission actions finding that the tunnel is the least environmentally damaging alternative in support of its action to approve the coastal development permit for the tunnel. The appellants' concern appears to be an untimely challenge to these prior Commission actions on the tunnel project rather than of the County's action on the coastal development permit for the tunnel.
- The appellants' concern that the tunnel project would create four lanes in conflict with the two-lane limit contained in the LCP does not raise a substantial issue because the concern is not supported by the evidence in the record, which clearly demonstrates that the approved development would be limited to a single travel lane in each direction.

The appellants' last four concerns noted above, even if they had been raised in a timely filed appeal, do not raise a substantial issue because, contrary to the requirements of Coastal Act sections 30625 and 30603, none of these concerns allege that the approved development does not conform to the standards set forth in the County's LCP or public access policies of the Coastal Act.

5. Finally, the documentation that was subsequently provided by the Coastal Family Alliance and the Save Our Bay Foundation beyond the 10-working day appeal period in fact pre-dated the County's decision and could not, therefore, be reasonably considered to reflect and respond to the County's actual decision.

The Commission's role at the "substantial issue" phase of an appeal of a local government action taken after certification of its local coastal program is to decide

whether the appeal of the local government action raises a substantial issue as to conformity of the project approved by the County with the applicable Local Coastal Program (LCP) and with the access policies of the Coastal Act. In this case, with respect to the issues contained within the documentation submitted by the appellants beyond the 10-working day appeal period, the local government's findings for the approval of the coastal development permit (Exhibit 18) support its determination that the approved development, as conditioned, does conform to the policies of the County's LCP and the access policies of the Coastal Act. **The motion to carry out the staff recommendation is on Page 5.**

1.0 STAFF RECOMMENDATION

No Substantial Issue

The staff recommends that the Commission determine that no substantial issue exists with respect to the grounds on which the appeal by Oscar Braun, for the Coastal Family Alliance and the Save Our Bay Foundation, has been filed.

Motion

I move that the Commission determine that Appeal No. A-2-SMC-04-011 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

Staff Recommendation of No Substantial Issue

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

Resolution to Find No Substantial Issue

The Commission finds that Appeal No. A-2-SMC-04-011 does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency of the approved project with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

2.0 PROJECT SETTING AND DESCRIPTION

2.1 Project Location and Site Description

The approved project is located between Pacifica and north of Montara in unincorporated San Mateo County (Exhibits 1-2). Proceeding from north to south, from Pacifica, the approved new Highway 1 alignment would depart from the existing Highway 1 along an uphill grade approximately 0.5 kilometer (0.3 mile) south of Linda Mar Boulevard in Pacifica, bridge the valley at Shamrock Ranch on a curve, and enter twin tunnels beneath San Pedro Mountain. The approved alignment would exit the tunnels at a cliff face just south of the Devil's Slide promontory and rejoin the existing highway on a slight downhill grade (Exhibits 3-5).

2.2 Project Description

As approved by the County, Caltrans would construct the Devil's Slide Tunnel project, consisting of realigning approximately 6,500 linear feet of State Route 1 from Devil's Slide to a tunnel underneath San Pedro Mountain, including approaches and bridges outside the tunnel. The approved project would include construction of two parallel tunnels with a length of 4,000 feet, a north portal approach of 1,500 feet that includes parallel bridges measuring 1,050 feet, and a south portal approach of 1,000 feet. Each tunnel would be 30 feet wide and would provide a single traffic lane. Approximately 5,250 feet of the existing Highway 1 alignment would be abandoned as a result of this project and initially turned over to San Mateo County for maintenance and operational responsibilities, after Caltrans constructs parking areas at both ends of the abandoned highway (Exhibits 8-9) and converts this portion into a non-vehicular public trail.

The approved project would generate approximately 610,000 cubic yards of excavated earth. All excess soil would be transported to a fill disposal site located approximately 1,800 feet south of the south portal (Exhibit 11). A Tunnel Operations and Maintenance Center (OMC) would be constructed near the existing highway on a portion of the disposal site (Exhibit 10). The OMC/disposal site would be contour graded and re-vegetated with coastal scrub species (Exhibit 15). Offsite wetland mitigation would occur south of the tunnel, across Highway 1 from the Chart House Restaurant at the north end of Montara (Exhibit 16).

2.3 Project History

Highway 1 at Devil's Slide is geologically unstable. Since the highway was built in 1937, Caltrans has sought various permanent solutions to the problems posed by the slide. Despite drainage improvements, pavement reinforcement and rock anchors, Highway 1 continues to experience difficulties and closures due to landslides and roadway subsidence, causing tremendous inconvenience to coastal residents, severe economic hardships for Coastside businesses and families, and adverse effects on public access to the many recreation opportunities in the Mid-Coast region of San Mateo County. When Highway 1 is closed, travelers are forced to detour to Highway 92 to reach the coast, and with Highway 92's limited capacity and mountainous terrain, the result is extreme traffic congestion for the entire region. The 1986 Devil's Slide FEIS listed the numerous historic road closures; similar closures have continued to occur since that document was written. One of the longest lasting road closures in the area occurred in 1995, lasted 158 days (from 1/22/95 thru 6/30/95), and cost \$2,983,000 to repair.

In the early 1970's, when NEPA (the National Environmental Policy Act) and CEQA (the California Environmental Quality Act) first became law, the Sierra Club and several other organizations filed a lawsuit over Caltrans' proposal to construct a bypass through McNee Ranch State Park, and the U.S. District Court enjoined further construction pending preparation of an Environmental Impact Report.

The Coastal Commission certified San Mateo County's Local Coastal Program (LCP) in 1981. The LCP recognized the geologic problems at Devil's Slide and provided for a two-lane bypass with uphill passing lanes along a "preferred alignment" called the

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"Martini Creek alignment" (Exhibit 3). The bypass was not a subject of major controversy during the Commission's public hearings on the LCP. However closures of the existing road continued, with a total of 22 closures occurring between 1973 and 1983. Public sentiment for a solution intensified as a result of 238 days of closure in 1980, and a three-month closure caused by the winter storms of 1982-83.

In response, in 1983 Caltrans resumed preparation of its bypass EIR for a longer alignment than the 4.5-mile long Martini Creek alignment; this alternative was called the "adopted alignment" and was a 6.8-mile long, predominantly four-lane bypass, traversing past Martini Creek through Montara and rejoining Highway 1 near the Half Moon Bay airport. Both the adopted alignment and Martini Creek alignment bisect McNee Ranch State Park, but only the adopted alignment necessitated an LCP amendment. The County submitted to the Coastal Commission LCP amendments to authorize this bypass, but in 1985 the Commission twice denied the proposed LCP amendments (on June 27, 1985, and September 25, 1985).

Caltrans then abandoned the adopted alignment and submitted a consistency certification to the Commission for a 4.5 mile long, three-lane bypass along the Martini Creek alignment (up to 100 ft. wide, with continuous uphill passing lanes in each direction, 30-ft. wide vehicle recovery areas and 49-ft. wide vehicle retention lanes, and with 5.9 million cu. yds of grading). On February 11, 1986, the Commission concurred with Caltrans' consistency certification for this bypass. However, litigation ensued and controversy remained. As a result, Caltrans never submitted to the County a coastal development permit application for this bypass.

In the winter of 1995-1996, landslide activity again closed the Highway at Devil's Slide for several months, and public pressure again mounted for a solution to the Devil's Slide problem. Although it had not been seriously studied previously as a potential feasible solution, at about this time proponents for building a tunnel as a permanent solution to Devil's Slide presented to County and state officials information supporting the viability of a tunnel. Thus, in 1996, in response to requests from local agencies and the public, Caltrans hired an independent consulting firm to conduct a tunnel feasibility study. Based upon the results of this study (The Devil's Slide Tunnel Study, Woodward-Clyde Consultants, 1996), the Federal Highway Administration (FHWA) and Caltrans determined that a tunnel alternative would be a reasonable alternative that should be fully evaluated through the environmental impact review process. Caltrans and FHWA determined that a new supplement to the 1986 FEIS was necessary in order to provide new information relevant to the tunnel alternative. On March 19, 1999, the Draft Second Supplemental Environmental Impact Statement (DSSEIS) for the proposed Devil's Slide Improvement Project was circulated for public review.

On November 5, 1996, the voters of San Mateo County passed the Devil's Slide Tunnel Initiative known as "Measure T". Passage of Measure T triggered initiation of the process to amend San Mateo County's Local Coastal Program (LCP) to provide a tunnel for motorized vehicles behind Devil's Slide through San Pedro Mountain, and to delete references to a two-lane highway bypass along the Martini Creek alignment. The

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initiative requires that the tunnel be designed consistent with restricting Highway 1 to a two-lane scenic highway using minimum state and federal tunnel standards, and that a separate trail for pedestrians and bicycles be provided outside the tunnel. Measure T also requires voter approval of any other alternative to the tunnel, except repair or reconstruction of the existing highway.

On January 9, 1997, the Commission certified this LCP amendment replacing the Martini Creek alignment with the tunnel, finding the tunnel the least environmentally damaging alternative for providing a permanent solution to the road closure problems at Devil's Slide. In its action certifying the LCP amendment, the Commission determined that the tunnel project presented a conflict between the policies of the Coastal Act that on the one hand promote the protection of public access to the coast, and on the other hand protect wetlands and environmentally sensitive habitat areas (ESHA). In resolving this conflict as provided by Coastal Act Sections 30007.5 and 30200, the Commission concluded that in this specific situation, if conditioned to avoid, minimize and mitigate wetland and ESHA impacts, it would be more protective of coastal resources to approve the project so as to provide safe public access to and along the coast even though it would result in some wetland fill and impacts to environmentally sensitive habitat areas.

On October 10, 2000, the Commission also concurred with Caltrans' consistency certification for the tunnel project. The Commission's findings elaborated that:

In reviewing Measure T the Commission acknowledged that the wetland fill for the tunnel would not be an allowable use under Section 30233(a) of the Coastal Act. The Commission determined that a conflict existed between competing Coastal Act policies which, on the one hand, promote public access, and which, on the other, seek to prevent or minimize wetland fill and protect wildlife habitat. The Commission noted the "traffic nightmare" that occurs when the existing Highway 1 at Devil's Slide is closed, which greatly impedes the public's ability to achieve access to this coastal area (and also has a severe adverse effect on the heavily tourist-dependent economy of the San Mateo County MidCoastside). The Commission also noted that the previously approved "Martini Creek" Devil's Slide bypass was far more environmentally damaging than the tunnel, not only to wetlands and environmentally sensitive habitat, but to public access and recreation, scenic public views, and the overall character of the San Mateo County Mid-Coastside. That bypass included several orders of magnitude more wetland fill than the proposed tunnel ...; the Commission further noted that:

... the tunnel called for by the proposed amendment would have far less impact on the State Park than the Martini Creek Bypass called for by the existing LUP policies to be deleted as part of the amendment. The bypass would bisect the park and would result in significant adverse effects on the quality of recreational experience that can occur in the park.

Thus, the Commission concluded that any tunnel to be built based on Measure T would be more protective of coastal resources than the Martini Creek bypass alternative. Based on the conflict resolution provision of the Coastal Act (Section 30007.5), the Commission concluded:

Based on the information submitted to date, which provides additional alternatives analysis, habitat minimization, monitoring and avoidance measures, as well as other mitigation measures discussed in this report addressing public access and recreation, scenic public views, and water quality, the Commission finds these conclusions remain valid and that, based on Section 30007.5 of the Coastal Act, that it would be most protective of significant coastal resources to allow this project to proceed. The Commission therefore concludes that the project is consistent with the Coastal Act.

On November 20, 2003, Caltrans applied to San Mateo County for a Coastal Development Permit for the project. On May 26, 2004, the County Planning Commission granted a permit with conditions. On June 3, 2004, the Coastal Family Alliance and Save Our Bay Foundation appealed this permit to the Board of Supervisors, which, as noted below, granted the permit with conditions on July 6, 2004.

3.0 APPEAL PROCESS

3.1 Local Government Action

On May 26, 2004, the San Mateo County Planning Commission approved with conditions coastal development permit No. PLN 2003-00428 authorizing the Devil's Slide Tunnel project. On June 3, 2004, the Save Our Bay Foundation appealed this permit to the County Board of Supervisors. On July 6, 2004, the Board of Supervisors denied the appeal, upholding the Planning Commission's action in approving the coastal development permit for the tunnel project.

On July 9, 2004, the Commission's North Central Coast District office in San Francisco received the County's Notice of Final Local Action for the County's approval of Local Coastal Development Permit PLN 2003-00428.

3.2 Filing of Appeal

Oscar Braun, for the Coastal Family Alliance and the Save Our Bay Foundation, and Coastal Commissioners Reilly and Caldwell filed two separate appeals with the Commission in a timely manner on July 23, 2004, within 10-working days of receipt by the Commission on July 9, 2004 of the County's Notice of Final Local Action.

On July 27, 2004, the Commission's North Central Coast District office issued the Executive Director's determination (Exhibit 19), pursuant to Section 30620(d) of the Coastal Act, that the appeal by the Coastal Family Alliance and the Save Our Bay Foundation was patently frivolous, thereby requiring the appellants to submit a filing fee of \$300 if they wished to continue to pursue the appeal. On July 30, 2004, the Commission's North Central Coast District office received the filing fee from Oscar Braun on behalf of the Coastal Family Alliance and the Save Our Bay Foundation.

If the Commission, by a majority vote of Commissioner's present, determines 'that no substantial issue exists with respect to the grounds on which the appeal has been filed pursuant to section 30603,' then the filing fee will not be returned and the Commission

will not hear the application de novo. (Public Resources Code Section 30625(b)(2); Title 14 CCR section 13115(c)). If, on the other hand, the motion specified in Coastal Act Section 30625(b)(2) fails, then the filing fee will be refunded as required by Section 30620(d) of the Coastal Act and the Commission will hear the appeal as mandated by Section 30625(b).

3.3 Appeals Under the Coastal Act

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

Coastal Act Section 30603 provides, in applicable part, that an action taken by a local government on a coastal development permit application may be appealed to the Coastal 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, or within 300 feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff; or in a sensitive coastal resource area or located within 100 feet of any wetland, estuary, or stream. Developments approved by counties may be appealed if they are not designated as the "principal permitted use" under the certified LCP. Developments that constitute a major public works or a major energy facility may be appealed, whether they are approved or denied by the local government.

The approved development is located within 300 feet of top of the seaward face of a coastal bluff, within 100 feet of a wetland, is not considered the principle permitted use under the County's certified LCP, and constitutes a major public works project. The approved development thus meets the Commission's appeal criteria in Section 30603 of the Coastal Act. Pursuant to Section 30603 of the Coastal Act, an appeal of this type of approved development is limited to the allegation that the development does not conform to the standards set forth in the certified LCP or the public access policies set forth in the Coastal Act.

Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal has been filed. In this case, because the staff is recommending no substantial issue, the Commission will 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. The only persons eligible 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 the substantial issue question must be submitted to the Commission or the Executive Director in writing.

It takes a majority of the Commissioners present to find that no substantial issue is raised. Unless it determines that the project raises no substantial issue, the Commission will conduct a full de novo public hearing on the merits of the project at the same or subsequent hearing. If the Commission conducts a de novo hearing on the appeal, the

applicable test under Coastal Act Section 30604 would be whether the development is in conformance with the certified Local Coastal Program and with the access and recreation policies of the Coastal Act.

3.4 Standard of Review

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

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

The term *substantial issue* is not defined in the Coastal Act or its implementing regulations. The Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." (Commission Regulations, Section 13115(b)). In previous decisions on appeals, the Commission has been guided by the following factors:

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

If the Commission chooses not to hear an appeal, an appellant nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

4.0 SUBSTANTIAL ISSUE ANALYSIS

Appellants' Contentions

4.1 Appellants Coastal Family Alliance and Save Our Bay Foundation, Failed to Allege an Inconsistency of the Approved Project with either the certified LCP or the access policies of the Coastal Act within the 10-working day Appeal Period Prescribed by Coastal Act Section 30603(c)

Coastal Act (Public Resources Code) Section 30625(b)(2) states that the Commission shall hear an appeal of an action taken by a local government on a coastal development permit application after the certification of the local government's LCP unless it determines "that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to section 30603." Pursuant to section 30603 of the

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Coastal Act, the grounds for an appeal of a local action approving development after certification of the local government's LCP are limited to an allegation that the development does not conform to the certified LCP or the access policies of the Coastal Act. Thus, the Commission's role as an appellate body at this stage is limited to assessing whether the appeal raises a substantial issue with respect to the conformity of the local government's action with the certified LCP and the access policies of the Coastal Act.

Contrary to the requirements of Coastal Act Section 30603(a), the appeal by the Coastal Family Alliance and the Save Our Bay Foundation that was filed within the 10-working day appeal period did not include any claim that the local government action is inconsistent with either the certified LCP or the public access policies of the Coastal Act (Exhibit 17). Therefore, the appeal raises no issues that could justify a decision by the Commission to hear the appeal. In addition, the appeal by the Coastal Family Alliance and the Save Our Bay Foundation that was filed within the 10-working day appeal period did not include a statement of facts on which the appeal was based, as is required by Section 13111(a)(8) of Title 14 of the California Code of Regulations (Exhibit 17).

In fact, the appeal form submitted by the Coastal Family Alliance and the Save Our Bay Foundation on the last day of the prescribed 10-working day appeal period attached no documentation and identified no reasons for the appeal. Instead, the appellants stated they would provide "written documentation and reason for appeal" on a date outside the 10-working day appeal period (Exhibit 17). If the Commission were to allow the appellants to provide for the first time documentation and reasons for appeal on a date beyond the 10 working-day appeal period, the Commission would, in effect, be extending the statutorily prescribed time period for appeal, contrary to the mandate of Section 30603(c) of the Coastal Act. Accordingly, the Commission finds that the appeal that was filed within the 10-working day appeal period raises no substantial issue because: (1) the appeal form submitted failed to allege any grounds for appeal; and (2) the appeal form submitted did not include a statement of facts on which the appeal was based.

Section 30603(c) of the Coastal Act mandates that any local action taken by a local government after certification of an LCP shall become final on the 10th working day from the date of receipt by the Commission of the Notice of Final Local Action. Section 30603(c) of the Coastal Act states:

(c) Any action described in subdivision (a) shall become final at the close of business on the 10th working day from the date of receipt by the commission of the notice of the local government's final action, unless an appeal is submitted within that time. Regardless of whether an appeal is submitted, the local government's action shall become final if an appeal fee is imposed pursuant to subdivision (d) of Section 30620 and is not deposited with the commission within the time prescribed.

Due to the appellants' failure to make the allegations prescribed by Coastal Act section 30603(a) within the 10-working day appeal period prescribed by Section 30603(c), along

with its failure to provide any evidence or facts to support its appeal within the 10-working day appeal period, the appeal raises no issues that could justify a decision by the Commission to hear the appeal.

4.2 Even if the Documentation Submitted Beyond the 10-working day Appeal Period by Appellants' Coastal Family Alliance and Save Our Bay Foundation Had Been Timely Submitted, such Documentation still Raises No Substantial Issue of Conformity of the Approved Project with Either the Certified LCP or the Access Policies of the Coastal Act.

As stated above, the appeal form submitted by the Coastal Family Alliance and the Save Our Bay Foundation did not include any allegations that the approved project was inconsistent with the LCP or the access policies of the Coastal Act (Exhibit 17). Instead, on July 28, 2004, five days after closure of the 10-working day appeal period, the appellants submitted a collection of newspaper articles, correspondence dating back to 1973. ~~Most of these documents concern the Devil's Slide project, though it is unclear~~ how some of these documents relate to the project. Although some of these documents do raise issues concerning the conformity of the tunnel project with the County's LCP, because they were not included in a timely filed appeal, they cannot be considered as valid grounds for appeal in accordance with the 10-working day appeal deadline established by Coastal Act Section 30603(c).

Moreover, even if the documentation submitted by the appellants beyond the 10-working day appeal period had been timely submitted, the appeal does not raise a substantial issue as to the approved project's conformity with the LCP or the public access policies of the Coastal Act. The Commission notes that rather than provide the Commission with a specific explanation of its reasons for appeal, these documents include a collection of news articles and correspondence written over the years by a number of parties (Exhibit 21). Contained within this documentation are scattered statements opposing the project at its various stages. This documentation provided by the appellants beyond the 10-working day appeal period is all material that predates the County's action on the coastal development permit on July 6, 2004, and could not, therefore, be reasonably considered to reflect and respond to the County's actual decision.

For the reasons stated below, the Commission finds that even if timely filed, the supporting documentation that was subsequently provided by the Coastal Family Alliance and the Save Our Bay Foundation after the close of the 10-working day appeal period does not establish any substantial issue with respect to conformity of the approved project with the LCP or the access policies of the Coastal Act.

After examining the materials that the appellants submitted, it appears that the appellants' concerns, if liberally construed, fall into eight general arguments that: (1) the project would result in wetland fill in conflict with the wetland protection policies of the LCP; (2) the project would result in impacts to environmentally sensitive habitat areas (ESHA) in conflict with the sensitive habitat protection policies of the LCP; (3) the project is not the least environmentally damaging alternative; (4) the project would provide four highway lanes in conflict with the LCP requirement that Highway 1 remain a scenic two-

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lane roadway; (5) the project does not comply with the requirements of the National Environmental Policy Act (NEPA) or the California Environmental Quality Act (CEQA); (6) the project is too expensive; (7) the tunnel alternative is less safe than other project alternatives; and (8) various actions by Caltrans and the County concerning the project are in violation of environmental protection and federal anti-racketeering laws.

The first four issues noted above, had they been raised specifically in a timely filed appeal, would potentially be valid grounds for an appeal of the County's action on the coastal development permit for the approved development because they include contentions that the tunnel project is inconsistent with the coastal resource protection policies of the County's LCP. However, even assuming these four contentions to be otherwise valid, none of them raise a substantial issue of conformity of the approved development with the County's LCP for the following reasons:

4.2.1 Wetlands

The approved development would result in 42,250 square feet of wetland fill (Exhibits 11-12). As the County noted in its findings for the approved coastal development permit, Caltrans proposes to mitigate wetland impacts at a 4:1 ratio. The County further noted that:

Due to the steep topography of the project site, full on-site mitigation at this level is not feasible. The applicant proposes to provide on-site mitigation where practicable and feasible. In addition, the applicant has proposed restoring and creating new wetland areas on a parcel just north of Montara and across from the former Charthouse Restaurant (Attachment K [Exhibit 16]).

Some of the documents submitted by the appellants on July 28, 2004 raise concerns that the tunnel project is inconsistent with the wetland protection policies of the San Mateo County LCP and the Coastal Act.

Although the LCP prohibits most types of development from being located in or within 100 feet of wetlands, as amended through the Measure T initiative and certified by the Commission, the County's LCP specifically permits the limited and unavoidable wetland impacts related to the Devil's Slide Tunnel project. At the time that the provisions of Measure T were incorporated into the certified LCP in 1996-1997, the Commission determined that the tunnel project presented a conflict between the coastal access and wetland protection policies of the Coastal Act. In resolving this conflict as provided by Coastal Act Sections 30007.5 and 30200, the Commission found that, if conditioned to avoid, minimize and mitigate wetland impacts, approval of the tunnel project would, on balance, be more protective of coastal resources.

In its subsequent consistency certification action (CC-94-00), the Commission summarized the action the Commission had taken in certifying the LCP amendment incorporating the provisions of Measure T into the certified LCP as follows:

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On November 5, 1996, the voters of San Mateo County passed the Devil's Slide Tunnel Initiative known as Measure T. Passage of Measure T triggered initiation of the process to amend San Mateo County's Local Coastal Plan (LCP) to provide a tunnel for motorized vehicles behind Devil's Slide through San Pedro Mountain, and to delete references to a two-lane highway bypass along the Martini Creek alignment. The Initiative requires that the tunnel be designed consistent with restricting Highway 1 to a two-lane scenic highway using minimum state and federal tunnel standards, and that a separate trail for pedestrians and bicycles be provided outside the tunnel. Measure T also requires voter approval of any other alternative to the tunnel, except repair or reconstruction of the existing highway.

On January 9, 1997, the Commission certified this LCP amendment, finding the tunnel the least environmentally damaging alternative for providing a permanent solution to the road closure problems at Devil's Slide, and finding that while the project did not qualify as an allowable use pursuant to Section 30233(a), the project presented a conflict between Coastal Act policies addressing, on the one hand, protection of wetland resources, and, on the other, promotion of public access. Under Section 30007.5 (the conflict resolution section of the Coastal Act), the Commission concluded that it would be more protective of coastal resources to resolve this conflict by approving the project and allowing wetland fill and encroachment near environmentally sensitive habitat areas (with avoidance and mitigation measures).

As the County noted, the project was originally proposed with a fill embankment at the north portal across the Shamrock Ranch valley and filling the entire north pond at Shamrock Ranch, and, at the south portal, which would have had substantial impacts upon the riparian and wetland resources in this area. Additionally, the original plans called for the filling in of the seasonal ponding depression at the fill disposal site and elimination of both wetland areas around the South Portal. Working with the County and Coastal Commission staff, Caltrans reduced the extent of wetland fill and made several impact-reducing design changes, including: (1) constructing a bridge across the valley at the west end of Shamrock Ranch (protecting wetlands and ESHA/California red-legged frog habitat); (2) modified the design of the fill slope at the fill disposal site (south of the south portal) to avoid filling the uphill ponding depression at this location; (3) further reducing wetland and riparian impacts by relocating access into the OMC site from the north to the south, pushing the OMC building further east, limiting grading, and installing retaining walls; (4) reducing wetland impacts at Shamrock Ranch by realigning construction access roads throughout the property to avoid wetland areas and narrowing the roadway prism in spots that traversed wetlands to minimize impacts (through use of temporary retaining walls); (5) replacing a proposed water quality measure (installation of a bio-swale at Shamrock Ranch, which would have involved small impacts to wetlands) with a water quality basin that avoids wetland impacts; (6) eliminating wetland impacts at the south portal through redesigning the northbound approach to the south portal; (7) replacing originally proposed roadway drainage improvements and a maintenance access area at the north end of the soil nail walls, which would have

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involved fill of a seasonal wetland, with a drainage plan designed to allow runoff from above the walls to sheet flow over the face of the soil nail wall; and (9) redesigning the rock cut at the south portal to avoid wetland fill and replace fill with a retaining wall.

In addition, the County's conditions of approval require submittal of a final wetland mitigation plan for review and approval by the County Planning Division, in consultation with the Coastal Commission, for the "Charthouse mitigation site," with such plan to include: (1) mitigation goals, objectives and performance standards; (2) an ecological assessment of the existing habitat, functions and values of the mitigation sites; (3) specific designs for hydrology, soil, ground elevations, buffer areas, vegetation composition; (4) plans for removal of exotics; (5) a contingency plan to be implemented if success criteria or mitigation performance standards are not achieved; (6) long term maintenance; (7) monitoring; (8) an implementation schedule; and (9) conservation easements for all wetland mitigation areas (three on site and one at the Chighthouse site) for habitat restoration, habitat maintenance, open space, view preservation and habitat protection.

Because, the approved tunnel has been designed and conditioned to avoid, minimize and mitigate wetland impacts to the maximum extent feasible consistent with the requirements of Measure T LCP and the Commission's action certifying the Measure T LCP amendment, the wetland impacts resulting from the approved development are allowable under the certified LCP and the appellant's concerns regarding these project impacts do not therefore raise a substantial issue concerning the conformity of the approved development with the County's LCP.

4.2.2 ESHA

The approved development would result in unavoidable impacts to California red-legged frog habitat, which is considered a sensitive habitat (ESHA) under the County's LCP. Some of the documents submitted by the appellants on July 28, 2004, raise concerns that the approved development is therefore inconsistent with the sensitive habitat protection policies of the LCP.

At the time that the provisions of Measure T were incorporated into the certified LCP in 1996-1997, the Commission determined that the tunnel project presented a conflict between the coastal access and ESHA policies of the Coastal Act. In resolving this conflict as provided by Coastal Act Sections 30007.5 and 30200, the Commission found that, if conditioned to avoid, minimize and mitigate ESHA impacts, approval of the tunnel project would, on balance, be more protective of coastal resources.

As the County noted, the project was originally proposed with a fill embankment at the north portal across the Shamrock Ranch valley and filling the entire north pond at Shamrock Ranch, and, at the south portal, which in addition to filling wetlands as discussed above, would have also destroyed environmentally sensitive California red-legged frog habitat. Also as discussed above Caltrans agreed to bridge rather than fill the north pond and to include a number of measures, in consultation with the U.S. Fish and Wildlife Service (USFWS), to identify, protect, and minimize impacts to ESHA at all work areas.

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Of particular concern is California-red legged frog habitat. The areas where the frog exists (identified in detailed maps contained in the County's file [Attachments 3-B1 through 3-B11 of plans dated November 20, 2003]) will be delineated and marked with high visibility, frog-proof fencing, silt fencing, and sturdy perimeter barriers. No construction activity or movement through these ESHAs will be allowed. Vegetation removal for this project will be limited to those areas that will be disturbed by construction activities.

Caltrans has also committed to the measures contained in the Biological Opinion issued by the USFWS, dated December 2000 and revised by letter from the USFWS dated March 25, 2004. The measures include relocating red-legged frog from the north pond (Shamrock Ranch) to minimize incidental take during construction, creation of a pond on the Shamrock Ranch property, where new permanent habitat for the red-legged frog was established. The purpose of the pond was to provide additional habitat for frogs that would be relocated from the northern pond during construction, and as mitigation for potential indirect impacts resulting from the project. The USFWS endorsed the proposed pond creation and, in 2000, Caltrans constructed the new pond. In April and July 2001, with approval from the USFWS, frogs were trapped at the north pond and relocated to the new pond. In addition to providing new California red-legged frog habitat, this pond also created 0.04 acres of wetlands.

Additional mitigation measures based on the biological opinion include: (1) frog exclusion fencing (including one-way funnels that allow frogs that might be in the adjacent construction areas to "escape" to non-construction areas); (2) sediment barrier fencing; (3) restoration of temporarily disturbed areas; (4) redirection of runoff from the bridges to a water quality basin and which does not drain to the ponds and their surrounding habitats; (5) post-project completion, a one-time, silt removal project will be implemented at the north pond in order to lessen the current heavy silt load in this basin (with the frogs temporarily relocated, to the degree possible, during this operation); (6) permanent protection for the north pond, including a permanent water supply and planting of a complex of indigenous emergent reed, sedge, and forbs species, in order to assist continued larval metamorphosis, even during drought years; (7) a three-year monitoring plan for California red-legged frog impacts and recovery; (8) removal of the koi carp population from the south pond (at the North Portal work site) to eliminate predation on red-legged frog eggs and tadpoles; (9) restoration of the now-disturbed north face of the south pond dam (at the North Portal work site); (10) regular inspections of the fence around the construction access road and the north pond to ensure that red-legged frogs do not cross the road and enter the north pond; (11) installation of an electric fence around the new pond fence to prevent mammalian predation; and (12) development of a monitoring plan for the Peregrine falcon nesting site adjacent to the South Portal work area, including suspension of construction if monitoring establishes that project activities are interrupting egg incubation or the feeding of the chicks at the peregrine falcon nest(s).

Thus, because, consistent with the provisions of Measure T the approved tunnel has been conditioned to avoid, minimize and mitigate ESHA impacts to the maximum extent

feasible, the ESHA impacts resulting from the approved development are specifically allowed under the certified LCP. Therefore, the appellant's concerns regarding the impacts of the approved development to ESHA do not raise a substantial issue concerning the conformity of the approved development with the certified LCP.

4.2.3 Bolsa Chica Decision

The appellants rely on the compilation of news articles and correspondence to argue that the *Bolsa Chica* decision (*Bolsa Chica Land Trust v. Superior Court of San Diego*, 71 Cal.App.4th 493) does not allow the Commission to rely on the "conflict resolution test" of Section 30007.5 to allow the unavoidable wetland and ESHA impacts resulting from the Devil's Slide Tunnel project. However, the *Bolsa Chica* decision did not reach that conclusion. In the *Bolsa Chica* case, the Court held that the approval by the Commission of an LCP that allowed residential development of a eucalyptus grove identified as ESHA was not justifiable under the Coastal Act as a resolution of a conflict between competing policies of the Coastal Act because neither the Commission nor the Court could identify a conflict between two Coastal Act policies. Neither the Commission nor the Court could identify a conflict between two Coastal Act policies because there are no Coastal Act policies that mandate the provision of residential housing.

In contrast, before and after the *Bolsa Chica* decision, the Commission has in limited situations authorized certain projects involving conflicts with wetland and ESHA protection policies; the Commission has done so, however, only when it has found that a conflict exists between Coastal Act policies and when such conflict was "... resolved in a manner which on balance is the most protective of significant coastal resources."

For example, in reviewing CC-64-99 (San Diego Metropolitan Transit Development Board, mid-coast light-rail extension, San Diego) the Commission considered the *Bolsa Chica* decision and found:

The project creates a conflict between the access and water quality policies of the CCMP on the one hand and wetland policies on the other. If the proposed project is denied based on wetland policy requirements, the existing and future access and water quality impacts from traffic congestion would not be reduced. The increased traffic problems will result in the continued deterioration of these resources. Therefore, the project results in a conflict among Coastal Act policies. The access and water quality benefits from this project are significant and the project benefits other coastal resources and issues because it is an extension of a mass transit facility that will improve air quality and reduce energy consumption. The wetland impacts are not significant for two reasons. First, the amount of wetland fill is small, 0.007 acre (304.92 square feet). Second, the impact to the resource is not significant because it is degraded, affected by urban encroachment, and does not support any endangered, threatened, or special status species. Therefore, concurrence with this consistency certification is on balance most protective of coastal resources.

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In CC-29-02 (North County Transit District, Oceanside-Escondido Rail Project), the Commission similarly found:

The project creates a conflict between the access and water quality policies of the CCMP on the one hand and wetland policies on the other. If the proposed project were denied based on wetland policy requirements, the existing and future access and water quality impacts from traffic congestion would not be reduced. The increased traffic problems will result in the continued deterioration of these resources. Therefore, the project results in a conflict among Coastal Act policies. The access and water quality benefits from this project are significant and the project benefits other coastal resources and issues because it is an extension of a mass transit facility that will improve air quality and reduce energy consumption. The wetland impacts are not significant for two reasons. First, the amount of wetland fill is small, 0.275 acre (11,979 square feet). Second, the impact to the resource is not significant because it is disturbed and has low habitat value, is affected by urban encroachment, and does not support any endangered, threatened, or special status species. Therefore, pursuant to Section 30007.5, concurrence with this consistency certification is on balance most protective of coastal resources.

Although the appellants are correct in stating the *Bolsa Chica* decision determined that "the power to balance and compromise (Section 30007.5) cannot be found in Section 30240," the appellants misinterpret that decision when they extrapolate from it that the power to resolve a conflict under Section 30007.5 of the Coastal Act is not available. As stated above, one reason the subject tunnel case differs from the circumstances in the *Bolsa Chica* decision is that unlike the LCP amendment incorporating the provisions of Measure T, the Commission did not and could not find in the *Bolsa Chica* case that a conflict existed between two Coastal Act policies. Therefore the Commission did not rely on Section 30007.5 to resolve a conflict in the *Bolsa Chica* matter. Thus, because the proposed fill of wetlands in the *Bolsa Chica* matter was not an allowable use under Sections 30233(a) and Section 30240, it could not be found consistent with the Coastal Act. The appellants' assertion that the *Bolsa Chica* decision does not allow the Commission to rely on Section 30007.5 when a legitimate conflict does exist however (which the Commission has now repeatedly found exists for the Devil's Slide tunnel project) is an inappropriate extrapolation of the *Bolsa Chica* decision and, as evidenced above, is refuted by Coastal Commission decisions and findings adopted since the *Bolsa Chica* decision was issued.

Further, the concerns raised by the appellants are issues that were resolved when the Commission and the County certified Measure T into the LCP in 1996-1997. By rechallenging these issues in the County's approval of the coastal development permit, the appellants are in effect challenging the provisions of the LCP that were certified over eight years ago rather than raising the statutorily required grounds for appeal of a local coastal development permit regarding whether the local approval of the coastal development permit is consistent with the certified LCP as is required by Coastal Act Section 30603.

4.2.4 Alternatives Analysis

Some of the news articles and correspondence submitted by the appellants after the 10-working day appeal period raise concerns that the tunnel project is not the least environmentally damaging feasible alternative.

In 1997, the Commission certified the Measure T LCP amendment, which included amending LUP Policy 2.54(b) to state:

For Route 1, allow construction of a tunnel behind Devil's Slide through San Pedro Mountain. The tunnel should be given high priority for federal and State highway funds. Until a tunnel is completed, the State should maintain and repair the road on the existing alignment. No part of Route 1 used by motor vehicles shall be built on any alignment that bisects Montara State Beach, including the "McNee Ranch Acquisition" except along the current Route 1 alignment. Any alternative to the tunnel, except the repair and reconstruction of the existing road, shall require approval by a majority of the voters of San Mateo.

[Emphasis added.]

In certifying this amendment to the County's LCP, the Commission evaluated the three principal alternatives to the Devil's Slide Tunnel project: (1) the inland bypass alternative, which would relocate the highway inland of the slide through the McNee Ranch acquisition of Montara State Beach known as the Martini Creek alignment; (2) the marine disposal alternative, which would maintain the highway in its current alignment by buttressing the bluff with a massive fill in the ocean of material excavated from San Pedro Mountain above Devil's Slide; and (3) the "no project" alternative. After considering each of these alternatives, the Commission determined that the tunnel alternative represents the least environmentally damaging feasible alternative.

The Commission finds that it was reasonable for the County to rely on the Commission's findings for the certification of the Measure T LCP amendment in concluding that the tunnel project is the least environmentally damaging alternative. Furthermore, as amended through Measure T, the LCP prohibits the County from approving a coastal development permit for any alternative to the tunnel without voter approval. Therefore, the Commission finds that the appellants' concerns regarding project alternatives raises no substantial issue of conformity of the approved development with the certified LCP.

4.2.5 Number of Lanes

With respect to the appellant's concern that the project is in essence a four-lane road and, therefore, inconsistent with the requirement of County LUP Policy 2.50.b that "The tunnel design shall be consistent with (a) Coastal Act [Section 30254] limits restricting Route 1 to a two-lane scenic highway...", this assertion is simply inaccurate. It appears that the appellants' concern may be that the total 30-foot width of each of the approved twin bore tunnels could provide for two travel lanes within each tunnel. However, the project description and plans, and the engineering and design specifications for the project all clearly show that the approved tunnels would provide: one 3.6-meter (11.8-foot) travel lane; one 0.6-meter (2-foot) shoulder; one 2.4-meter (7.9-foot) shoulder; and two 1.2-meter (3.9-foot) sidewalks. Consistent with Measure T, which the Commission

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has already found consistent with Coastal Act Section 30254 (see p. 13, Commission findings, San Mateo County LCP Amendment No. 1-96), wide shoulders are permitted within the tunnels to allow passage for emergency vehicle. Moreover, the North Portal approach bridges are narrower than the tunnels, each providing one 3.6-meter (11.8-foot) travel lane, one 2.4-meter (7.9-foot) shoulder, and one 1.8-meter (5.9-foot) bicycle lane.

Therefore, the Commission finds that the appellants' concerns that the tunnel would provide four travel lanes raises no substantial issue of conformity of the approved development with the certified LCP.

4.2.6 Invalid Grounds for Appeal of Coastal Development Permit

The appellants' concerns that: (1) the project does not comply with the requirements of the National Environmental Policy Act (NEPA) or the California Environmental Quality Act (CEQA); (2) the project is too expensive; (3) the tunnel alternative is less safe than other project alternatives; and (4) various actions by Caltrans and the County concerning the project are in violation of environmental protection and federal anti-racketeering laws, even if they had been raised in a timely filed appeal, do not raise a substantial issue because, contrary to the requirements of sections 30625(b)(1) and 30603 of the Coastal Act, none of these concerns allege that the approved development does not conform to the standards set forth in the County's LCP or public access policies of the Coastal Act.

4.3 Conclusion

The Commission finds that with respect to the issues raised by appellants, it was reasonable for the County to conclude that the approved project is consistent with the County's LCP based on the avoidance, minimization, and mitigation measures incorporated into the final design of the project and as required by the County's conditions of approval for the coastal development permit, combined with the language of Measure T and the supporting Coastal Commission LCP amendment and consistency certification findings.

Other factors amplify how the Coastal Family Alliance and Save Our Bay Foundation's appeal raises "No Substantial Issue" with respect to the conformity of the approved project with the County's LCP and with the access policies of the Coastal Act.

With respect to the issues contained within the documentation submitted by the appellants beyond the 10-working day appeal period and the degree of factual and legal support for the local government's decision, the County's findings and conclusions (Exhibit 18) are amply supported by substantial evidence. The County found the proposed project, as conditioned, to be consistent with the applicable policies and building standards set forth by the certified San Mateo County LCP. The County's approval includes 48 special conditions and specifically reviews the project against the applicable LCP provisions for each coastal resource that would be impacted by the project. The approved project is supported by intensive environmental analysis (including Environmental Impact Reports, Statements, and Supplements), an approved ballot initiative, many public hearings, several votes at distinct project stages (including

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LCP amendment, consistency certification, and coastal development permit) by the County and the Coastal Commission. With respect to the issues contained within the documentation submitted by the appellants beyond the 10-working day appeal period, the County findings also discuss that with the conditions imposed by the County, all feasible wetland and ESHA impact avoidance measures have been taken, unavoidable impacts will be mitigated to the maximum extent feasible, and, that therefore, the tunnel project represents the least environmentally damaging feasible alternative.

With respect to the issues contained within the documentation submitted by the appellants beyond the 10-working day appeal period and the precedential value of the local government's decision for future interpretations of its LCP, because the County's LCP has been amended to specifically contemplate and authorize this project, the project does not raise any concerns regarding the precedential value of the local government's decision for future interpretations of its LCP.

Therefore, even with regard to the untimely concerns submitted by Coastal Family Alliance and Save Our Bay Foundation beyond the 10-working day appeal period, the Commission finds that Coastal Family Alliance and Save Our Bay Foundation's appeal of the County's action does not raise any substantial issues of conformity of the approved project with either the LCP policies or the public access policies of the Coastal Act.

APPENDICES

- A. Substantive File Documents
- B. Cited San Mateo County LCP Policies

EXHIBITS

- 1-2. Project Location
3. Tunnel Alignment and former Inland Bypass alignment
4. Tunnel and OMC Building Locations
5. Tunnel Profile under San Pedro Mountain
6. Tunnel/Bridge Cross Sections
7. Bridges
8. North Cul-de-sac
9. South Cul-de-sac
10. OMC Building
11. Fill Disposal Site
12. North Portal
13. South Portal
14. North Portal Revegetation Plan
15. South Portal Revegetation Plan
16. Offsite Wetland Mitigation Site
17. Appellant's (Coastal Family Alliance's and Save Our Bay Foundation's) Appeal Form Submitted within the 10-working day appeal period
18. San Mateo County Findings and Conditions

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19. Executive Director's letter of July 27, 2004 ("patently frivolous" determination)
20. San Mateo County Counsel Letter of January 25, 2001
21. Appellant's (Coastal Family Alliance's and Save Our Bay Foundation's) material submitted after closure of the 10-working day appeal period
22. Additional Correspondence
23. Measure T

APPENDIX A

SUBSTANTIVE FILE DOCUMENTS:

1. San Mateo County File Number: PLN 2003-00428 (Caltrans, Devil's Slide Tunnel)
2. Consistency Certification No. CC-94-00 (Caltrans, Devil's Slide Tunnel)
3. San Mateo County LCP Amendment No. 1-96, ("Measure T," the Devil's Slide Tunnel Initiative).
4. 1986 Environmental Impact Statement/Environmental Impact Report.
5. Draft Supplemental Environmental Impact Statement (DSSEIS) for the proposed Devil's Slide Improvement Project, March 19, 1995.
6. Draft Second Supplemental Environmental Impact Statement (DSSEIS) for the proposed Devil's Slide Improvement Project, March 1999.
7. Federal Highway Administration issued a Record of Decision on this document on September 13, 2002.
8. The Devil's Slide Tunnel Study, Woodward-Clyde Consultants, 1996.
9. Addendum to the Devil's Slide Dewatering Feasibility Study, Caltrans, June 2000.
10. Preliminary Coastal Zone Wetland Delineation, State Route 1 Devil's Slide Bypass Project, Caltrans, June 15, 2000.
11. San Mateo County LCP Amendments No. 1-85 and 2-85, Devil's Slide bypass (adopted alignment bypass).
12. Consistency Certification CC-45-85, Caltrans, Devil's Slide bypass (Martini Creek bypass).
13. Consistency Certification CC-64-99, San Diego Metropolitan Transit Development Board, mid-coast light-rail extension, San Diego.
14. Consistency Certification CC-29-02, North County Transit District, Oceanside-Escondido Rail Project.

APPENDIX B

SAN MATEO COUNTY LCP LAND USE PLAN POLICIES

2. 50 Route 1 and Route 92 Phase I Capacity Limits

- a. On Route 92, limit Phase I improvements to: (1) slow vehicle lanes on uphill grades, and (2) the following operational and safety improvements within the existing alignment or lands immediately adjacent: elimination of sharp curves, lane widening, wider shoulders to allow passage for emergency vehicles and signals at major intersections.
- b. On Route 1, limit Phase I improvements to: (1) slow vehicle lanes on uphill grades and the following operational and safety improvements within the ~~existing alignment or lands immediately adjacent: elimination of sharp~~ curves, lane widening, wider shoulders to allow passage for emergency vehicles and signals at major intersections; and (2) construction of a tunnel for motorized vehicles only behind Devil's Slide through San Pedro Mountain. The tunnel design shall be consistent with (a) Coastal Act limits restricting Route 1 to a two-lane scenic highway, and (b) minimum State and federal tunnel standards. A separate trail for pedestrians and bicycles shall be provided outside the tunnel as specified in Policy 2. 56a.

2. 54 Roadway Alignments

- a. For Routes 92 and 84, use the existing alignment when increasing roadway capacity, unless it can be proven physically and economically infeasible, or if use of the existing alignment would be environmentally more damaging than an alternative route.
- b. For Route 1, allow construction of a tunnel behind Devil's Slide through San Pedro Mountain. The tunnel should be given high priority for federal and State highway funds. Until a tunnel is completed, the State should maintain and repair the road on the existing alignment. No part of Route 1 used by motor vehicles shall be built on any alignment that bisects Montara State Beach, including the "McNee Ranch Acquisition" except along the current Route 1 alignment. Any alternative to the tunnel, except the repair and reconstruction of the existing road, shall require approval by a majority of the voters of San Mateo.
- c. Require that the roadway improvements be consistent with policies of the Local Coastal Program, particularly the Sensitive Habitats and Agriculture Components.

2. 56 Improvements for Bicycle and Pedestrian Trails

- a. Require, if funds are available, that CalTrans provide adjacent or separate facilities for bicycle and pedestrian trails in accordance with the policies of the Recreation and Visitor-Serving Facilities Component and the County Bikeways Plan. If a tunnel is constructed behind Devil's Slide, require as part of the project that CalTrans construct a bicycle and pedestrian trail outside the tunnel.
- b. Require, as a minimum, that CalTrans provide adequate right-of-way on new or expanded roadways to allow the future development of bicycle and pedestrian trails in accordance with the policies of the Recreation and Visitor-Servicing Facilities Component and the County Bikeways Plan.

***7. 1 Definition of Sensitive Habitats**

Define sensitive habitats as 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 and endangered" species as defined by the State Fish and Game Commission, (2) all perennial and intermittent streams and their tributaries, (3) coastal tide lands and marshes, (4) coastal and offshore areas containing breeding or nesting sites and coastal areas used by migratory and resident water-associated birds for resting areas and feeding, (5) areas used for scientific study and research concerning fish and wildlife, (6) lakes and ponds and adjacent shore habitat, (7) existing game and wildlife refuges and reserves, and (8) sand dunes. Sensitive habitat areas include, but are not limited to, riparian corridors, wetlands, marine habitats, sand dunes, sea cliffs, and habitats supporting rare, endangered, and unique species.

7. 2 Designation of Sensitive Habitats

Designate sensitive habitats as including, but not limited to, those shown on the Sensitive Habitats Map for the Coastal Zone.

***7. 3 Protection of Sensitive Habitats**

- a. Prohibit any land use or development which would have significant adverse impact on sensitive habitat areas.
- b. Development in areas adjacent to sensitive habitats shall be sited and designed to prevent impacts that could significantly degrade the sensitive habitats. All uses shall be compatible with the maintenance of biologic productivity of the habitats.

***7. 4 Permitted Uses in Sensitive Habitats**

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- a. Permit only resource dependent uses in sensitive habitats. Resource dependent uses for riparian corridors, wetlands, marine habitats, sand dunes, sea cliffs and habitats supporting rare, endangered, and unique species shall be the uses permitted in Policies 7. 9, 7. 16, 7. 23, 7. 26, 7. 30, 7. 33, and 7. 44, respectively, of the County Local Coastal Program on March 25, 1986.
- b. In sensitive habitats, require that all permitted uses comply with U. S. Fish and Wildlife and State Department of Fish and Game regulations.

7. 5 Permit Conditions

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

7. 6 Allocation of Public Funds

In setting priorities for allocating limited local, State, or federal public funds for preservation or restoration, use the following criteria: (1) biological and scientific significance of the habitat, (2) degree of endangerment from development or other activities, and (3) accessibility for educational and scientific uses and vulnerability to overuse.

7. 7 Definition of Riparian Corridors

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

7. 8 Designation of Riparian Corridors

Establish riparian corridors for all perennial and intermittent streams and lakes and other bodies of freshwater in the Coastal Zone. Designate those corridors shown on the Sensitive Habitats Map and any other riparian area meeting the definition of Policy 7. 7 as sensitive habitats requiring protection, except for manmade irrigation ponds over 2,500 sq. ft. surface area.

7. 9 Permitted Uses in Riparian Corridors

- a. Within corridors, permit only the following uses: (1) education and research, (2) consumptive uses as provided for in the Fish and Game Code and Title 14 of the California Administrative Code, (3) fish and wildlife management activities, (4) trails and scenic overlooks on public land(s), and (5) necessary water supply projects.
- b. When no feasible or practicable alternative exists, permit the following uses: (1) stream dependent aquaculture, provided that non-stream dependent facilities locate outside of corridor, (2) flood control projects, including selective removal of riparian vegetation, where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, (3) bridges when supports are not in significant conflict with corridor resources, (4) pipelines, (5) repair or maintenance of roadways or road crossings, (6) logging operations which are limited to temporary skid trails, stream crossings, roads and landings in accordance with State and County timber harvesting regulations, and (7) agricultural uses, provided no existing riparian vegetation is removed, and no soil is allowed to enter stream channels.

7. 11 Establishment of Buffer Zones

- a. On both sides of riparian corridors, from the "limit of riparian vegetation" extend buffer zones 50 feet outward for perennial streams and 30 feet outward for intermittent streams.
- b. Where no riparian vegetation exists along both sides of riparian corridors, extend buffer zones 50 feet from the predictable high water point for perennial streams and 30 feet from the midpoint of intermittent streams.
- c. Along lakes, ponds, and other wet areas, extend buffer zones 100 feet from the high water point except for manmade ponds and reservoirs used for agricultural purposes for which no buffer zone is designated.

7. 14 Definition of Wetland

Define wetland as an area where the water table is at, near, or above the land

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surface long enough to bring about the formation of hydric soils or to support the growth of plants which normally are found to grow in water or wet ground. Such wetlands can include mudflats (barren of vegetation), marshes, and swamps. Such wetlands can be either fresh or saltwater, along streams (riparian), in tidally influenced areas (near the ocean and usually below extreme high water of spring tides), marginal to lakes, ponds, and manmade impoundments. Wetlands do not include areas which in normal rainfall years are permanently submerged (streams, lakes, ponds and impoundments), nor marine or estuarine areas below extreme low water of spring tides, nor vernal wet areas where the soils are not hydric.

In San Mateo County, wetlands typically contain the following plants: cordgrass, pickleweed, jaumea, frankenia, marsh mint, tule, bullrush, narrow-leaf cattail, broadleaf cattail, pacific silverweed, salt rush, and bog rush. To qualify, a wetland must contain at least a 50% cover of some combination of these plants, unless it is a mudflat.

7. 15 Designation of Wetlands

- a. Designate the following as wetlands requiring protection: Pescadero Marsh, Pillar Point Marsh (as delineated on Map 7. 1), marshy areas at Tunitas Creek, San Gregorio Creek, Pomponio Creek and Gazos Creek, and any other wetland meeting the definition in Policy 7. 14.
- b. At the time a development application is submitted, consider modifying the boundary of Pillar Point Marsh (as delineated on Map 7. 1) if a report by a qualified professional, selected jointly by the County and the applicant, can demonstrate that land within the boundary does not meet the definition of a wetland.

7. 16 Permitted Uses in Wetlands

Within wetlands, permit only the following uses: (1) nature education and research, (2) hunting, (3) fishing, (4) fish and wildlife management, (5) mosquito abatement through water management and biological controls; however, when determined to be ineffective, allow chemical controls which will not have a significant impact, (6) diking, dredging, and filling only as it serves to maintain existing dikes and an open channel at Pescadero Marsh, where such activity is necessary for the protection of pre-existing dwellings from flooding, or where such activity will enhance or restore the biological productivity of the marsh, (7) diking, dredging, and filling in any other wetland only if such activity serves to restore or enhance the biological productivity of the wetland, (8) dredging manmade reservoirs for agricultural water supply where wetlands may have formed, providing spoil disposal is planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation, and (9) incidental public service purposes, including, but not limited to, burying cables and pipes

or inspection of piers and maintenance of existing intake and outfall lines.

7. 18 Establishment of Buffer Zones

Buffer zones shall extend a minimum of 100 feet landward from the outermost line of wetland vegetation. This setback may be reduced to no less than 50 feet only 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. A larger setback shall be required as necessary to maintain the functional capacity of the wetland ecosystem.

SEA CLIFFS

7. 30 Permitted Uses

- a. Where nesting or roosting exists, permit only education and research activities.
- b. Where nesting or roosting does not exist, permit only the following uses: (1) education and research, (2) limited foot paths, (3) limited recreational rock climbing, (4) road and underground utility construction where no feasible alternative exists, and (5) intake or outfall lines provided that the habitat is not threatened.

7. 32 Designation of Habitats of Rare and Endangered Species

Designate habitats of rare and endangered species to include, but not be limited to, those areas defined on the Sensitive Habitats Map for the Coastal Zone.

7. 34 Permit Conditions

In addition to the conditions set forth in Policy 7. 5, require, prior to permit issuance, that a qualified biologist prepare a report which defines the requirements of rare and endangered organisms. At minimum, require the report to discuss: (1) animal food, water, nesting or denning sites and reproduction, predation and migration requirements, (2) plants life histories and soils, climate and geographic requirements, (3) a map depicting the locations of plants or animals and/or their habitats, (4) any development must not impact the functional capacity of the habitat, and (5) recommend mitigation if development is permitted within or adjacent to identified habitats.

8. 4 Cliffs and Bluffs

- a. Prohibit development on bluff faces except public access stairways where

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deemed necessary and erosion control structures which are in conformity with coastal policies on access and erosion.

b. Set back bluff top development and landscaping from the bluff edge (i. e. , decks, patios, structures, trees, shrubs, etc.) sufficiently far to ensure it is not visually obtrusive when viewed from the shoreline except in highly developed areas where adjoining development is nearer the bluff edge, or in special cases where a public facility is required to serve the public safety, health, and welfare.

8. 5 Location of Development

a. Require that new development be located on a portion of a parcel where the development (1) is least visible from State and County Scenic Roads, (2) is least likely to significantly impact views from public viewpoints, and (3) is consistent with all other LCP requirements, best preserves the visual and open space qualities of the parcel overall. Where conflicts in complying with this requirement occur, resolve them in a manner which on balance most protects significant coastal resources on the parcel, consistent with Coastal Act Section 30007. 5.

Public viewpoints include, but are not limited to, coastal roads, roadside rests and vista points, recreation areas, trails, coastal accessways, and beaches.

This provision does not apply to enlargement of existing structures, provided that the size of the structure after enlargement does not exceed 150% of the pre-existing floor area, or 2,000 sq. ft. , whichever is greater. This provision does not apply to agricultural development to the extent that application of the provision would impair any agricultural use or operation on the parcel. In such cases, agricultural development shall use appropriate building materials, colors, landscaping and screening to eliminate or minimize the visual impact of the development.

b. Require, including by clustering if necessary, that new parcels have building sites that are not visible from State and County Scenic Roads and will not significantly impact views from other public viewpoints. If the entire property being subdivided is visible from State and County Scenic Roads or other public viewpoints, then require that new parcels have building sites that minimize visibility from those roads and other public viewpoints.

8. 6 Streams, Wetlands, and Estuaries

- a. Set back development from the edge of streams and other natural waterways a sufficient distance to preserve the visual character of the waterway.
- b. Prohibit structural development which will adversely affect the visual quality of perennial streams and associated riparian habitat, except for those permitted by Sensitive Habitats Component Policies.
- c. Retain the open natural visual appearance of estuaries and their surrounding beaches.
- d. Retain wetlands intact except for public accessways designed to respect the visual and ecological fragility of the area and adjacent land.

8. 9 Trees

- a. Locate and design new development to minimize tree removal.
- b. Employ the regulations of the Significant Tree Ordinance to protect significant trees (38 inches or more in circumference) which are located in urban areas zoned Design Review (DR).
- c. Employ the regulations of the Heritage Tree Ordinance to protect unique trees which meet specific size and locational requirements.
- d. Protect trees specifically selected for their visual prominence and their important scenic or scientific qualities.
- e. Prohibit the removal of trees in scenic corridors except by selective harvesting which protects the existing visual resource from harmful impacts or by other cutting methods necessary for development approved in compliance with LCP policies and for opening up the display of important views from public places, i. e. , vista points, roadways, trails, etc.
- f. Prohibit the removal of living trees in the Coastal Zone with a trunk circumference of more than 55 inches measured 4 1/2 feet above the average surface of the ground, except as may be permitted for development under the regulations of the LCP, or permitted under the Timber Harvesting Ordinance, or for reason of danger to life or property.
- g. Allow the removal of trees which are a threat to public health, safety, and welfare.

8. 10 Vegetative Cover

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(with the exception of crops grown for commercial purposes)

Replace vegetation removed during construction with plant materials (trees, shrubs, ground cover) which are compatible with surrounding vegetation and is suitable to the climate, soil, and ecological characteristics of the area.

8. 16 Landscaping

- a. Use plant materials to integrate the manmade and natural environments and to soften the visual impact of new development.
- b. Protect existing desirable vegetation. Encourage, where feasible, that new planting be common to the area.

***8. 17 Alteration of Landforms; Roads and Grading**

- a. Require that development be located and designed to conform with, rather than change landforms. Minimize the alteration of landforms as a consequence of grading, cutting, excavating, filling or other development.
- b. To the degree possible, ensure restoration of pre-existing topographic contours after any alteration by development, except to the extent necessary to comply with the requirements of Policy 8. 18.
- c. Control development to avoid the need to construct access roads visible from State and County Scenic Roads. Existing private roads shall be shared wherever possible. New access roads may be permitted only where it is demonstrated that use of existing roads is physically or legally impossible or unsafe. New roads shall be (1) located and designed to minimize visibility from State and County Scenic Roads and (2) built to fit the natural topography and to minimize alteration of existing landforms and natural characteristics.

This provision does not apply to agricultural development to the extent that application of the provision would impair any agricultural use or operation, or convert agricultural soils. In such cases, build new access roads to minimize alteration of existing landforms and natural characteristics.

8. 18 Development Design

- a. Require that development (1) blend with and be subordinate to the environment and the character of the area where located, and (2) be as unobtrusive as possible and not detract from the natural, open space or visual qualities of the area, including but not limited to siting, design, layout, size, height, shape, materials, colors, access and landscaping. The colors of exterior materials shall harmonize with the predominant earth

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and vegetative colors of the site. Materials and colors shall absorb light and minimize reflection. Exterior lighting shall be limited to the minimum necessary for safety. All lighting, exterior and interior, must be placed, designed and shielded so as to confine direct rays to the parcel where the lighting is located.

Except for the requirement to minimize reflection, agricultural development shall be exempt from this provision. Greenhouse development shall be designed to minimize visual obtrusiveness and avoid detracting from the natural characteristics of the site.

- b. Require screening to minimize the visibility of development from scenic roads and other public viewpoints. Screening shall be by vegetation or other materials which are native to the area or blend with the natural environment and character of the site.
- c. Require that all non-agricultural development minimize noise, light, dust, odors and other interference with persons and property off the development site.

8. 23 Utilities in County Scenic Corridors

- a. Install new distribution lines underground, except as provided in b.
- b. For all development, exceptions may be approved by the Planning Commission when: (1) it is not physically practicable due to topographic features, (2) there are agricultural land use conflicts or (3) development is for farm labor housing. In addition, for building permits, exceptions may be approved by the Planning Commission for financial hardships. In each case, however, utilities shall not be substantially visible from any public road or developed public trail.

8. 31 Regulation of Scenic Corridors in Rural Areas

- a. Apply the policies of the Scenic Road Element of the County General Plan.
- b. Apply Section 6325. 1 (Primary Scenic Resources Areas Criteria) of the Resource Management (RM) Zoning District as specific regulations protecting scenic corridors in the Coastal Zone.
- c. Apply the Rural Design Policies of the LCP.
- d. Apply the Policies for Landforms and Vegetative Forms of the LCP.
- e. Require a minimum setback of 100 feet from the right-of-way line, and greater where possible; however, permit a 50-foot setback when sufficient

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screening is provided to shield the structure from public view.

f. Continue applying special regulations for the Skyline Boulevard and Cabrillo Highway State Scenic Corridors.

g. Enforce specific regulations of the Timber Harvest Ordinance which prohibits the removal of more than 50% of timber volume in scenic corridors.

9.3 Regulation of Geologic Hazard Areas

Apply the following regulations of the Resource Management (RM) Zoning Ordinance to designated geologic hazard areas:

a. Section 6324. 6 - Hazards to Public Safety Criteria.

b. Section 6326. 2 - Tsunami Inundation Area Criteria.

c. Section 6326. 3 - Seismic Fault/Fracture Area Criteria. Require geologic reports prepared by a certified engineering geologist consistent with "Guidelines for Geologic/Seismic Reports" (CDMG Notes #37) for all proposed development.

d. Section 6326. 4 - Slope Instability Area Criteria.

10.1 Permit Conditions for Shoreline Access

Require some provision for shoreline access as a condition of granting development permits for any public or private development permits (except as exempted by Policy 10. 2) between the sea and the nearest road. The type of provision, the location of the access and the amount and type of improvements required shall be consistent with the policies of this component.

10.9 Public Safety

a. Provide safe access to the following shoreline destinations which are large enough to accommodate public safety improvements and public use: (1) beaches which are large enough to provide space for easy retreat from normal tidal action, (2) bluffs which are large enough and of a physical character to accommodate safety improvements and which provide room for public use as a vista point, and (3) beaches and bluffs designated appropriate for public use in the Site Specific Recommendations for Shoreline Destinations (Table 10. 6).

b. Discourage public use of access trails which are hazardous because safety improvements have not been provided or cannot be built due to

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physical limitations. Specifically,

(1) Close undeveloped trails which are hazardous when an alternative safe existing or potential access is available for the same beach or bluff.

(2) When no safe access alternative is available, close undeveloped hazardous trails identified in Tables 10. 1 and 10. 2 as having a "high" rating in the public safety hazards category and which pose a risk of serious bodily harm because of the height or unstable nature of bluffs or the limited beach area between the mean high tide line and the base of the bluff. Give priority to the acquisition and improvement of nearby access or for the improvement and re-opening of accesses closed for safety reasons to those trails which lead to long sandy beaches as indicated on Table 10. 1.

(3) Where a trail to the beach is closed, provide a bluff top access point or trail for public viewing, of the shoreline when consistent with Policy 10. 9(a).

(4) Prohibit development that would prevent the future improvement of unsafe access.

10. 19 Maintenance

Eliminate debris, provide trash cans and keep trails safe for public use in new or improved public areas.

10. 21 Access for the Disabled

In all areas where topography permits, provide shoreline access for the disabled by building paths and ramps for wheelchairs without altering major landforms. Refer to the Site Specific Recommendations for Shoreline Destinations (Table 10. 6) for a listing of existing access trails which should be made wheelchair accessible.

10. 22 Parking

a. Continue the use of existing official off-street parking facilities for shoreline access areas in order to maintain existing parking levels and to confine negative impacts to areas already disturbed.

b. Minimize the negative impacts of existing official off-street parking facilities. Specifically,

(1) Require the landscaping of existing facilities which are visible from

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public roads, vista points or recreation areas without blocking ocean views from these areas.

(2) Remove or relocate parking spaces in existing facilities which are located in or near sensitive habitats to provide adequate buffering. In no cases, however, eliminate an entire existing parking facility without relocation.

c. Use the following criteria when developing or relocating new off-street parking facilities for shoreline access areas:

(1) Base the amount of parking on the level of public use appropriate for a site's size, environmental sensitivity, and amount of land suitable for parking.

(2) Give preference to sites which are now used informally for shoreline access parking. However, do not establish the following as permanent sites for parking: (a) emergency pullouts needed for highway safety, (b) visually prominent sites where landscaping would not significantly screen the parking from view, (c) visually prominent sites where landscape screening would block ocean views, and (d) sites in or adjacent to sensitive habitats.

(3) Locate new parking facilities on sites where it is possible to blend them into the landscape or screen them by topography or vegetation.

(4) Prohibit the development of sandy beaches.

(5) Prohibit the conversion of prime agricultural lands, except where such conversion is consistent with Policies 5. 8 to 5. 11 of the Agriculture Component. In such cases, locate facilities at the edges of fields, separated by fences or other facilities to protect agricultural operations.

d. New commercial or industrial parking facilities of ten or more spaces within 1/4 mile radius of an established shoreline access area shall designate and post 20% of the total spaces for beach user parking between 10:00 a. m. and 4:00 p. m.

e. Provide trails linking parking facilities to nearby shoreline destinations that do not have existing parking facilities because such facilities would be inconsistent with other parking policies.

f. Reserve parking spaces for the disabled at the trailheads of wheelchair accessible paths and ramps and at other level sites with safe access.

- g. Provide bus and secure bicycle parking in parking facilities.

10.30 Requirement of Minimum Access as a Condition of Granting Development Permits

- a. Require the provision of shoreline access for any private or public development between the sea and the nearest public road.
- b. Base the level of improvement and development of access support facilities at a site on the Locational Criteria and Development Standards Policies and the Site Specific Recommendations contained in Table 10.6.
- c. Base the responsibility and requirements of the property owner for the provision of this access on: (1) the size and type of development, (2) the benefit to the developer, (3) the priority given to the type of development under the Coastal Act and (4) the impact of the development, particularly the burden the proposed development would place on the public right of access to and use of the shoreline. Determine the minimum requirements according to the following:

(1) For small non-agricultural developments (i. e. , construction of nonresidential structures 500 sq. ft. and smaller, fences, wells, placement of utility poles), require the retention of existing public access as defined in Policies 10.5 and 10.6, the posting of hazardous and environmentally sensitive areas, and pay an in-lieu fee of a minimal sum not to exceed 5% of the project cost to contribute to the provision of public access elsewhere along the County shoreline.

(2) For small to medium developments (i. e. , single-family residences, all minor land divisions, barns over 5,000 sq. ft. , small greenhouses), not specifically exempted from shoreline access requirements by Policy 10.2, require the offering or granting of a vertical and/or lateral access consistent with the policies of this component, to either a public agency or private group acceptable to the County for improvement and maintenance.

(3) For large agricultural and non-agricultural developments (i. e. , developments of more than one single-family house, major subdivisions, commercial and industrial developments, and large greenhouses and agricultural processing plants), require the property owner to provide, improve, and maintain shoreline access consistent with the policies of this component.

11.4 Recreation and Visitor-Serving Facilities Permitted in the Coastal Zone

Permit the following facilities in the Coastal Zone: (1) necessary visitor-serving

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facilities as defined in Policy 11. 1, and (2) commercial recreation and public recreation facilities which (a) are designed to enhance public opportunities for coastal recreation, (b) do not substantially alter the natural environment, and (c) do not subvert the unique small town, rural character of the individual communities on the Coastside.

11. 12 Sensitive Habitats

- a. Permit recreation and visitor-serving facilities to locate on lands adjacent to sensitive habitats only when (1) there is adequate distance or separation by barriers such as fences, (2) the habitat is not threatened, and (3) there would not be substantial impacts on habitat, topography, and water resources.
- b. Permit recreation or visitor-serving facilities to locate adjacent to sensitive habitats only when development standards and management practices are adequate to protect the resources, consistent with Policy 11. 18 and the Sensitive Habitats Component.
- c. Discourage the expansion of public recreation into locations within or adjacent to sensitive habitats until the level of improvement and management of existing public recreation areas within or adjacent to sensitive habitats are consistent with the Sensitive Habitats Component.

11. 16 Posting

- a. Require, as a condition of recreational or highway development in the vicinity, the placement of signs on major roads near major public and commercial recreation areas to inform visitors of available services, recreation facilities and distances to the next service or facility.
- b. Design these signs to be similar in style and materials to the signs for shoreline access.

11. 20 Utilities

- a. Require that sites for permitted recreation or visitor-serving facilities have or develop access to a public road in conformance with the policies of the Sensitive Habitats, Scenic Resources, and Hazards Components.
- b. Encourage sites for recreation or visitor-serving facilities to develop public restrooms, drinking water and telephones.
- c. Require recreation and visitor-serving facilities to connect to public or community water and sewer systems wherever those exist.

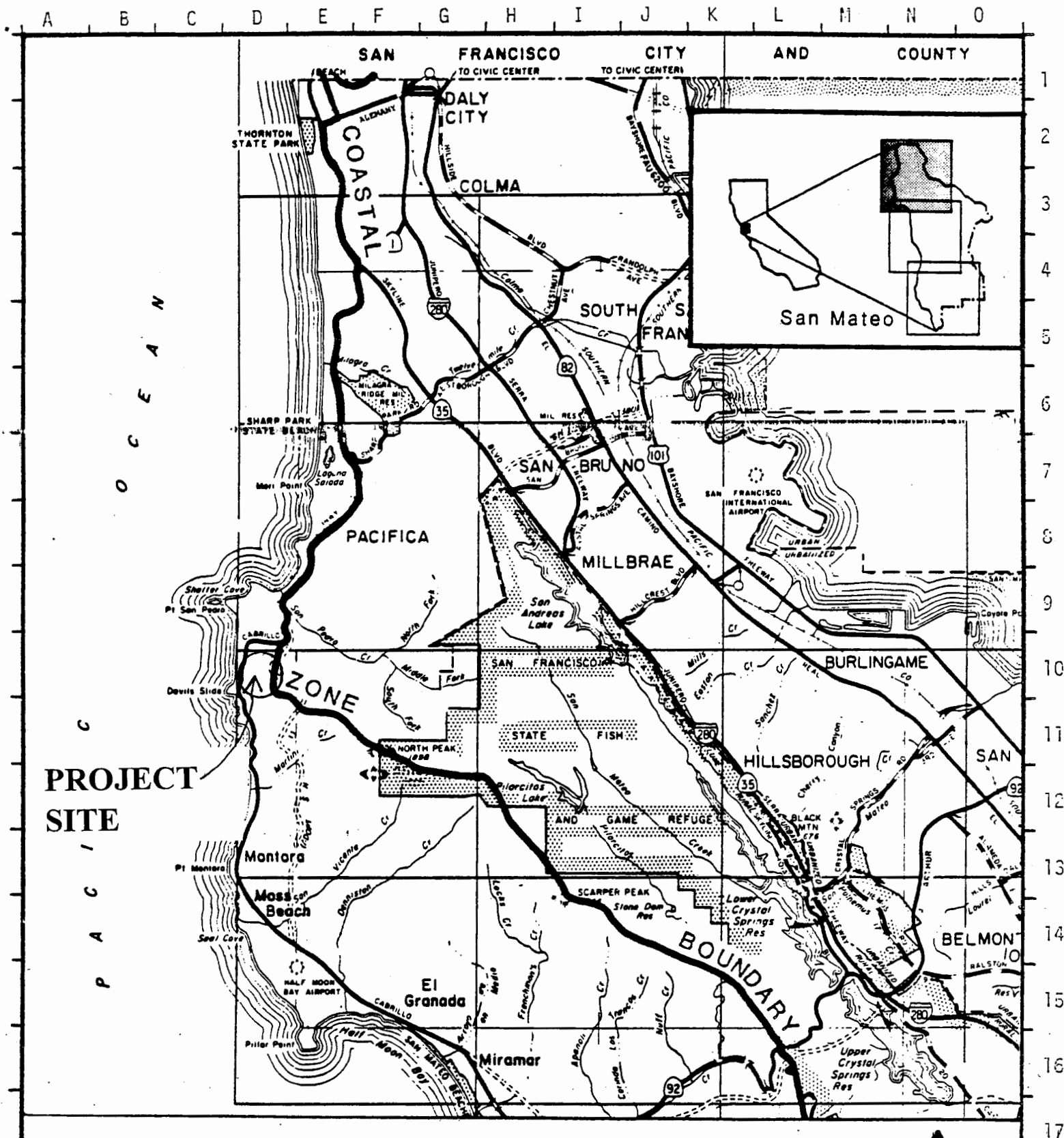


FIGURE 2-2: Project Area Map

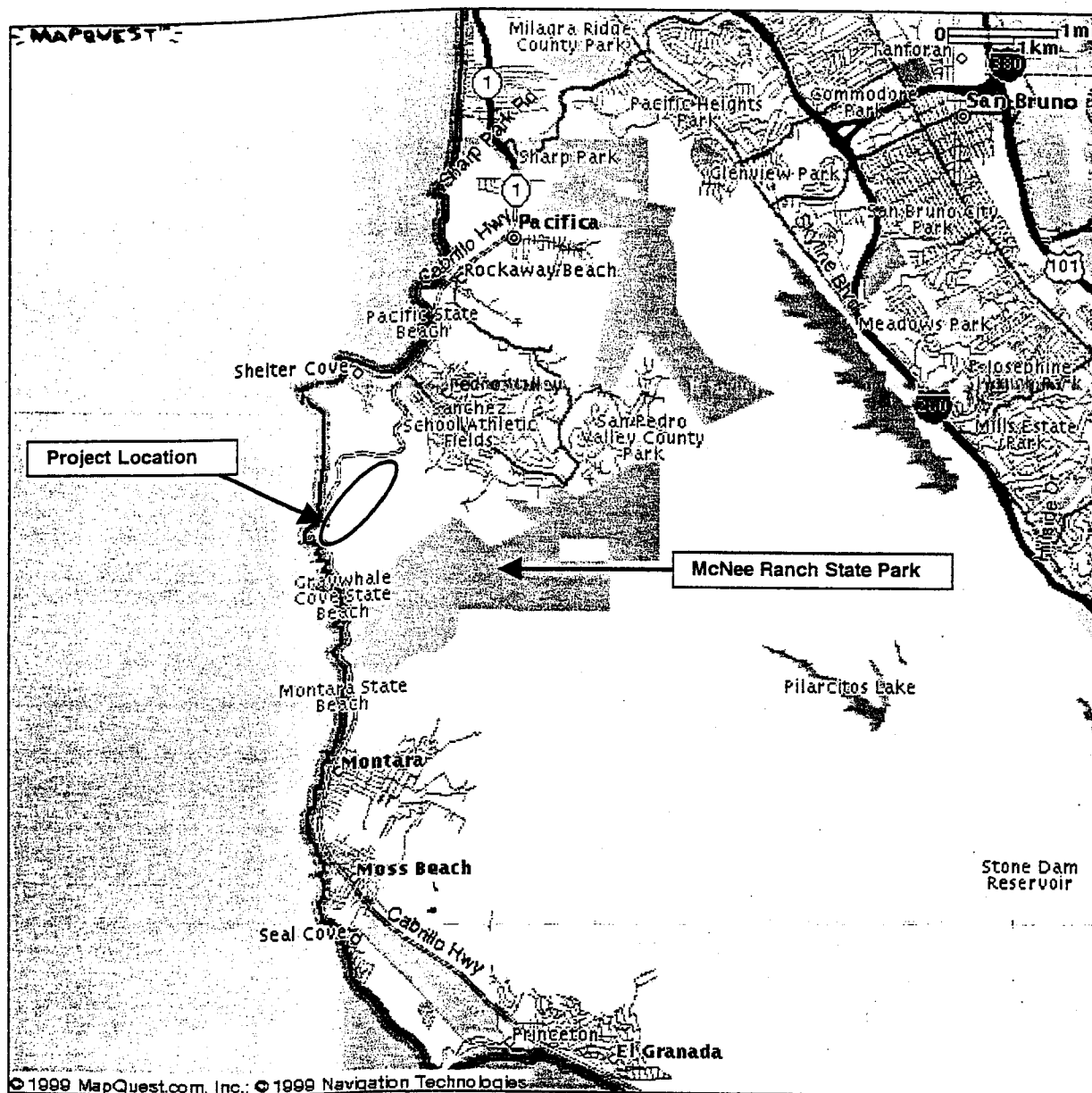


EXHIBIT NO.	2
APPLICATION NO.	
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EXHIBIT A

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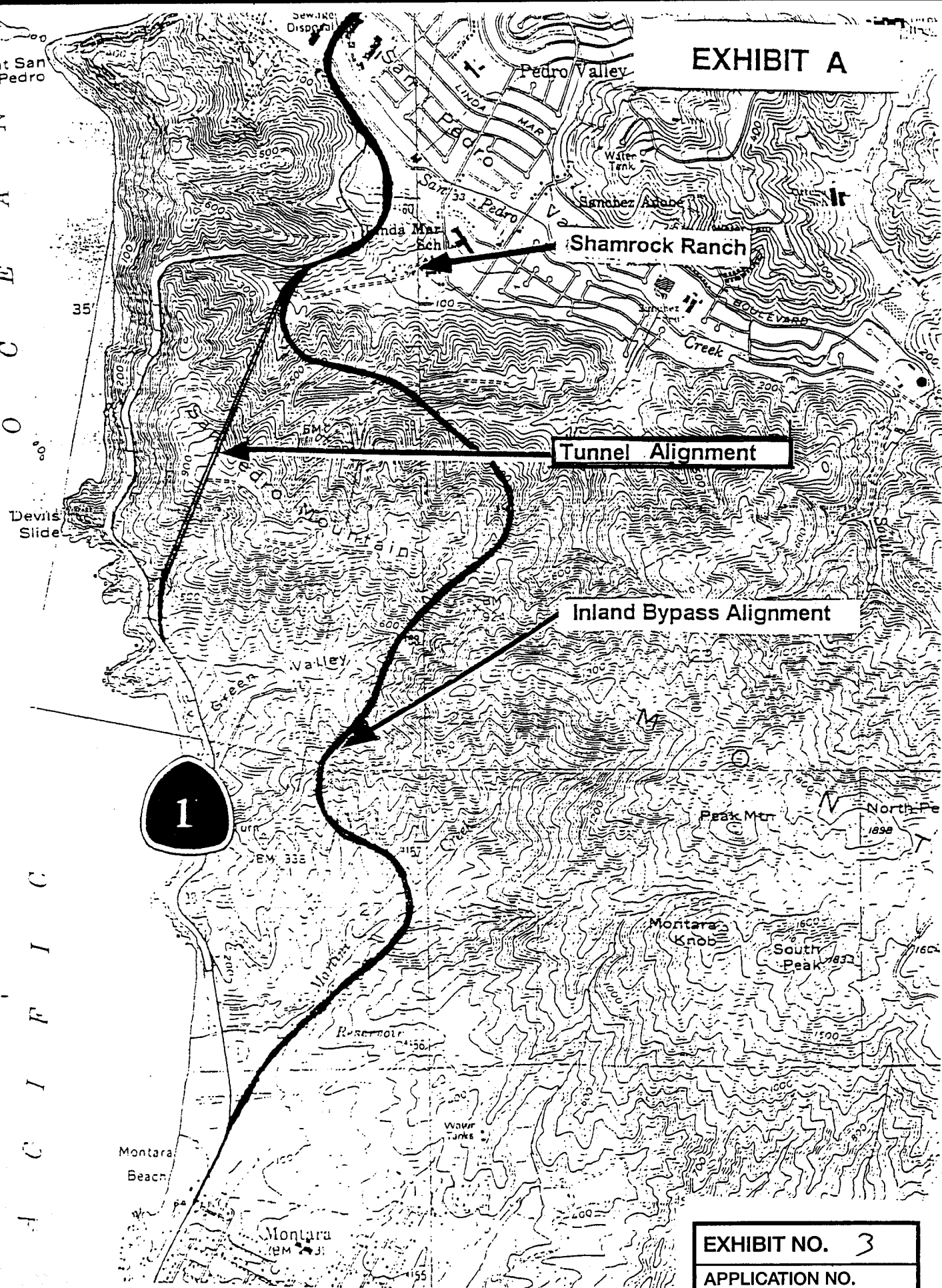
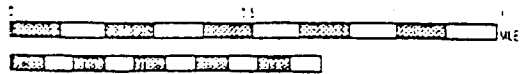
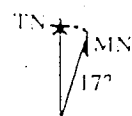
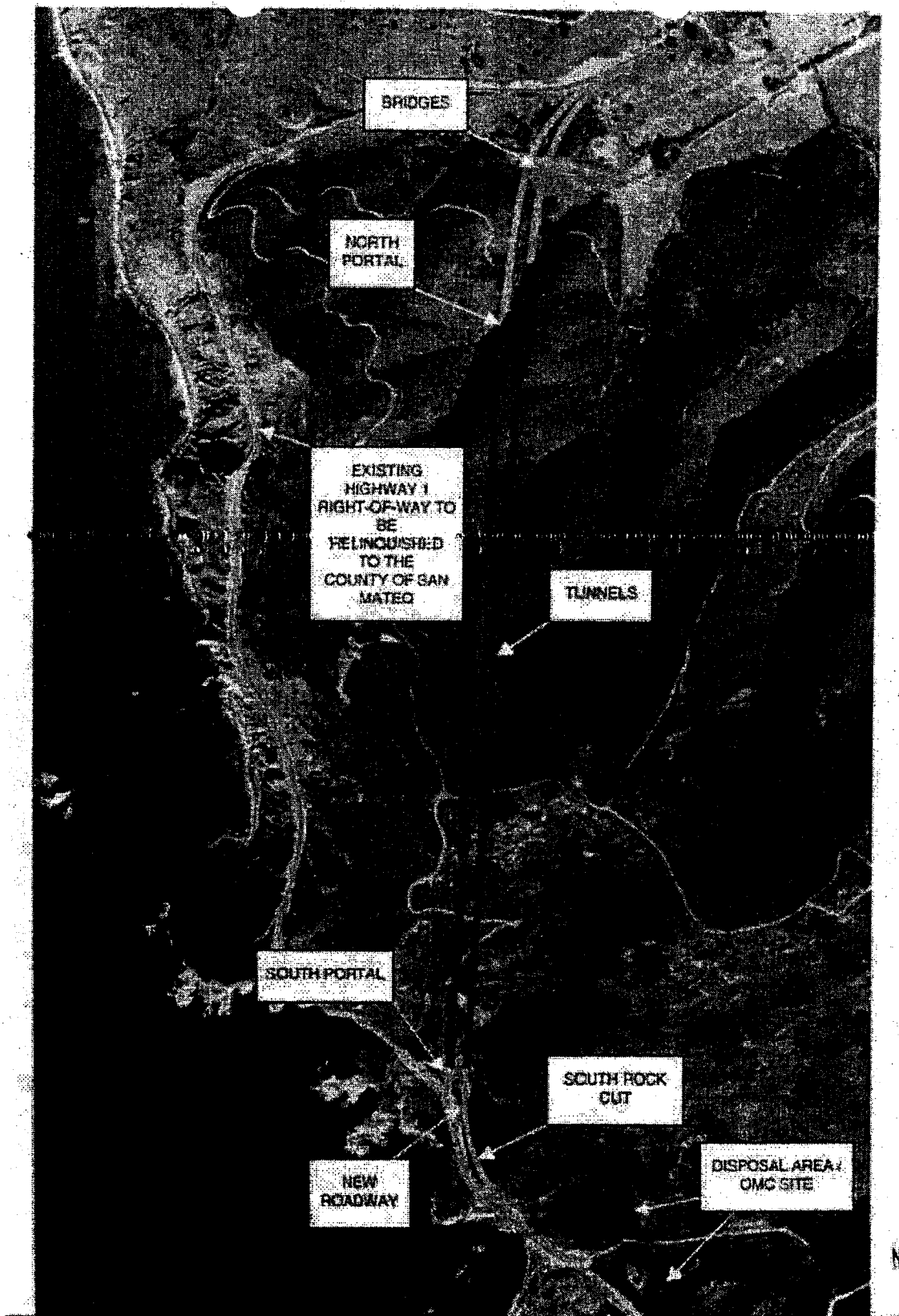


EXHIBIT NO.	3
APPLICATION NO.	
A-2-SMC-04-011	



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Devil's



Devil's Slide Tunnel Project

EXHIBIT 2
PROJECT EL

San Mateo County Planning Commission Meeting

Applicant:

Attachment

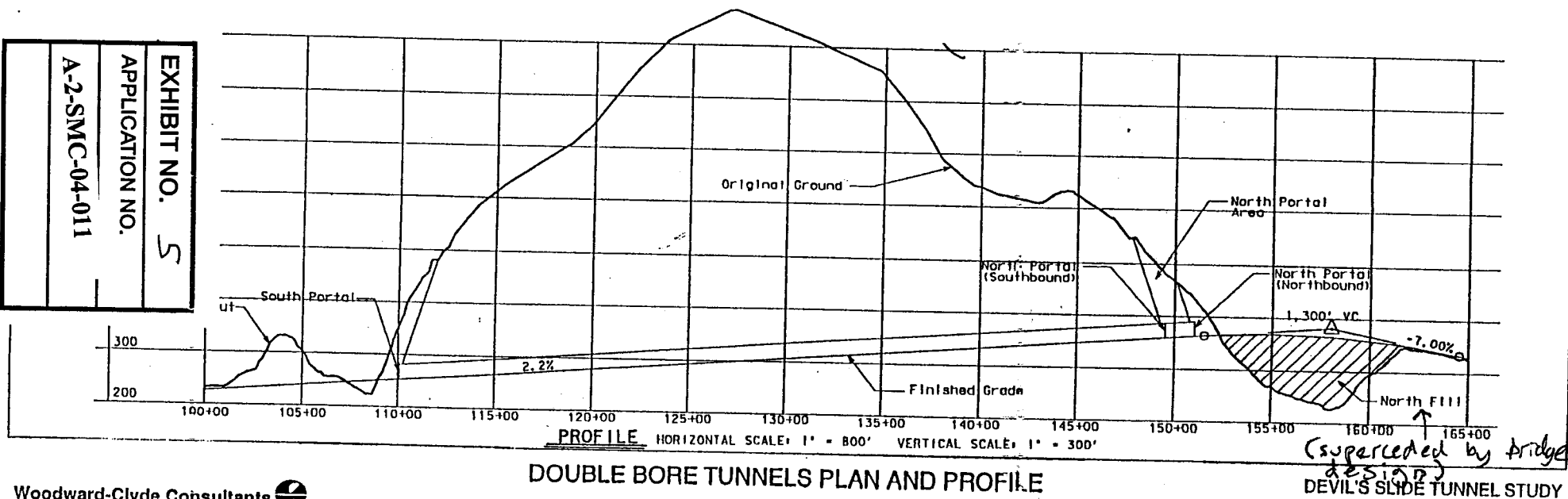
File Numbers:

EXHIBIT NO. 4

APPLICATION NO.

A-2-SMC-04-011

EXHIBIT NO. 5
APPLICATION NO.
A-2-SMC-04-011

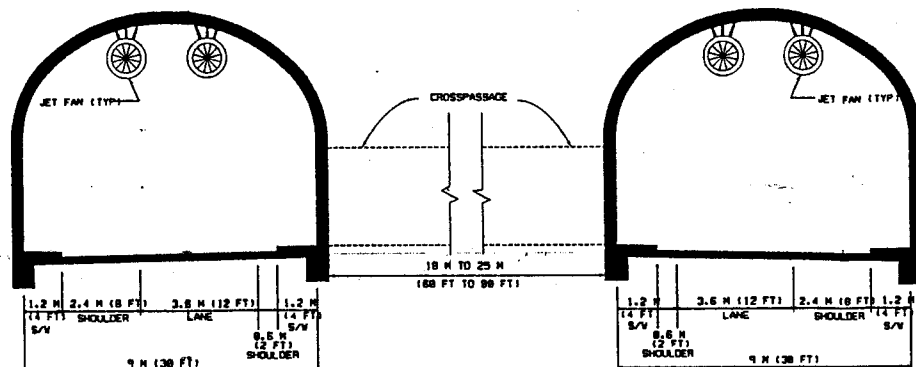


Woodward-Clyde Consultants

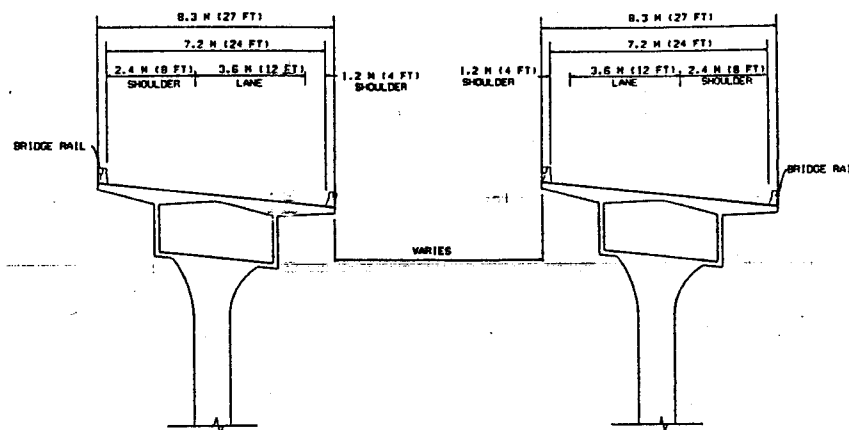
DOUBLE BORE TUNNELS PLAN AND PROFILE

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

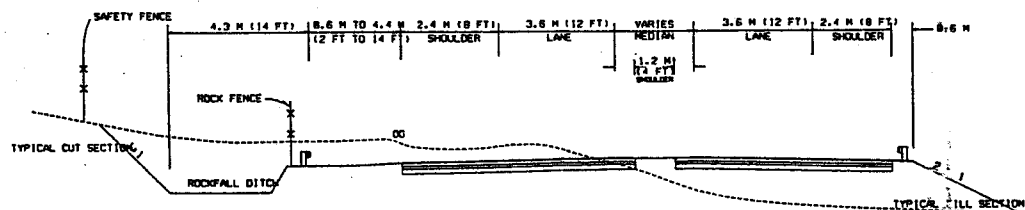
Figure ES-2



TUNNEL



BRIDGE

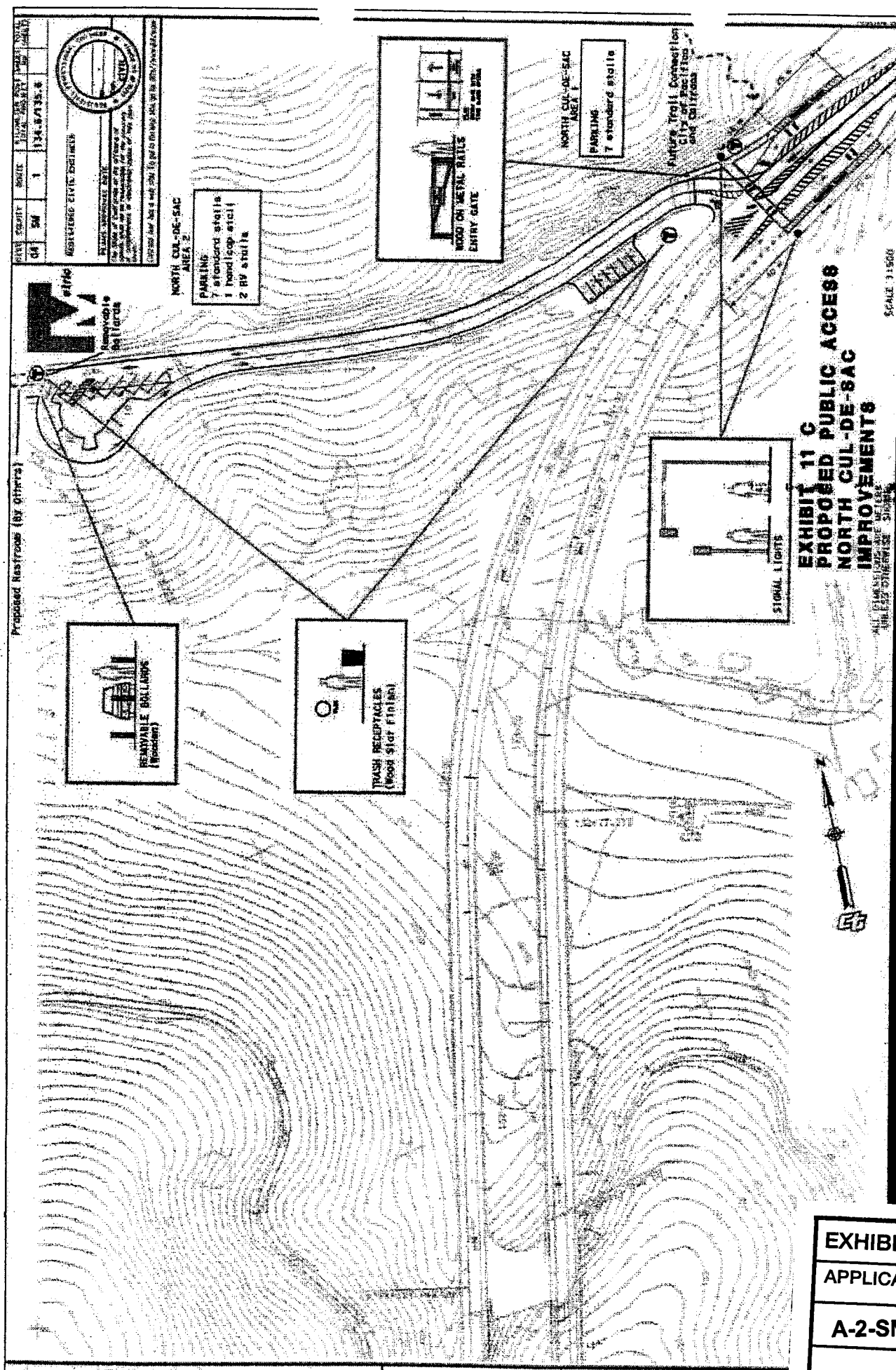


ROADWAY

TYPICAL SECTIONS

NO SCALE

EXHIBIT NO.	6
APPLICATION NO.	
A-2-SMC-04-011	

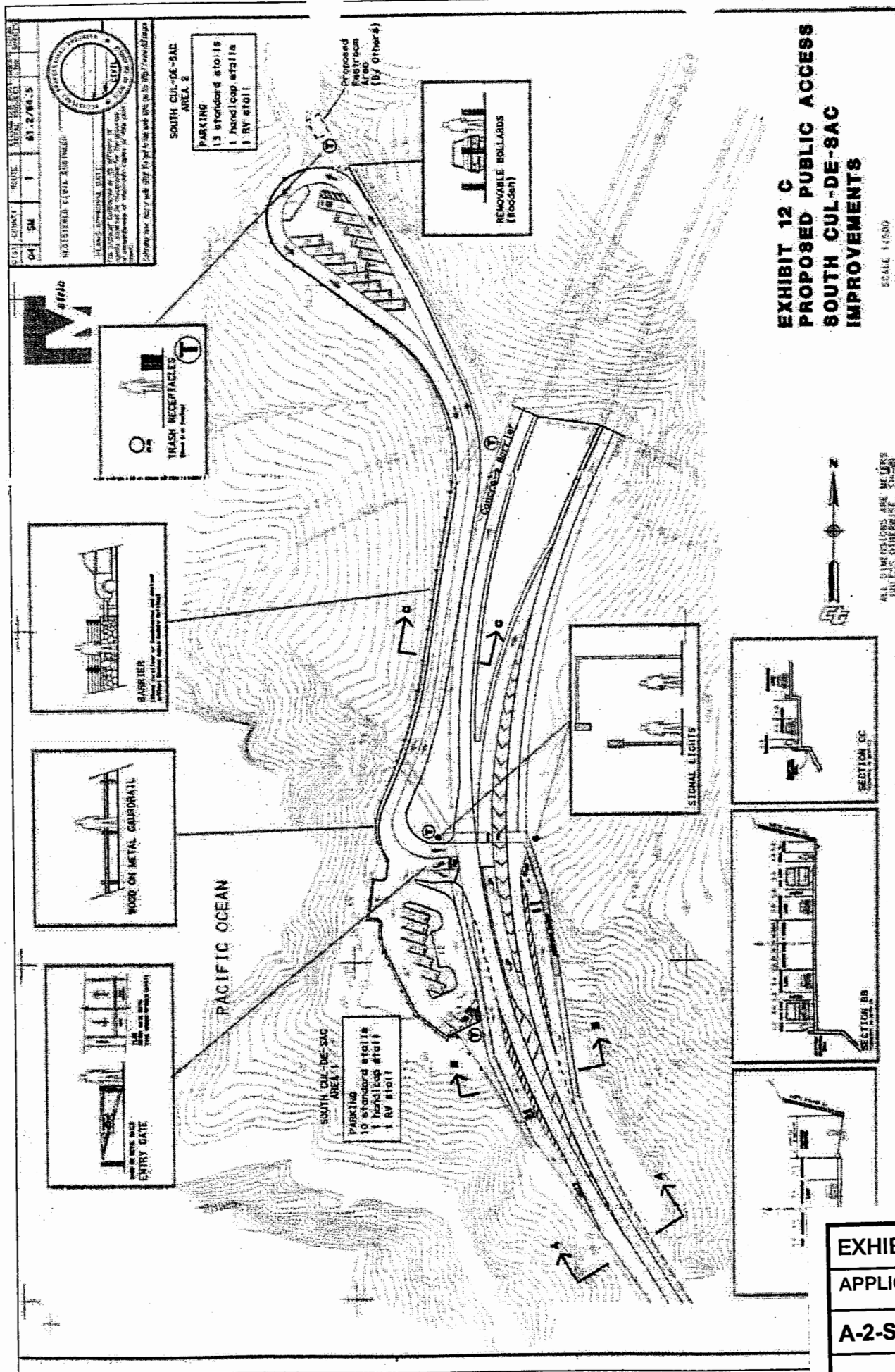


County Planning Commission Meeting

Attachment: 1-1

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EXHIBIT NO. 8
APPLICATION NO.
A-2-SMC-04-011



o County Planning Commission Meeting

Attachment: **I-2**

3RS:

EXHIBIT NO. 9
APPLICATION NO.
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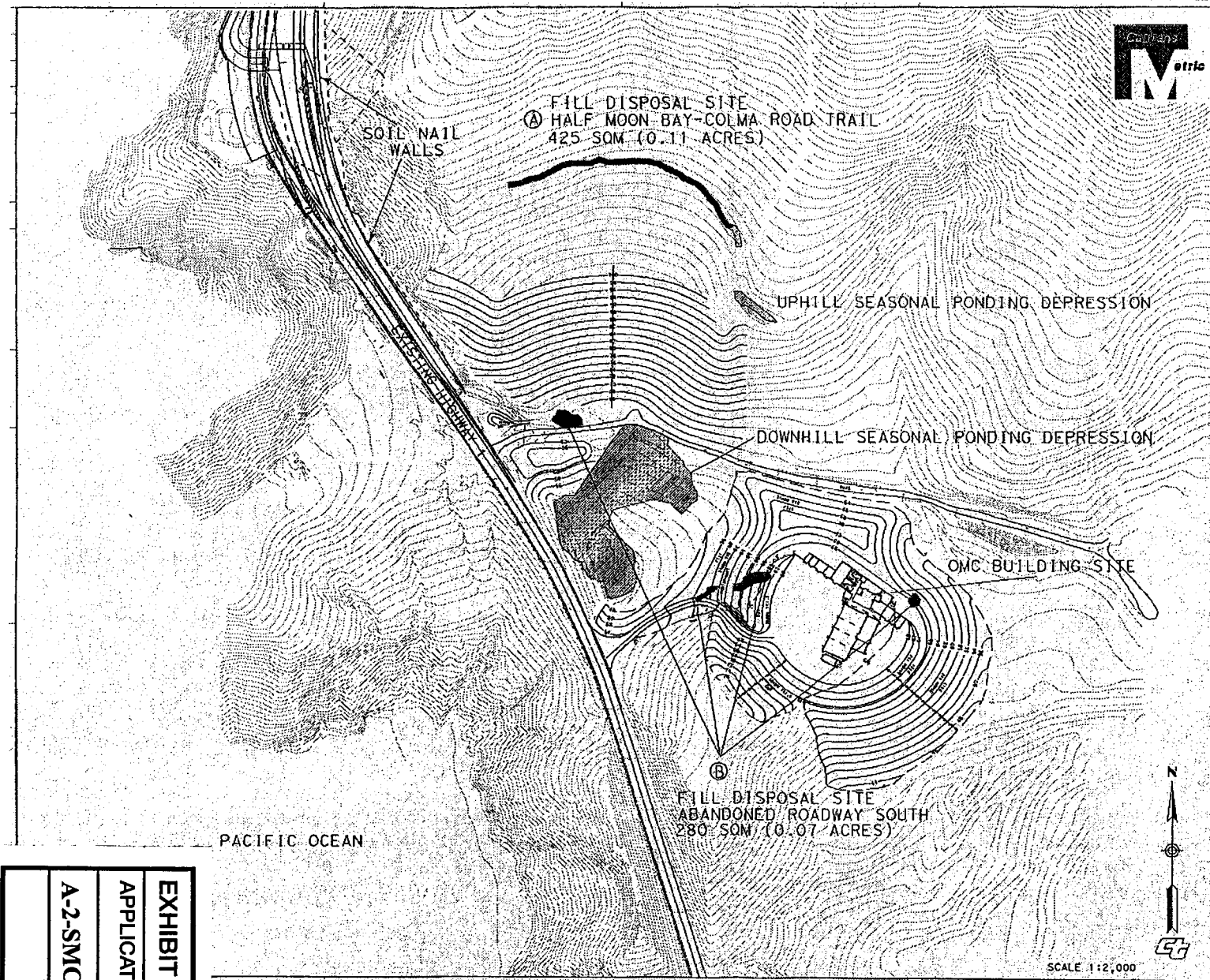
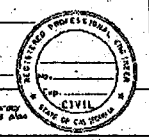
DIST.	COUNTY	ROUTE	KILOMETER TOTAL PROJECT	POST MILE	SHEET NO.	TOTAL SHEETS

REGISTERED CIVIL ENGINEER

PLANS APPROVAL DATE

The State of California or its officers or agents shall not be responsible for the accuracy or completeness of electronic copies of this plan sheet.

Contract now has a web site. To go to the web site, go to <http://www.sst.com>



LEGEND:

WETLAND BOUNDARY

WETLAND IMPACT



**EXHIBIT 4-B3
WETLAND IMPACTS**


SCALE 1:12,000

EXHIBIT NO.	11
APPLICATION NO.	
A-2-SMC-04-011	

County Planning Commission Meeting

Attachment: **F-1**

01ST	COUNTY	ROUTE	ALLOCATION POST	BENEFIT	TOTALS
			TOTAL PROJECT	NO	EST



REGISTERED CIVIL ENGINEER

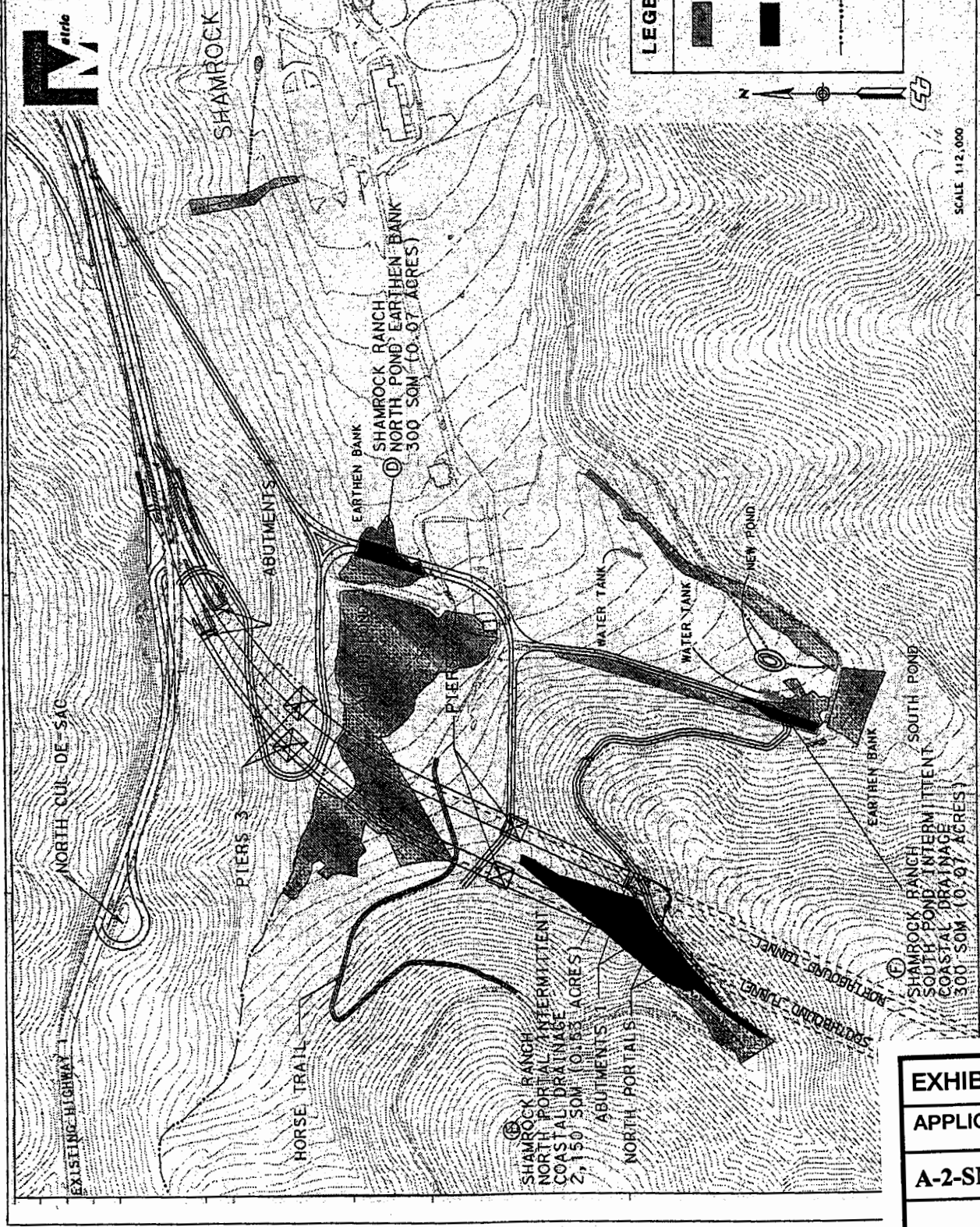
PLANS APPROVED DATE _____

 (Signature)
 PROJECT ENGINEER

 (Signature)
 REGISTERED CIVIL ENGINEER

Seal and stamp of the Professional Engineer, State of Illinois, No. 12345, Exp. 12/31/2024. This stamp is required for all plans submitted for review and approval. The stamp must be placed on the plans at the time of submission. The stamp must be placed on the plans at the time of submission. The stamp must be placed on the plans at the time of submission.

Continued over this sheet. To find the next sheet, go to the "Next Sheet" button.



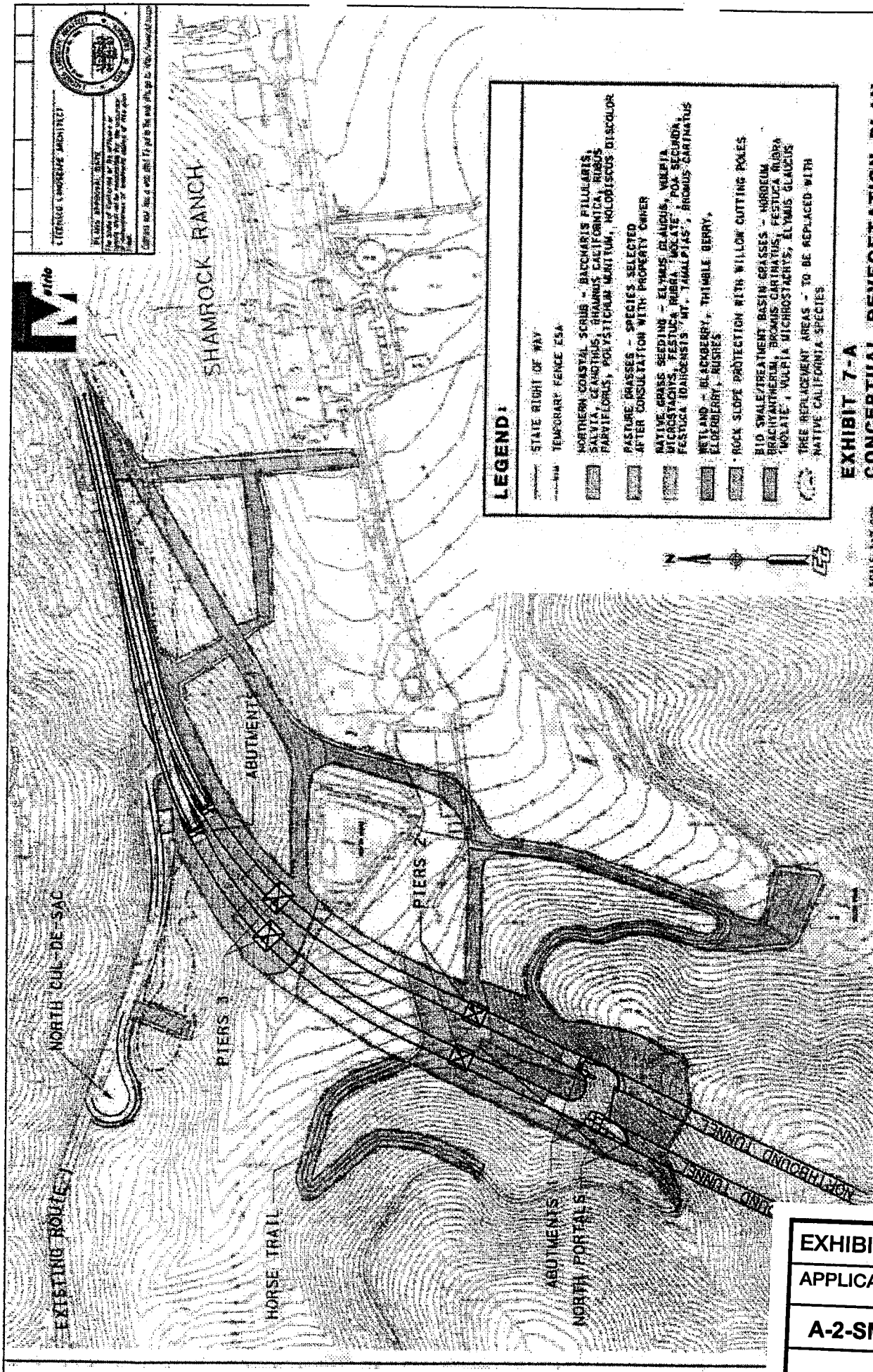
**EXHIBIT 4-B1
WETLAND IMPACTS**

County Planning Commission Meeting

Attachment:

51

EXHIBIT NO.	12
APPLICATION NO.	
A-2-SMC-04-011	



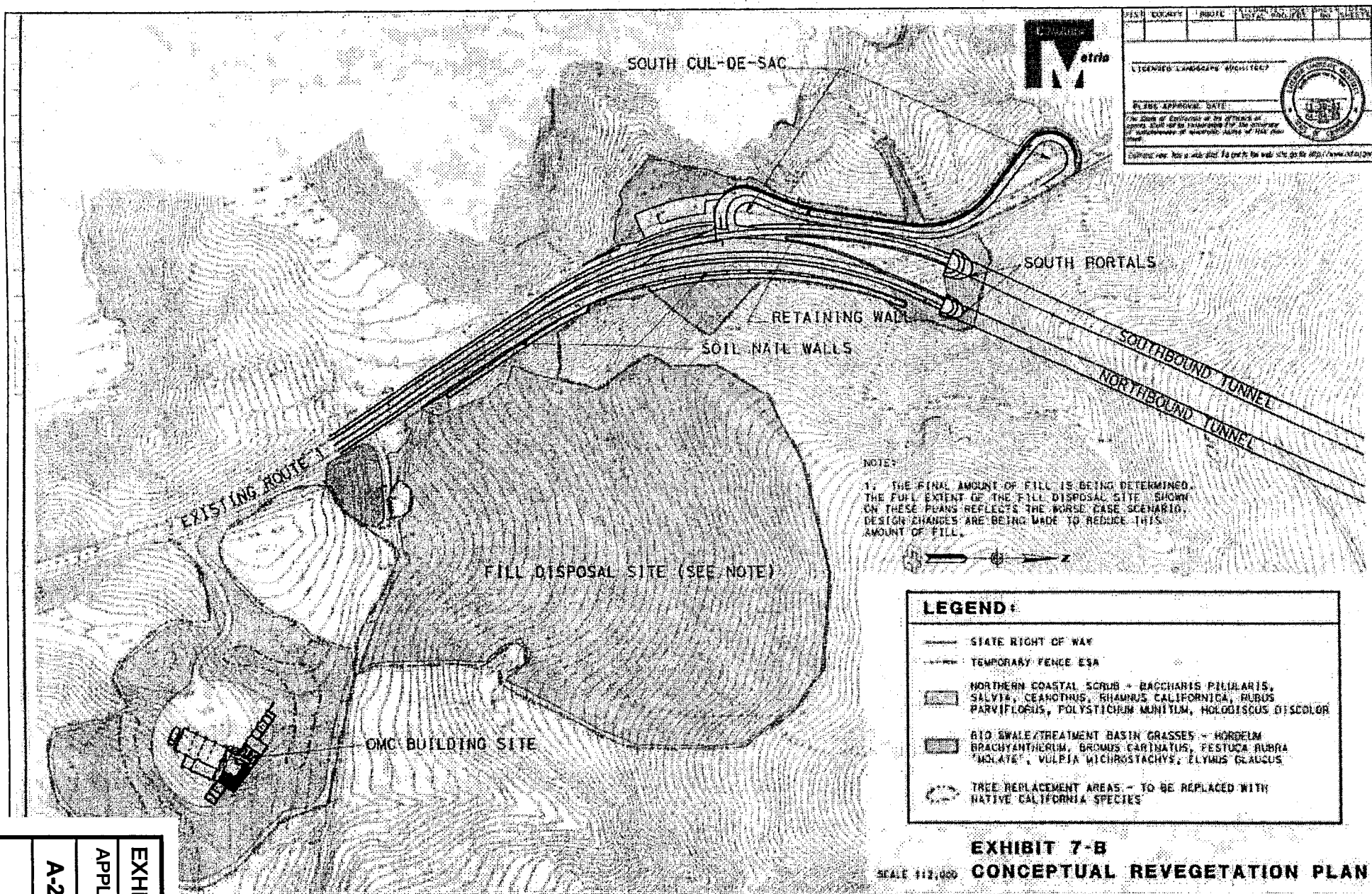
County Planning Commission Meeting

SCALE 1:2,000
EXHIBIT 7-A
CONCEPTUAL REVEGETATION PLAN

Attachment: **G-1**

EXHIBIT NO.	14
APPLICATION NO.	
A-2-SMC-04-011	

115



o County Planning Commission Meeting

**EXHIBIT 7-B
CONCEPTUAL REVEGETATION PLAN**

SCALE 1:12,000

Attachment: **G-2**

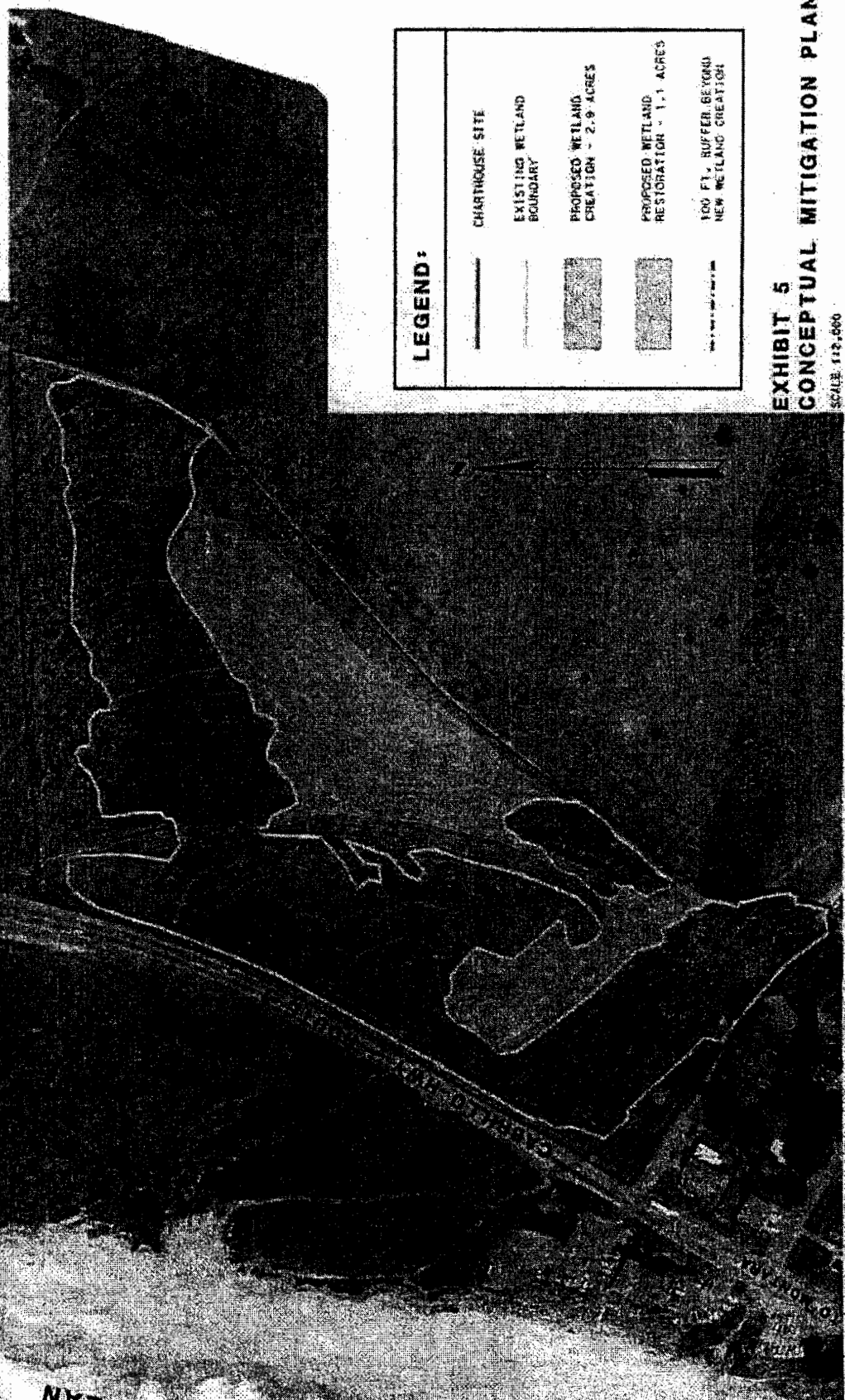
RS:

EXHIBIT NO. 15

APPLICATION NO.

A-2-SMC-04-011

DATE	APPROVED	PROJECT	CHARTHOUSE WETLANDS
10/1/00	10/1/00	10/1/00	10/1/00
<p>THE STATE OF CALIFORNIA, by and through the Department of Fish and Game, hereby certifies that the above project is consistent with the provisions of the California Endangered Species Act.</p>			



LEGEND:

- CHARTHOUSE SITE
- EXISTING WETLAND BOUNDARY
- PROPOSED WETLAND CREATION - 2.9 ACRES
- PROPOSED WETLAND RESTORATION - 1.1 ACRES
- 100 FT. BUFFER BEYOND NEW WETLAND CREATION

EXHIBIT 5
CONCEPTUAL MITIGATION PLAN
 SCALE: 1:12,000

San Diego County Planning Commission Meeting

Attachment: **H**

ers:

EXHIBIT NO.	16
APPLICATION NO.	
A-2-SMC-04-011	

STATE OF CALIFORNIA - THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
 SAN FRANCISCO, CA 94105-2210
 VOICE AND TDD (415) 884-6200

TO: ~~MARK~~ Delaplaine

APPEAL FROM COASTAL PERMIT
 DECISION OF LOCAL GOVERNMENT

TOTAL: 3 PAGES

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

SECTION I. Appellant(s)

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

OSCAR BRAUN FOR COASTAL FAMILY ALLIANCE & SAGECOURT BAY
 1584 HISSING CANYON ROAD
 HALF MOON BAY, CA 94015 (650) 726-3307
 Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government:

SAN MATEO COUNTY

2. Brief description of development being appealed:

DEVIL'S SLIDE HWY 1 IMPROVEMENT PROJECT AND TUNNELS

3. Development's location (street address, assessor's parcel no., cross street, etc.):

STATE ROUTE HWY 1, PACIFICA, SAN MATEO COUNTY

4. Description of decision being appealed:

a. Approval; no special conditions:

b. Approval with special condition:

c. Denial:

DENIAL OF CDP TO PROTECT FILE # PMN2003-00423

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: _____

DATE FILED: _____

DISTRICT: _____

EXHIBIT NO. 17

APPLICATION NO.

A-2-SMC-04-11

RECEIVED

JUL 23 2004

CALIFORNIA
COASTAL COMMISSION

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

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

a. ☐ Planning Director/Zoning
Administratorc. ☐ Planning Commissionb. ☒ City Council/Board of
Supervisorsd. ☐ Other

6. Date of local government's decision:

July 6, 2004

7. Local government's file number (if any):

Permit on Project File # PIN 2003-00428**SECTION III. Identification of Other Interested Persons**

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

a. Name and mailing address of permit applicant:

CALTRANS

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

(1) Oscar Braun1589 Higgins Canyon RoadHalf Moon Bay CA 94019

(2)

(3)

(4)

SECTION IV. Reasons Supporting This Appeal

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

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

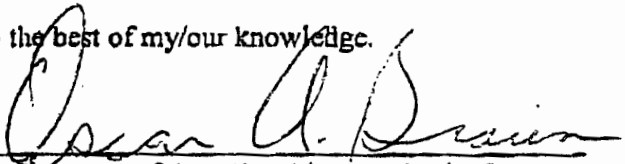
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

PLEASE NOTE THAT I'LL BE MEETING WITH
MARK DELAPHAINE ON Wednesday, July 28, 2004
AT 10 AM AT WHICH TIME I WILL PROVIDE
WRITTEN DOCUMENTATION & REASON FOR THIS
APPEAL.

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

SECTION V. Certification

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


Signature of Appellant(s) or Authorized Agent

Date:

July 23, 2004

Note: If signed by agent, appellant(s) must also sign below.

FAX AT 3:55 pm

Section VI. Agent Authorization

I/We hereby authorize _____ to act as my/our representative
and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date: _____



COUNTY OF SAN MATEO
Inter-Departmental Correspondence
ENVIRONMENTAL SERVICES AGENCY

DATE: June 21, 2004

PROJECT FILE

SET TIME: 10:15 a.m.

BOARD MEETING DATE: July 6, 2004

TO: Honorable Board of Supervisors

FROM: Marcia Raines, Director of Environmental Services *MR*

SUBJECT: EXECUTIVE SUMMARY: Consideration of an appeal of the Planning Commission's decision to approve a Coastal Development Permit to construct the Devil's Slide Tunnel project. This project is appealable to the California Coastal Commission.

RECOMMENDATION

Deny the appeal and uphold the decision of the Planning Commission to approve the Coastal Development Permit by adopting the required findings and conditions of approval.

PROPOSAL

The applicant is proposing to construct approximately 6,500 linear feet of new alignment along State Route 1, consisting of two parallel tunnels with a length of 4,000 feet, a north portal approach of 1,500 feet that includes parallel bridges measuring 1,050 feet, and a south portal approach of 1,000 feet. Each tunnel will be 30 feet wide and will provide a single traffic lane. Approximately 5,250 feet of the existing Highway 1 alignment will be abandoned as a result of this project. The applicant has proposed constructing parking areas at both ends of the abandoned highway and converting this portion into a non-vehicular public trail.

EXHIBIT NO. 18

APPLICATION NO.

A-2-SMC-04-011

The applicant is proposing to construct approximately 6,500 linear feet of new alignment along State Route 1, consisting of two parallel tunnels with a length of 4,000 feet, a north portal approach of 1,500 feet that includes parallel bridges measuring 1,050 feet, and a south portal approach of 1,000 feet. Each tunnel will be 30 feet wide and will provide a single traffic lane. Approximately 5,250 feet of the existing Highway 1 alignment will be abandoned as a result of this project. The applicant has proposed constructing parking areas at both ends of the abandoned highway and converting this portion into a non-vehicular public trail. The project will generate approximately 610,000 cubic yards of material. All excess soil will be transported to a fill disposal site located approximately 1,800 feet south of the south portal. A Tunnel Operations and Maintenance Center (OMC) will be constructed near the existing highway on a portion of the disposal site. The OMC/disposal site will be contour graded and re-vegetated with coastal scrub species.

PLANNING COMMISSION ACTION

The Planning Commission voted 4-0 to approve this project (Commissioner Wang absent). In doing so, the Commission adopted the recommended findings and conditions of approval as presented by the Planning Division, with some minor modification.

SUMMARY

The appellant filed an appeal with the Planning and Building Division regarding this project on June 3, 2004. This appeal is included as Attachment B. The appeal states that the Coastal Family Alliance is appealing the granting of this Coastal Development Permit because the project does not fully comply with the San Mateo County Local Coastal Program and the California Coastal Act. No further reasoning for the appeal is provided. The appellant does not provide any specifics as to how, in his view, the project does not comply with the County LCP or Coastal Act. The Board is directed to the discussion on project compliance contained in Section C of the attached staff report. The same analysis was presented to the Planning Commission on May 26, 2004. While it is acknowledged that the project will have significant, unavoidable impacts to specific wetland and riparian resources, on balance, the project has been found to be consistent with the provisions of the certified LCP, including the certified provisions of Measure T, which allow for unavoidable impacts in this instance.

MJS:kcd - MJSO0765_WKU.DOC



COUNTY OF SAN MATEO
Inter-Departmental Correspondence
ENVIRONMENTAL SERVICES AGENCY

DATE: June 21, 2004

SET TIME: 10:15 a.m.

BOARD MEETING DATE: July 6, 2004

TO: Honorable Board of Supervisors

FROM: Marcia Raines, Director of Environmental Services *MR*

SUBJECT: Consideration of an appeal of the Planning Commission's decision to approve a Coastal Development Permit to construct the Devil's Slide Tunnel project. This project is appealable to the California Coastal Commission.

County File Number: PLN 2003-00428

RECOMMENDATION

Deny the appeal and uphold the decision of the Planning Commission to approve the Coastal Development Permit, County File No. PLN 2003-00428, by adopting the required findings and conditions of approval listed in Attachment A.

PROPOSAL

The applicant is proposing to construct approximately 6,500 linear feet of new alignment along State Route 1, consisting of two parallel tunnels with a length of 4,000 feet, a North Portal approach of 1,500 feet that includes parallel bridges measuring 1,050 feet, and a South Portal approach of 1,000 feet. Each tunnel will be 30 feet wide and will provide a single traffic lane. Approximately 5,250 feet of the existing Highway 1 alignment will be abandoned as a result of this project. The applicant has proposed constructing parking areas at both ends of the abandoned highway and converting this portion into a non-vehicular public trail.

The project will generate approximately 610,000 cubic yards of material. All excess soil will be transported to a fill disposal site located approximately 1,800 feet south of the South Portal. A Tunnel Operations and Maintenance Center (OMC) will be constructed near the existing highway on a portion of the disposal site. The OMC/disposal site will be contour graded and revegetated with coastal scrub species.

BACKGROUND

Report Prepared By: Michael Schaller, Project Planner, Telephone 650/363-1849

Appellant: Coastal Family Alliance

Applicant: Caltrans

Owner: Dana Denman, Andreas Bechtolshiem, June Schanbacher, Charlise Heiser Tr.

Location: Proceeding south from Pacifica, the proposed new alignment departs from the existing State Route 1 along an uphill grade approximately 0.5 kilometer (0.3 mile) south of Linda Mar Boulevard in Pacifica, bridges the valley at Shamrock Ranch on a curve and enters the twin tunnels beneath San Pedro Mountain. The proposed alignment will exit the tunnels at a cliff face just south of the Devils Slide promontory and rejoin the existing highway on a slight downhill grade.

APNs: 023-731-020, 023-741-010, 023-741-020, 036-380-060, 036-380-070, 036-380-080, 036-380-120

Existing Zoning: RM-CZ (Resource Management District – Coastal Zone), PAD (Planned Agricultural Development), RM (Resource Management District)

General Plan Designation: General Open Space and Agriculture

Sphere-of-Influence: Pacifica

Existing Land Use: Open Space and State Roadway

Flood Zone: Zone C (Areas of Minimal Flooding), FEMA Panel 060311-0085B, Effective Date: July 5, 1984

Environmental Evaluation: Caltrans is the lead agency for this project. As such, they have prepared the environmental documents for this project, including the 1986 Environmental Impact Statement/Environmental Impact Report ('1986 EIR'), the First Supplemental Environmental Impact Statement/Environmental Impact Report ('SEIR'), and the Second Supplemental Environmental Impact Statement/Environmental Impact Report ('SSEIR'). The public review period for the SSEIR was March 19, 1999 through May 12, 1999. The Federal Highway Administration issued a Record of Decision on this document on September 13, 2002. The County of San Mateo is serving as a

responsible agency under the California Environmental Quality Act by virtue of the Coastal Development Permit which it must issue for the project.

Setting: Devil's Slide is a place name given to a steep, rocky coastal promontory located about midway between Montara and the Linda Mar District of Pacifica. Locally, however, Devil's Slide commonly refers to the entire stretch of rugged coastline extending from the promontory north to Point San Pedro.

San Pedro Mountain, which rises to over 1,000 feet in elevation about 0.5 mile inland from the ocean, backs Devil's Slide to the east and marks the northern end of the larger landmass known as Montara Mountain. Montara Mountain forms the high northwest trending ridge separating the San Mateo County coast from San Francisco Bay.

The summit ridge of San Pedro Mountain trends west-northwest from Montara Mountain across the alignment of the tunnel. The tunnel will pass under this summit ridge approximately 0.25 mile inland of the existing highway. The terrain is characterized by steep, eroded slopes with natural gradients ranging between thirty and seventy percent. Deeply incised gullies drain the ridges. An old, abandoned county road, several graded fire and utility maintenance roads, and foot trails crisscross San Pedro Mountain.

Extremely dense Northern Coastal Scrub covers most of the project vicinity, especially those portions over San Pedro Mountain and along the steeper foot slopes of Montara Mountain. ~~This plant community is dominated by coastal sage and coyote brush.~~ Other common species include poison oak, bush monkey flower, and California blackberry. Additional herbs include yarrow, pearly everlasting, yerba buena, coast figwort, monardella and lizard tail. Small grassy openings and barren rocky areas are scattered throughout the scrub. The scrub extends westerly to the cliffs above Devil's Slide, although coyote brush becomes less dominant nearer the coast, replaced by poison oak and coastal sage along the bluffs.

In addition to the Northern Coastal Scrub community described above, the tunnel alignment corridor traverses areas with other types of vegetation that are both natural and introduced, including Aquatic Sites and Coastal Freshwater Marshes/Seeps, Willow Riparian Scrub, Coastal Grassland, Non-Native Forest, Pasture/Ranch Uses/Non-Native Brush land.

Chronology:

<u>Date</u>	<u>Action</u>
November 20, 2003	- Application for Coastal Development Permit submitted.
May 26, 2004	- Planning Commission approves Coastal Development Permit for construction of the tunnel project.

- June 3, 2004 - Appeal filed.
- July 6, 2004 - Board of Supervisors public hearing.

DISCUSSION

A. PREVIOUS ACTION

The Planning Commission voted 4-0 to approve this project. In doing so, the Commission adopted the recommended findings and conditions of approval as presented by the Planning Division.

B. KEY ISSUES OF THE APPEAL

The appellant filed the appropriate appeal form on June 3, 2004. Under "Basis for Appeal," the appellant states: "Reversal of decision. Project does not fully comply with the San Mateo County Coastal Program and/or California Coastal Act." No further reasoning for the appeal is provided. The appellant does not provide any specifics as to how, in his view, the project does not comply with the County LCP or Coastal Act. The Board is directed to the discussion on project compliance contained in Section C below. The same analysis was presented to the Planning Commission on May 26, 2004. While it is acknowledged that the project will have significant, unavoidable impacts to specific wetland and riparian resources, on balance the project is the most protective of overall coastal resources. This discussion is excerpted below:

"On January 9, 1997, the California Coastal Commission certified Measure T as being consistent with the Coastal Act. In its comprehensive findings, the Commission concluded that the proposed project would result in wetland fill. In certifying Measure T, the Commission applied the "conflict resolution test" as set forth in Public Resources Code Section 30007.5. In doing so, the Coastal Commission found that, although implementation of the proposed Measure T raised conflicts between several policies in Chapter 3 of the Coastal Act, on balance, the tunnel option best protected significant coastal resources. By virtue of the Coastal Commission's certification, the County's LCP now includes Measure T, which calls for a tunnel at Devil's Slide, and allows for some impact to wetlands as a result of tunnel construction. In addition, on October 10, 2000, the Coastal Commission approved a Consistency Certification for the Devil's Slide Improvement Project. This certification found that the proposed project is consistent with the California Coastal Management Program. It was acknowledged at that time that the project would impact sensitive habitat areas. Since that certification, the applicant has redesigned portions of the project to reduce impacts to a level below what the Coastal Commission considered. The Planning Commission believes that, based upon the avoidance, minimization, and mitigation measures incorporated into the final design of the project and the language of

Measure T and the Coastal Commission's certification, the proposed project is allowed under Policy 7.3 (*Protection of Sensitive Habitats*)."

C. CONFORMANCE WITH THE LOCAL COASTAL PROGRAM

1. Public Works Component

A Coastal Development Permit is required pursuant to San Mateo County Local Coastal Program (LCP) Policy 2.1, which mandates compliance with the California Coastal Act for any government agency wishing to undertake development in the Coastal Zone.

Policy 2.50 - Route 1 Capacity Limits. This policy limits Phase I improvements on Highway 1 to slow vehicle lanes on uphill grades and the construction of a tunnel for motorized vehicles only behind Devil's Slide through San Pedro Mountain. The tunnel design shall be consistent with (a) Coastal Act limits restricting Route 1 to a 2-lane scenic highway, and (b) minimum State and federal tunnel standards. A separate trail for pedestrians and bicycles shall be provided outside the tunnel as specified in Policy 2.56a. As can be seen in the attached plans, the applicant has designed the proposed tunnel and its approach areas to maintain the existing 2-lane configuration of Route 1. Sidewalks will be provided in each tunnel to allow non-vehicular access for Caltrans workers as well as pedestrians and bicyclists. The old Route 1 alignment will be blocked to vehicular access and then maintained for pedestrians and bicycles as a non-motorized transportation facility. In addition to these design elements, there will be impacts upon road capacity during the construction of this project. To reduce the level of impact that this project will have upon Route 1's capacity, the Planning Commission is including conditions of approval that restrict construction truck traffic to periods outside of peak commute and recreational hours, and limiting lane closures to non-peak hours.

Policy 2.54 - Roadway Alignments. This policy restricts any future realignments of Route 1 to a tunnel behind Devil's Slide. No part of Route 1 used by motor vehicles shall be built on any alignment that bisects Montara State Beach, including the "McNee Ranch Acquisition" except along the current Route 1 alignment. The proposed project is in compliance with this policy. In the 1980s, Caltrans proposed bypassing the Devil's Slide by constructing an overland route, up and over Montara Mountain. This proposed alignment became known as the Martini Creek bypass. However, in 1996, County voters passed Measure T, which requires that a Devil's Slide bypass be constructed through a tunnel behind Devil's Slide, and that any other bypass alignment, such as the Martini Creek bypass, not be constructed without future approval of the voters. To implement Measure T, the County submitted an LCP amendment to the Coastal Commission that provided for the tunnel alignment (Policy 2.54), deleted references to the Martini Creek alignment, and rendered ineffective any other LCP provision to the extent it is inconsistent with Measure T. The Commission certified the amendment, finding that the tunnel was the least environmentally-damaging alternative and would have significantly fewer

adverse effects on the environmental, scenic, and recreational resources of the area. Accordingly, the Martini Creek bypass was eliminated as an option by the LCP amendment.

The adoption of a tunnel as a way to bypass the Devil's Slide has now made the old Martini Creek lands redundant as a transportation corridor. The State Department of Parks and Recreation (DPR) owns property on both sides of the Martini Creek alignment and has long expressed a desire to acquire the land within the redundant alignment to add to its existing McNee Ranch parkland. The transfer of these lands to DPR would ensure that the substantial coastal resources of the Martini Creek alignment and adjacent Montara Mountain lands are protected as required under the County's LCP and the Coastal Act. As a result of consultations between Caltrans, DPR and Coastal Commission staff, and in tandem with developing the details of the tunnel project, Caltrans has proposed a Memorandum of Understanding with the other two state agencies to provide for the transfer of the Martini Creek bypass lands to DPR. As part of this agreement, legislation is also being developed that would authorize the sale and transfer of those properties in the Coastal Zone at their original acquisition costs for park purposes, as provided by Section 9 of Article XIX of the California Constitution. If the MOU and the proposed legislation result in the final transfer of the Martini Creek bypass lands to State Parks then they will also function as an alternative implementation of the intent of the Devil's Slide Tunnel Initiative, including LCP Policy 2.54.

Policy 2.56 - Improvements for Bicycle and Pedestrian Trail. This policy requires that Caltrans, if a tunnel is constructed behind Devil's Slide, must build a bicycle and pedestrian trail outside the tunnel. Upon the opening of the tunnel for public use, the old alignment will be abandoned and parking areas constructed at both ends. Upon completion of these improvements, Caltrans will relinquish the old alignment to an appropriate resource agency which will then manage this land for recreational purposes. If no State or Federal Agency has been identified by the completion of the improvements, then the County will become the default recipient and manager of the old Highway trail. It would then be the goal of the County to donate this land to a more appropriate agency with the ability to operate and maintain the trail for the long term.

2. Sensitive Habitats Component

Policy 7.1 - Definition of Sensitive Habitats. This policy defines sensitive habitats as any area in which plant or animal life or their habitats are either rare or especially valuable. This includes all perennial and intermittent streams and their tributaries, and lakes and ponds and adjacent shore habitat. Sensitive habitat areas include riparian corridors, wetlands, and habitats supporting rare, endangered, and unique species. The biological survey identified several areas of sensitive habitat within the project work area:

North Portal Area

- a. Intermittent stream feeding the north pond. (Riparian)
- b. The area immediately around the north pond. (Wetlands)
- c. Intermittent stream adjacent to the North Portal. (Riparian)
- d. The south pond and its earthen bank. (Wetlands)
- e. Intermittent stream draining out of the south pond. (Riparian)
- f. Perennial wetlands to the north of the south pond (corral area). (Wetlands)
- g. Habitat pond north of the south pond. (Wetlands)

In the past, earthen dams were installed within two different drainage locations at Shamrock Ranch, creating the north pond and south pond. These ponds date from the 1950s when the existing drainages were impounded to form stock or irrigation ponds. In spite of the ongoing agricultural land uses, wetlands have evolved over time and now surround the perimeter of the ponds. These wetlands function as habitat for wildlife and contain a high diversity of vegetation including willow, tule, rush, and blackberry.

The ponds also provide habitat for a listed wildlife species. The California red-legged frog (CRLF) populates both the north and south ponds and uses the areas for breeding, feeding, and refuge. The CRLF is a federally-threatened species and is also designated as a State of California "Species Of Special Concern."

Therefore, all wetlands associated with the ponds have a high wildlife habitat value.

The buffer zone around the west, north and east sides of the north pond is generally of moderate to high habitat value. Along the south side of the pond, the buffer zone consists primarily of a horse pasture characterized by closely cropped annual grasses. Wildlife habitat values in this area are low.

The south pond buffer zone is characterized by generally high quality habitat with only minimal disturbance. The east and south sides of the pond exhibit well-developed riparian growth. On the north side, the south pond buffer zone intersects the buffer zone for the new frog pond with the only disturbance being a horse trail at the base of the impoundment dam.

There are two areas within the Ranch that contain intermittent drainages where wetlands are either contiguous to or are within the actual drainage. The coastal drainage immediately upstream of the north pond is bounded by coastal scrub and Monterey cypress. At the intermediate outfall of the pond, vegetation is dominated by poison oak. Further downstream, there is a riparian corridor containing willow, California blackberry and horsetail.

The buffer zone along the intermittent drainage upstream of the north pond is characterized by coastal scrub vegetation interspersed with disturbed grasslands and non-native forest stands of Monterey pine. Habitat value is moderate to high due to the diversity of the cover. The coastal scrub provides habitat value for birds

and other wildlife. The diversity of habitat and abundance of ecotonal areas created by the pattern of natural vegetation and agricultural activities provides excellent foraging opportunities for raptors and scavengers such as owl, red-tailed hawk, kestrel, raven, and turkey vulture. Other wildlife, including the small reptiles such as the western fence lizard and the southern alligator lizard are found in these areas. Mammals observed in the project area include woodrat, raccoon, brush rabbit, grey squirrel, chipmunk, ground squirrel, striped and spotted skunk, coyote, and black-tailed deer. The buffer zone also functions as erosion control areas for winter storm peak runoff generated in the upper portion of the watershed.

The intermittent drainage located in a steep natural drainage at the planned North Portal is vegetated by a variety of coastal scrub species and a narrow band of plants adapted to seasonal moisture. These plants include California blackberry, stinging nettle, rush, giant chain fern, horsetail and poison hemlock.

The steep natural drainage at the planned North Portal buffer zone is characterized by dense coastal scrub vegetation with moderate to high habitat value. The coastal scrub provides habitat value for birds and other wildlife and also functions as erosion control areas for winter storm peak runoff generated in the upper portion of the watershed. The diversity of habitat and abundance of ecotonal areas created by the pattern of natural vegetation and agricultural activities provides excellent foraging opportunities for raptors and scavengers such as owl, red-tailed hawk, kestrel, raven, and turkey vulture.

A small portion of wetland area is located down slope from the south pond and immediately adjacent to an existing horse trail. This perennial wetland evolved over time and is apparently fed by seeps associated with the upper hillside above, possibly including underground seepage from the south pond. Hydrophytic vegetation is dominated by reed, horsetail, and blackberry. This wetland, which is adjacent to the enclosed new CRLF pond, functions as wildlife habitat for amphibians such as Pacific tree frogs and Coast garter snakes. During times of peak storm water runoff, this wetland serves to filter sediment from runoff flowing from the uphill slopes to the Shamrock Ranch valley below.

South Portal Area

- a. Uphill drainage area adjacent to the South Portal (meets Riparian Corridor definition).
- b. Seasonal ponding depression adjacent to the South Portal (meets the Wetlands definition).

Uphill Drainage Area

This natural perennial drainage is situated on the side of a steep, rocky hillside just east of Highway 1. It carries runoff from the upper watershed down to an existing

drainage basin with a standpipe. The runoff flows from this standpipe under Highway 1 and ultimately into the ocean. Further uphill, the drainage was cut by the old county road alignment which has caused great disturbance and erosion over the years. The old county roadway alignment is the limit of the study area for this delineation. However, the cutting of the drainage has also affected the immediate topography in such a way that additional wetlands have developed within the abandoned alignment.

The portion of the drainage immediately above the seasonal ponding depression to the old county road is so steep that it creates a small cascading waterfall during the winter and spring and supports a small wetland strip. Toward the top of the cascading waterfall, there are areas of willow on both sides of this steep hillside. Owls and ravens use this steep drainage area for habitat. Other important functions of the cascading waterfall and the rest of the uphill drainage are open space and the contribution to aesthetic values.

Above the steep waterfall, the drainage somewhat flattens and fans out to a bowl-shaped area. At the bottom and the lower sides of this bowl-shaped drainage, the hydrophytic vegetation is very dense and diverse. The above normal precipitation of the El Nino rainy season caused a mudslide within the top portion of this drainage.

The vegetation found within buffer zone areas at the South Portal Drainage Area is primarily coastal scrub mixed in with large boulders and rocky areas. The coastal scrub provides habitat value for birds and other wildlife; therefore the buffer zone has relatively high habitat value on three sides of the wetland. Typical bird species include the California quail, the white-throated swift, song sparrow, white crown sparrow, Bewicks wren, barn swallow, cliff swallow, Wilson warbler, yellow warbler, bushtit, scrub jay, California thrasher, brown twohee, spotted twohee, lesser goldfinch, and house finch. Other wildlife including the small reptiles such as the western fence lizard and the southern alligator lizard are found in these areas. Mammals observed in the project area include woodrat, raccoon, brush rabbit, grey squirrel, chipmunk, ground squirrel, striped and spotted skunk, coyote, and black-tailed deer. In addition, the peregrine falcon nests on a coastal bluff nearby on the other side of existing Highway 1 and uses the coastal scrub area for foraging opportunities. The buffer zone also functions as erosion control areas for storm peak runoff generated in the upper portion of this watershed that drains San Pedro Mountain and the steeply sloping hills. Existing Highway 1 interrupts the buffer zone on the west and limits the habitat value on this side due to the lack of vegetation.

Seasonal Ponding Depression

Prior to the construction of Highway 1, runoff from this drainage area flowed directly and freely into the Pacific Ocean. The new roadway blocked off the canyon, and Caltrans placed a culvert under Highway 1 to carry the existing flow into the ocean.

Sometime during the early 1970s, Caltrans determined that there were problems with the drainage mainly due to blocking of the culvert. To rectify this, Caltrans installed a ten-foot-high by four-foot-diameter slotted standpipe (above ground riser) to meter drainage from the canyon. This maintenance improvement resulted in the inadvertent creation of a seasonal wetland depression at the base of the standpipe. During normal rainy seasons, the runoff from the surrounding hillside watershed ponds around the base of the riser for at least two weeks resulting in an area of seasonal aquatic habitat. Although the depression does not pond during the summer, the drainage leading to the standpipe retains a permanent water flow.

The standpipe was originally expected to perform two functions:

- a. To slow the water during heavy rainfall.
- b. To prevent clogging of the culvert under Highway 1.
- c. Attenuate downstream erosion by metering out flow.

Eventually, the lower slots of the standpipe became plugged; however, the standpipe continued to function because of the slots at higher points of the pipe were still functional and clear of debris. Over time, the ponding water and silt around the base of the riser resulted in the establishment of hydrophytic vegetation within the depression, although these plants were primarily facultative rather than obligate wetland species. The dominant vegetation here includes willow, reed, and poison hemlock.

The wetlands at the Seasonal Ponding Depression have moderate to high wildlife habitat value for Amphibians. This involves Pacific tree frog and Coast garter snake, which were observed at the site during field surveys for the project. In response to a request from the Midcoast Community Council, Caltrans conducted additional frog and garter snake surveys of wetland areas within the project site during the spring and summer of 2002. On May 16, 2002, four CRLF were found within the Seasonal Ponding Depression and Permanent Drainage. Based on the survey results, it appears that this drainage provides foraging habitat for randomly wandering CRLF, but since the ponding area around the standpipe does not last until the end of August, the drainage does not provide suitable breeding habitat for this species. In addition to sediment detention and foraging habitat for CRLF, this depression functions as a small area of open space. As a result of these findings, FHWA requested reinitiation of formal endangered species consultation with the USFWS on April 8, 2003 for the CRLF. In March of 2004, the USFWS completed the reinitiation of formal endangered species consultation and issued the USFWS letter dated March 25, 2004.

The South Portal Drainage Seasonal Ponding Depression buffer zone area is characterized by coastal scrub with relatively high habitat value. Typical bird species include the California quail, the white-throated swift, song sparrow, white crown sparrow, Bewicks wren, barn swallow, cliff swallow, Wilson warbler, yellow warbler, bushtit, scrub jay, California thrasher, brown twohee, spotted twohee,

lesser goldfinch, and house finch. Other wildlife including the small reptiles such as the western fence lizard and the southern alligator lizard are found in these areas. Mammals observed in the project area include woodrat, raccoon, brush rabbit, grey squirrel, chipmunk, ground squirrel, striped and spotted skunk, coyote, and black-tailed deer. In addition, the peregrine falcon nests on a coastal bluff nearby on the other side of existing Highway 1 and uses the coastal scrub area for foraging opportunities. Existing Highway 1 interrupts the buffer zone on the west and limits the habitat value due to the lack of vegetation.

Disposal Site

- a. Uphill seasonal ponding depression and Half Moon Bay – Colma Road Trail.
- b. Downhill Seasonal Ponding Depression.

Uphill Seasonal Ponding Depression and Half Moon Bay-Colma Road Trail

A seasonal ponding depression has formed within the bottom of the Half Moon Bay-Colma Road Trail alignment that is located on the northern hillside. The base of the depression has been compacted so that it has low permeability to rain runoff. Consequently, water ponds within the bottom of the depression. The water in the seasonal ponding depression sometimes lasts into the summer before drying up. This depression has remained intact over time because the cut embankment directly above the depression is rocky so soil has not sloughed off from the hillside above to fill the depression. In addition, due to topographic changes, the rainfall runoff flowing down the hillside from above generally flows around the depression.

An important function of this wetland is to provide habitat for the Pacific tree frog, which uses the seasonal depression as breeding habitat during the winter and early spring. Tree frog larvae have been observed in the seasonal ponding area during spring. After the pond dries up in summer, the adult frogs continue to use the habitat in association with this depression for feeding and refuge. To date, no threatened or endangered wildlife or plant species have been found at the site. Secondary functions of this wetland include open space and minor erosion control.

West of the ponding depression within the Half Moon Bay-Colma Road Trail alignment, a strip of compacted soil meets the wetland criteria due to saturation and anaerobic soil conditions lasting greater than 15 consecutive days during the growing season. Without the soil compaction resulting from the Half Moon Bay-Colma Road Trail alignment, the soil would not be hydric because the soil matrix color is too high and there are no other indicators of a hydric soil. In relation to hydrophytic vegetation, there are only small patches of rush present on some portions of the Half Moon Bay-Colma Road Trail alignment. It is important to note that the compacted soil area within Half Moon Bay-Colma Road Trail alignment is dominated by either pampas grass or bare ground; therefore, the wetland does not provide good habitat for wildlife.

The buffer zone for the Uphill Seasonal Ponding Depression and the Half Moon Bay-Colma Road Trail is characterized by coastal scrub habitat of moderate to high value habitat. The coastal scrub provides habitat value for birds and other wildlife. The buffer zone also functions as erosion control areas for the winter storm peak runoff generated in the upper portion of this watershed that drains San Pedro Mountain and the steeply sloping hills.

Downhill Seasonal Ponding Depression

Prior to the construction of Highway 1, runoff from this drainage area flowed directly and freely into the ocean. The new roadway blocked off the canyon, and Caltrans placed a culvert under Highway 1 to continue the existing drainage into the ocean. Sometime during the early 1970s, as with the area at the South Portal, Caltrans installed a 10 ft. high by 4 ft. diameter slotted standpipe (above-ground riser) to meter drainage of the canyon.

Eventually, the standpipe plugged up at lower points but continued to be effective because of the slits at higher points of the pipe. The resulting siltation created favorable conditions for wetland species to grow at the site, although these plants were primarily facultative rather than obligate wetland species.

Sediment continues to build up around the above ground riser during times of peak runoff after heavy rainfall. During a normal or above normal rainy season, water ponds within the downhill seasonal ponding depression for at least two weeks. This site has some isolated value. Due to the steep terrain there is a lack of natural freshwater ponds and depressions in the local area. This wetland depression functions as habitat for Pacific tree frog and Coast garter snake, which Caltrans biologists have visually observed at the site. To date, no threatened or endangered species have been found at the site. Ice plant and pampas grass have become invasive species in portions of the downhill seasonal ponding depression and have caused some degradation of the habitat.

The buffer zone for the Downhill Seasonal Ponding Depression is characterized by coastal scrub habitat of moderate to high value habitat. The highway interrupts the buffer zone on the west side of the wetland. Typical bird species include the California quail, and the white-throated swift. Mammals observed in the project area include woodrat, raccoon, and brush rabbit.

A large gully has formed within portions of an abandoned roadway that is located where the OMC building is proposed. The base of the gully has become compacted. Consequently, it has a low permeability to rain runoff and water collects in the gully during peak storms. The gully forms an informal ephemeral drainage and is dominated by Pacific wax myrtle, willow, and elderberry. Due to the ephemeral nature of the drainage, the habitat value is limited. The buffer zone for this area is characterized by coastal scrub habitat of moderate to high value.

Policy 7.3 - *Protection of Sensitive Habitats*. This policy prohibits any land use or development which would have a significant adverse impact on sensitive habitat areas. It also requires that development in areas adjacent to sensitive habitats be sited and designed to prevent impacts that could significantly degrade these resources. All uses shall be compatible with the maintenance of biologic productivity of the habitats.

Project Impacts

Unavoidable wetland impacts will occur within the drainage areas for the Fill Disposal site, South Portal site, and North Portal/Shamrock Ranch site as a result of the project. The total area of wetlands that will be affected by the project is approximately 0.97 acres (42,253 sq. ft.). In addition, the project will permanently affect wetland buffer zones totaling approximately 12.68 acres (552,340 sq. ft.). These impacts are further discussed in detail below:

North Portal Drainage Area/Shamrock Ranch

A total of approximately 0.67 acres (29,185 sq. ft.) of wetlands and 4.02 acres (175,111 sq. ft.) of buffer zones will be impacted at the Shamrock Ranch Drainage Areas (Please see Attachments D-1 and D-2). This includes the following:

- a. Approximately 3,049 sq. ft. of wetlands and 44,431 sq. ft. of buffer zones found on the earthen dam of the north pond and 20,473 sq. ft. of buffer zones at the Shamrock Ranch corral will be filled by the temporary construction access road (Location D in Attachment G-1 and Locations K and L in Attachment G-2). These wetlands function as habitat for wildlife and contain a high diversity of vegetation. All wetlands associated with the ponds have a high wildlife habitat value because the ponds also provide habitat for the CRLF. The buffer zone is generally of moderate to high habitat value. However, along the south side, the buffer zone consists primarily of a horse pasture characterized by closely cropped annual grasses. Wildlife habitat values in this area are low.
- b. Approximately 23,086 sq. ft. of wetlands and 82,764 sq. ft. of buffer zones found in association with the North Portal intermittent drainage will be filled as a result of the project (Location E in Attachment G-1 and Location M in Attachment G-2). The North Portal intermittent drainage habitat value is moderate to high due to the diversity of the cover. The coastal scrub provides habitat value for birds and other wildlife. The North Portal intermittent drainage buffer zone is characterized by dense coastal scrub vegetation with moderate to high habitat value.
- c. A small portion of a wetland area, approximately 3,049 sq. ft. and 27,442 sq. ft. of buffer zones, located down slope from the south pond and immediately adjacent to an existing horse trail, will be permanently filled due to the construction of an access road to the North Portal (Location F in Attachment G-1 and Location N in Attachment G-2). These wetlands function as habitat

for wildlife and contain a high diversity of vegetation. All wetlands associated with the ponds have a high wildlife habitat value because the ponds also provide habitat for the CRLF. The buffer zone is characterized by generally high quality habitat with only minimal disturbance.

South Portal Drainage Area

The Seasonal Ponding Depression and Permanent Drainage wetland and buffer zone area will be impacted at the South Portal Drainage Area (Please refer to Attachments E-1 and E-2). This includes the following:

A total of approximately 5,227 sq. ft. of the lower portion of a permanent wetland drainage, which terminates in a seasonal ponding depression, will be filled as a result of the planned approach that connects the tunnel's South Portal with the existing Highway 1 roadway. (Location C in Attachment H-1). This work will also impact approximately 66,646 sq. ft. of buffer zones in this area (Location J in Attachment H-2). This wetland functions as marginal, limited value wildlife habitat for amphibians such as Pacific tree frog and Coast garter snake. The South Portal Drainage Seasonal Ponding Depression buffer zone area is characterized by coastal scrub with relatively high habitat value.

Fill Disposal Site Drainage Area

A total of approximately 7,840 sq. ft. of wetlands and 310,582 sq. ft. of buffer zones will be impacted at the Fill Disposal Site Drainage Area (Please refer to Attachments F-1 and F-2). This includes the following:

- a. Approximately 4,791 sq. ft. of wetlands will be impacted at the Half Moon Bay-Colma Road Trail (Location A in Attachment I-1) by the disposal of excavated materials from the tunnel and the South Rock Cut. Approximately 134,600 sq. ft. of the Half Moon Bay-Colma Road Trail buffer zone (Location H in Attachment I-2) will be impacted. It is important to note that the compacted soil area within the Half Moon Bay-Colma Road Trail alignment is dominated by either pampas grass or bare ground; therefore, the wetland does not provide good habitat for wildlife. The buffer zone for the Half Moon Bay-Colma Road trail is characterized by coastal scrub habitat of moderate to high value habitat.
- b. Four other small areas within the Fill Disposal area, totaling 3,049 sq. ft. of wetlands and 175,982 sq. ft. of buffer zones will be filled as part of the OMC building and access road construction (Location B in Attachment I-1 and Location I in Attachment I-2). These wetlands may provide some habitat for birds, but due to the small size of the areas, no other important wetland functions are associated with them. The buffer zone for these small wetland areas is characterized by coastal scrub habitat of moderate to high value habitat.

Avoidance And Minimization Efforts

This project was originally proposed with a fill embankment across the Shamrock Ranch valley, which would have had substantial impacts upon the riparian and wetland resources in this area. Additionally, the original plans called for the filling in of the seasonal ponding depression at the fill disposal site and elimination of both wetland areas around the South Portal. To reduce these significant, adverse impacts, the applicant has made numerous design changes:

- a. To avoid impacts to the north ranch pond and associated wetlands, the applicant is proposing to construct a bridge across the valley at the west end of Shamrock Ranch. These wetlands around the north pond support a known population of California red-legged frog. Filling this canyon to support the approach road would have resulted in permanent impacts to wetlands, the north pond, adjacent uplands and upstream drainages and CRLF habitat.
- b. The applicant, in consultation with the U.S. Fish and Wildlife Service (USFWS), has established environmentally sensitive areas (ESA) at all three work areas. These areas will be delineated and marked with high visibility, frog-proof fencing, silt fencing, and sturdy perimeter barriers. No construction activity or movement through these ESAs will be allowed.
- c. The design of the fill slope at the disposal site has been refined to avoid destroying the uphill ponding depression at this location. This was achievable due to reductions in the amount of fill generated by the South Rock Cut.
- d. Caltrans achieved a significant reduction of wetland and riparian impacts by relocating access into the OMC site from the north to the south, pushing the OMC building further east, limiting grading and installing retaining walls. A modification to the Soil Nail Wall design at the South Rock Cut reduced the amount of fill to be placed at the Fill Disposal Site by 41,000 cubic yards. In turn, this avoided filling the downhill seasonal ponding depression (adjacent to Route 1) and associated willow riparian corridor.
- e. The applicant reduced the amount of wetland impacts within Shamrock Ranch by realigning construction access roads throughout the property to avoid wetland areas. In addition, the applicant narrowed the roadway prism in spots that traversed wetlands to minimize impacts. This will be accomplished using temporary retaining walls. These design revisions will avoid and minimize wetland impacts at the north pond earthen dam and at a small wetland adjacent to the horse dressage ring.
- f. An earlier iteration of this project included the installation of a bioswale within Shamrock Ranch to treat roadway runoff from Route 1. This bioswale would have resulted in small impacts to wetlands and riparian areas. The revised plan is to install a water quality basin to treat roadway runoff in a location that avoids these sensitive habitat areas.

- g. An earlier iteration of this project proposed constructing the South Portal (northbound direction) as close to the hillside face as possible. The applicant has revised their design to extend the South Portal out and away from the face of the excavated slope. This will reduce the height and scale of excavation necessary to construct this feature of the project. The revised design involves constructing a retaining wall adjacent to the sliver wetlands along the steep hillside to eliminate the need to construct within the wetlands.
- h. The original tunnel project called for roadway drainage improvements and a maintenance access area at the north end of the soil nail walls. These improvements would have required filling a seasonal wetland. The revised drainage plan will now allow runoff from above the walls to sheet flow over the face of the soil nail wall. This eliminated the need for drainage structures and access at the north end of the walls as well as significantly minimizing the excavation behind the walls thereby minimizing impacts to the seasonal wetland.
- i. At the South Portal area, the original design called for extensive grading to produce a stable slope adjacent to the tunnel mouths. This slope removal would have resulted in the loss of both wetlands areas at this location. The applicant has redesigned the rock cut and is now proposing to incorporate a retaining wall in order to avoid impacts to the uphill drainage area.
- j. The applicant, in consultation with the USFWS, developed a plan to relocate red-legged frog from the north pond (Shamrock Ranch) to minimize incidental take during construction (it should be noted that the Service has issued a Biological Opinion which authorizes incidental take of the CRLF). The plan included the creation of a pond on the Shamrock Ranch property, where new permanent habitat for the red-legged frog was established. The purpose of the pond was to provide additional habitat for frogs that would be relocated from the northern pond during construction, and as mitigation for potential indirect impacts resulting from the project. The USFWS endorsed the proposed pond creation and, in 2000, Caltrans constructed the new pond. In April and July, 2001, with approval from the USFWS, frogs were trapped at the north pond and relocated to the new pond. In addition to providing new California red-legged frog habitat, this pond also creates 0.04 acres of wetlands.

Unfortunately, not all impacts to sensitive habitat areas could be avoided. Policy 7.4 - *Permitted Uses in Sensitive Habitats* of the LCP permits only resource dependent uses in sensitive habitats. This project does not fall into that category of uses. However, the process that led to the certification of Measure T (the Devil's Slide Tunnel Initiative) by the California Coastal Commission contemplated that a project consistent with the Measure would inevitably result in some impacts to sensitive habitats.

On January 9, 1997, the California Coastal Commission certified Measure T as being consistent with the Coastal Act. In its comprehensive findings, the Commission concluded that the proposed project would result in wetland fill. In certifying Measure T, the Commission applied the "conflict resolution test" as set forth in Public Resources Code Section 30007.5. In doing so, the Coastal Commission found that, although implementation of the proposed Measure T raised conflicts between several policies in Chapter 3 of the Coastal Act, on balance, the tunnel option best protected significant coastal resources. By virtue of the Coastal Commission's certification, the County's LCP now includes Measure T, which calls for a tunnel at Devil's Slide, and allows for some impact to wetlands as a result of tunnel construction. In addition, on October 10, 2000, the Coastal Commission approved a Consistency Certification for the Devil's Slide Improvement Project. This certification found that the proposed project is consistent with the California Coastal Management Program. It was acknowledged at that time that the project would impact sensitive habitat areas. Since that certification, the applicant has redesigned portions of the project, as outlined above, to reduce impacts to a level below what the Coastal Commission considered. The Planning Commission believes that, based upon the avoidance, minimization, and mitigation measures incorporated into the final design of the project and the language of Measure T and the Coastal Commission's certification, the proposed project is allowed under Policy 7.3.

Policy 7.5 - Permit Condition. This policy requires, as part of the development review process, that the applicant demonstrate that there will be no significant impact on sensitive habitats. This is achieved by having the applicant submit a biological report outlining what resources exist at the project location and how the project may impact those resources. Included as Attachment F is the Biological Assessment prepared for this project. Also, the applicant has submitted a wetlands report, which identifies all wetlands (as defined by the Coastal Commission) within the project work areas and outlines potential impacts to those wetlands and their buffer zones. It also outlines mitigation measures to help reduce impacts to these areas.

In approving Measure T, the voters of San Mateo County acknowledged that some impacts could not be avoided, this is reflected in Section 4 of Measure T:

"Except as approved by the voters of San Mateo County subsequent to the effective date of this ordinance, if any existing or subsequently enacted provision of the General Plan, the Local Coastal Program, an area or special plan or other ordinance or resolution of the County of San Mateo, is inconsistent with this ordinance, that provision is superseded and rendered ineffective by this ordinance to the extent, but only to the extent, that it is inconsistent."

As stated above, this project will have a significant adverse impact upon some of the sensitive habitat areas of the project site. However, the applicant has

redesigned portions of this project numerous times to reduce those impacts as much as possible. The project before the Planning Commission is the least damaging design that could be produced while still meeting the intended goals of this project.

The second part of this policy requires the restoration of damaged habitat when it is feasible. As part of this project, the applicant has proposed an extensive revegetation plan (Attachments G-1 and G-2) including the re-establishment of wetland areas disturbed by construction around the North Portal. The applicant estimates that total impact to wetlands will be 0.97 acres. To compensate for this impact, the applicant is proposing to mitigate at a 4:1 replacement ratio. Due to the steep topography of the project site, full on-site mitigation at this level is not feasible. The applicant proposes to provide on-site mitigation where practicable and feasible. In addition, the applicant has proposed restoring and creating new wetland areas on a parcel just north of Montara and across from the former Charthouse Restaurant (Attachment K).

Policy 7.8 - Designation of Riparian Corridors. This policy establishes riparian corridors for all perennial and intermittent streams and lakes and other bodies of freshwater in the Coastal Zone. Based upon this policy, there are three riparian corridors around the North Portal work site, as discussed above. At the South Portal, there is a riparian corridor fed by the uphill drainage area, which empties into the seasonal ponding depression.

Policy 7.9 - Permitted Uses in Riparian Corridors. This policy outlines the allowed uses within riparian corridors, which include education and research, and fish and wildlife management activities, amongst others. When no feasible or practicable alternative exists, bridges are allowed, when their supports are not in significant conflict with corridor resources. At the North Portal, the south bridge abutments and the portal entrances will impact the corridor. Vegetation will be removed to accommodate the new structures, and the intermittent creek at this location will be rerouted slightly around the western abutment. After analyzing the data provided by the applicant, the Planning Commission believes that there is no practicable alternative to the proposed portal location. Shifting the portals to the west would likely result in impacts to the north pond's intermittent stream. Shifting the portals to the east would increase the impact to the north pond itself. Additionally, shifting the portal locations to one side or the other could increase their visibility (currently, the portals are proposed in a cleft between ridge brows), thus conflicting with other LCP policies. To mitigate the impact to the portal riparian corridor, the applicant has proposed a revegetation plan for this area, consisting of black, thimble and elder berries and rushes. Those portions of the riparian corridor which will be permanently impacted will be replaced at the Charthouse mitigation site, as discussed above.

At the South Portal, the portal entrances and approach road will permanently remove most of the drainage pond at this location. Shifting the tunnel to the west to

avoid this pond would result in difficulties connecting to the existing Highway 1 alignment. It would likely require substantial grading on the west side of the existing highway alignment in order to produce an approach angle that meets safety standards. Also, moving the tunnel to the west could encroach into the geologic fault zone that is the underlying problem of the Devil's Slide area. Shifting the tunnel to the east would again require substantial grading on the west side of Highway 1 to accommodate the proper approach angle. The loss of a portion of the South Portal pond will be offset at the Charthouse mitigation site.

Despite the proposed restoration and mitigation measures, the project will still have a direct impact upon riparian corridor areas, and thus places this project in conflict with Policy 7.9. As discussed above, to the extent that this project does not constitute a permissible use under Policy 7.9, Section 4 of Measure T authorizes the tunnel despite such inconsistency since the significant adverse impact to the riparian corridors is unavoidable.

Policy 7.11 - Establishment of Buffer Zones (for Riparian Corridors). This policy requires the establishment of buffer zones on both sides of riparian corridors. Specifically, a buffer zone of 30 feet, from the "limit of riparian vegetation," is required for intermittent streams, and 100 feet for ponds, except for manmade ponds used for agricultural purposes. Based upon this policy, there is a 30 ft. buffer zone on both sides of the intermittent creek feeding the north pond, however, this pond does not require a buffer zone because it is manmade and used for agricultural purposes. Piers 3S and 3N are outside of this riparian buffer zone, however, they are within the wetland buffer zone for the north pond. This will be discussed below. Also, the temporary construction road to access the Pier site will encroach into the buffer zone for this intermittent creek. The LCP does allow for impervious surfaces within riparian buffer zones only if no feasible alternative exists.

Policy 7.12 - Permitted Uses in Riparian Buffer Zones. This construction road will be temporary and will use aggregate for the road surface. Also, the applicant has proposed an extensive erosion control and revegetation plan (using native plant species) to prevent long-term impact to this intermittent creek (Policy 7.13 - *Performance Standards in Riparian Buffer Zones*).

There is also a 30 ft. buffer zone for the intermittent creek associated with the North Portal. Portions of this buffer zone will be permanently impacted by construction of the North Portals and associated bridge abutments. The impacts to this riparian corridor (and its associated buffer zone) were discussed above under Policy 7.9.

At the South Portal area, there is a 50-foot buffer zone associated with the uphill perennial drainage area. This buffer zone will not be impacted by the construction or use of the tunnel. There are no riparian areas at the disposal site. Again, to the extent this project does not constitute a permissible use under these policies, Section 4 of Measure T authorizes the project despite such inconsistencies since such impact is unavoidable.

Policy 7.14 - *Definition of Wetland*. The Final Draft Wetlands Report identifies several wetland locations at the North Portal work area that would be impacted by construction of the project. The first area consists of the horse trail wetlands to the north of the south pond. This perennial wetland evolved over time and is apparently fed by seeps associated with the upper hillside above, possibly including underground seepage from the south pond. Hydrophytic vegetation is dominated by reed, horsetail, and blackberry. As in the case of the wetlands found on the fill disposal site and the South Portal drainage area, this wetland functions as wildlife habitat for amphibians such as Pacific tree frog and Coast garter snake. During times of peak storm water runoff, this wetland serves to filter sediment from runoff flowing from the uphill slopes to the Shamrock Ranch valley below. This wetland will be impacted due to the construction of the access road to the North Portal.

The second wetland area that will be impacted is the earthen dam of the north pond. This area has been disturbed by agricultural activities, which continue today. The area is dominated by poison hemlock, blackberry, poison oak and other weedy species. According to the Final Draft Wetlands Report, this area has low habitat value except for passerine birds and small rodents. This area will be temporarily impacted by construction and use of the access road.

At the South Portal, the project will permanently impact the seasonal ponding depression (5,227 sq. ft. in size) adjacent to Highway 1. At the fill disposal site, the project will permanently impact the wetlands (4,791 sq. ft.) associated with the old Half Moon Bay – Colma Road alignment. The hydrology and soil conditions at this site are artificial due to the soil compaction resulting from the old county roadway cut. Without the soil compaction resulting from the abandoned roadway, the soil would not be hydric because the soil matrix color is too high and there are no other indicators of a hydric soil. This strip is dominated by bare ground and pampas grass, a plant species that is not hydrophytic, and provides almost no wildlife habitat value. Due to its small size, there are also no other important wetland functions associated with this site. Additionally, there are four small areas (3,049 sq. ft. total), in the vicinity of the proposed OMC building that will be filled. These depressions are dominated by Pacific wax myrtle, willow, and elderberry. One of these three areas consists of a single elderberry tree. The other two areas are located within the alignment of a dirt access road that was abandoned in the past and has altered the original natural conditions. These trees may provide some habitat for birds, but due to the small size of the areas, no other important wetland functions are associated with them.

Policy 7.16 - *Permitted Uses in Wetlands*. This policy dictates the allowed uses within wetlands. Among those uses are education, research and wildlife management. New roadways are not listed as one of the permitted uses. This conflict was discussed above under Policy 7.3. To recap, the County's adoption of Measure T and the Coastal Commission's certification of it, as well as the Commission's Federal Consistency analysis for the tunnel, all acknowledge that some fill of wetlands will be unavoidable. However, that does not abrogate the applicant's responsibility to avoid these impacts when possible.

As discussed above, numerous changes have been made to the original project design to avoid impacting wetland resources within the three work areas. At the North Portal area, the proposed construction access route was altered. The original plan had called for using the ranch road from Shamrock Ranch to bring all equipment and materials to the construction sites. However, this would have impacted higher quality wetland and riparian resources along that road. To avoid this impact, the applicant has altered the plan so that access comes directly down from Highway 1. The project is designed to minimize the wetland impacts to the maximum extent feasible and to avoid the most sensitive habitat areas. At the Fill Disposal Site, the original design for the fill slope has been modified to avoid impacts to the uphill ponding depression, formed in the abandoned county roadway. Additionally, the original design has been modified to avoid filling in of the seasonal pond adjacent to Highway 1.

To offset the impacts described above, the applicant is proposing to (1) revegetate and enhance areas disturbed by the construction of the project, and (2) create approximately 1.15 acres of new wetlands at the Charthouse mitigation site. The revegetation of disturbed sites (primarily around the North Portal bridge and the fill disposal site) will occur upon completion of construction. Native plant species will be used (see Attachment J) and the goal is to achieve, within five years, a density of vegetative cover of 75 percent or greater of native species. In addition, the exotic plant species that have colonized much of the wetland areas at the South Portal and Disposal sites will be eliminated. The proposed off-site wetland mitigation involves the removal of fill placed on the site and at least one seasonal ponding depression will be created. The preliminary details of this mitigation plan are discussed in the Final Draft of the applicant's Wetlands Report. Because of the size of this report, it has not been included as an attachment to this report. However, all or portions of this document can be made available upon request. In summary, the Planning Commission believes, given the avoidance measures that the applicant has incorporated into their design, and the revegetation and off-site mitigation, that the proposed project is in conformance with the Coastal Commission's Federal Consistency analysis and the County's Measure T language contained in the County's certified LCP.

Policy 7.18 - Establishment of Buffer Zones (for Wetlands). This policy requires the establishment of buffer zones around areas meeting the definition of "wetlands." Specifically, a buffer zone of 100 feet, from the outermost line of wetland vegetation is required. This setback may be reduced to no less than 50 feet only where no alternative development site or design is possible and when the adequacy of the reduced setback is demonstrated by a professional biologist to the satisfaction of the County and the State Department of Fish and Game.

As discussed above, Piers 3S and 3N are within the wetland buffer zone for the north pond. Additionally, a portion of the construction access road will temporarily encroach into this buffer. The access road for the North Portals will temporarily encroach into the buffer zone for the horse trail wetlands to the north of the south

pond. Finally, the new horse trail (intended to replace the trail destroyed by construction of the North Portals) will encroach into the buffer zone associated with the north pond's upland areas. These encroachments are not listed as an allowed use within wetland buffer areas as denoted by Policy 7.19 - *Permitted Uses in Wetland Buffer Zones*, including the new horse trail, which is a private recreational trail, not public. The design and location of these intrusions into the buffer zones has been predicated upon avoiding direct impacts upon primary wetland and riparian resources. Additionally, there are engineering limitations which at least partially dictate the location of access roads. For example, the applicant is proposing to use the horse trail north of the south pond as access to the North Portal in order to (1) maintain grades that heavy equipment can negotiate, and (2) to minimize new disturbance of untouched areas of the site.

At the South Portal, there is a buffer zone associated with the seasonal ponding depression. This pond and its associated buffer zone will initially be eliminated by construction of the project. However, the current design for the South Portal will result in the creation of a new, small ponding area at the base of the South Portal drainage area.

At the disposal site, there will be encroachment of fill into the buffer zones for the lower and upper ponding depressions. This encroachment is unavoidable given the large amount of fill to be disposed of at this site. However, the amount of encroachment has been reduced substantially from original plans. The first conceptual plans for the disposal site called for the filling in of both the upper and lower ponding depressions. But, changes in the design of the South Portal and South Rock Cut areas have reduced the amount of material that will be placed at the disposal site, thus allowing for more sensitive placement of the material. Also, as mentioned previously, the proposed location of the OMC building has been moved to avoid impacts to the lower seasonal ponding depression. The applicant has proposed an extensive erosion control plan to prevent damage to the two remaining wetland areas. Once all fill material has been placed on the site, erosion control planting will occur and then revegetation with native species to restore habitat value to the area.

Policy 7.30 - *Permitted Uses (for Sea Cliffs)*. This policy restricts the use of land in areas on or immediately adjacent to coastal cliffs. In particular, when nesting or roosting sites exists, only education and research activities are permitted. Where such sites do not exist, certain additional uses are allowed, specifically: limited footpaths; road and underground utility construction where no feasible alternative exists; and intake or outfall lines provided that the habitat is not threatened.

In preparation of the biotic report for this project, the applicant conducted field reconnaissance and observations for the peregrine falcon at rock outcrops in the project vicinity. It was determined that an active nest was located on a rock outcropping at the Devil's Slide promontory. This location is approximately 4,000 feet north of the proposed South Portal. No new construction is proposed

immediately adjacent to this nesting site. The alignment for Highway 1 is already in place at this location. The transformation of the highway from a vehicular travel way to a recreational trail could in fact benefit this nesting site since ambient noise levels should drop once vehicle traffic ends. Based upon this policy, it would appear that the proposed cul-de-sac at the South Portal is an allowed use. There is no other feasible location to place this turnaround and still provide safe public access to the general public (including people with limited mobility).

Policy 7.32 - Designation of Habitats of Rare and Endangered Species. This policy requires the County to designate habitats of rare and endangered species including, but not be limited to, those areas defined on the Sensitive Habitats Map for the Coastal Zone. The Final Draft Wetlands Report submitted for this project identifies several locations where California red-legged frog have been sighted: Populations of the California red-legged frog were found at the two Shamrock Ranch ponds in the northern part of the project site during the 1995 field survey conducted by Dr. Samuel McGinnis. Individuals of this species were also found in two small pool sites along the course of the Green Valley drainage. In 2002, Caltrans biologists also identified the red-legged frog within the South Portal drainage.

The Shamrock Ranch ponds originated in the mid 1950s when the existing drainages were dammed to form stock or irrigation ponds. The south pond site represents a relatively ideal habitat for the red-legged frog. There is adequate shoreline cover for protection of foraging frogs from most predators, and the permanent water supply permits year round residency within the sanctuary of the immediate pond habitat. During field surveys in 1997 and 1998, a small population of adult California red-legged frogs was found at the seasonal north pond. During the 1997-98 survey period, no evidence of their presence was observed within the west and southwest valleys adjacent to the north pond even though drift fences and track plates were placed to detect frog movement into these areas.

At the Green Valley Creek location, individual adult red-legged frogs were observed in two small pool areas. These frogs appeared to be members of small populations, which occasionally inhabit the creek pools. During a field survey by Caltrans biologists in the spring of 1997, an adult red-legged frog was observed on the shore of a very small pond adjacent to Green Valley Creek just east of the foot of the Highway 1 embankment. A field review of this same small pond in the spring of 1998 showed that the pond had been severely disturbed by the massive movement of sediment through the drainage during the El Nino storms of the past winter. In 1998, no California red-legged frogs were observed at this site.

During the spring and summer of 2002, Caltrans biologists conducted additional frog surveys in the project vicinity and found four California red legged frogs within the South Portal drainage.

Policy 7.33 - Permitted Uses (within Habitats of Rare and Endangered Species). This policy restricts the types of uses allowed within habitats of rare and

endangered species. Uses deemed compatible by the U.S. Fish and Wildlife Service can be allowed. The Service has rendered a Biological Opinion (December, 2000), which is excerpted below:

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

Direct effects include the potential for harassment, injury, and mortality of juveniles and adults. The project will also result in the temporary loss of red-legged frog non-breeding and foraging habitat, specifically 0.4 acres in the north pond. However, as explained in the following mitigation section, this effect will be offset by the creation of the new pond, which will provide dispersal, foraging and breeding habitat.

Indirect effects to the frog include the potential for increased sedimentation downstream from the project as a result of the construction activities. The grading and re-grading at the site is likely to alter the soil horizon to such an extent that re-establishment of existing vegetation type may be difficult and problematic.

The effects to proposed critical habitat include the construction of access roads that 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 59 ft. of the south pond at its closest point. The existing Highway 1, which already 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.

The USFWS concluded that:

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 that the Devil's 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.

The USFWS further described non-discretionary measures that must be implemented by the applicant in order for an exemption to Section 7(o)(2) (Incidental Take Statement) to apply. The USFWS states that:

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 it will become exempt from the prohibition described under Section 9 of the Act for direct and indirect impacts.

The Federal Consistency approval for this project was predicated upon the applicant refining the overall design of the project to avoid impacts to sensitive habitats and visual resources to the extent possible. When impacts could not be avoided, then the applicant was charged with minimizing the impacts as much as practicable. As described in detail earlier in this report, the applicant has made extensive changes to the initial project design in order to minimize or even totally avoid impacts to habitat resources as much as possible. For example, the South Rock Cut has been redesigned several times to reduce its size and scope. These changes have reduced the visual impact of this facet of the project, but they have also benefited habitat resources at the Disposal Site, by reducing the amount of fill that will be placed there and thus avoiding the need to fill the lower seasonal depression. Unfortunately, as was discussed previously, not every impact can be avoided or minimized to a less than significant level. In that case, mitigation is required. As was discussed previously, the project will have both temporary and permanent impacts upon habitat for the CRLF. To mitigate these impacts, the applicant has created additional habitat at the Shamrock Ranch site and will, upon completion of construction, restore and enhance the habitat around the north pond on the Shamrock Ranch site. Additional measures were discussed above.

Policy 7.34 - Permit Conditions. This policy requires the submittal of a biological report which not only identifies the rare and endangered species and their habitats within a project area, but also recommends mitigation if development is permitted within or adjacent to identified habitats. In issuing their Biological Opinion, the USFWS cited a number of modifications which have already been incorporated into the design of the project (use of a bridge rather than fill at the North Portal for example) and measures that have already been incorporated into the overall project (creation of a habitat pond at Shamrock Ranch). The USFWS also cited the proposed Charthouse wetlands mitigation plan (discussed above) in issuing their decision.

Visual Resources Component

Policy 8.4 - Cliffs and Bluffs. This policy requires bluff top development and landscaping to be set back sufficiently far to ensure it is not visually obtrusive when viewed from the shoreline. The parking area at the South Portal will encompass an

area that extends right to the edge of the bluff top at this location. However, the shoreline is not accessible at this location. Therefore, the development will not be visible from below. Additionally, because of the constrained nature of the site, there is no alternative location to place this parking area.

Policy 8.5 - Location of Development. This policy requires new development to be located on a portion of a parcel where the development (1) is least visible from State and County Scenic Roads, (2) is least likely to significantly impact views from public viewpoints, and (3) is consistent with all other LCP requirements, best preserves the visual and open space qualities of the parcel overall.

The location of the tunnel and bridge will be visible from adjacent portions of Highway 1. However, these locations are dictated by a number of parameters, such as adjacent biologically sensitive areas. Because of the nature of what is being constructed, there is no location on the parcels involved, where the bridge and tunnel will not be visible. However, the applicant has, as a result of public input, proposed placing the OMC building at a location where it will not be visible from Highway 1. The OMC building will be placed farther back on the subject parcel than originally planned and tucked behind berms to hide it from the roadway.

Policy 8.6 - Streams, Wetlands, and Estuaries. This policy requires all development be set back from the edge of streams and other natural waterways a sufficient distance to preserve the visual character of the waterway. Immediately adjacent to the proposed North Portal there is an intermittent stream that will be directly impacted by construction of this project. Additionally, there is an intermittent stream that feeds the north pond on Shamrock Ranch. The northerly piers for the bridge will be immediately adjacent to this stream. At the South Portal, the stream that feeds the pond at this location is immediately adjacent to the proposed location of the portals. As has been discussed elsewhere in this report, the location of the bridge and tunnel are fixed based upon geological, biological and engineering constraints. Also as mentioned before, the project has been redesigned in several ways to reduce impacts to these resources as much as possible. Additionally, disturbed riparian vegetation will be replaced upon completion of the project. From the perspective of drivers traveling upon the completed project, the Planning Commission believes there will not be a significant visual impact vis-à-vis these streams. As discussed before, Measure T and the Federal Consistency analysis acknowledge that there will be some unavoidable impacts associated with this project. At the time that the Coastal Commission approved the incorporation of Measure T into the County's LCP and certified the Federal Consistency analysis for this project, it was determined that conflicts did occur between the proposed project and policies contained within Chapter 3 of the Coastal Act. However, based on Section 30007.5 of the Coastal Act, the Commission determined that the tunnel option was, on balance, the most protective of significant coastal resources.

Policy 8.9 - *Trees*. This policy requires new development to be located and designed to minimize tree removal. At the North Portal, the project will result in the removal of 17 Monterey pine trees ranging in size from 12" to 98" dia. On the other side of the valley, construction of northerly piers and abutments will result in the loss of one pine and 70 Monterey cypress trees ranging in size from 12" to 78" dia. The alignment and location of the bridge and piers are dictated in large part by the applicant's attempts to avoid sensitive habitat areas, and underlying geologic faults and enable safe connections to the existing Highway 1 alignment. In summary, avoidance of the tree resources at both ends of the bridge is not possible without impacting other sensitive biotic resources. However, not all of the trees at the north end of the bridge will be removed. There are sixteen trees on the outer edges of the cypress grove that will be protected by the applicant during construction. As part of the revegetation plan for this project, the applicant is proposing several tree replacement areas specifically adjacent to the old Highway 1 alignment at the north end and around the OMC building. However, the applicant has not submitted specific details regarding the number of replacement trees, their species, or how they will be maintained until they become established. This information will be required as part of the revegetation plan (Condition of Approval 8).

Policy 8.10 - *Vegetative Cover*. This policy requires vegetation removed during construction be replaced with plant materials (trees, shrubs, groundcover) which are compatible with surrounding vegetation and are suitable to the climate, soil, and ecological characteristics of the area. The applicant has submitted a conceptual revegetation plan for all disturbed areas created by this project. However, this plan does not provide details regarding seed rates, irrigation methods, or success criteria. The Planning Commission is recommending a condition that requires the submittal of a detailed revegetation plan within one year of the start of construction of this project. The plan shall outline species to be used, their percentage at each location, and shall establish success criteria.

Policy 8.16 - *Landscaping*. This policy requires the use of plant materials to integrate the manmade and natural environments and to soften the visual impact of new development. This policy also requires the protection of existing desirable vegetation. The applicant is proposing to revegetate all disturbed areas with plant species that are endemic to the project area and particular micro-climate involved. This is represented on Attachments G.

Policy 8.17 - *Alteration of Landforms; Roads and Grading*. This policy requires new development be located and designed to conform with, rather than change landforms. It also emphasizes minimizing the alteration of landforms as a consequence of grading, cutting, excavating, filling or other development. To the degree possible, an applicant shall ensure restoration of pre-existing topographic contours after any alteration by development. This policy also requires the County to control development to avoid the need to construct access roads visible from State and County Scenic Roads. New access roads may be permitted only where it is demonstrated that use of existing roads is physically or legally impossible or

unsafe. New roads shall be (1) located and designed to minimize visibility from State and County Scenic Roads and (2) built to fit the natural topography and to minimize alteration of existing landforms and natural characteristics.

The proposed project will involve a significant amount of landform alteration, particularly at the south end of the project. In order to construct a safe approach curve for the South Portals, the applicant is proposing to cut back the rock slope immediately south of the portals. It is estimated that approximately 109,587 cubic yards of material will be created by this phase of the project. The original project design had envisioned a substantial cut of this hillside to a slope of approximately 1:1. This would have generated somewhere on the order of 202,732 cubic yards of material, to be placed at the disposal site. In addition to causing a significant visual impact, the original plan would have generated such a substantial amount of material that it would have been necessary to fill in the large drainage pond at the base of the disposal site. To reduce both the primary visual and secondary biotic impacts associated with this original design, the applicant has modified their plans and are now incorporating a soil-nail wall at the South Rock Cut. This wall will be approximately 650 feet in length and 72 feet in height at its tallest point. The exterior of the wall will be textured and stained to appear as a natural rock formation, similar to the soil-nail walls constructed on Highway 92.

The applicant has proposed placing material generated by this project at a disposal site immediately south of the South Portals. This material will be placed on the site so that it resembles a naturally occurring slope. Additionally, a portion of the fill will be placed to form a berm around the proposed OMC building, helping to reduce its visibility from Highway 1.

Policy 8.18 - Development Design. This policy requires development to blend with and be subordinate to the environment and the character of the area where located, and be as unobtrusive as possible and not detract from the natural, open space or visual qualities of the area. This policy also requires screening to minimize the visibility of development from scenic roads and other public viewpoints. Screening shall be by vegetation or other materials that are native to the area or blend with the natural environment and character of the site.

As discussed previously, the project has been redesigned significantly from the conceptual plan approved by the Coastal Commission at the Federal Consistency stage. The portal designs at both ends have been reworked to reduce the amount of excavation necessary to construct them. Additionally, the applicant has incorporated surface texturing and color staining into the design of the portal cement to simulate natural rock outcroppings and local geology. Once native vegetation has become re-established at these locations, the Planning Commission believes the portals will become subordinate to the surrounding environment. The proposed South Rock Cut has been reduced in scope by approximately 75% from the original project design. This reduction has been due to the incorporation of a retaining wall, similar to the ones constructed on Highway 92. Design elements,

such as see through railings and sweeping arches, have been added to the proposed bridge to reduce its starkness. The proposed location for the OMC building has been moved, in part to help reduce its visibility. A portion of the tunnel spoils will be used to help create berms that will further reduce the visibility of this structure. The Planning Commission believes the incorporation of these modifications into the project design make the project as unobtrusive as possible.

Policy 8.23 - Utilities in County Scenic Corridors. This policy requires all new distribution lines to be placed underground, except for when topographic features make this impracticable. The applicant is proposing to extend power and telephone lines from the current terminus at Grey Whale Cove to the new OMC buildings. The proposal is to place these new lines in an underground conduit under the existing Highway 1 pavement. The applicant is also proposing to extend a water line from Pacifica, up through the tunnel and onto the OMC building. This water line will be underground.

Policy 8.31 - Regulation of Scenic Corridors in Rural Areas. This policy calls for the application of the Scenic Road and Rural Design standards of the County General Plan, Zoning District, and LCP. These policies and standards overlap the policies discussed above. The Planning Commission believes the project, as proposed, meets the standards contained in this policy.

Hazards Component

Policy 9.3 - Regulation of Geologic Hazard Areas. This policy requires that certain regulations contained within the County's Resource Management (RM) Zoning Ordinance be applied to parcels designated as geologic hazard areas. The project site is designated as a geotechnical hazard area on the County's certified LCP Hazards Map. In particular, the hill through which the tunnel will be drilled is designated as a landslide hazard. The regulations that pertain to this project are:

- a. *Section 6324.6 - Hazards to Public Safety Criteria.* This section states that areas shall not be used for placement of structures: (1) which are severely hazardous to life and property due to soils, geological, or seismic factors; or (2) for which elimination of such hazards would require major modification of existing landforms, significant removal or potential damage to established trees or exposure of slopes which cannot be suitably revegetated.

The applicant has performed extensive geotechnical exploration of the proposed project alignment and has determined that the underlying geologic formation is suitable for the tunnel. There are no known seismic faults that cross the project site. However, the San Gregorio Fault, the nearest major fault, is approximately two miles offshore and southwest of the project site. Activity along this fault could expose the project to vibrations and ground movement during earthquakes. Knowing of this potential impact, the applicant has designed the tunnel to withstand the potential impacts of an earthquake along this fault.

Shoreline Access

Policy 10.1 - *Permit Conditions for Shoreline Access*. This policy requires the provision of shoreline access as a condition of granting development permits for any public or private development permits between the sea and the nearest road. The vast majority of the project is east of Highway 1; however, the proposed parking area at the South Portal will be west of the highway. Thus this policy is applicable. Because of the steep nature of the coastal bluffs in this area, direct access to the shoreline is not feasible in a safe manner. However, Policy 10.3 - *Definition of Shoreline Access* states: "Define shoreline as a beach, where contact with the water's edge is possible, or a bluff, where only visual access is afforded."

Policy 10.9 - *Locational Criteria: Public Safety*. This policy requires the provision of safe access to bluffs that are large enough and of a physical character to accommodate safety improvements and which provide room for public use as a vista point. To comply with this policy, the applicant is proposing to close the abandoned portion of Highway 1 to automobiles and construct parking areas at each end. This will allow people to safely park off of the main travel way and walk the abandoned road in safety. Additionally, the applicant has included provisions to help complete portions of the California Coastal Trail alignment. At the south end of the project, a new 4-foot wide walkway, on the east side of Highway 1, will connect the south cul-de-sac area to the old Ocean Shore Railroad route, at the base of the proposed fill disposal site. Upon reaching this spot, the trail will continue east, past the proposed OMC building upon the old railroad bed. At a point approximately 1,600 meters west of Highway 1, this trail segment will terminate at a dead end. The State of California owns the land to the south of this dead end. Connection of the proposed trail segment with an existing trail approaching from the south would require the bridging of a small drainage. The applicant is not proposing to make this connection. However, Caltrans has stated that the Coastal Conservancy has initiated a study of possible ways of connecting these and other trails within this area. Any trail construction activities resulting from this study would be covered under a separate permit. On the north end, the Coastal Trail will continue on, past the cul-de-sac down to the intersection with the realigned Highway 1. The applicant's plans indicate a proposed connection to the Pacifica Trail will be established as part of this project, in the vicinity of the new northern bus stop. Additionally, bicyclists will be able to safely turn out of the cul-de-sac road onto Highway 1 because the proposed signal lights at this location.

Policy 10.19 - *Maintenance*. This policy requires new or improved public trails to be kept safe and clean. As discussed previously, the applicant is proposing to construct parking areas at both ends of the old highway and then convert the abandoned roadway into a non-motorized recreational trail. After construction of these improvements, the applicant is proposing to relinquish ownership of this land to another agency which specializes in maintaining recreational facilities. Possible receiving agencies include the State Parks Department or the Golden Gate National Recreation Area. As of the writing of this staff report, the receiving agency had not been determined. Discussions between the various Federal, State and local agencies will continue via a Public Access Joint Task Force while the project is under construction (approximately 5-7 years) to resolve this issue. If no receiving agency

has come forward by the time the project is completed, then the County shall assume responsibility for the operation and maintenance of the old highway trail. As provided for in Condition 12, the County would continue to work with possible receiving agencies by convening the "Devil's Slide Coastal Access Task Force" to find a suitable receiving agency for the old highway trail. One concern on the part of the various agencies is total, catastrophic failure of the old alignment. The cost of repairing such a failure is likely beyond the budgets of the agencies involved. After discussions with the Coastal Commission staff, it has been acknowledged that there is no expectation that the roadway will be rebuilt in such an instance. At that point, the agency responsible for the trail would have to apply for a modification of this permit in which the feasibility of rebuilding the roadway to its former condition or in an alternative manner to connect the trail for maximum feasible public use would be examined.

Because Caltrans will be constructing a large portion of the new access improvements and relinquishing these, and the old highway recreational trail in fee to be operated and maintained by a separate entity, it is appropriate that Caltrans develop the final operation plan for these access facilities in consultation with the various relevant agencies, including the County of San Mateo. The above-referenced Task Force will fulfill this consultation role to Caltrans as it prepares a final operations plan for free public access to the facility 365 days a year. As specified by Condition 10, this plan will include, at a minimum, provisions for the opening and closing of barrier gates one hour before sunrise and one hour after sunset; trash management and removal; restroom design, construction and maintenance; trail monitoring, operations, and repair; and the maintenance of the existing de-watering system.

Policy 10.21 - Access for the Disabled. Where topography allows, provide access for the disabled by building paths and ramps for wheelchairs. At the north cul-de-sac, the applicant is proposing to construct one handicap parking stall. Because this parking lot will utilize the existing road right-of-way, the stall and all trails will be at existing grade. No ramps will be necessary to access the old Highway 1 right-of-way. At the south cul-de-sac, two handicap stalls will be provided. Again, the new parking areas will be at the same grade as the existing Highway 1, with no obstacles impeding wheelchair access.

Policy 10.22 - Parking. This policy requires many criteria be evaluated when developing new off-street parking facilities for shoreline access areas. Specifically, projected use, environmental sensitivity, and the amount of usable land suitable for parking are important factors to be considered. Both new parking areas will utilize the existing Highway 1 roadway as part of their configuration (See Attachment L). In addition, parking areas at both ends will use flat, undeveloped, bench areas adjacent to the road. By utilizing these existing areas, the applicant can minimize the amount of disturbance associated with this project. The number of parking spaces proposed at each end is dictated by the limited amount of space available without significant grading. Neither parking area will be adjacent to identified sensitive habitat.

Policy 10.30 - Requirement of Minimum Access as a Condition of Granting Development Permits. This policy requires the provision of shoreline access for any

private or public development between the sea and the nearest public road. It also bases the level of improvement and development of access support facilities at a site on the Locational Criteria and Development Standards Policies (contained in this chapter) and the Site Specific Recommendations contained in Table 10.6. The applicant has already agreed to provide shoreline (visual) access in the form of the old Highway 1 alignment. Compliance with the Location and Development Standards is discussed above. However, the applicant's coastal access plans do not include improvements referenced in the Site Specific Recommendations of Table 10.6. Specifically, this table (and its associated map) references three locations within, or in close proximity of, the project area. Farthest south is the old World War II bunker across from the disposal site. Location number two is the existing pull out area across from the South Portal pond. This pull out area will be incorporated into the South Portal parking area. The third location is the old Devil's Slide Bunker immediately adjacent to the slide zone (this site is identified as Location 4 on the associated Shoreline Access Maps). Sprint PCS received a use permit to construct a cell site at this location in 2000.

The specific policies of Table 10.6 state: (1) fence the bluff viewpoints to inhibit the public from climbing down the bluffs and to protect them from falling, and (2) rebuild the staircase at the Devil's Slide Bunker. Furthermore, Table 10.2 identifies the Devil's Slide Bunker area as having a high potential for prescriptive rights. These policies, however, must be read in conjunction with other related LCP policies. Policy 10.26, for example, defines fragile resources, in part, specifically as exposed rocky cliff faces, steep slopes and hilly coastal terraces (e.g., San Pedro Bluff and Devil's Slide). Moreover, Policy 10.10 notes that access for public use in sensitive habitats or their buffer zones should be opened only when development standards and management practices are adequate to protect the resources. Additionally, this policy calls for discouraging the public from existing established access trails if use is deteriorating a sensitive habitat, including the potential closure of trails if alternatives are available in the same bluff area. Further, Policy 10.9 discourages public use of access trails that are hazardous because safety improvements have not been provided or cannot be built due to physical limitations.

Several sensitive resource and hazard issues exist at the Devil's Slide Bunker area, which is currently blockaded by a chain-linked fence across the access trail leading from Highway 1. Nesting sites for peregrine falcons and Brandt's cormorants, both species of concern, have been identified at this location, creating concerns for potential negative impacts to these birds if improvements are made to increase access to this area. Additionally, the site has been subjected to extreme erosion over the years, creating ever more precipitous slopes on this small peninsula of land that plunges steeply into the Pacific Ocean. More study of these sensitive resource and safety issues is needed to determine the appropriate management of the Devil's Slide Bunker area. Implementing the requirements of Table 10.6 to build a staircase at this location, along with the other LCP policies cited above, necessitates careful consideration of how this area should be treated upon the opening of the old highway recreational trail. Condition 12 of this permit requires the applicant, working as part of

the Devil's Slide Coastal Access Task Force, to provide the necessary information needed to make recommendations for the appropriate long-term management of the Devil's Slide Bunker area. The eventual owner of this land will be responsible for implementation of the management strategies, including obtaining any necessary permits.

D. COMPLIANCE WITH THE PUBLIC ACCESS AND RECREATION POLICIES OF THE COASTAL ACT

1. Standard of Review

For every Coastal Development Permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the Coastal Zone, Section 30604(c) of the Coastal Act requires a specific finding that the development is in conformity with the public access and recreation policies contained in Chapter 3 of the California Coastal Act. This requirement is reflected in Policy 10.1 - *Permit Conditions for Shoreline Access* of the County LCP. Coastal Act Section 30210 states:

"In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from over use."

The requirement to provide for public access in new projects is tempered by several factors, enumerated in Coastal Act Section 30214, including:

- a. Topographic and geologic site characteristics.
- b. The capacity of the site to sustain use and at what level of intensity.
- c. The appropriateness of limiting public access to the right to pass and re-pass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.
- d. The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

2. Analysis

Existing public access along the coast and to the shoreline within the project area is severely constrained by high, unstable cliffs, the lack of suitable shoulders or bike lanes along the Highway, and the absence of any continuous hiking trail along the coast. Limited parking and beach access are available at Grey Whale Cove State

Beach. The proposed project will provide a substantial opportunity for improved visual access along the coast, in the form of a hiking trail along the old highway right-of-way. However, direct physical access to the shoreline, or even to bluff top overlooks is constrained by safety concerns due to the rugged terrain and unstable geology, and the presence of environmentally sensitive habitat features. These include nesting sites for the peregrine falcon and Brandt's cormorants at the Devil's Slide Bunker area.

3. Conclusion

The project will result in the creation of a public, non-motorized, recreational trail. Not all potential access points along the new portion of trail are appropriate for developed access, due to presence of sensitive species and public hazards. Access will be implemented with these considerations in mind, as required by Coastal Act, Section 30214. Therefore, the project as conditioned will conform to the public access policies of the San Mateo County LCP, as well as the applicable public access and recreation policies of the California Coastal Act.

Recreation/Visitor-Serving Facilities Component

Policy 11.4 - Recreation and Visitor-Serving Facilities Permitted in the Coastal Zone. This policy permits commercial recreation and public recreation facilities in the Coastal Zone if they do not substantially alter the natural environment. In addition to the conversion of the old Highway 1 alignment to a non-motorized recreation trail, the applicant is proposing to construct a new horse trail at the North Portal area. This is to re-establish a connection to other trails in the area that will be severed by construction of the North Portals. This trail will be on private property and only open to users of the Shamrock Ranch stables. While the new trail will disturb untouched vegetation in the area, the old trail will be de-commissioned and revegetated after construction of the tunnel. Thus, there will be no net loss of habitat due to the construction of this trail, and the trail replacement is therefore consistent with Policy 11.4 because: (a) it is a necessary visitor-serving facility under Policy 11.1, and (b) it is a recreation facility that does not substantially alter the natural environment.

Policy 11.12 - Sensitive Habitats. This policy permits recreation and visitor-serving facilities to locate on lands adjacent to sensitive habitats only when (1) there is adequate distance or separation by barriers such as fences, (2) the habitat is not threatened, and (3) there would not be substantial impacts on habitat, topography, and water resources. There is an existing access road on the north side of the OMC site (see Attachment I-1). This road is adjacent to the major drainage pond at the disposal site. The applicant is proposing to convert this access road into a portion of the Coastal Trail. This change in designated use will not involve any actual alteration of the road. The road is approximately 50 feet from the normal high water level for this pond. Because no alteration of this road is necessary for it to be used as a hiking trail, there should be no impacts to habitat, topography, or water resources. The Planning Commission believes that this portion of the project complies with this policy.

Policy 11.16 - *Posting*. This policy requires, as a condition of recreational development, that signs be placed on major roads near major public recreation areas to inform visitors of available recreation facilities. A condition of approval will be added to this project that requires the applicant to submit a signage plan, for review and approval, prior to completion of the tunnel. At a minimum, this will include directional signs for trail parking areas and connecting trails and interpretive signs regarding the history and natural resources of the area. This condition will not apply to traffic signage (i.e., stop signs, etc.) or to temporary construction signage (which shall be removed in its entirety upon completion of this project).

Policy 11.20 - *Utilities*. This policy requires that sites for permitted recreation or visitor-serving facilities develop public restrooms, drinking water and telephones. Such facilities are required to connect to public or community water and sewer systems wherever those exist. The coastal access improvement plans submitted by the applicant (see Attachments I-1 and I-2) indicate locations for future restrooms at both ends of the new Highway 1 trail. However, the applicant is not proposing to construct these facilities. The applicant will extend a water line to these parking areas for use by the future land manager. Because of the nature of the project site, construction of a septic system to serve restrooms at these locations is impracticable. The applicant envisions the future manager of the new trail using SST (Sweet Smelling Toilets) restrooms at these locations. That agency will be responsible for the maintenance of these facilities. Condition 10 will ensure that Caltrans consults the appropriate entities to develop a final operations plan for these facilities. Water for the OMC building and fire suppression within the tunnel will be provided by the North Coast County Water District via a new waterline from Pacifica. Condition 31 restricts the use of this waterline to the purposes of this project only, so as to avoid any unintended, adverse growth-inducing impacts from the extension of this new waterline.

E. ENVIRONMENTAL REVIEW

The environmental review of this project was conducted by Caltrans. Section 15050 of the CEQA Guidelines delineates the Lead Agency concept: where a project is to be carried out or approved by more than one public agency, one public agency shall be responsible for preparing the environmental review. For the purposes of this project, Caltrans, as the agency which will actually carry out the project, assumed the Lead Agency role. As such, they have prepared an Environmental Impact Statement/ Environmental Impact Report. The public review period for this document was March 19, 1999 thru May 12, 1999. The Federal Highway Administration issued a Record of Decision on this document on September 13, 2002.

F. REVIEWING AGENCIES

California Coastal Commission

Subsequent to the Planning Commission's decision on this permit, staff received comments from the Coastal Commission regarding the wording of some of the approved conditions for this project. The Coastal Commission proposes the following

changes to the conditions of approval (to assist the reader, old language has been struck out and new language is **bold** and underlined).

3. The applicant shall submit quarterly mitigation monitoring reports, outlining in detail, compliance with the conditions of approval contained in this attachment, and any conditions that may be attached to this project by subsequent reviewing bodies. The applicant shall submit said monitoring reports for the duration of the project (construction plus restoration period), to the Planning Division. ~~The~~ **Except as otherwise specified below, the** monitoring report shall follow the example provided in Attachment K. Staff shall present said monitoring reports to the Planning Commission in a timely manner upon their receipt.

8. Within one year of project approval, the applicant shall submit **a final revegetation plan** for review and approval by the County Planning Division, **in consultation with the Coastal Commission** ~~a final revegetation plan~~. Said plan shall reflect the draft revegetation plan as indicated in the project staff report as Attachments G-1 and G-2. Specifically, the final plan shall include:
 - a. A clear statement of the goals of the restoration, including:
 - (1) The desired habitat types.
 - (2) Major vegetation components.
 - (3) Hydrological regime for wetlands (as applicable).
 - (4) And wildlife support functions.

 - b. The plan shall establish clear performance goals by which the success of the plan can be judged. These goals shall be:
 - (1) After the first year of revegetation efforts, 50% plant cover of native species shall be established. If plant cover falls below this percentage, supplemental planting will be required. Additional container plants (one per 36 **sq.** ft. of bare ground) shall be planted.

 - (2) After the second year, 60% plant cover of native species is required. If plant cover falls below this percentage, supplemental planting will be required. Container plants will be replaced if the survival rate falls below 70% or if the plant cover is below 60%. Between years three and five, 71% cover of native species is required. Supplemental planting will be required if cover falls below this percentage. Container plants also will be replaced if plant survival rates fall below 70% or plant cover is below 71%.

 - (3) At the end of the 5-year monitoring period, a final annual monitoring report will be prepared documenting the achievement of the success criteria. Caltrans will forward the final report to the County Planning

Division with a request in writing to schedule a final field review. If individual criteria or goals specified in the Revegetation Plan are not met, then success of the revegetation efforts will be re-evaluated, in consultation with the County and the Coastal Commission, and the applicant shall obtain a an-approved Coastal Development Permit amendment.

(4) Success will be evaluated on an annual basis and at Year 5 with a final monitoring determination. Success criteria will be based on measurable criteria and comparisons with reference sites. Measurable criteria will include, at a minimum, survivorship of planted species, composition of species and percentage cover. Statistical criteria will be required to support success determinations and included in the annual monitoring reports. A sampling plan will be required that outlines the methodology, frequency and number of samples taken during the course of monitoring.

(5) Species diversity and composition will be required and representative of those native species found in both the reference sites and surrounding areas where revegetation efforts are implemented. The species composition will reflect dominant native species found on-site. The distribution and percentage make up of any one species in the reference site will serve as a basis for determining similar distribution and percentage make up in the planting design for the revegetation sites.

- c. A qualified individual who will be personally responsible for all phases of the restoration shall be identified by name as the restoration manager. The restoration manager shall be a qualified in all phases of restoration and shall be responsible to consult with a qualified biologist to ensure the success of all phases of the restoration plan biologist, not a project manager with no technical background. (Note: The restoration manager shall not assign different phases of the restoration to different contractors without his/her direct on-site supervision.)
- d. A grading plan.
- e. A weed and exotic plant species eradication plan.
- f. A planting plan. This shall identify:
 - (1) The natural habitat type that is the model for the restoration
 - (2) The relative abundance of desired species.
 - (3) Whether planting will be by seeding or installation of container plants.

- (4) Details about tree replacement (species, location, etc.).
 - (5) The source of plant stock (plant propagules shall come from local native stock.).
 - (6) If supplemental watering is planned. (The method and timing of watering shall be described).
- g. An interim monitoring plan. This shall include:
- (1) Maintenance and remediation activities.
 - (2) Interim performance goals.
 - (3) Assessment methods.
 - (4) Schedule.
 - (5) Monitoring shall be monthly until plants are established and quarterly thereafter.
 - (6) Weeding shall be frequent, with a "zero tolerance" policy and continuous throughout the monitoring period. Weeding will target invasive species that are identified in surrounding areas where revegetation efforts take place. At a minimum, weeding will be required once a month for the first 6 months, once every other month from months 7-12 and then quarterly throughout the duration of monitoring. Weed presence at final monitoring will be limited to no more than 10% of the total area revegetated and will be consistent with the species diversity percentage goal under B above.
 - (7) Photographs shall be taken from fixed points on fixed azimuths during each monitoring period.
 - (8) Quantitative monitoring shall take place once a year.
- h. A "Final" monitoring report. This report is intended to determine whether the restoration has been successful and shall take place after at least three years with no remediation or maintenance other than weeding. The final monitoring report shall include data verifying that specific and/or relative performance criteria have been met and shall be submitted to the County Planning Division for review and approval, in consultation with the Coastal Commission.

10. Within one year of project approval, Caltrans shall submit for review and approval by the County Planning Division, an operations plan for the coastal access facilities based on consultations with the Devil's Slide Coastal Access Task Force. Said plan shall cover facility use for free public access 365 days a year and include, but not be limited to, such things as provisions for the opening and closing of barrier gates one hour before sunrise and one hour after sunset; trash management and removal; restroom/drinking fountain design, construction and maintenance; trail monitoring, operations, and repair; and the maintenance of the existing de-watering system. ~~Said plan may be modified by~~ **Any modifications to the plan desired by** the Devil's Slide Coastal Access Task Force ~~as needed~~ **must be submitted to the County Planning Division for review and approval.**
11. To facilitate relinquishment of the public access **facility and required improvements** referenced in Condition 9 above, the County of San Mateo shall, immediately following final approval of this Coastal Development Permit, convene a Devil's Slide Coastal Access Task Force consisting of representatives of public agencies with an interest in, or responsibility for, operating, maintaining, or otherwise managing the public access. Said Task Force shall meet regularly until either (1) a plan for transition of responsibility for the access is completed to the satisfaction of Caltrans and the County of San Mateo, or (2) the tunnel is complete and open to traffic. The plan developed by the Task Force shall, at a minimum:
13. When relinquished to a permanent custodian, the access and related improvements referenced above shall ~~then be~~ **remain** open to the public and operated and maintained by the agency or organization to which they are permanently transferred, in accordance with the operational plan and parameters developed by the Devil's Slide Coastal Access Task Force **and approved by the County Planning Division.**
16. Prior to the beginning of any construction, the applicant shall submit for review and approval by the County Planning Division, a construction dust control plan. The approved plan shall be implemented by the applicant prior to construction and is required during all phases of construction. **County review and approval time frames will** ~~parallel time frames for review and approval of plans outlined in the contract documents~~ **commence with the County's determination that the submittals have complete information and will be completed within 60 days.**
20. For the North and South Portals and the South Rock Cut retaining wall, the applicant shall employ surface texturing and color treatments that match the surrounding rock coloration. The applicant shall install a 10 ft. by 20 ft. sample of the proposed texturing and color treatment near each portal and the South Rock Cut retaining wall. The proposed texturing and color treatment shall be reviewed and approved by Planning staff prior to application across all portals and

retaining walls. **County review and approval time frames will commence with the County's determination that the submittals have complete information and will be completed within 60 days** ~~parallel time frames for review and approval of plans outlined in the contract documents.~~

21. Within six months of this approval, the applicant shall submit **a final wetlands mitigation plan** for review and approval by the County Planning Division, **in consultation with the Coastal Commission**, ~~a final wetlands mitigation plan~~ for the "Charthouse mitigation site." Said plan shall include the following:
- a. Mitigation goals, objectives and performance standards including quantitative criteria to assess the attainment of goals/objectives.
 - b. An ecological assessment of the existing habitat, functions and values of the mitigation sites.
 - c. A site plan and design with specific elements and construction methods for:
 - (1) Hydrology (water control structures, channels).
 - (2) Soil (sediment composition, top soil conservation).
 - (3) Ground elevation changes (grading, erosion or sedimentation).
 - (4) Buffer areas, vegetation (species composition, exotics removal, sources of seeds).
 - d. A contingency plan **that includes the acknowledgement that an approved Coastal Development Permit amendment will be needed if success criteria or mitigation performance standards are not achieved.**
 - e. Long-term maintenance plan (irrigation, weeding, erosion control). ~~Seed mixes will be predominantly made up of native grass and shrub species appropriate to the surrounding habitat types. Sterile, non-invasive cereal grains that will not persist or perpetuate may be used as well to provide quick soil stabilization.~~ Seed mixes will be made up of native herbaceous and shrub species appropriate to the habitat types, except that sterile, non-invasive annual cereal grains that will not persist or perpetuate may be used to provide quick soil stabilization.
 - f. A monitoring plan that addresses:
 - (1) Hydrology, soils, water quality, plants and animals.
 - (2) Success criteria for physical and chemical attributes.
 - (3) A timetable for reporting results.

g. Implementation schedule:

- (1) Construction.
- (2) Monitoring.

h. Wetland mitigation shall occur according to the approved plan.

29. Caltrans is required to submit evidence, in a form and content acceptable to the County Planning Division, that it has legally-binding agreements with the owners of the north and south ponds, as well as the new pond, and the Charthouse wetland mitigation site and has executed an irrevocable offer to dedicate to a public agency or private association acceptable to the County Planning Division, in consultation with the Coastal Commission, a conservation easement for habitat restoration, habitat maintenance, open space, view preservation and habitat protection over each of the four sites. In the case of the three ponds, this evidence shall be submitted prior to the commencement of construction of the bridge and, in the case of the Charthouse wetland site, this evidence shall be submitted prior to the commencement of construction of the tunnel. The easement shall:

- a. Permit the applicant, its agents, and/or the accepting agency to enter the property when necessary to create and maintain habitat, revegetate portions of the area, and fence the newly created/revegetated area in order to protect such habitats.
- b. Restrict all development as defined by the San Mateo County LCP (except any required and approved for habitat restoration and interpretation purposes), vegetation clearance, fuel modification and grading within the easement area.
- c. Permit County or Coastal Commission staff to enter and inspect for purposes of determining compliance with Coastal Development Permit PLN 2003-00428.
- d. The easement area shall be described in metes and bounds. The offer shall be recorded free of prior liens and encumbrances which the County Planning Division Director, in consultation with the Coastal Commission, determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assigns, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

36. Prior to the beginning of construction activities, the applicant shall submit a revised site plan designating construction staging areas. This plan shall be

reviewed and approved by the San Mateo County Planning Division, California Department of Fish and Game, and USFWS staff prior to implementation. Stockpiling of construction materials, including portable equipment, vehicles and supplies, including chemicals, will be restricted to these designated areas only. These areas shall be designed to contain runoff. **County review and approval time frames will commence with the County's determination that the submittals have complete information and will be completed within 60 days** ~~parallel time frames for review and approval of plans outlined in the contract documents.~~

39. Prior to the beginning of any construction associated with this permit, the applicant shall submit copies of all permits obtained from other State and Federal agencies, including a Stormwater Pollution Prevention Plan (SWPPP). **County review and approval time frames will commence with the County's determination that the submittals have complete information and will be completed within 60 days** ~~parallel time frames for review and approval of plans outlined in the contract documents.~~
43. The applicant shall restrict truck trips (for the supply and removal of equipment and materials) to **minimize significant delays to** ~~off peak hours (i.e. outside the normal peak commute and peak recreational~~ **traffic by restricting delivery and hauling of materials from** ~~the hours of 3:00 p.m. to 6:00 p.m. on Mondays through Thursdays~~ ~~Fridays, and 3:00 p.m. to 7:00 p.m. on Fridays, and from 9:00 a.m. to 9:00 p.m. on Saturdays, and Sundays, and days preceding designated legal holidays and special events.~~ **On designated legal holidays and special events days, truck trips will be restricted the entire day and night.** Public notices and the posting of roadway signs will be implemented to alert the public of any temporary road closures, lane reductions, or other construction scenarios that may affect traffic movement.
44. Prior to the beginning of any construction covered by this permit, the applicant shall submit a traffic management plan for review and approval. Said plan shall address the following:
- a. Restrict all truck traffic associated with this project **as indicated on Condition 43, above** ~~to periods outside of peak commute and peak recreational peak hours (i.e. outside of the hours of _____ to _____ on Mondays through Fridays and _____ to _____ on Saturdays and Sundays during State and National holidays and the period of June 1 through October 31.~~ The plan shall detail how this restriction shall be effectively implemented.
 - b. ~~Minimize truck traffic associated with this project during the period of November 1 May 31.~~

Staff has reviewed the proposed modifications. Most of the proposed modifications clarify confusing language from the original condition wording. However, in several instances the Coastal Commission is suggesting entire new conditions be added. After reviewing these proposed modifications, staff is in agreement with the Coastal Commission and these modifications have been incorporated into the conditions of approval contained in Attachment A.

VISION ALIGNMENT

The proposed project keeps the commitment of "*Responsive, Effective, and Collaborative Government*" and goal number 20: "Government decisions are based on careful consideration of future impact, rather than temporary relief or immediate gain." The Devil's Slide Tunnel is the public's preferred method of addressing the frequent road closures associated with the Devil's Slide. The County's active cooperation with the applicant to construct this tunnel achieves the commitment of a government responsive to its constituents. The County's analysis of this project is based upon very careful consideration of the potential impacts caused by the project as well as the potential long-term benefits.

ATTACHMENTS

- A. Recommended Findings and Conditions of Approval.
- B. Appellant's letter of appeal.
- C. Planning Commission letter of decision.
- D. Responsible Agency Resolution of Findings.
- E. Proposed Mitigation Monitoring Report Form.
- F. Applicant's Project Submittal (Consisting of Coastal Development Permit application, Environmental Information form, and Biological Report).
- G. North Portal Drainage/Shamrock Ranch wetland and buffer zone impacts.
- H. South Portal wetland and buffer zone impacts.
- I. Fill Disposal/OMC Building Site wetland and buffer zone impacts.
- J. Conceptual revegetation plans for North and South Portal/OMC Building Site.
- K. Conceptual Wetland Mitigation Site Plan (Charthouse site).
- L. Proposed Public Access Improvements for North and South Portals.
- M. Project Elements.
- N. OMC Building Floor Plans and Elevations.
- O. Bridge Plans.
- P. Final Second Supplement to the 1986 EIS/EIR (May 2002). (Please note: due to size constraints, only the Board of Supervisors is receiving a copy of this document with this staff report. A copy of this SSEIS/EIR is available at Planning Division for public review.)

COUNTY OF SAN MATEO
ENVIRONMENTAL SERVICES AGENCY

RECOMMENDED FINDINGS AND CONDITIONS OF APPROVAL

Permit or Project File Number:
PLN 2003-00428

Board Meeting Date: July 6, 2004

Prepared By: Michael Schaller

For Adoption By: Board of Supervisors

RECOMMENDED FINDINGS

Regarding the Environmental Review, Find:

1. That the Board, acting as a responsible agency under the California Environmental Quality Act, has reviewed and considered the 1986 Environmental Impact Statement/Environmental Impact Report for the Devil's Slide Improvement Project, and the First Supplement and Second Supplement thereto (collectively, the "Devil's Slide EIS/EIR").
2. Adopt the attached resolution making findings for each significant environmental impact identified in the Devil's Slide EIS/EIR, and approving the attached mitigation monitoring and reporting program for construction of the Devil's Slide Improvement Project.

Regarding the Coastal Development Permit, Find:

3. That the project, as described in the application and accompanying materials required by Section 6328.7 and as conditioned in accordance with Section 6328.14, conforms with the plans, policies, requirements and standards of the San Mateo County Local Coastal Program.
4. That the project is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act of 1976 (commencing with Section 30,200 of the Public Resources Code), for the reasons stated on page 33 of the staff report dated May 26, 2004.

RECOMMENDED CONDITIONS OF APPROVAL

(Please note: for the reader's assistance new language is in **bold** and Underlined.)

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, which have no potential to adversely affect coastal resources, including public access, may be made subject to the review and approval of the Planning Director. Any modification of this project that has a potential to adversely affect coastal resources shall require an amendment to this Coastal Development Permit.

2. Once construction has commenced, this permit shall be valid for the full duration of all project construction. Within one year of project approval, the applicant shall commence construction of the project. Any extension of this permit beyond one year of project approval shall require submittal of an application for permit extension and payment of applicable permit extension fees to the San Mateo County Planning and Building Division.

Mitigation Monitoring

3. The applicant shall submit quarterly mitigation monitoring reports, outlining in detail, compliance with the conditions of approval contained in this attachment, and any conditions that may be attached to this project by subsequent reviewing bodies. The applicant shall submit said monitoring reports for the duration of the project (construction plus restoration period), to the Planning Division. **Except as otherwise specified below, the** monitoring report shall follow the example provided in Attachment E. Staff shall present said monitoring reports to the Planning Commission in a timely manner upon their receipt.
4. Prior to the beginning of any construction associated with this permit, the applicant shall meet with the County Planning and Building Division for "pre-construction mitigation compliance" meetings. The purpose of said meetings is to review and determine if all applicable conditions of approval, as listed in this attachment, have been complied with, prior to commencement of construction.
5. The applicant shall be required to establish a post-approval inspection deposit account in the amount of \$5,000 with the San Mateo County Planning Division. This deposit will be used to offset all costs incurred by the Planning Division staff resulting from inspections, plan reviews, field meetings, etc., during construction and implementation of this project. The unused balance of the deposit will be released only upon satisfactory completion of the work and acceptance of the work by San Mateo County. Additional deposits may be required and the account shall never be less than \$1,000 at any time. San Mateo County will notify the applicant when the balance approaches \$1,000. At such time, the applicant shall make additional deposits to San Mateo County within thirty (30) days of notice.

Erosion Control and Revegetation

6. Prior to the beginning of any construction associated with this permit, the applicant shall implement the construction phase sediment and stormwater control plan, as shown on the plans entitled "Conceptual Water Quality Plan: Water Pollution

Control" and included as Attachments 3-B1 through 3-B11 of the November 20, 2003 plan submittal. (Note: Because of the high amount of detail and color in the full-size plans, reductions were not included in this staff report as they would not have been readable. The plans are in the project file and are available for public review upon request. These plans are incorporated by reference into this project. These plans will be available at the July 6, 2004 hearing.)

7. Upon completion of construction within a given project area, the applicant shall implement the post-construction erosion controls as shown on the plans entitled "Conceptual Water Quality Plan: Erosion Control" and included as Attachments 3-A1 through 3-A9 of the November 20, 2003 plan submittal. (Note: Because of the high amount of detail and color in the full-size plans, reductions were not included in this staff report as they would not have been readable. The plans are in the project file and are available for public review upon request. These plans are incorporated by reference into this project. These plans will be available at the July 6, 2004 hearing.)
8. Within one year of project approval, the applicant shall submit a **final revegetation plan** for review and approval by the County Planning Division, **in consultation with the Coastal Commission**. Said plan shall reflect the draft revegetation plan as indicated in the project staff report as Attachments J-1 and J-2. Specifically, the final plan shall include:
 - a. A clear statement of the goals of the restoration, including:
 - (1) The desired habitat types.
 - (2) Major vegetation components.
 - (3) Hydrological regime for wetlands (as applicable).
 - (4) Wildlife support functions.
 - b. The plan shall establish clear performance goals by which the success of the plan can be judged. These goals shall be:
 - (1) After the first year of revegetation efforts, 50% plant cover of native species shall be established. If plant cover falls below this percentage, supplemental planting will be required. Additional container plants (one per 36 sq. ft. of bare ground) shall be planted.
 - (2) After the second year, 60% plant cover of native species is required. If plant cover falls below this percentage, supplemental planting will be required. Container plants will be replaced if the survival rate falls below 70% or if the plant cover is below 60%. Between years three and five, 71% cover of native species is required. Supplemental

planting will be required if cover falls below this percentage. Container plants also will be replaced if plant survival rates fall below 70% or plant cover is below 71%.

- (3) At the end of the 5-year monitoring period, a final annual monitoring report will be prepared documenting the achievement of the success criteria. Caltrans will forward the final report to the County Planning Division with a request in writing to schedule a final field review. If individual criteria or goals specified in the revegetation plan are not met, then success of the revegetation efforts will be re-evaluated, in consultation with the County and the Coastal Commission, and the applicant shall obtain a Coastal Development Permit amendment.
 - (4) **Success will be evaluated on an annual basis and at year five with a final monitoring determination. Success criteria will be based on measurable criteria and comparisons with reference sites. Measurable criteria will include at a minimum, survivorship of planted species, composition of species and percentage cover. Statistical criteria will be required to support success determinations and included in the annual monitoring reports. A sampling plan will be required that outlines the methodology, frequency and number of samples taken during the course of monitoring.**
 - (5) Species diversity and composition will be required and representative of those native species found in both the reference sites and surrounding areas where revegetation efforts are implemented. The species composition will reflect dominant native species found on site. The distribution and percentage make up of any one species in the reference site will serve as a basis for determining similar distribution and percentage make up in the planting design for the revegetation sites.
- c. A qualified individual who will be personally responsible for all phases of the restoration shall be identified by name as the restoration manager. The restoration manager shall be qualified **in all phases of restoration and shall be responsible to consult with a qualified biologist to ensure the success of all phases of the restoration plan.** (Note: The restoration manager shall not assign different phases of the restoration to different contractors without **his/her direct** onsite supervision.)
 - d. A grading plan.
 - e. A weed and exotic plant species eradication plan.
 - f. A planting plan. This shall identify:

- (1) The natural habitat type that is the model for the restoration.
 - (2) The relative abundance of desired species.
 - (3) Whether planting will be by seeding or installation of container plants.
 - (4) Details about tree replacement (species, location, etc.).
 - (5) The source of plant stock (plant propagules shall come from local native stock).
 - (6) If supplemental watering is planned (the method and timing of watering shall be described).
- g. An interim monitoring plan. This shall include:
- (1) Maintenance and remediation activities.
 - (2) Interim performance goals.
 - (3) Assessment methods.
 - (4) Schedule.
 - (5) Monitoring shall be monthly until plants are established and quarterly thereafter.
 - (6) Weeding shall be frequent, **and continuous** throughout the monitoring period. **Weeding will target invasive species that are identified in surrounding areas where revegetation efforts take place. At a minimum, weeding will be required once a month for the first six months, once every other month from months 7-12 and then quarterly throughout the duration of monitoring. Weed presence at final monitoring will be limited to no more than 10% of the total area revegetated and will be consistent with the species diversity percentage goal under B above.**
 - (7) Photographs shall be taken from fixed points on fixed azimuths during each monitoring period.
 - (8) Quantitative monitoring shall take place once a year.
- h. A "Final" monitoring report. This report is intended to determine whether the restoration has been successful and shall take place after at least three years with no remediation or maintenance other than weeding. The final monitoring report shall include data verifying that specific and/or relative performance

criteria have been met **and shall be submitted to the County Planning Division for review and approval, in consultation with the Coastal Commission.**

Post-Construction Recreational Access

9. Caltrans shall construct the proposed public access improvements, as shown in the project staff report as Attachments L-1 and L-2. Said improvements shall be completed as soon as possible, but in no case more than one year from opening of the tunnel for public use. These improvements shall include parking areas, pedestrian signal lights, traffic signage, trash receptacles, guardrails, barriers, and entry gates, water hookups, and signage as approved under Condition 17.
10. Within one year of project approval, Caltrans shall submit for review and approval by the County Planning Division an operations plan for the coastal access facilities based on consultations with the Devil's Slide Coastal Access Task Force. Said plan shall cover facility use for free public access 365 days a year and include, but not be limited to, such things as provisions for the opening and closing of barrier gates one hour before sunrise and one hour after sunset; trash management and removal; restroom/drinking fountain design, construction and maintenance; trail monitoring, operations, and repair; and the maintenance of the existing de-watering system. **Any modifications to the plan desired by the Devil's Slide Coastal Access Task Force must be submitted to the County Planning Division for review and approval.**
11. To facilitate relinquishment of the public access facility and required improvements referenced in Condition 9 above, the County of San Mateo shall, immediately following final approval of this Coastal Development Permit, convene a Devil's Slide Coastal Access Task Force consisting of representatives of public agencies with an interest in, or responsibility for, operating, maintaining, or otherwise managing the public access. Said Task Force shall meet regularly until either (1) a plan for transition of responsibility for the access is completed to the satisfaction of Caltrans and the County of San Mateo, or (2) the tunnel is complete and open to traffic. The plan developed by the Task Force shall, at a minimum:
 - a. Advise Caltrans in the development of the operations plan required in Condition 10;
 - b. Identify opportunities for the final trail connection at the southern end of the OMC building site; and
 - c. Make recommendations, as soon as possible, but in no case more than one year from opening of the tunnel for public use, to the current owner of the old highway recreational trail for the proper management of the Devil's Slide Bunker area. The Task Force shall evaluate whether or not public access could be provided and managed at the Devil's Slide Bunker in a manner that

would protect sensitive biological resources and public safety. Caltrans shall prepare and submit the necessary biological and hazards studies to assist this evaluation. If the Task Force decides that public access would not impact sensitive biological resources based upon these studies, then the Task Force shall evaluate whether public access can be accommodated in a safe manner. If the Task Force concludes that access can be provided in a safe manner, then it shall prepare a public access plan for the Bunker area. If the Task Force determines that public access to the Bunker site is not appropriate because of sensitive biological resource or public safety concerns, then the Task Force shall recommend to the agency operating the old highway trail, a long-term plan to protect the area, including the replacement of the existing chain-link fence with an aesthetically suitable alternative. Upon the receipt, the agency operating this facility shall be responsible for implementing the Task Force's recommendations, including applying for any necessary permits.

12. If, by the time the access improvements are completed, there is no plan for transition of responsibility for the public access acceptable to Caltrans and the County of San Mateo, then the access shall be relinquished as a non-motorized trail (not as a road) to the County of San Mateo, which shall accept responsibility for opening and operating the access. Such access shall be opened upon completion of the improvements referenced in Condition 10, and shall be incorporated into the San Mateo County Parks System for the purposes of operation and maintenance. The facility shall remain a part of the San Mateo County Parks System until such time as responsibility for operation and maintenance of the access is transferred to a permanent custodian.
13. When relinquished to a permanent custodian, the access and related improvements referenced above shall **remain** open to the public and operated and maintained by the agency or organization to which they are permanently transferred, in accordance with the operational plan and parameters developed by the Devil's Slide Coastal Access Task Force **and approved by the County Planning Division.**
14. When the old highway recreational trail is relinquished in fee to a permanent operating entity, Caltrans shall include provisions in the transfer agreement to ensure that the public access trails and related required improvements referenced above shall then remain open to the public and operated and maintained by the agency or organization to which they are permanently transferred, in accordance with the approved operations plan required pursuant to Condition 10. Prior to executing this transfer agreement, Caltrans shall consult with the California Coastal Commission and shall submit the draft transfer agreement to the County Planning Division for review and approval.
15. In the event of a catastrophic failure of this public trail (Old Highway 1 Trail) which renders all or a part of it, in the opinion of the agency or organization which then

has operational responsibility for it, unusable, un-repairable or un-maintainable, and such agency or organization further determines that repairs to restore the access to the pre-failure condition would not be feasible, or that the creation of an alternative, passable pedestrian and/or bike trail is not feasible, that agency or organization shall not be required to return the access to its pre-failure condition. The agency or organization that owns the land and has operational responsibility for the trail shall immediately apply for a separate Coastal Development Permit to modify the nature, extent and operational parameters of the coastal access in a manner consistent with the then existing conditions, the requirements of the Coastal Act and the San Mateo County Local Coastal Program.

Dust Control

16. Prior to the beginning of any construction, the applicant shall submit for review and approval by the County Planning Division, a construction dust control plan. The approved plan shall be implemented by the applicant prior to construction and is required during all phases of construction. **County review and approval time frames will commence with the County's determination that the submittals have complete information and will be completed within 60 days.**

Visual

17. Within one year of final project approval, Caltrans shall submit for review and approval by the County Planning Division a final signage plan. Signage plan shall include, but not be limited to, directional signs for trail parking areas and connecting trails, interpretive signs regarding the history and natural resources of the area, and "no overnight camping" (per LCP Policy 11.22) signs for the parking areas. This plan shall only cover signage for the recreational facilities and is not applicable to construction or traffic safety signage. The signage plan shall also show location of signs to avoid impacts to scenic views and sensitive resources. This signage shall be carefully designed to harmonize with the scenic qualities of scenic corridors.
18. The Operations and Maintenance (OMC) building shall be constructed as proposed in the project Staff Report's Attachments N-1 through N-4. All exterior concrete walls shall be left in a neutral gray color. No polished or reflective materials shall be used.
19. The North Portal bridges shall be constructed as proposed in the project Staff Report's Attachment O. The applicant shall employ a neutral gray shade of concrete to construct this bridge.
20. For the North and South Portals and the South Rock Cut retaining wall, the applicant shall employ surface texturing and color treatments that match the surrounding rock coloration. The applicant shall install a 10-foot by 20-foot sample of the proposed texturing and color treatment near each portal and the South Rock

Cut retaining wall. The proposed texturing and color treatment shall be reviewed and approved by Planning staff prior to application across all portals and retaining walls. **County review and approval time frames will commence with the County's determination that the submittals have complete information and will be completed within 60 days.**

Sensitive Habitat Protection and Mitigation

21. Within six months of this approval, the applicant shall submit **a final wetlands mitigation plan** for review and approval by the County Planning Division, **in consultation with the Coastal Commission**, for the "Charthouse mitigation site." Said plan shall include the following:
- a. Mitigation goals, objectives and performance standards including quantitative criteria to assess the attainment of goals/objectives.
 - b. An ecological assessment of the existing habitat, functions and values of the mitigation sites.
 - c. A site plan and design with specific elements and construction methods for:
 - (1) Hydrology (water control structures, channels).
 - (2) Soil (sediment composition, top soil conservation).
 - (3) Ground elevation changes (grading, erosion or sedimentation).
 - (4) Buffer areas, vegetation (species composition, exotics removal, sources of seeds).
 - d. A contingency plan **that includes the acknowledgment that an approved Coastal Development Permit amendment will be needed if success criteria or mitigation performance standards are not achieved.**
 - e. Long-term maintenance plan (irrigation, weeding, erosion control). Seed mixes will be made up of native herbaceous and shrub species appropriate to the habitat types, except that sterile, non-invasive annual cereal grains that will not persist or perpetuate may be used to provide quick soil stabilization.
 - f. A monitoring plan that addresses:
 - (1) Hydrology, soils, water quality, plants and animals.
 - (2) Success criteria for physical and chemical attributes.
 - (3) A timetable for reporting results.

g. Implementation schedule:

(1) Construction.

(2) Monitoring.

h. **Wetland mitigation shall occur according to the approved plan.**

22. Vegetation removal for this project shall be limited to those areas that will be disturbed by construction activities. Areas within ESA fencing, as shown on Attachments 3-B1 through 3-B11 of the November 20, 2003 plan submittal, shall be protected from all construction related disturbances. The only additional vegetation removal permitted by this approval is for invasive vegetation control and must be in adherence with previously conditioned plan. (Note: Because of the high amount of detail and color in the full-size plans, reductions were not included in this staff report as they would not have been readable. The plans are in the project file and are available for public review upon request. These plans are incorporated by reference into this project. These plans will be available at the July 6, 2004 hearing.)
23. To protect the California-red legged frog and its habitat from direct impacts due to construction, the applicant shall fully comply with the Biological Opinion issued by the United States Fish and Wildlife Service, dated December, 2000 and revised by letter from the USFWS dated March 25, 2004. The Biological Opinion authorizes take of the California red-legged frog. The applicant shall submit to San Mateo County copies of any monitoring reports required pursuant to the Biological Opinion. Any proposed revisions to the conditions of the Biological Opinion shall be based on continuing field research and studies and shall be made only in consultation with the USFWS.
24. To avoid direct impacts to the California red-legged frog due to construction and minimize indirect impacts due to sedimentation, the following measures are required:
- a. A frog exclusion fence shall be installed around the immediate perimeter of the north pond, and all other areas indicated on Attachments 3-B1 through 3-B11 of the November 20, 2003 plan submittal, prior to initiation of any construction activities within those areas. Said fence shall include one-way funnels that allow frogs that might be in the adjacent construction areas to "escape" to non-construction areas. Minor modifications to the location of this fence shall not require Planning Division approval so long as said modifications have been approved by the USFWS or their representative.
 - b. Either prior to or concurrently with the installation of the frog exclusion fence, ESA fencing will be installed, as indicated on Attachments 3-B1 through 3-

B11 of the November 20, 2003 plan submittal. This fence will be installed along segments of the temporary construction access roads. High visibility orange polypropylene fabric can be used along portions of the ESA. These fences must be completely in place prior to access road construction at the North Portal and approaches. Minor modifications to the location of this fence shall not require Planning Division approval so long as said modifications have been approved by the USFWS or their representative.

- c. The sediment barrier fence will be designed so that surface runoff within the construction zones will drain into small temporary de-silting basins spaced along the construction side of the fence. The spacing of these basins will reflect the locations shown on Attachments 3-B1 through 3-B11 of the November 20, 2003 plan submittal. Silt deposits will be removed once they fill more than one third of any basin or if the integrity of the sediment barrier fence is threatened.
- d. Construction of temporary access roads and pier foundations will be limited primarily to the dry season (April 15 to October 15) to reduce the likelihood of a large-scale silt deposition on the valley floor. However, construction of temporary access roads and pier foundations within the valley floor from October 15 to April 15 will be allowed in accordance to limitations for Disturbed Soil Areas (DSAs) outlined in the water pollution control provisions in the applicant's contract plans and specifications.
- e. After construction is completed, the construction access roads will be re-graded to match the original ground contours as close as possible. Restoration of the plant communities within all disturbed areas will begin, including the use of erosion control fabric, where applicable, and a fabric silt fence, as required, to prevent any loose soil from entering the pond basin. All disturbed areas will then be hydro-seeded with a non-invasive seed mix.
- f. During the operational phase, the majority of roadway runoff from the bridges will be contained and directed northward to a drainage on the existing Route 1 roadway which will include a water quality basin and which does not drain to the ponds and their surrounding habitats.
- g. Following completion of the project, a one-time, silt removal project will be implemented at the north pond in order to lessen the current heavy silt load in this basin. This operation shall be implemented consistent with the requirements of the Biological Opinion referenced in Condition 24 above. Prior to the silt removal operations, the applicant shall trap and remove from the pond, as many California red-legged frogs as possible, in order to prevent their take.
- h. To ensure that the north pond does not continue to dry up in mid-summer, thereby negating successful metamorphosis of any California red-legged frog

larval crop, the pond shall be supplied with a pressurized water line and a heavy duty float valve system. In addition, the shoreline and inshore areas will be planted with a complex of indigenous emergent reed, sedge, and forb species. These actions shall create a permanent pond habitat in which perennial inshore vegetation will continue to grow and provide frog protection, and where the frog can complete larval metamorphosis, even during drought years.

- i. A 3-year monitoring plan shall be implemented following the roadway construction to assess and evaluate the California red-legged frog population and the effects of the proposed mitigation measures. A copy of the monitoring plan shall be submitted to the San Mateo County Planning Division.
 - j. The koi carp population shall be removed from the south pond (at the North Portal work site) to eliminate predation on red-legged frog eggs and tadpoles.
 - k. The face of the south pond dam (at the North Portal work site) shall be restored and stabilized to ensure that the habitat functions associated with the pond will continue into the future.
 - l. The applicant shall conduct regular inspections of the fence around the construction access road and the north pond to ensure that red-legged frogs do not cross the road and enter the north pond. The applicant shall install an electric fence around the new pond fence to prevent mammalian predation.
25. The existing earthen impoundment (dam) at the south ranch pond (on Shamrock Ranch) shall be repaired upon completion of construction of the North Portal and approach bridges. Vegetation shall be removed from the dam and spillway area, the face of the dam will be re-graded, and slope protection fabric and a system of drainage pipes will be installed.
26. As required by the Federal Migratory Bird Treaty Act, the applicant shall develop and implement a monitoring plan for the peregrine falcon nesting site adjacent to the South Portal work area. Said plan shall be submitted to the County Planning Division for review and approval prior to the beginning of construction at the South Portal work area.
27. If it is determined during monitoring that project activities are interrupting egg incubation or the feeding of the chicks at the peregrine falcon nest(s), then construction activities shall be suspended or the eggs or chicks shall be removed.
28. If it is necessary to remove eggs from the nest(s), then the eggs are to be artificially incubated at a facility such as that operated by the Santa Cruz Predatory Bird Research Group (SCPBRG). Any chicks that hatched out are to be "hacked-out" to occupied nests. In the event that construction activities interrupt the raising

of hatched chicks, those chicks shall be removed and hatched-out to other nests, if it is determined by a qualified biologist that this is the best course of action.

Conservation Easements

29. **Caltrans is required to submit evidence, in a form and content acceptable to the County Planning Division, that it has legally-binding agreements with the owners of the north and south ponds, as well as the new pond, and the Charthouse wetland mitigation site and has executed an irrevocable offer to dedicate to a public agency or private association acceptable to the County Planning Division, in consultation with the Coastal Commission, a conservation easement for habitat restoration, habitat maintenance, open space, view preservation and habitat protection over each of the four sites. In the case of the three ponds, this evidence shall be submitted prior to the commencement of construction of the bridge and, in the case of the Charthouse wetland site, this evidence shall be submitted prior to the commencement of construction of the tunnel. The easement shall:**
- a. **Permit the applicant, its agents, and/or the accepting agency to enter the property when necessary to create and maintain habitat, revegetate portions of the area, and fence the newly created/revegetated area in order to protect such habitats.**
 - b. **Restrict all development as defined by the San Mateo County LCP (except any required and approved for habitat restoration and interpretation purposes), vegetation clearance, fuel modification and grading within the easement area.**
 - c. **Permit County or Coastal Commission staff to enter and inspect for purposes of determining compliance with Coastal Development Permit PLN 2003-00428.**
 - d. **The easement area shall be described in metes and bounds. The offer shall be recorded free of prior liens and encumbrances which the County Planning Division Director, in consultation with the Coastal Commission, determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assigns, and shall be irrevocable for a period of 21 years, such period running from the date of recording.**

Utilities

30. In compliance with LCP Policy 11.20, the applicant shall provide drinking water facilities at both proposed parking areas for the trail. The access improvement plans and water supply plans shall be modified to reflect this requirement.

31. All new utilities associated with this project shall be placed underground as shown on Exhibit 9 of the November 20, 2003 plan submittal. No new aboveground utilities are permitted as part of this project.
32. All water transmission and storage improvements permitted herein shall be restricted solely to serve the development specifically authorized by this Coastal Development Permit, including the tunnel, OMC building, and public access facilities. The permitted water transmission and storage facilities shall not be used to serve any development other than that authorized by this permit, including, but not limited to, existing, new, or expanded residential, commercial, or agricultural development or uses.

Noise and Light

33. The applicant shall employ noise suppression devices on all equipment and vehicles to be used for this project. Because of the proximity of sensitive receptors at the North Portal work site, construction activities will be limited to daylight hours and all work at this location shall be prohibited on Sundays and National Holidays. Due to the lack of nearby sensitive receptors at the South Portal, no such restrictions shall exist.
34. Prior to the beginning of construction of the tunnel bores, the applicant shall submit a lighting plan for review and approval by the County Planning Division. Said plan shall address both interior (within) and exterior lighting. Lighting at the exterior of the portal entrances shall be limited to that necessary to provide safe illumination of the tunnel approaches. All exterior lighting shall be hooded and directed downward and/or away from surrounding urban areas. The entire lighting system shall be computer controlled and have an uninterruptible power supply. The approved plan shall be implemented prior to the opening of the tunnel for regular public use.

Water Quality

35. All temporary construction roads for this project shall employ aggregate surfacing to reduce stormwater sedimentation, dust, and visual impacts. No asphalt paving shall be used unless aggregate surfacing is not possible due to field conditions. The applicant shall maintain all temporary construction roads and install additional aggregate as necessary.
36. The applicant 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 at the North Portal work site. 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 as weed free as possible.

37. Prior to the beginning of construction activities, the applicant shall submit a revised site plan designating construction staging areas. This plan shall be reviewed and approved by the San Mateo County Planning Division, California Department of Fish and Game, and USFWS staff prior to implementation. Stockpiling of construction materials, including portable equipment, vehicles and supplies, including chemicals, will be restricted to these designated areas only. These areas shall be designed to contain runoff. **County review and approval time frames will commence with the County's determination that the submittals have complete information and will be completed within 60 days.**
38. 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. The applicant shall check and maintain equipment and vehicles operated in the project area daily to prevent leaks of fuels, lubricants or other fluids. The vehicle and equipment fueling and maintenance areas shall be designed to contain runoff.
39. Equipment may not be washed in a place where wash water could drain to the creek or the ponds. The washing areas shall be designed to contain runoff.
40. Prior to the beginning of any construction associated with this permit, the applicant shall submit copies of all permits obtained from other State and Federal agencies, including a Stormwater Pollution Prevention Plan (SWPPP). **County review and approval time frames will commence with the County's determination that the submittals have complete information and will be completed within 60 days.**
41. The applicant shall clean hazardous material spills immediately. Such spills shall be reported to the County and the U. S. Fish and Wildlife Service immediately. Spill cleanup and remediation shall be detailed in post-construction compliance reports. Copies of said reports shall be submitted to the USFWS and the San Mateo County Planning Division. The perimeter of cleanup areas shall include appropriate barriers to contain and collect wash waters.
42. The applicant shall remove litter and construction debris from the construction site on a regular basis and contain the waste at an appropriate site. All collected trash that may attract predators shall be securely covered at all times in locking metal containers, removed from the work site and disposed regularly. Following construction, all trash and construction debris shall be removed from the work areas.

Trails

43. During construction of the tunnel, Caltrans shall maintain all public trail access affected by the project. Access shall be maintained by means of trail detours during construction of the tunnel. After construction, any trail affected by the project, including the impacted section of the old Half Moon Bay-Colma Road Trail,

shall be re-established or realigned and reconnected to maintain trail continuity. All reconnection of severed trails shall occur prior to the opening of the tunnel for public use.

Traffic Measures

44. **To minimize significant delays to recreational traffic**, the applicant shall restrict truck trips (for the supply and removal of equipment and materials) **to the time periods of: (1) 3:00 p.m. to 6:00 p.m. on Mondays through Thursdays, (2) 3:00 p.m. to 7:00 p.m. on Fridays, and (3) 9:00 a.m. to 9:00 p.m. on Saturdays, Sundays, and days preceding designated legal holidays and special events. On designated legal holidays and special events days, truck trips will be restricted the entire day and night.** Public notices and the posting of roadway signs will be implemented to alert the public of any temporary road closures, lane reductions, or other construction scenarios that may affect traffic movement.
45. Prior to the beginning of any construction covered by this permit, the applicant shall submit a traffic management plan for review and approval. Said plan shall address the following:
- a. Restrict all truck traffic associated with this project **as indicated on Condition 43, above.** The plan shall detail how this restriction shall be effectively implemented.
 - b. Parking for construction workers and equipment delivery. The plan shall clearly delineate where workers will park and equipment delivered.
 - c. Lane closures. All lane closures shall be limited to non-peak (recreational or commute) hours.
46. No off-site hauling of material is allowed. All spoils resulting from this project shall be disposed of at the "Fill Disposal Site" as designated on the accompanying plans. No off-site hauling of tunnel spoils is allowed.

Air Quality

47. The applicant shall incorporate jet fan units into the construction of the tunnels, as shown on the November 20, 2003 plan submittal, to provide acceptable air quality conditions for bicyclists. The proposed tunnel design will also include a "real time" air quality monitoring system that includes variable message signs to advise bicyclists if unacceptable air quality conditions exist in the tunnel.

Socioeconomic

48. In accordance with the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and the California Relocation Act

(Chapter 16, Section 7260 et seq. of the Government Code), Caltrans will provide relocation assistance to any person, business, farm or non-profit organization displaced as a result of the acquisition of real property for public use.

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CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5260
FAX (415) 904-5400



July 27, 2004
CERTIFIED MAIL

Oscar Braun, Executive Director
Save Our Bay Foundation
1589 Higgins Canyon Rd.
Half Moon Bay, CA 94019

**RE: Appeal of COUNTY OF SAN MATEO Coastal Development Permit No. PLN
2003-00428; Construction of a 4,000-foot long tunnel with approach bridges,
North of Montara, in unincorporated San Mateo County**

Dear Mr. Braun:

On July 23, 2004, we received your appeal form appealing the above referenced project (copy attached). We note that as required by section 30603(c) of the Coastal Act and section 13111(b) of Title 14 of the California Code of Regulations, the appeal form you faxed to us on July 23, 2004 was timely received on the deadline, exactly ten working days after receipt by the Commission on July 9, 2004 of the County's Notice of Final Local Action.

Under Section 30620(d) of the Coastal Act, within 5 working days of the receipt by the Commission, the Executive Director is responsible for determining whether an appeal is patently frivolous. This Section provides:

(d) With respect to any appeal of an action taken by a local government pursuant to Section 30602 or 30603, the executive director shall, within five working days of receipt of an appeal from any person other than members of the commission or any public agency, determine whether the appeal is patently frivolous. If the executive director determines that an appeal is patently frivolous, the appeal shall not be filed unless a filing fee in the amount of three hundred dollars (\$300) is deposited with the commission within five working days of the receipt of the executive director's determination. If the commission subsequently finds that the appeal raises a substantial issue, the filing fee shall be refunded

The Executive Director has determined that the appeal you submitted is patently frivolous for the following reasons:

1. Contrary to the requirements of sections 30603(a) and 30625(b) of the Coastal Act, the appeal that you timely submitted raises no issues that could justify a decision by the Commission to hear the appeal. Coastal Act (Public Resources Code) Section 30625(b)(2) states that the Commission shall hear an appeal of an action taken by a local government on a coastal development permit application after the certification of the local government's local coastal program (LCP) unless it determines "that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to section 30603." Pursuant to section 30603 of the Coastal Act, the grounds for an appeal

EXHIBIT NO. 19

APPLICATION NO.

A-2-SMC-04-011

of a local action approving development after certification of the local government's LCP are limited to an allegation that the development does not conform to the certified LCP or the access policies of the Coastal Act. Thus, the Commission's role as an appellate body at this stage of this matter is limited to assessing whether the appeal raises a substantial issue with respect to the conformity of the local government's action with the certified LCP and the access policies of the Coastal Act. Your appeal does not include any claim that the local government action is inconsistent with either the certified LCP or the access policies of the Coastal Act. Although your appeal form does indicate you will explicate the reasons for your appeal on Wednesday, July 28, any grounds you allege on July 28 would not be timely alleged as they would be alleged outside the 10-working day appeal period established by section 30603(c) of the Coastal Act.

2. The appeal does not include a statement of facts on which the appeal is based, as is required by Section 13111(a)(8) of Title 14 of the California Code of Regulations.

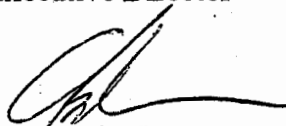
In addition, your appeal form also incorrectly characterized the County's action as a denial, when in fact the County approved the project with conditions.

Therefore, as required by Coastal Act Section 30620(d), the appeal will not be filed unless you submit to the Commission's North Central District office in San Francisco within five working days of your receipt of this letter a filing fee in the amount of three hundred dollars (\$300). If the filing fee is paid within five working days of your receipt of this letter, the appeal will be filed and the Commission will hold a substantial issue hearing on the appeal. If the Commission finds that the appeal raises a substantial issue, the filing fee shall be refunded.

If you have any questions about this letter, please feel free to contact Mark Delaplaine, project analyst, at (415) 904-5200.

Sincerely,

PETER M. DOUGLAS
Executive Director


By: Chris Kern
North Central Coast District Manager

Attachment

cc: Skip Sowko, Caltrans
Mike Schaller, San Mateo County

JAN 26 '01 04:02PM CA COASTAL COMM

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COUNTY COUNSEL
THOMAS F. CASEY III

CHIEF DEPUTIES
CHRISTINE E. MOTLEY
MICHAEL P. MURPHY



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Please respond to: (650) 363-4762

January 25, 2001

Harry Yahata, District Director
Caltrans
District 4
P. O. Box 23660
Oakland, CA 94623-0660.

Re: Devil's Slide Tunnel Project

Dear Mr. Yahata:

You have requested that the County clarify statements made in a letter dated May 11, 1999, from Paul M. Koenig, San Mateo County Director of Environmental Services, to Robert Gross and Ed Pang of your office. The letter offered comments regarding the Second Supplemental Environmental Impact Statement/Environmental Impact Report. Your specific request is that the County further explain the statement made at page four of the letter that off-site mitigation of wetland impact is not allowed under the Coastal Act, and that, as a result, the County could not find that the proposed tunnel design complies with the County's Local Coastal Program. After further review of this matter, we have concluded that this statement was made in error. Our view is that a coastal development permit for a tunnel at Devil's Slide could be approved as consistent with the County's Local Coastal Program notwithstanding some impacts to wetlands. The basis for our conclusion is set out below.

Background

To put our conclusion into context, we provide the following background:

1. In November 1996, the San Mateo County electorate approved Measure T, the Devil's Slide Tunnel Initiative. Measure T amended three policies in the San Mateo County Local Coastal

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Re: Devil's Slide Tunnel Project

Program, establishing the tunnel alternative as the preferred alternative for future improvements to State Highway Route 1 in the area of Devil's Slide. Measure T also included the following section:

"Section 4. Inconsistent County Plans and Ordinances.

"Except as approved by the voters of San Mateo County subsequent to the effective date of this ordinance, if an existing or subsequently enacted provision of the General Plan, the Local Coastal Program, an area or special plan or other ordinance or resolution of the County of San Mateo is inconsistent with the ordinance, that provision is superseded and rendered ineffective by this ordinance to the extent, but only to the extent, that it is inconsistent."

The adoption of Measure T by the County was challenged in state court. In February 2000, the court of appeal affirmed a trial court decision upholding Measure T.

2. On January 9, 1997, the California Coastal Commission certified Measure T as being consistent with the Coastal Act. In its comprehensive findings, the Commission concluded that the proposed project would result in wetland fill. The Commission further found that the impact to wetlands which would result from construction of a Devil's Slide tunnel would result in a conflict with Public Resources Code sections 30233(a) and 30240(a), which do not allow the construction of new roadways in wetlands and environmentally sensitive habitat areas. The Coastal Commission nevertheless certified Measure T after applying the "balancing testing" set forth in Public Resources Code section 30007.5. Section 30007.5 states:

"The Legislature further finds and recognizes that conflicts may occur between one or more policies of the division. The Legislature therefore declares that in carrying out the provisions of this division such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources. In this context, the Legislature declares that broader policies which, for example, serve to concentrate development in close proximity to urban and employment centers may be more protective, overall, than specific wildlife habitat and other similar resource policies."

The Coastal Commission also relied on section 30200(b), which states:

"Where the commission or a local government in implementing the provisions of this division identifies a conflict between the policies of this chapter, Section 30007.5 shall

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Re: Devil's Slide Tunnel Project

be utilized to resolve the conflict and the resolution of such conflicts shall be supported by appropriate findings setting forth the basis for the resolution of the identified policy conflicts."

In certifying Measure T, the Commission noted that the project furthered important coastal access and recreation policies set forth in sections 30210, 30211, 30212, 30212.5, 30213, 30252 and 30254 of the Coastal Act, recognized the existence of a conflict between these policies and the habitat protection policies set forth in sections 30233 and 30240 of the Coastal Act, and found 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 environmentally sensitive areas." The certification of Measure T by the Coastal Commission was challenged in state court, but dismissed at the demurrer stage.

3. On May 19, 1999, the County Director of Environmental Services, Paul Koenig, directed a letter to Caltrans staff commenting on the Second Supplemental Environmental Impact Statement/Environmental Impact Report ("EIS/EIR"). The letter reviewed the proposed project against Local Coastal Program policies addressing impacts to wetlands, noted that "[o]ff-site mitigation of such an impact is not currently allowed under the Coastal Act or Local Coastal Program," and concluded that "we cannot at this time find that the proposed tunnel design complies with the Local Coastal Program." The letter represented the comments of staff on the environmental document. No action on the project was taken by the Board of Supervisors.

4. On October 10, 2000, the Coastal Commission approved a federal consistency determination for the Devil's Slide tunnel. The findings again recognized the impact to wetlands that would result if the project were to be built. The Commission conducted the same conflict resolution analysis that it undertook when Measure T was certified in 1997, finding that the conflict should be resolved in favor of approving the project and allowing the proposed wetland fill and encroachment into environmentally sensitive areas.

Analysis

We have concluded that the County does have the authority to consider and approve a coastal development permit for the Devil's Slide Tunnel project notwithstanding that the project may result in some impacts to wetlands. This position is based on the provisions of Measure T itself, coupled with the action taken by the Coastal Commission certifying Measure T.

Harry Yahata, District Director
January 25, 2001
Page 4

Re: Devil's Slide Tunnel Project

The primary rule of statutory construction is to determine the intent of the legislative body. (Freedom Newspapers, Inc. v. Orange County Employees Retirement System (1993) 6 Cal.4th 821, 826.) It is well established that statutes and legislative codes must be read together and so construed to give effect, when possible, to all the provisions thereof. (Tripp v. Swoap (1979) 17 Cal.3d 671, 679; DeVita v. County of Napa (1995) 9 Cal.4th 763, 779.) The various parts of a statute must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole. (People v. Craft (1986 41 Cal.3d 554, 560.) It is assumed that a legislative body has existing laws in mind at the time it enacts a new statute. (Schmidt v. Southern Cal. Rapid Transit Dist. (1993) 14 Cal.App.4th 23, 28.)

Here, Measure T was quite specific with respect to the solution to be implemented for Devil's Slide, specifying a tunnel as the preferred alternative. In addition, the electorate clearly indicated that the resolution of any conflicts among competing policies of the Local Coastal Program should weigh in favor of the Devil's Slide Tunnel alternative. (Sec. Measure T, section 4.) The voters properly resolved conflicts among competing Local Coastal Program policies in favor of the tunnel alternative, as the voters were entitled to do under the provisions of Public Resources Code section 30200(b).

Moreover, by certifying Measure T and employing a Section 30007.5 conflict analysis, the Coastal Commission confirmed that the choice made favoring the tunnel notwithstanding some impacts to wetlands was, on balance, more protective of coastal resources. Any County approval of a coastal development permit for the Devil's Slide project requires that the County find that the project conforms to the policies of the County's Local Coastal Program. By virtue of the Coastal Commission's certification, that Local Coastal Program now includes Measure T, which calls for a tunnel at Devil's Slide, and allows for some impact to wetlands as a result of tunnel construction.

In summary, Public Resources Code sections 30007.5 and 30200(b) require both the Coastal Commission and local governments to resolve conflicts between competing policies of the Coastal Act when carrying out the provisions of the Act. The electorate resolved policy conflicts in favor of the tunnel when it adopted Measure T. The Coastal Commission has twice performed the analysis prescribed in Section 30007.5, certifying Measure T despite the conclusion that construction of a tunnel would result in some wetland impacts. Measure T is now a part of the County's certified Local Coastal Program. It is our view that a coastal development permit can be approved for the construction of a tunnel despite some impact to wetlands.

JAN 26 '01 04:05PM CA COASTAL COMM

P.6/6

Harry Yahata, District Director
January 25, 2001
Page 5

Re: Devil's Slide Tunnel Project

Please feel free to contact the undersigned if you have any questions.

Very truly yours,

THOMAS F. CASEY III, COUNTY COUNSEL

By: 

Michael P. Murphy, Chief Deputy

TFC:MPM/mw/gg

cc: Supervisor Rich Gordon
John Maltbie, County Manager
Marcia Raines, Director of Environmental Services
Skip Sowko, Caltrans
Ed Pang, Caltrans
Mark Delaplaine, Coastal Commission
L:\CLIENT\PLANNING\Caltrans.wpd

MAE

Half Moon Bay

Coastside Foundation

Coastside CRMP & Fire Safe Councils

aka California Watershed Posse (CWP)



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

May 26, 2004

To: San Mateo County Planning Commission

From: Oscar Braun, Executive Director

RE: Regular Agenda item: # 6 at 1:p.m.

Oscar Braun

Owners: Dana Denman, Andrea Bechtolshiem,
June Schanbacker, Charlise Heiser, Trust

Applicant: Caltrans

File No: PLN2003-00428

Location: 1986 Devil's Slide Highway 1 Improvement Project, Pacifica

Assessor's Parcel No: 023-731-020

EXHIBIT NO.	21
APPLICATION NO.	
A-2-SMC-04-011	

Consideration of a Coastal Development Permit, pursuant to Section 6328.4 of the County Zoning Regulations, to allow the construction of a two 4,000 foot long tunnels with two approach bridges, north of Montara, in unincorporated San Mateo County. **This project IS appealable to the California Coastal Commission.**

PROJECT PLANNER: Mike Schaller: Telephone: 650-363-1849

Dear Commissioners,

On behalf of the Save Our Bay Foundation and the Coastal Family Alliance, we ask the San Mateo County Planning Commission to **"DENY"** Caltrans Coastal Development Permit (CDP) application File No: PLN2003-00428 to build the Sierra Club sponsored tunnels/bridges 4 lane freeway alternative. Why? Because after review of the DSSEIS/EIR by San Mateo County and the California Coastal Commission on May 11 & 12, 1999, determinations were lawfully made that the tunnels are not a reasonable alternative because of their inconsistency with current Local Coastal Planning (LCP) policies, wetlands destruction, and various safety and cost issues. Enclosed please find a chronological history of the Devil's Slide Second Supplemental to the 1986 Final Environmental Impact State/Environmental Impact Report and Save Our Bay's whistle blowing alerts and protests on behalf of the San Mateo County rural coastal communities.

The goal of the Measure T's proponents (Sierra Club & COSA) was never to build tunnels; they simply wanted to stop the Martini Creek bypass and maintain limited access to the coast. The Tunnel Initiative (Measure-T) has proven to be a fiasco. Supervisors Mike Nevin, Richard Gordon and Jerry Hill have betrayed the public trust. This San Mateo County Board of Supervisors has concealed from the public since, May 11, 1999 that the Sierra Club sponsored "Sooner Safer Cheaper" Tunnel Initiative was dead on arrival and a \$300 million boondoggle.

Can San Mateo County afford an environmental movement and Supervisors that cannot be trusted? Think of all the work left to do: The protection of our Peninsula watershed wildland urban interface **"WUI"** from catastrophic wildfires, smart growth to prevent urban sprawl and the preservation of our rural coastal farming communities. If environmentalists cannot be trusted at the resource management planning table, then soon we will no longer be invited. And that would be a tragedy, not just for environmentalists, but the environment itself. Much as we would work to protect our environment, so must we protect our honor, or neither will survive.

California State Senate

STATE SENATOR
Quentin L. Kopp

Eighth Senatorial District
Representing San Francisco and San Mateo Counties

SACRAMENTO ADDRESS
STATE CAPITOL
95814
9164450503

DISTRICT OFFICE
363 EL CAMINO REAL #205
SO SAN FRANCISCO CA 94080
415 952-5666

COMMITTEES
TRANSPORTATION CHAIRMAN
AGRICULTURE & WATER
RESOURCES
BANKING COMMERCE AND
INTERNATIONAL TRADE
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VOTING PRACTICES AND PROCEDURES

SUBCOMMITTEES
BUDGET AND FISCAL REVIEW
SUBCOMMITTEE NO 4 ON LEGISLATIVE, EXECUTIVE BUSINESS TRANSPORTATION HOUSING AND GENERAL GOVERNMENT

JOINT COMMITTEES
JOINT COMMITTEE ON RULES

March 31, 1995

Mr. Peter Drekmeier
P.O. Box 371018
Montara, CA 94037

Dear Mr. Drekmeier:

I have received your letter of March 21, 1995. I've also read the letter of March 17, 1995 to which you refer.

I don't possess the inexhaustible time to debate or meet and discuss your pronounced views, although I will take time, as appropriate, to correct misinformation.

Your tactics are transparent. You've abandoned the vaunted Marine Disposal Alternative almost literally overnight, after trying for more than 10 years to mislead the public into believing it was a worthwhile alignment. You shifted your target to another gossamer-like "solution", claiming that a two-lane tunnel is feasible. You know, that a different alignment results in a loss of federal funds and the requirement of a wholly new Environmental Impact Statement/ Environmental Impact Report. You know that the institution of the

EXHIBIT 6

Completely-required environmental process and the commencement of a new process for securing the necessary funds will consume several years, if not a decade. You also know that, notwithstanding the imminent commencement of reconstruction and the eventual reopening of the Devil's Slide portion of Highway 1, the road base inescapably narrows each time a slide occurs and that eventually the road base will not be susceptible to reconstruction or reopening.

On the other hand, it is manifest that you're generally not desirous of a permanent alternative alignment, because of your misrepresentations that unjustifiable development at or near Montara Mountain will occur. I suggest you, "come as clean as a hound's tooth", to use President Eisenhower's immortal injunction to Vice President Nixon in 1952, about your intentions. Those objectives and misrepresentations about excessive development (or any development) are rather amusing, because it was the Sierra Club, dissatisfied with the San Mateo County Board of Supervisors version of a Local Coastal Plan (LCP), which spent time and effort to write its own local coastal plan, qualified it as an initiative for the November 1987 county-wide ballot and achieved passage of it. It did so upon the basis of representing to voters that it would prevent excessive development. If it doesn't, I strongly suggest you look at yourselves.

In short, if you pursue the tunnel, please be certain to advise all interested persons of the implications of doing so, please advise them also of the fact that a tunnel roadway usually costs more than a surface roadway and please concede to the public that you're willing to risk ultimately the permanent closure of Devil's Slide and the non-existence of any roadway between Pacifica and Half Moon Bay on the Coastside.

As I stated publicly, your tactics are contemptible and I do not intend to remain silent if you continue to dissemble.

Yours truly,

[signed]

JENTIN L. KOPP

QLK:tt

Enclosure

cc: Hon. Ted Lempert

P.S. So that there's no excuse of your misrepresentations about the availability of funding for another alignment, I enclose a copy of a letter dated March 3, 1995 from the Administrator of the Federal Highway Administration to Congressman Tom Lantos.

[handwritten]

I also enclose Dr. Bill Wattenburg's expressed and considered opinion.

[enclosures not yet scanned; hope to have that done soon -- Editor]

Senator Kopp enclosed also enclosed a letter from the Federal Highway Administration. This letter discusses the history of the funding situation, and suggests that funds cannot be "deobligated". See that scanned letter here (120K).

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



Wednesday, September 6, 1995

50 Cents

Feds: Study tunnel option

Lempert asks that report answer funding questions

By ERIC RICE
Half Moon Bay Review

Bowing to public pressure, the Federal Highway Administration has ordered the California Department of Transportation to re-examine the viability of a tunnel through Devil's Slide.

Tunnel supporters welcomed the news as long overdue, but a CalTrans spokesman noted that the decision also reconfirms the 4.5-mile Martini Creek Bypass as the preferred alternative to reroute Highway 1 at Devil's Slide.

The decision was a victory for environmentalists who have been waging a campaign since April to get CalTrans to re-study a tunnel.

"I'm glad to see the Federal Highway Administration responding to the extensive public comment encouraging the study of a tunnel alternative," stated Chuck Kozak, chairman of the Committee for the Permanent Repair of Highway 1, one of three groups suing CalTrans to prevent construction of the bypass. "But I'm concerned that CalTrans lacks the expertise to properly evaluate a tunnel project. Their response so far has been to ignore all outside engineering recommendations and propose a tunnel design so inflated in scope that the cost became

prohibitive."

CalTrans spokesman Jeff Weiss said the agency will do the study, albeit at the insistence of the Federal Highway Administration.

"The FHWA wants us to do it again," Weiss said. "We're trying to give the people what they want discussion-wise."

He claimed previous estimates clearly show that a tunnel is too expensive.

"We'll look at the tunnel," he added, "but given our preliminary studies we don't think any of our information is going to change. . . . It's still a matter of funding."

Jay Combs, with Coastsiders 4 the Bypass, questioned the value of a tunnel study, saying that if it comes back that the tunnel is not feasible, the Sierra Club will claim the study was flawed.

"I don't know anything positive would come of it," Combs said.

"Opponents have not been sincere," he added. "Their slogans are think tunnel, not build tunnel."

The FHWA's decision, known formally as the Record of Decision, was published Aug. 10 in the Federal Register. It was prepared as the last step in fulfilling a court requirement that noise impacts of a bypass be

Please see TUNNEL, Page 6A

Tunnel

Continued from Page 1A

studied further. The court asked for the study as part of the 9-year-old litigation by three environmental groups to stop the bypass.

Many comments submitted for the noise study dealt not with noise impacts, but the viability of a tunnel. While the decision "reconfirms" the Martini Creek alignment, it acknowledges the demand by members of the public and environmental groups for more tunnel study.

The environmental impact report prepared for the bypass is 9 years old and parts may be outdated. CalTrans has already begun a re-evaluation, including whether the document complies with changes in environmental law since 1986, such as the proposed addition of the red-legged frog to the Endangered Species List.

The FHWA decision means a tunnel will be studied as part of that re-evaluation. The study is projected

to be completed next spring or early summer.

The FHWA's decision was prompted by the grass-roots campaign of tunnel supporters, according to Bill Wong, senior transportation engineer at the FHWA's Sacramento office.

"We had to put that issue to rest," he said.

Kate Smit, a spokeswoman for Citizens for the Tunnel, said the issue won't rest, however, unless the county Board of Supervisors takes steps to ensure the study is complete and objective.

"We would like to see the board identify very clear requirements for a tunnel study," she said, including meeting with people outside CalTrans who build tunnels.

Ted Lempert, president of the San Mateo County Board of Supervisors, said he wants CalTrans to study the tunnel as if it were the preferred alternative.

"When things are a preferred alternative, things happen," he said.

However, Lempert was reluctant last week to commit to revisiting the board's April vote in favor of the bypass.

The FHWA's decision prompted some softening of what has been hard-line opposition to a tunnel.

In June, Supervisor Mary Griffin characterized lengthy environmental studies that might be needed for a tunnel as "unconscionable disruption," and as recently as last month she reaffirmed her support for the bypass. Upon learning of the FHWA decision, however, she said her future position will be based on the findings of the tunnel study.

"The FHWA decision supports what San Mateo County residents have demanded — no delay in the Martini Creek Bypass, protect the funds set aside for this project, and to also take one last look at the tunnel alternative. The project will move

"We're trying to give the people what they want discussion-wise."

**Jeff Weiss,
CalTrans**

ahead, but not so hastily as to overlook what may be a viable alternative."

Griffin's opponent in the November election, Janet Fogarty, who announced at a tunnel fund-raiser Aug. 27 that she would be "the third vote for the tunnel study," applauded the FHWA decision.

"It's nice to see Supervisor Griffin has finally decided to consider the tunnel alternative," she stated, "but disappointing that she needed a decision from bureaucrats before she would listen to the people."

Lempert said the study must

answer the question of funding definitively. He also suggested that if the bypass funding cannot be shifted to a tunnel, unspent federal emergency funds from the March rains may be available.

Bypass opponents maintain a 4,600-foot-long tunnel would be less expensive and create fewer environmental impacts than the bypass. They cite an estimate of \$60 million to build a tunnel by San Francisco tunnel builder Shank/Balfour Beatty, and CalTrans' own 1993 estimate of \$77 million.

CalTrans' latest estimates for a tunnel range from \$94-\$126 million.

Bypass supporters believe that switching to a tunnel would endanger the federal funding and subject the project to lengthy delays for new environmental studies. They also claim that the real purpose of bypass foes is to prevent any construction and that a tunnel ultimately would be subjected to the same litigation as the bypass. Earlier this year, CPR1, the Sierra Club and the Committee for Green Foothills promised to drop their lawsuit if a tunnel was approved.

It's time to bypass Devil's Slide

4/5 1995
By MIKE NEVIN

San Mateo County Supervisor

The time is right to build the Martini Creek Bypass.

Caltrans has been studying the problem of how to deal with Highway 1 at Devil's Slide for decades. Now, nine years after the Sierra Club and others filed a lawsuit to prevent construction, the road is closed indefinitely. This situation is not only inconvenient, causing two-hour commutes and bumper-to-bumper traffic, it is also dangerous, severely limiting medical services.

In 1986, Caltrans applied for a construction permit from San Mateo County. Immediately, the Sierra Club filed a lawsuit opposing the permit on two grounds: The supporting Environmental Impact Statement was insufficient and the application did not address a federal law prohibiting the taking of park lands. Since that time, the courts have determined that Caltrans was not appropriating park land. Also, Judge D. Lowell Jensen recently ruled that only one area was missing from the EIS: noise. Caltrans is preparing the supplemental noise impact studies, and expects to have them completed by June.

For years now the Sierra Club has maintained that the Marine Disposal Alternative was the best solution to the

Point of View

Devil's Slide dilemma, even though this "solution" called for dumping thousands of tons of displaced earth directly into the ocean. Now, only a few weeks after the road is closed, it has abandoned the MDA in favor of a "new vision" — a tunnel.

I submit that this is not a new vision. Caltrans studied the tunnel alternative in 1973 and again in 1986. The experts said then, and still say now, that the proposal is unworkable. No matter; the Sierra Club continues to insist that Caltrans examine the issue yet again.

The last time a tunnel was built anywhere around here was in the 1960s. Even San Francisco's Broadway Tunnel was built in the '50s. They just don't do tunnels around here anymore — there are too many unknowns. Anyone can say, "Go ahead — build it!" but the experts charged with making the plans a reality say a tunnel is not a viable alternative.

So where are we now? The good news is that the court is ready to act. As soon as the noise study is complete, the judge will make a final decision. In his

latest statement, he made it clear that the \$52.1 million previously allocated for this project is for the Martini Creek Bypass alone. No other alternative qualifies for the money Caltrans already has in the bank. If Caltrans decides to build anything except the bypass, it must return the money.

Judge Jensen also denied the Sierra Club's request for attorney fees and court costs. Imagine the irony of this situation: the Sierra Club causes a nine-year delay by filing lawsuits, then asks the court to make the taxpayers come up with nearly \$1 million for the privilege of having no road! Incredible!

The tunnel suggestion is merely another delay tactic. The Sierra Club's real concern here is preventing growth on the coast, but the efforts are misguided. The Local Coastal Plan and the Coastal Development Committee are only two of the tools already in place to protect the coastline for generations to come. The actions of the Sierra Club only prevents vital progress.

A close friend suggested that I "show some leadership" on this issue. In this case, leadership is the courage to move on and build the bypass that has already been approved. The time for study is over. Class was held and dismissed years ago. Now is the time for action.

Oscar Braun

From: nobody@sfgate.com on behalf of Mimi Iwama [mimiiwama@yahoo.com]
Sent: Sunday, May 16, 2004 10:30 AM
To: Oscar Braun
Subject: SFGate: Bridge cost tops \$1 billion/Bay Area to pay for cost overrun at Benicia-Martinez span with \$405 million in tolls that could have been used elsewhere



SFGate_Bridge
cost tops \$1 bl...

SF Chron - Benicia-Martinez bridge cost overrun

This article was sent to you by someone who found it on SFGate. The original article can be found on SFGate.com here: <http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2004/05/13/MNGLU6KKV11.DTL>

Thursday, May 13, 2004 (SF Chronicle)
Bridge cost tops \$1 billion/Bay Area to pay for cost overrun at Benicia-Martinez span with \$405 million in tolls that could have been used elsewhere Michael Cabanatuan, Chronicle Staff Writer

The cost of building a second Benicia-Martinez Bridge has swelled to more than a billion dollars -- nearly four times original estimates -- and the Bay Area will pay for the Caltrans overrun with \$405 million in toll money that could have been spent on other transportation improvements.

Regional transportation leaders reluctantly agreed Wednesday to recommend that the Bay Area Toll Authority pay for the cost overrun on the bridge -- but warned the state Department of Transportation not to ask for more. The authority is expected to accept the recommendation at a meeting later this month.

Caltrans is building a new five-lane bridge on Interstate 680 across the Carquinez Strait that parallels the existing six-lane bridge. The new bridge is expected to open to traffic at the end of 2006.

The overruns were the result of an unanticipated threat to fish, weak rock requiring innovative drilling methods and difficulty in finding building materials that fit the design of the bridge, Caltrans said.

Transportation leaders said they were stunned by Caltrans' latest figures, released this week.

"Was all this unforeseeable?" said Mike Nevin, a San Mateo County supervisor and Bay Area Toll Authority board member. "This is an incredible amount of money to be asking for."

The money would come from the proceeds of Regional Measure 1, a 1988 ballot measure that set bridge tolls on the Bay Area's seven state-owned toll bridges at \$1 to raise money for transportation improvements to bridges and connecting highways. Previously, the tolls ranged from 35 cents to \$1.

The overrun was not entirely unexpected. In fact, with the Bay Area in the midst of a bridge-building boom -- major work is under way or complete on five state bridges -- cost overruns have become commonplace.

Caltrans officials blame the rising cost of the bridge on three major problems they say couldn't have been predicted:

-- Pile driving that killed migrating salmon and other fish swimming through the construction zone.

Federal fisheries agencies halted construction in November 2002 until Caltrans could come up with a way to protect the fish, increasing the cost by as much as \$200,000 a day. The transportation agency eventually satisfied regulators by creating a device that generates a curtain of air bubbles surrounding the piles being driven and absorbs the sound waves. In addition to the cost of the device -- which Caltrans has patented -- the process slowed the pile driving.

-- Weak rock layers beneath the soils at the bottom of the strait.

Test drillings failed to seal the weak rock, which wasn't solid enough to support rock sockets -- the attachment between support pilings and the bedrock. Caltrans had to devise a special device to install the sockets and keep the bedrock from collapsing. It works, but takes much longer than the usual method, Caltrans officials say.

-- The need to develop construction methods to work with a bridge design that requires the use of lightweight concrete and an unprecedented amount of steel in the structure.

Caltrans and the contractor have struggled to find a proper concrete, said Andrew Premier, deputy district director. They've also had trouble fitting the large amount of reinforcing steel required for a bridge in an earthquake zone, he said.

Scott Haggerty, an Alameda County supervisor and toll authority board member, wasn't sympathetic.

"I'm feeling a little bit used by the state to solve its budget problems," he said.

At the hearing, Premier was asked if he was certain the cost won't increase again.

He told the committee that the success of the construction methods Caltrans has developed "gives us much better confidence that we are within our estimates. We didn't have that level of confidence" when previous projections were made.

Jim Duffy, a Bechtel company project manager hired to analyze Caltrans' financial estimates, explanations and conclusions, said they were correct

-- if shocking. Building a bridge involves a lot of unknowns, he said, particularly in building the foundations.

"Any time you go underground, you don't know what you're going to run into," he said.

"And when you go underground and underwater, there are a double number of unknowns."

Regional Measure 1 has enough money to cover the huge increase, said Rod McMillan, an authority planner, because of low interest rates and good financial management. Also, Regional Measure 2, which raised tolls to \$3 effective July 1, dedicated \$50 million toward Benicia-Martinez Bridge overruns.

"We are able to fund the bridge overruns without impacting any of the other Regional Measure 1 projects," McMillan said.

In addition to the Benicia-Martinez Bridge, Regional Measure 1 committed to pay for the new Al Zampa suspension span of the Carquinez Bridge, a widened San Mateo Bridge, replacement of the decks of the Richmond-San Rafael Bridge, widening of the Bayfront Expressway and reconstruction of the Highway 92/Interstate 880 interchange. All of the projects are completed or under way except for the 92/880 interchange, which is still in the planning stages.

But while the cost overruns won't steal money from other projects that Regional Measure 1 promised to voters, they take away money that could have been used to help pay for other highway and transit projects on or near bridges, including a fourth bore for the Caldecott Tunnel or a wide range of other partially funded transportation improvements.

"It could have been used for a lot of different things," said Randy Rentschler, a spokesman for the Metropolitan Transportation Commission, the Bay Area's transportation planning agency. "It's impossible to say how we would have spent it."

E-mail Michael Cabanatuan at mcabanatuan@sfchronicle.com. Benicia-Martinez Bridge's climbing cost

A series of cost overruns on the new Benicia-Martinez Bridge has steadily pushed the projected cost higher.

1995	\$286,000,000
December 1998	\$384,500,000
June 2000	\$585,900,000
October-November 2001	\$642,100,000
December 2001	\$652,800,000
May 2004	\$1,057,800,000

Source: Bay Area Toll Authority
Chronicle Graphic

THE INDEPENDENT

The Voice of San Carlos and Belmont for 80 years

D. 29

Saturday, April 10, 2004

County auditor's independence questioned

→ Hill says move to oust Huening as whistleblower investigator not related to Measure A switch

BY JUSTIN NYBERG
Staff Writer

REDWOOD CITY—Supervisors approved an ordinance designed to protect governmental whistleblowers Tuesday, but not before removing the county's top auditor from the team he designed to investigate such complaints.

The board's decision to remove San Mateo County Controller Tom Huening came three days after Huening shocked the county leadership by withdrawing his

support for a renewal of the local transportation sales tax known as Measure A.

Supervisor Jerry Hill said the decision was not in retaliation for Huening's stance, but was in accordance with the recommendations of a grand jury report issued Dec. 4, 2002.

"No. We don't work that way here," Hill said when asked whether the change was tied to Huening's Measure A stance. Hill suggested the change in procedure. "Being a department head himself, that could influence his decision-making and independence. I felt that it would be

more prudent to accept the whistleblower's information and delegate it to the county counsel or the [district attorney], or an outside independent auditing agency."

In March, Huening proposed a county ordinance whereby whistleblowers could report complaints of governmental misconduct to the county controller, district attorney and the county counsel to determine the appropriate response.

Tuesday, the board substituted the words "board of supervisors" for the "county controller" before approving

the ordinance unanimously.

"I'm sure they have a very good and valid reason," Huening said.

Hill said the reason was the grand jury's report that found the controller, while elected to serve as the county's fiscal watchdog, "is not independent because of his dual responsibilities" as both record keeper and auditor of financial statements.

On Feb. 25, 2003, supervisors appeared to have a different position. In a written response to the grand jury report, the board defended Huening and his office.

"We believe that the current elected

WHISTLEBLOWER page 13A



Huening



Hill

WHISTLEBLOWER: Huening off job

Continued from 1A

county controller [Huening] is independent and reports directly to the voters," the board wrote in a joint reply signed by all five supervisors.

Hill pointed out that that portion of the board's position was specifically in response to the grand jury's recommendation that an outside, independent auditor supervise the audits conducted by the controller. The statement did not apply, Hill said, to the question of who is the best person to react to whistleblower complaints.

"The whistleblowers should blow their whistles to the government body, which is the board of supervisors, not the controller," Hill said.

Huening angered many county leaders April 3 when he abruptly declared he would not support the renewal of Measure A, which

he authored in 1988. Instead the former supervisor proposed an alternative that would eliminate the one-half cent sales tax and drastically reduce the amount of funding for transit projects for the next 25 years.

Fearful that the Measure A renewal may not reach the two-thirds voter majority it needs in November, transit leaders as well as city and county officials have been trying to build a broad consensus on the measure.

Though the public discussion of what projects would be eligible for funding has been underway for almost a year, Huening did not take a position until after the Transportation Authority had issued its ballot-ready version last month. Hill called Huening's late entry to the debate "arrogant" and "divisive."

Despite the angry rhetoric, Hill

said there are no personal motivations underlying his motion to remove Huening from the whistleblower ordinance.

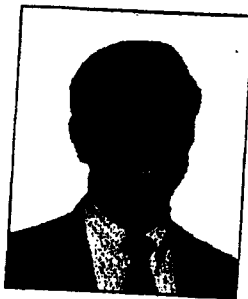
"He's a good man. I like him ... but I'll tell him he's arrogant and divisive to his face," Hill said. "He's a lot off base on this issue, but he's a good man."

The 2002 grand jury report also called for the board to "immediately establish a 'whistleblower' process." It remains unclear why it took the county more than 16 months to take action.

Huening, who drafted the ordinance, said it got caught in a backlog at the county's legal department. Because the procedure was already in practice, there was little urgency to pass a law.

"There wasn't a particular rush," he said.

E-mail: jnyberg@smindependent.com



NOBODY ASKED ME, BUT
BY JERRY FUCHS

County's top 10 for past year

SUPERVISOR JERRY HILL, who chairs "Dads Count," an event of the Father Collaborative, has landed San Mateo native and New England Patriots quarterback Tom Brady for breakfast at the Sofitel hotel July 9. Tom's dad, Tom, is in the San Mateo Rotary Club.

It's time for the top 10 on the hit parade of the most influential people in San Mateo County. Obviously this is not an exact science, but my list has been compiled on the basis of observing county events and those whose influence has most affected social, economic and political decisions.

In past years, state Sen. Jackie Speier has held down the No. 1 spot, but this year she has been supplanted by Supervisor Mike Nevin, who will run for her seat. She trades places with Nevin, who has had an active year clashing with BART and pushing Measure A. Speier has been less focused on the county, but still has the power to influence decisions when she chooses to exert her authority. Right now she is putting her stamp on a number of legislative issues in anticipation of her run for lieutenant governor in 2006.

In the third spot, climbing by virtue of his increased stature on the Board of Supervisors and his role in taking on issues such as the county hospital and transportation, is Supervisor Jerry Hill, who moves up the top-10 list this year.

Since Nevin is the acknowledged leader on the Board of Supervisors and will leave at the end of the year, most observers see Hill as filling that vacuum.

In the fourth spot is transportation czar Mike Scanlon, who has the biggest budget in the county and will spearhead Measure A in November. Scanlon moves up on the ladder.

County Manager John Maltbie has slipped a few slots because he is a lame duck and will retire at the end of the year. Still, Maltbie is responsible for making the county departments and the budget process run.

In slot No. 6 is the leading environmentalist in the county, Lennie Roberts. Any county issue that is a hot potato requires her support if it is going to succeed. Moving up a few notches to the

NOBODY: page 6A

NOBODY: Huening jumps into spotlight

Continued from 1A

No. 7 spot is San Mateo Councilmember Sue Lempert, who also serves as the county representative on the Metropolitan Transportation Commission and is a powerful influence in city governments. If anyone wants CJCAG's support, get Lempert on board.

Don't ignore the influence of labor, where Bill Nack of the Building and Trades Council, in the eighth spot, and Shelly Kessler of the Central Labor Council, in the ninth spot, exert tremendous influence on construction issues and on candidates.

And for the first time on the bandwagon is public-relations consultant Ed McGovern, who has handled the campaigns of county candidates such as Supervisor Mark Church. He managed Assemblymember Gene Mullin's successful campaign and will be the top honcho in Mike Nevin's campaign for state senator.

McGovern also handled city council campaigns for Marc Hershtman in Millbrae, Coralin Feierbach in Belmont, John Lee and Jack Matthews in San Mateo, Mike Coffey and Mary Janney in Burlingame and Rosanne Foust in Redwood City.

That's the hit parade for 2004, with only one new member, Ed McGovern, taking a spot on the top 10 influential folks in the county.

...

The Redwood City Chamber of Commerce signed another contract with the Hyatt in Monterey for the 2005 conference. Attendance breakdown shows 40 percent of attendees were public officials and 60 percent came from the business community. ... South San Francisco Council-

member Joe Fernekes, perhaps the most popular elected official in his city, is sounding out people for a possible run when his pal Gene Mullin is termed out. On the list, are Supervisors Jerry Hill and Mark Church as possible candidates. ... Maverick Mike Murray has found a friend in Controller Tom Huening and believes that Tom Lantos will soon bow out of Congress and the two public officials will battle for the job. Don't count on it. Huening says no — he's happy as controller. ... Long-time Republican, San Carlos Councilmember Don Eaton is supporting Democratic Assembly candidate Ira Ruskin in November.

...

So why did Tom Huening, who has had great reviews as county controller, decide to throw a bombshell in front of the Measure A vote in November? Huening says it's because the funding for projects can be switched around and that there is too little money spent on capital projects.

But anyone who knows Huening knows that explanation is too simple. After being in the mainstream for 12 years as a member of the Board of Supervisors, having authored the previous Measure A, and having been repulsed in his effort to bring BART all the way down the Peninsula, it was time for Tom to awaken from a long, long winter nap.

To say that his colleagues on the Board of Supervisors are unhappy would be putting it mildly. Huening compounded his unpopularity by sending a letter to Mike Scanlon, executive director of the county Transportation Authority, giving him two days' notice that Huening's office would no longer serve as auditor of the agency.

What Huening should know is that his budget will come under greater scrutiny in the future and that the two auditors he was allowed to hire last year to take on more responsibility are an endangered species. Dave Miller, longtime attorney for the Transportation Authority, has sent a letter to county Counsel Tom Casey saying that any effort to put a second measure on the ballot in November would be illegal because the Supreme Court ruled — in a case titled Committee of Seven Thousand v. Orange County — that the Legislature gave exclusive authority to transportation agencies to bring such ballot measures to the electorate. Besides, who is going to collect signatures to put his measure on the ballot?

...

But Huening has no desire to collect signatures to put his measure on the November ballot. He's hoping that county cities will do it themselves when they see that under his plan revenues for local streets will increase from \$12.5 million to \$18 million. Huening says spending Measure A funds for state highway improvements and Caltrain electrification should not be done by the county, but rather is the fiscal responsibility of the state.

As the author of the present Measure A, he says the county has fulfilled its responsibility to the voters and it's time to sunset the half-cent sales tax. The only transportation responsibility Huening sees is the need to repair local streets. Taking the present reserve funding from Measure A, depositing it and collecting interest would give the county the \$18 million Huening believes is

all that's necessary to repair local roads. And it would save taxpayers half a cent in sales tax.

...

There's been some concern over the efforts to raise \$1 million to fund the Measure A campaign, but Supervisor Jerry Hill says, "not to worry, the blitz for money has not yet started," though there is \$150,000 in the pot. ... Mark the date, April 17, at Dominic's in San Mateo when the Boys and Girls Clubs of North San Mateo County will honor Judge Quentin Kopp as their Citizen of the Year. ... Biggest violator of noise standards at SFO is Cathay Pacific with 143 violations and the best is Skywest with just six this year. ... Al Teglia will be guest of honor of the Daly City Emergency Food Pantry on Thursday, May 13 for lunch at the Outback Steak House in Daly City. ... Susan Ferren, county human services manager, used county e-mail to notify others about Assemblymember Leland Yee's legislation curtailing video violence for children. County policy says using its e-mail when legislation is not out of committee is a no-no. Redwood City's Electronic Arts is fighting the bill and Yee is having trouble getting it out of committee.

Jerry Fuchs, the publisher of the Independent Newspaper Group, has been in the newspaper industry for 46 years, beginning in New Jersey. In 1980 he founded Fuchs Publications, which included the Hillsborough-Burlingame Boutique & Villager, the Millbrae Sun, the San Mateo Weekly, the Foster City Progress and the San Carlos-Belmont Enquirer-Bulletin. Contact him via e-mail at jfuchs@smindependent.com or by fax at (650) 692-7587.

Enquirer-Bulletin

THE INDEPENDENT

The Voice of San Carlos and Belmont for 80 years

No. 40

Tuesday, May 18, 2004

SamTrans to pay BART operating expenses

Agreement reached in dispute over costly new system expansion

BY JUSTIN NYBERG
Staff Writer

REDWOOD CITY — A bitter feud between two transit agencies over who should pay for the costly and underused BART extension on the Peninsula has been resolved in a way that might provide more frequent service to most San Mateo County stations.

After two months of nego-



tiations, BART directors ratified an agreement May 13 that places the operating bill for the extension entirely with SamTrans, San Mateo County's transit agency, while providing for marketing and parking programs to help boost ridership.

SamTrans directors agreed to



the terms the day before.

"This agreement not only stops the bleeding, it prevents new wounds from opening in the future because we are working together," SamTrans chairman Mike Nevin said. "It's not a quick fix. It's a permanent solution."

On March 10, BART held a

press conference to announce it planned to sue SamTrans for falling between \$8.9 million and \$10.7 million behind in payments to BART for operating the line. SamTrans agreed to cover all operating costs in the 1995 contract between the two agencies.

Ridership on the BART extension has fallen far short of initial forecasts that SamTrans relied on to budget for the system. In 1996, BART predicted some 48,600 people would ride the system daily, but the extension has seen roughly half that

'This agreement not only stops the bleeding, it prevents new wounds from opening in the future because we are working together'

Mike Nevin,
chairman of SamTrans

figure each day since opening last summer.



Environmental Services Agency Planning Commission

William Wong, 1st District
David Bomberger, 2nd District
Jon Silver, 3rd District
Ralph A. Nobles, 4th District
Steve Dworetzky, 5th District

County Office Building
455 County Center
Redwood City, California 94063
(650) 363-1859

Notice of Public Hearing

MEETING NO. 1411

NOTE: Special
Meeting Time

Wednesday, May 26, 2004
1:00 p.m.

Board of Supervisors Chambers
400 County Center, Redwood City

Planning Commission meetings are accessible to people with disabilities. Individuals who need special assistance or a disability-related modification or accommodation (including auxiliary aids or services) to participate in this meeting; or who have a disability and wish to request an alternative format for the agenda, meeting notice, agenda packet or other writings that may be distributed at the meeting, should contact the Planning Commission Secretary at least five (5) working days before the meeting at 650/363-1859, Facsimile 650/363-4849 or e-mail krud@co.sanmateo.ca.us. Notification in advance of the meeting will enable the Secretary to make reasonable arrangements to ensure accessibility to this meeting and the materials related to it.

SPEAKING AT THE PUBLIC HEARING:

All parties wishing to speak will have an opportunity to do so after filling out a speaker's slip and depositing it in the speaker's slip box. The Commission has established time limits for speakers, allowing 15 minutes for the applicant and appellant, if any, and 5 minutes for all others. These time limits may be modified by the Commission's Chairperson in order to accommodate all speakers.

CORRESPONDENCE TO THE COMMISSION:

Letters to the Commission should be addressed: Planning Commission, County Government Center, 455 County Center, 2nd Floor, Mail Drop PLN122, Redwood City, CA 94063. The Commission e-mail address is planning-commission@co.sanmateo.ca.us. The Commission Secretary can be reached at 650/363-1859, Facsimile 650/363-4849. *It is preferred that your letters be received at least five (5) days prior to the scheduled hearing to allow sufficient time for your comments and concerns to be considered by the Commission.*

RETENTION OF MATERIALS PRESENTED AT HEARING:

All materials (including but not limited to models and pictures) presented by any person speaking on any item on the agenda are considered part of the administrative record for that item, and must be retained by the Commission Secretary until such time as all administrative appeals are exhausted and the time for legal challenge to a decision on the item has passed. If you wish to retain the original of an item, a legible copy must be left with the Commission Secretary. The original or a computer generated copy of a photograph must be submitted. Fifteen (15) copies of written material should be provided so that each Commission member, staff and other interested parties will have copies to review.

REGULAR AGENDA

1:00 p.m.

6. **Owners:** Dana Denman, Andreas Bechtolshiem,
June Schanbacher, Charlise Heiser, Trust
Applicant: Caltrans
File No.: PLN2003-00428
Location: Devil's Slide, Pacifica
Assessor's Parcel No.: 023-731-020

Consideration of a Coastal Development Permit, pursuant to Section 6328.4 of the County Zoning Regulations, to allow the construction of a 4,000-foot long tunnel with approach bridges, north of Montara, in unincorporated San Mateo County. This project is appealable to the California Coastal Commission. PROJECT PLANNER: Mike Schaller. Telephone: 650/363-1849.

The Commission will adjourn for dinner and reconvene at 7:00 p.m.

Wednesday, May 26, 2004

7:00 p.m.

**Ted Adcock Community/Senior Center
535 Kelly Avenue, Half Moon Bay**

NOTE: Special
Meeting Time
and place.

7. **Applicant:** San Mateo County Planning Director
File No.: PLN2003-00438
Location: Unincorporated Midcoast

Midcoast LCP Update Project:

- Task 18 Update elements of the LCP Sensitive Habitats Component, including the definition of sensitive habitats, the Midcoast Sensitive Habitats Map, and select policies.

PROJECT MANAGER: George Bergman. Telephone: 650/363-1851.

-
8. Correspondence and Other Matters
9. Consideration of Study Session for Next Meeting
10. Director's Report
11. Adjournment
-

Devil's Slide
Second Supplement to the 1986
Final Environmental Impact Statement/Environmental Impact Report



**Route 1 from the Half Moon Bay Airport to Linda Mar Boulevard,
Pacifica, San Mateo County, California**

DRAFT



Federal Highway Administration

March 1999



California Department of Transportation

Half Moon Bay Coastside Foundation



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

The Voice of the Coast *May 12, 1973* *New Proposal for Devil's Slide*

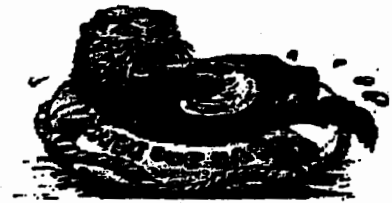
The following is the text of a letter on the subject of the Devil's Slide Bypass. The letter from the Loma Prieta chapter of the Sierra Club to the California Department of Public Works, was written by Olive Mayer.

The Loma Prieta chapter of the Sierra Club and the Peninsula Regional Group are on the record as supporting a two lane limited access recreational road between Pacifica and Half Moon Bay airport, a winding, slow speed road. Along this route would be a series of recreational stops, each offering a unique recreational activity. Because of the problem of the safety of Devil's Slide, the executive committee of the Loma Prieta chapter of the Sierra Club, voted, at its April meeting, to support the construction of a tunnel from Green Valley to Pacifica as an alternative to a recreational road or to the proposed freeway. This would continue the present two lane road but provide a bypass of Devil's Slide. We consider this the fastest solution to the problem of the safety of this road. We understand that this tunnel would cross an inactive earthquake fault (inactive during the past 10,000 years) and that cars would be more safe in an earthquake in the tunnel than they would be on existing freeways which border the San Andreas fault. Under no circumstances could we support grading for six to eight lanes along the presently proposed right of way, or a four lane parkway along the right of way as we consider it would be environmentally disastrous as well as socially and economically disastrous.

Judge Sweigert has ruled that the environmental impact statement coast route #1 must consider the impact on the environment of the whole highway length from Pacifica to Higgins Road, Half Moon Bay. He also ruled that the proposed freeway is a Federal Aid Primary Route and must conform to federal law for locational and design hearings. Since this freeway was conceived in a period with different community needs and lifestyles than we have today, we urge that the entire project be reconsidered and alternatives be investigated.

The Sierra Club believes that an excess of automobiles on the coast, from either commuter traffic or trucks, or from recreational traffic, will mean destruction of the coastal resources. Therefore, we believe the solution lies in a good system of public transportation. It is the automobile that can result in the greatest damage to the scenic and esthetic wildlife resources of the coast, to sand dunes, marshes, small beaches, scarce plant communities, etc. Public transportation confines people to the areas designated for them and designed for their use. The coast can absorb many thousands of people each day on foot, horseback, on bicycle, or coming on public transportation, but it cannot absorb any more automobiles without being destroyed. Even with existing access limited to two lane roads, Highway 1 and 92, many precious coastal resources are now being destroyed through overuse and inadequate recreational planning.

Half Moon Bay Coastside Foundation



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

Sierra Club believes it is unnecessary to urbanize the mid-coast side of the San Mateo County because county reports indicate that expanding population can easily be accommodated in already existing communities well provided with community services. It is unnecessary to sacrifice a priceless scenic, esthetic, regional, recreational resource to create a new community. This coast is vitally important to the quality of life to more than two and a half million people who live in San Francisco, San Mateo and Santa Clara Counties, as well as to the thousands of visitors who live in the central valley. Increasingly working people cannot afford long trips to Sierras for recreation, as the price of gasoline increases, the use of the coast for recreation will increase. The value of having agricultural and scenic resources close to home will become increasingly appreciated. Even today the peace, space and quiet and the spectacular vistas along the coast bring people relaxation. For fisherman, surfers and beachcombers the coast today brings a great deal of happiness.

According to San Mateo County Planning Department, even with existing access roads limited to two lanes, the coastal population can increase 5,800 to 15,500 people. ABAG has recommended, in its coastal plan, that growth on the mid-coast side be limited by limiting road access as well as the water and sewer systems. If the number of lanes of either route 1 or Highway 92 are increased to four lanes the population could reach 45,000. With this number of people living on the coast, with their accompanying automobile and truck traffic, the fragile and ecologically precious south coastside would be threatened.

The Sierra Club believes that the mid-coast side should be kept as a low density buffer zone between the highly populated counties of San Mateo and San Francisco, and the fragile, precious south coast side with its seals, murries, herons, ducks, coastal dunes, marshes, estuaries, etc. In the past 10 to 15 years increased automobile traffic on the south coast has destroyed many acres of coastal vegetation. All along Pescadero where there were once thick plant vegetation, there is now yellow rock. Many other places too have been seriously affected and could easily be listed.

In Yosemite Valley the National Park Service has come to realize that it must substitute public transportation for unlimited automobile access and mobility. Anyone in California who has known Laguna Beach or La Jolla in the past knows that the recreational resources and natural beauties of the area have been destroyed by urbanization.

The Sierra Club would be happy to work with the division of transportation of the department of public works in planning alternatives to the proposed freeway which would be least damaging to the coastal resources but would still provide public access in a regulated way, and which we believe could maintain the quality of the coastal experience for future generations. We should transmit this resource undiminished to our children and to our grandchildren so that they may enjoy the experience that has meant so much to us.

COASTSIDE PROTECTION INITIATIVE OF 1994

We, the undersigned, request that this initiative be enacted by the Board of Supervisors or submitted to the voters of San Mateo County in accordance with Section 3711 of the California Election Code.

The people of the County of San Mateo ordain as follows:

Section 1. Purposes of This Measure

- (1) **Protection of Natural Resources.** To protect the farmlands, forests, waters, beaches, outstanding scenic beauty, and other natural resources of the San Mateo Coastside from destruction and harm by excessive and badly located development;
- (2) **Preservation of Environment.** To preserve watersheds, environmentally sensitive areas, and wildlife and wildlife habitats;
- (3) **Local Economic Opportunities.** To sustain agriculture, forestry and outdoor recreational uses on the Coastside, with resulting local economic and employment opportunities;
- (4) **Reduction of Government Expenditures.** To reduce costs to San Mateo County taxpayers of roads, law enforcement, fire protection, and other government services for scattered and remote development;
- (5) **Prevention of Excessive Development.** To limit development on subsize parcels to avoid congestion, overload on public facilities, and hazards to public safety and health;
- (6) **Voter Control.** To maintain the County's Local Coastal Program by requiring that any impairment of essential safeguards be approved by the voters of the County;
- (7) **Protection of Entire Coastside.** To extend key protections of the Local Coastal Program to the entire Coastside, in particular the Skyline Area;
- (8) **Conservation of Natural Heritage.** Generally, to conserve the natural heritage and beauty and the remarkable diversity of San Mateo County, for future as well as current generations, yet allow reasonable use of the land.

Section 2. Findings

- (1) **Importance of San Mateo Coastside.** The Coastside of San Mateo County, including the Skyline, is a valuable and beautiful area. Its fields, forests, hillsides, streams, and scenic vistas contribute greatly to the quality of the environment and life in the County. They provide a peaceful rural contrast to the County's heavily built-up urban areas, and supply habitat for a large variety of wild plants and animals.
- (2) **Endangered Coastal Resources.** Coastside farmland, forests and open space are scarce resources. Water is in particularly short supply; demand now exceeds the reliable flow in several watersheds. These vital resources are jeopardized by urban sprawl and scattered, inappropriate development. Protection of natural resources and farming are the highest priorities of the California Coastal Act and the County Local Coastal Program.
- (3) **Development Threats.** Pressures for extensive development on the Coastside are severe, especially with the proposed construction of increased water supplies, additional sewage treatment facilities, and larger highways. Development on remote and rugged rural lands is often difficult and costly, including to the public. It is frequently beset with unsafe roads, soil instability and fire hazard.
- (4) **Protection of Agriculture.** Farming is the second largest industry in the County. It needs to be protected from displacement or substantial interference by commercial, residential, or other development. Tourism and outdoor recreation, significant Coastside economic activities, depend upon the preservation of natural qualities and scenic beauty.
- (5) **Subsize Parcels.** There are many parcels on the Coastside which are less than the minimum parcel size in the zoning district in which they are located. Excessive building on subsize parcels overloads infrastructure, creates congestion and safety hazards, interferes with light, air and ocean views, and reduces property values.
- (6) **Maintenance of Coastal Protection Safeguards.** The County adopted a Local Coastal Program to protect coastal resources, after many studies and extensive public participation. In 1986, the voters enacted the Coastal Protection Initiative to provide more certainty and permanence to this Program. Shortcomings have appeared, however, in the Program, as administered by the County Government. Because of the importance of the Coastside, it is necessary therefore to strengthen and make more specific Program safeguards.

NOTICE OF INTENTION TO CIRCULATE PETITION

Notice is hereby given by the persons whose names appear below of their intention to circulate a petition within the County of San Mateo for the purpose of protecting the San Mateo County Coastside and Skyline Areas. A statement of the reasons for the proposed action contemplated in the petition is as follows:

The purpose of this initiative is to strengthen and make more specific policies protecting the San Mateo County Coastside, to extend key Coastal protections to the Skyline Area, to reduce hazards to residents from fire, flooding, and other natural disasters, and to give voters a voice in decisions affecting the San Mateo County Coastside.

Proponents: S/S Lennie Roberts, Chair, Save Our Coast
339 La Cuesta
Portola Valley, CA 94028

S/S Mary Hobbs, Co-Chair, Coast Committee, Sierra Club
881 Linda Vista
Moss Beach, CA 94038



GREEN FOOTNOTES

COMMITTEE FOR GREEN FOOTHILLS



© Robert Bueltman, courtesy of POST

POST was able to purchase these coastal fields and this stunning skyline ridge thanks to the Committee's perseverance, and decades of work to prevent development.

Rancho Corral de Tierra — A treasure protected at last!

BY LENNIE ROBERTS

Perseverance is one of the Committee for Green Foothills' watchwords. For nearly 40 years, we have stuck tenaciously to our mission of protecting the scenic natural landscapes of the Peninsula and Coastsides.

Our tenacity paid off recently in the announcement by Peninsula Open Space Trust of the acquisition of the Rancho Corral de Tierra property — 4,262 acres of bucolic coastal terrace farm fields, chaparral

clad foothills, and the dramatic skyline ridge behind Montara and Moss Beach.

Just 30 years ago, Deane and Deane (Westinghouse) owned some 8,000 acres around the City of Half Moon Bay and the Midcoast area, including the Corral de Tierra properties. They planned to develop these areas with homes, condos, shopping centers, hotels, and golf courses. The Devil's Slide Bypass Freeway was scheduled to be built to accommodate all this sprawling growth.

Enter the Committee for Green Foothills! Our small but effective organization joined the fray on many fronts. We rallied citizens to support State Senator Arlen Gregorio's bill, SB 1099, to acquire Montara State Beach, thwarting Deane and Deane's plans for the beach to become the private preserve for a Del Monte-style 400 unit lodge, plus some 1,600 units of condos and apartments surrounding a golf course. "Will North Montara Beach soon become a State Park...or will it be sacrificed to benefit private developers?" queried a 1972 CGF flyer urging members to write the State Senate to support SB 1099.

The bill passed and today, visitors enjoy

See TIERRA, page 9

Green Feet profile: Meet Mike Kahn

BY KATHY SWITKY

He's becoming known throughout the Peninsula both for his wonderful photographs and for being the creative and technical force behind several interesting media projects. He is photographer, webmaster, and environmentalist Michael Kahn, and Committee for Green Foothills is lucky to benefit from his hard work on our website and photo collection.

Mike came to us after a long journey that wound up changing the direction of his career. After working two years with Environmental Volunteers (just downstairs from the CGF office), Mike got the itch to travel.

An enthusiastic bicyclist, Mike spent last summer on a 105-day bike ride that took him the 5,135 miles from his hometown of Palo Alto to Bar Harbor, Maine. Mike equipped his bike with camping gear, a digital camera, and a solar-powered laptop, and used the trip to reach out to environmental organizations across the nation. People across the nation followed his "Coast to Coast Discovery Ride" via his ride website, <http://www.EVols.org/discover.htm>.

After taking more than 2,000 photos on his journey, Mike became an even more enthusiastic and skilled photographer. On his return, he was committed to sharing his web and photography skills with the environmental community.

This led to a number of consulting projects, including one to design and manage an interim website for Committee for Green Foothills. Mike's site has helped us get the word out about our advocacy projects while we await the launch of our new site (coming soon). In addition, his photographs of the foothills, Coyote Valley, and other threatened open space have become integral parts of CGF's publications and education work.

Michael's "portfolio career" includes a number of interesting community-building projects. He coordinates NeighborSpace, a website that builds local community through online conversation. He's the volunteer Executive Producer for the Peninsula's environmental talk show, Common Ground (in which CGF also participates). And he shoots and edits digital video for Community Journal, a news project of local cable channel MPAC.

"I'm so glad to be doing work that



Mike Kahn

Mike celebrates after biking 5,135 miles from Palo Alto to Bar Harbor, Maine.

feeds my heart. It's a pleasure to help bring attention to local environmental and community issues via the media. Ads aren't the only things people should be seeing on TV and online," Mike says with a ready grin.

Appreciative? Inspired? We sure are. Committee for Green Foothills is proud to have Mike on our team, and thanks him for all his good work on behalf of the environmental community. **CGF**

TIERRA, continued from page 1

this spectacular beach due to public pressure overcoming a powerful development lobby. Deane and Deane argued that if the State purchased the property, the site would be paved over for a 1,000-car parking lot.

Now, after thirty years, the northern portion of the Corral de Tierra property completes the protection of the watershed of Martini Creek and the agricultural fields of Ocean View Farms located just east of Highway One at Montara State Beach.

A critical component of Deane and Deane's development plans was the notorious Devil's Slide Freeway Bypass project. Caltrans, working closely with the landowners and local Chambers of Commerce, designed the ultimate "access" project — seven miles of freeway that would have destroyed the quiet communities of Montara and Moss Beach, in addition to devastating Montara Mountain and despoil-

ing seven separate watersheds.

In 1972, Committee for Green Foothills and other environmental groups went to court and won an early key decision that highway projects came under the National Environmental Policy Act (NEPA) and were required to file Environmental Impact Statements (EIS). The outcome of this legal and political battle is the Devil's Slide Tunnel, which is close to becoming a reality.

By the late 1970's, Deane and Deane had sold their land holdings to Half Moon Bay Properties, who objected bitterly to the County's designation of their lands in the Local Coastal Program as agriculture or open space. Half Moon Bay Properties' lawyers wrote to the Board of Supervisors, "The only effect (of the proposed zoning) will be to artificially depress land values and maintain open space at the expense of private landowners." The County went forward with very low density zoning on the rural lands, but that bold stroke didn't deter

new attempts at development.

Over the years, CGF has had to weigh in against various proposals on Rancho Corral de Tierra. In 1986, when an environmentally hostile Board of Supervisors was ready to unravel the Local Coastal Plan (LCP) protections of rural areas such as these parcels, CGF sponsored a countywide initiative to make any weakening amendments to the LCP subject to a vote of the citizens. However, despite the resounding success of Measure A, in accordance with State law, annexation of land to Half Moon Bay would not be subject to voter approval.

Today, with this critical acquisition, much of the rural side of the urban/rural boundary around Half Moon Bay is permanently protected, not just through zoning and voter control, but by acquisition. Without CGF, the land would not have been in its natural state today, but without POST, who knows what the future could hold? **CGF**

1.0 INTRODUCTION

1.1 HISTORY

The 1986 Devil's Slide Final Environmental Impact Statement (FEIS) included a section on History which included a chronology of events and activities related to attempts at resolving the problems at Devil's Slide from 1951 to February 1986. Refer to the 1986 FEIS (pp. 15-25) for the prior history and specific chronological events for that period.

The following is a more general history of the Devil's Slide project in a narrative format and for the period of late 1983 to the present.

Caltrans and the Federal Highway Administration (FHWA) circulated a draft Environmental Impact Statement (EIS) in December 1983, for a proposal to improve State Route 1 in San Mateo County, California. The project study limits of alternatives considered in the document extended from Half Moon Bay Airport, between Moss Beach and El Granada, on the south to Linda Mar Boulevard in Pacifica on the north, a distance of approximately 11.3 km (7 miles). As part of the public review process, Caltrans conducted a public hearing on the draft EIS on January 12, 1984.

The San Mateo County Planning Commission and the City of Pacifica each also held a public hearing on the draft EIS during the following weeks. In late January and early February 1984, the San Mateo County Planning Commission, the City of Pacifica, and the City of Half Moon Bay each selected a different alternative as their "preferred" alternative. The San Mateo County Board of Supervisors held a public hearing on the draft EIS on February 14, 1984 in Half Moon Bay and selected their preferred alternative on March 6, 1984. The County Board of Supervisors in April 1984 rescinded their previous action regarding their preferred alternative and approved the concept of an inland bypass with the alignment and design option to be identified after Caltrans submittal of the Final Environmental Impact Report (EIR) to the Board.

On January 3, 1985, a Final EIR was certified by Caltrans and distributed on January 16, 1985. The "adopted alignment", a 6.8 mile route between Half Moon Bay airport and Linda Mar Boulevard in Pacifica, was identified as the preferred alternative. This was followed by multiple reviews and public hearings conducted by the San Mateo County Board of Supervisors and the California Coastal Commission regarding the various project alternatives and whether they were consistent with the certified Local Coastal Program (LCP) and the Coastal Act. Additional public hearings regarding amendments to the LCP were conducted and several attempts to certify these amendments failed when the Commission's action resulted in tie votes.

On October 8, 1985, Caltrans announced to the Board of Supervisors that the preferred alternative would be modified to what was to be referred to as the Martini Creek Alignment. A Supplemental Environmental Impact Report (SEIR) which discussed this modified Martini Creek Alignment Alternative was distributed on November 15, 1985.

The City of Pacifica on December 9, 1985 and the San Mateo County Board of Supervisors on December 12, 1985 each held a public hearing on the draft-SEIR. The California Coastal Commission on February 11, 1986 determined that the Preferred Alternative known as the Martini Creek Alignment alternative was consistent with the Coastal Zone Management Program.

The final EIS (FEIS) was approved by FHWA on April 16, 1986. The Martini Creek Alignment alternative was selected by FHWA for project construction in the Record of Decision (ROD) on May 30, 1986.

Litigation regarding the project was commenced in U.S. District Court in the Northern District of California in June 1986 (Sierra Club, et al. v. United States Department of Transportation, et al., Civ. No. 86-3384 DLJ). The project has been enjoined since September 1986, prior to the commencement of any construction. Ultimately, the District Court found that the 1986 FEIS was inadequate only in its discussion and analysis of noise impacts and required a re-analysis of those impacts, as set forth in the Court's Orders of April 3, 1989, and April 2, 1990. Thereafter, in March 1995, FHWA and Caltrans prepared a draft supplemental EIS/R (SEIS/R) for the purpose of addressing the noise impact analysis deficiencies of the 1986 FEIS, as determined in the litigation.

Public comments on the 1995 SEIS/R called for consideration of a tunnel alternative, and the August 10, 1995 Record of Decision for the Devil's Slide Project included a commitment by the FHWA to address the issue of a tunnel alternative in the reevaluation of the 1986 FEIS. A tunnel alternative had been considered earlier in the project development process, but had been withdrawn from active consideration prior to the issuance of the 1983 draft EIS. The reevaluation was to be undertaken since major steps to advance the project had not occurred within three years after the approval of the FEIS (23 C.F.R. Sec. 771.129(b)).

In 1996, in response to requests from local agencies and the public, Caltrans hired an independent consulting firm to conduct a tunnel feasibility study. Based upon the results of "The Devil's Slide Tunnel Study" (Woodward-Clyde Consultants, 1996), and the updated cost estimates for the revised Martini Creek alignment alternative (now \$112 million), FHWA and Caltrans determined that a tunnel alternative is, in fact, a reasonable alternative for the proposed project that should be fully evaluated in the environmental process. Therefore, Caltrans and FHWA determined that a new supplement to the 1986 FEIS was necessary in order to provide new information relevant to the tunnel alternative. Based on the decision to supplement and update the 1986 FEIS, a separate reevaluation of the 1986 FEIS was no longer necessary.

In addition, on November 5, 1996, the voters of San Mateo County passed the Devil's Slide Tunnel Initiative known as Measure T. Passage of the Measure initiated the process to amend the County's land use plan portion of the San Mateo County certified LCP to provide a tunnel for motorized vehicles only behind Devil's Slide through San Pedro Mountain as the preferred alternative for Highway 1 around Devil's Slide, and to delete references to a two-lane highway bypass along the Martini Creek alignment. The Initiative requires that the tunnel be designed consistent with restricting Route 1 to a two-lane scenic highway using minimum state and federal tunnel standards, and that a separate trail for pedestrians and bicycles be provided outside the tunnel. The Measure also requires voter approval of any other alternative to the tunnel, except repair of the existing highway. On January 9, 1997, the California Coastal Commission voted to certify the LCP amendment as submitted by the County.

1.2 CURRENT STATUS

This second supplemental Environmental Impact Statement/Report (SEIS/R) supplements the 1986 FEIS and the 1985 FEIR. With the exception of background information provided for clarity, this document and the 1995 Final SEIS contain that information necessary to make the 1986 FEIS adequate for the project, in terms of providing necessary information to the public, interested entities, and decision makers.

As set forth in Part 771 of Title 23 of the Code of Federal Regulations regarding Environmental Impact and Related Procedures:

§ 771.130. Supplemental environmental impact statements:

(a) A draft EIS, final EIS, or supplemental EIS may be supplemented at any time. An EIS shall be supplemented whenever the Administration determines that:

- (1) Changes to the proposed action would result in significant environmental impacts that were not evaluated in the EIS; or*
- (2) New information or circumstances relevant to environmental concerns and bearing on the proposed action or its impacts would result in significant environmental impacts not evaluated in the EIS.*

As stated in Section 15163(c) of the California Environmental Quality Act (CEQA) guidelines:

(a) The Lead or Responsible Agency may choose to prepare a supplement to an EIR rather than a subsequent EIR if:

- (1) Any of the conditions described in Section 15162 would require the preparation of a subsequent EIR, and*
- (2) Only minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation.*

TABLE S-1: Summary of Impacts

IMPACT CATEGORY	ALTERNATIVE		
	Tunnel	Martini Creek Alignment	No-Build
AESTHETICS	Visual contrast at portal areas, and bridge.	Severe visual scars from cuts and fills. Revegetation will not fully mitigate.	Vehicles and roadway visible from Park and surrounding area.
AIR QUALITY	No impact	No impact	No impact
CONSISTENCY WITH LOCAL, REGIONAL AND STATE PLANS	Consistent with County LCP. Certified by CA Coastal Commission. Consistent with the current draft RTP. Not fully funded.	Not in conformity with County LCP. Voter approval required to reverse existing Program. Not consistent with the current draft RTP. Not fully funded.	No non-conformity or funding issues.
CONSTRUCTION	short term dust, run-off and siltation impacts.	short term dust, run-off and siltation impacts.	Run-off and siltation impacts and repair periods.
CULTURAL RESOURCES	No Impact	No Impact	No Impact
FARMLANDS	No Impact	Take of 4.2 ha (10.4 acres) of farmland.	No impact
FOG	Some visibility reduction at portal areas from June to September.	Visibility reduced at higher elevations from June to September.	Some visibility reduction from June to September.
GEOLOGY/SEISMOLOGY	Minor deformations and architectural damage during major seismic event.	Roadbed stable with some rockfalls/rockslides during major seismic event.	Potential permanent road closure risk during major seismic event and/or landslide.
GROWTH INDUCEMENT	No growth inducement impacts.	No growth inducement impacts.	No growth inducement impacts.
HYDROLOGY	No significant floodplain encroachment or risk.	No significant floodplain encroachment or risk.	No significant floodplain encroachment or risk.
NATURAL ENVIRONMENT	Temporary construction effects to peregrine falcon nesting activity and <u>red-legged frog</u> - mitigated by hacking program (falcon) and avoidance measures.	Takes 1.41 ha (3.5 acres) of riparian habitat. Reduces home range for large mammals; creates migration barriers. Impacts to red-legged frog habitat.	No impact
NOISE	No noise receptors to be affected	Adverse impacts in Park and proposed campgrounds. Some construction impacts from blasting.	Existing alignment generates more noise impacts along beach portion of Park.
PARKLAND	No Impacts	No Impacts (based on previous joint planning efforts)	No impacts.
SOCIOECONOMIC	Permanent acquisition of 74 acres required.	52.6 ha (130 acres) to be acquired. Some relocation of ranch property at south end.	Continuous closures from slides will adversely affect businesses and residents south of Devil's Slide
TRAFFIC	No impacts.	No impacts.	Adverse impacts expected due to continual roadway failings.
WATER QUALITY	Runoff/Sedimentation impacts expected during construction.	Runoff/Sedimentation impacts expected during construction.	No Impacts.

AVOIDANCE →

EXHIBIT A

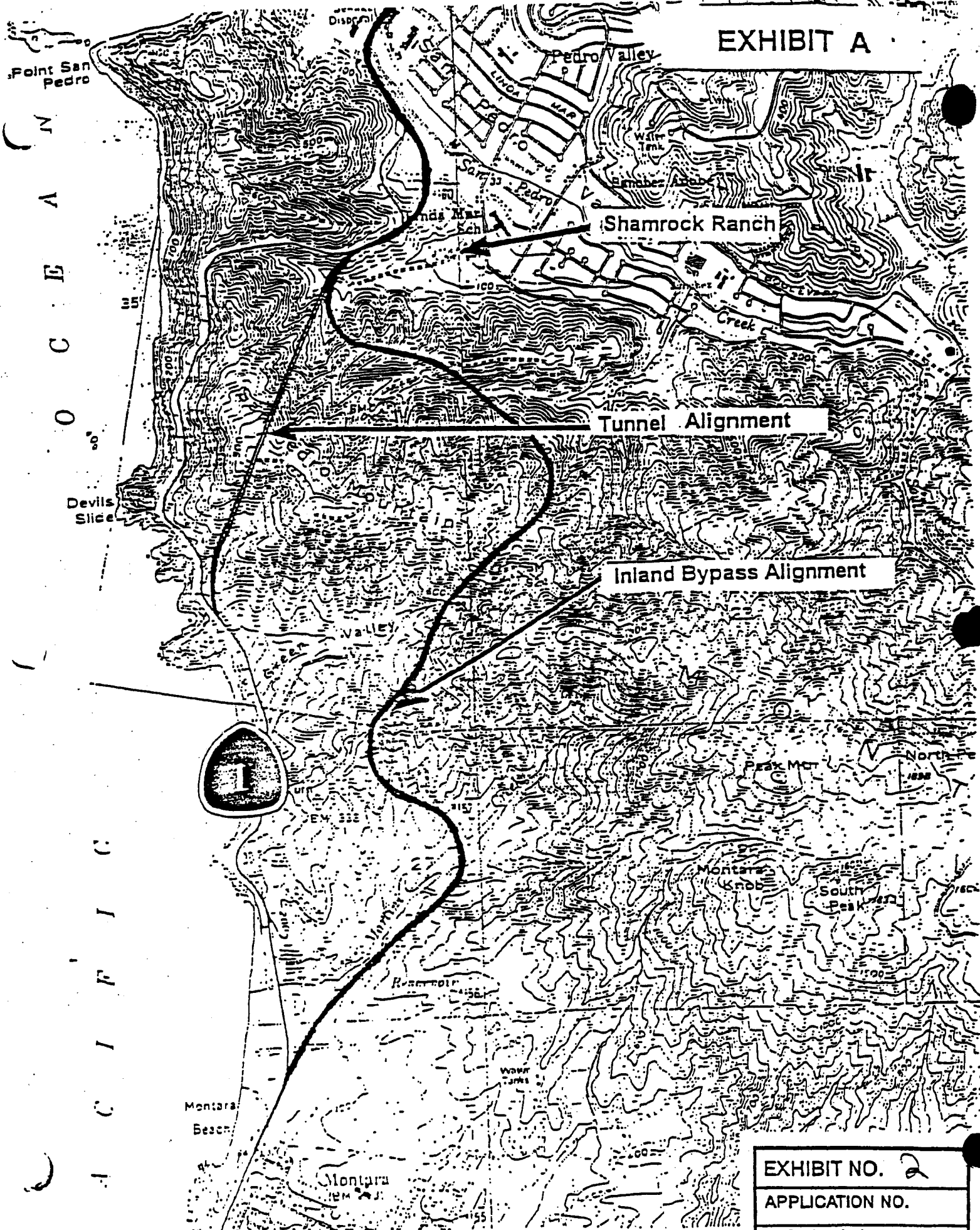


EXHIBIT NO. 2

APPLICATION NO.

CC-94-00

04-SM-
4243-1



Dear Sierra Club Member,

For over 100 years, the Sierra Club has led the fight to acquire and protect parklands, open space and irreplaceable natural scenic areas. Nowhere is this battle more urgent today than right here on the San Mateo County coastside. We are writing to ask for your help to pass Measure T, the Devil's Slide Tunnel Initiative, which is on the November 5, 1996 ballot.

If passed, Measure T will authorize construction of a tunnel (rather than a 4.5 mile long freeway bypass) along Highway 1 at Devil's Slide on the San Mateo County coast.

The tunnel at Devil's Slide is a superior solution for the following reasons:

- The tunnel will have virtually no negative environmental impact. It will avoid crossing landslide-prone mountainous terrain, filling of wetlands, and damage to steelhead spawning streams, habitats of endangered species, and the marine sanctuary.
- The tunnel will be a much safer solution than the bypass both in terms of seismic stability and because it avoids the dangers of steep 6.5% grades, curves, and fog at the summit.
- The tunnel will avoid destruction of McNee Ranch State Park whereas the bypass would destroy scenic trails, severely affecting hiking, biking, and riding activities enjoyed by many park users today. The excessive noise of the bypass would force State Parks to abandon plans for campgrounds in the park.
- The tunnel solution is overwhelmingly supported by all major environmental groups, and coastside and bayside communities alike.

We need your help to win the campaign to pass Measure T in November. Our most pressing need right now is for financial contributions to Yes on T. Although much of the campaign will be done by volunteers, some efforts, such as brochures and mailing, require cash funding. We must reach every registered voter household throughout the County with our message. Your financial assistance is vital. The opponents of Measure T will spend a large amount of money, reputedly upward of \$500,000. They plan to confuse voters with a well-financed and deceptive campaign.

Your help is also needed to walk a precinct, make telephone calls, send "Dear Friend" cards, or display a yard sign. Please check off the areas on the enclosed return envelope where you can help.

Won't you please make as large a contribution as you feel you reasonably can to protect this wonderful, unspoiled area of our coast. Its parklands, rugged mountains and wildlife habitat are essential for all of us today, and for future generations to enjoy.

Checks should be made out to SOC/CATS. We thank you for your help in preserving our beautiful coast and parks.

Ollie Mayer

Ollie Mayer, Chair, Sierra Club
Devil's Slide Campaign

Mary Hobbs

Mary Hobbs, Co-Chair
Coastside 2000 Committee
Sierra Club

D. Lynn Britt

Chris Thollaug

Chris Thollaug, Sierra Club
Devil's Slide Campaign

Tim Duff

Tim Duff, Co-Chair
Coastside 2000 Committee
Sierra Club

Martin Letton

DEVIL'S SLIDE TUNNEL INITIATIVE

Attachment

MEASURE T

"Shall the initiative ordinance changing the San Mateo County Local Coastal Program to substitute a tunnel alternative at Devil's Slide in place of a bypass on Route 1 be adopted?"

(TEXT)

We, the undersigned, request that this initiative measure be enacted by the Board of Supervisors or submitted to the voters of San Mateo County in accordance with Section 9118 of the California Elections Code.

The people of the County of San Mateo ordain as follows:

Section 1. Purposes of This Measure

(1) Authorization of Tunnel: To provide for a safe, stable, and reliable tunnel behind Devil's Slide that expeditiously solves the problems of closure of State Highway Route 1.

(2) Prevention of Hazards: To protect highway users against dangers from landslides, rockfalls, cliff drop-offs, steep grades and coastal fog that often shrouds the higher elevations of the proposed Devil's Slide bypass.

(3) Protection of Quality of Life for Coastside Communities and Visitors: To protect residents, businesses, property owners and visitors to coastside communities and parklands from flooding, visual blight, noise, air pollution, and traffic congestion resulting from the proposed bypass.

(4) Preservation of the Environment: To preserve the streams, parks, watersheds, scenic beauty, endangered species, wildlife and other vital natural resources of the San Mateo Coastside.

(5) Voter Control: To ensure voter control over critical decisions affecting State Highway Route 1 and the San Mateo Coast.

Section 2. Findings

(1) A tunnel is a safe and reliable solution. A tunnel would include all applicable federal safety standards. Safety features would include ventilation, lighting, and appropriate signage or signaling systems. A tunnel would be safer during earthquakes than bridges and fills, which would be necessary along the proposed bypass.

(2) A tunnel is cost-effective. A tunnel could be built for less money than the proposed bypass. Earthwork would be reduced by as much as 95 percent, from six million to two hundred thousand cubic yards.

(3) A tunnel will protect the environment. A tunnel would have virtually no harmful effects upon the environment. It would be consistent with coastal laws. It would avoid the serious damage to the watersheds, wildlife habitats and parks of Montara and San Pedro Mountains that would be caused by a surface bypass.

(4) A tunnel is a timely solution. A tunnel can be constructed as quickly as the proposed surface bypass. It would meet transportation needs while protecting the environment.

Section 3. Route 1 Improvements

(1) Policy 2.50 b. of the San Mateo County Local Coastal Program is amended to read in its entirety:

2.50 b. On Route 1, limit Phase I improvements to: (1) slow vehicle lanes on uphill grades and the following operational and safety improvements within the existing alignment or lands immediately adjacent: elimination of sharp curves, lane widening, wider shoulders to allow passage for emergency vehicles and signals at major intersections, and (2) construction of a tunnel for motorized vehicles only behind Devil's Slide through San Pedro Mountain. The tunnel design shall be consistent with (a) Coastal Act limits restricting Route 1 to a two-lane scenic highway, and (b) minimum state and federal tunnel standards. A separate trail for pedestrians and bicycles shall be provided outside the tunnel as specified in Policy 2.56 a.

(2) Policy 2.54 b. of the Local Coastal Program is amended to read in its entirety:

2.54 b. For Route 1, allow construction of a tunnel behind Devil's Slide through San Pedro Mountain. The tunnel should be given

high priority for Federal and State highway funds. Until a tunnel is completed, the State should maintain and repair the road on the existing alignment. No part of Route 1 used by motor vehicles shall be built on any alignment that bisects Montara State Beach, including the "McNee Ranch Acquisition" except along the current Route 1 alignment. Any alternative to the tunnel, except the repair and reconstruction of the existing road, shall require approval by a majority of the voters of San Mateo County.

(3) Policy 2.56 a. of the Local Coastal Program is amended to read in its entirety:

2.56 a. Require, if funds are available, that Caltrans provide adjacent or separate facilities for bicycle and pedestrian trails in accordance with the policies of the Recreation and Visitor Serving Facilities Component and the County Bikeways Plan. If a tunnel is constructed behind Devil's Slide, require as part of the project that Caltrans construct a bicycle and pedestrian trail outside the tunnel.

Section 4. Inconsistent County Plans and Ordinances

Except as approved by the voters of San Mateo County subsequent to the effective date of this ordinance, if any existing or subsequently enacted provision of the General Plan, the Local Coastal Program, an area or special plan or other ordinance or resolution of the County of San Mateo, is inconsistent with this ordinance, that provision is superseded and rendered ineffective by this ordinance to the extent, but only to the extent, that it is inconsistent.

Section 5. Submission to Coastal Commission and Metropolitan Transportation Commission

The Board of Supervisors shall submit in a timely and appropriate manner, with necessary supporting documents and information, any amendments made by this ordinance of the Local Coastal Program to the California Coastal Commission, and any amendment of the Regional Transportation Plan to the Metropolitan Transportation Commission.

Section 6. Effective Date of Measure

This ordinance shall become effective as provided by statute except that if all the General Plan Amendments permitted by law during the year in which this ordinance is enacted have been made, the ordinance shall become effective on January 1 of the following year.

Section 7. Amendment

This ordinance shall not be repealed or amended except by a majority of the voters of San Mateo County.

Section 8. Severability

If any provision or application of this ordinance is held by the courts to be invalid, the invalidation shall not affect the validity of any other provision or the application of any provision.

INITIATIVE MEASURE AMENDING SAN MATEO LOCAL COASTAL PROGRAM TO ALLOW FOR CONSTRUCTION OF A TUNNEL ALTERNATIVE FOR THE DEVIL'S SLIDE BYPASS ON STATE ROUTE 1

Initiative measure proposing ordinance to amend the San Mateo County Local Coastal Program. Current regulatory policies of the Local Coastal Program allow construction of a two-lane bypass on State Highway 1 around Devil's Slide, with slow vehicle lanes on uphill grades, and designate the Martini Creek alignment as the preferred alignment for a bypass. This measure would substitute a tunnel alternative as the preferred alternative, and would prohibit any other alternative, except repair or reconstruction of the existing roadway, unless approved by a vote of the electorate. Specifically, this measure would amend existing Policy 2.50(b), which specifies limitations on Phase I improvements on State Route 1, to delete the reference to a two-lane bypass, and to provide instead for construction of a tunnel for

000024

EXHIBIT 1

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



Date: August 1, 2000

To: Honorable San Mateo County Board of Supervisors

From: Oscar Braun, Save Our Bay Foundation

Re: Devil's Slide, Credibility & November 2000 Ballot Measure

As environmentalists, we are proud of the higher standard we set for ourselves and others, especially landowners and public officials. But lately, too many of us are walking away from too many promises. Too many people can no longer take our word. The long-term consequences of people losing faith in us as environmentalists are devastating. It's almost as if telling the truth and living up to our word was nothing more than a tactic that we can use and discard, as convenient. Let's look at the Devil's Slide Bypass Project here in San Mateo County for the clearest example of how some environmental organizations have squandered their credibility with the public in pursuit of their special interest agendas.

Devil's Slide, located within one of the most seismically active regions of the United States, is an actively eroding ocean-facing cliff which is sliding into the sea. The operation of Route 1 has suffered from frequent closures caused by slip-outs and landslides. The California Department of Transportation pursued a solution to this for approximately 30 years. The purpose and need of the project is to provide a safe, dependable and stable State highway route that avoids the geologically unstable Devil's Slide area. The instability of Devil's Slide and the problems with the existing roadway, including landslides and rock falls through that area, remain the same today as set forth in the Final Environmental Impact Statement approved on April 16, 1986.

On April 9, 1986 the California Coastal Commission voted to grant Consistency Certification No. CC-45-85. "The Commission hereby concurs with the consistency certification made by the California Department of Transportation for the proposed project, finding that the project is consistent with the policies and objectives of the California Coastal Management Program. Where conflicts occur between one or more policies, the Commission must resolve such conflicts in a manner which is most protective of significant coastal resources (Section 30007.5). The Commission finds that the selection of the Martini Creek Alignment is the alternative most protective of coastal resources and least environmentally damaging. The Commission finds that the construction of the Martini Creek Alignment will assure the balanced utilization of coastal resources while meeting the social and economic needs of the people of the State. The Commission finds that the provisions of a safe and reliable Highway 1, for all the citizens of the State of California, sensitively designed and adequately mitigated, will enhance and protect for future generations the overall quality of the Coastal Zone."

Caltrans reviewed a number of other alternatives, but withdrew these alternatives from active consideration for various reasons. The other alternatives were Sierra Club's proposed Marine Disposal Alternative (MDA) Freeway Option, No Project Alternative, Modified LH Alignment, Widening Existing Highway 1 from Two to Four Lane, and a Tunnel Alternative. "This Tunnel Alternative would entail a tunnel through San Pedro Mountain, and was suggested by the Sierra Club in 1973. This alternative was withdrawn from active consideration because the tunnel would cost an estimated \$100 million. In addition, a tunnel would have to be two lanes in each direction to provide access for emergency vehicles in the event of an accident or stalled vehicles". Note: Scenic Highway 1 by State law can have only two lanes in rural areas in the coastal zone. Note: (Quotations from 1986 CCC Consistency Certification)

In 1986 the Sierra Club filed suit in U.S. District Court over the issue of deficiencies in the FIES with regards to "noise" and its environmental consequences and mitigation measures. "In March 1995, the Federal Highway Administration (FHWA), in cooperation with the California Departments of Transportation (Caltrans), issued a Draft Supplemental Environmental Impact Statement/Environmental Impact Report (SEIS). The Final Environmental Impact Statement (FEIS) was originally approved on April 16, 1986, for a proposal to improve State Route 1 in San Mateo County, California. The preferred

alternative, identified in the FEIS and selected in the FHWA Record of Decision signed on May 30, 1986, is known as the Martini Creek Alignment."

"As indicated in the Draft Supplement, the purpose of the document is to comply with the Order and subsequent Judgement of the U.S. District Court following litigation regarding the project. The Supplement is limited to addressing the deficiencies in the FEIS determined in the litigation, and therefore, only addresses noise issues. A tunnel alternative was considered and rejected as part of the CEQA/NEPA environmental review process in 1986. The U.S. District Court subsequently determined that the treatment of alternatives in the 1986 FEIS was proper. Although only noise-related issues were addressed in the 1995 Draft SEIS, comments were received indicating a tunnel alternative would avoid project noise impacts. This issue has been reviewed, and it is determined that the tunnel is not a reasonable alternative because of its inconsistency with current planning policies, the lack of funding, and various safety and cost issues." (Quotation from SEIS June 1995 Tunnel Investigation)

In the Spring of 1996, the Sierra Club proposed and asked the residents of San Mateo County to pass Measure T, the Devil's Side Tunnel Initiative which was placed on the November 5, 1996 ballot. They promised the electorate on the Measure T ballot that: "A tunnel (singular) will protect the environment. A tunnel would have virtually no harmful effects on the environment. It would be consistent with coastal laws. It would avoid serious damage to the watersheds, wildlife habitats and parks of Montara and San Pedro Mountain that would be caused by a surface bypass. A tunnel would be cost effective. A tunnel would be built for less money than the proposed by-pass. A tunnel is a safe and reliable solution. No dangerous bridges or fill for the Sierra Club two lane tunnel" Their campaign slogan was "Tunnel: Sooner, Safer, Cheaper! Measure T was passed by a wide margin by the voters. The County of San Mateo change their LCP selecting the "tunnel alternative". The California Coastal Commission certified the County's LCP revisions. The FHWA, in cooperation with Caltrans, issued a draft Second Supplemental Environmental Impact Statement/Environmental Impact Report (SEIS) in April of 1999 for public review and comment. The Tunnel alternative was compared for the third time with the CEQA/NEPA certified Martini Creek Alignment.

- By letter dated May 11, 1999, Paul Koenig, Director of Environmental Services for the County of San Mateo, advised Caltrans that the County could not find that the proposed tunnel design complies with the Local Coastal Program. Reason given was the filling of wetlands and destruction of sensitive habitat.
- San Mateo County Senior Planner/Biologist Roman Gankin conducted a field investigation of the nature of two wetland areas that were a point of concern with staff of the Coastal Commission, CalTrans and the County on July 30, 1999. In his letter to Paul Koenig dated August 11, 1999 Mr. Gankin concluded that the area of concern does contain "wetlands". Under the Coastal Act, wetlands are protected by specific limitations with respect to uses which may occur in the wetland and by the requirement that there be no feasible less environmentally damaging alternative to the filling of wetlands and where feasible mitigation measures have been provided to adverse environmental effect. Indeed, the Commission's guidelines provide that "of all the environmentally sensitive habitat areas mentioned specifically in the Coastal Act, wetlands and estuaries are afforded the most stringent protection."
- Safety: Tunnels have potential for catastrophic accidents with confined space of long tunnels and also have a higher actual rate of accidents within the local Bay Area tunnels than on comparable open air roadways. Tunnels are built only when there are no other alternatives.
- Two Lanes: The 1996 Sierra Club sponsored Tunnel alternative has two, mile long tunnels and two, thousand foot bridges with two lanes in each direction to provide emergency vehicle access. Currently the Coastal Act only allows total of two lanes on rural Scenic Hwy 1.
- Costs: The Tunnel 1999 projected costs exceeds \$180 million versus \$112 for the Martini Creek Alignment. The Tunnel annual maintenance is estimated \$2.26 million versus \$340,000 for the open air Martini Creek bypass.

In light of the County's response to the Second Supplemental Environmental Statement/Environmental Impact Report as well as the concerns expressed by the Coastal commission staff, Caltrans and the FHWA are not able to approve the Second Supplemental Environmental Statement/Environmental Impact Report or issue a new Record of Decision for the Tunnel alternative. A tunnel alternative was considered and

rejected as part of the CEQA/NEPA environmental review process in 1986. The Coastal Commission found that the selection of the Martini Creek Alignment was the alternative most protective of coastal resources and least environmentally damaging. The U.S. District Court subsequently determined that the treatment of alternatives in the 1986 FEIS was proper. The Tunnel alternative has been reviewed a third time by the County of San Mateo, the Coastal Commission, Caltrans and the FHWA and it is determined that the tunnel is not a reasonable alternative because it is not the most protective of coastal resources, it is inconsistent with current Local Coastal Program policies, various safety and cost issues.

Resolution: The Half Moon Bay Coastside Foundation (dba Save Our Bay) request the Board of Supervisors, County of San Mateo, State of California to co-sponsor and adopt a resolution approving submission of a measure to the electorate to amend policy of the land use plan of the Local Coastal Program relating to the construction of the Martini Creek Alignment alternative for the Devil's Slide Bypass on State Route 1.

Purpose of This Measure: The purpose of this measure is to provide the citizens of California a permanent solution to the Devil's Slide Route 1 Bypass that complies with the NEPA/CEQA and Coastal Act environmental review process, Record of Decision and qualifies for Federal funding.

Findings: On April 9, 1986 the California Coastal Commission voted to grant Consistency Certification No. CC-45-85. "The Commission hereby concurs with the consistency certification made by the California Department of Transportation for the proposed project, finding that the project is consistent with the policies and objectives of the California Coastal Management Program. Where conflicts occur between one or more policies, the Commission must resolve such conflicts in a manner which is most protective of significant coastal resources (Section 30007.5) The Commission finds that the selection of the Martini Creek Alignment is the alternative most protective of coastal resources and least environmentally damaging. The Commission finds that the construction of the Martini Creek Alignment will assure the balanced utilization of coastal resources while meeting the social and economic needs of the people of the State. The Commission finds that the provisions of a safe and reliable Highway 1, for all the citizens of the State of California, sensitively designed and adequately mitigated, will enhance and protect for future generations the overall quality of the Coastal Zone."

The goal of the Measure T's proponents was never to build a tunnel; they simply wanted to stop the Martini Creek bypass and maintain limited access to the coast. The Tunnel Initiative has proved to be a fiasco. San Mateo County cannot afford an environmental movement that cannot be trusted. Think of all the work left to do: The endangered species protection; smart growth to prevent urban sprawl and the preservation of wetlands and other sensitive habitats. If environmentalist cannot be trusted at the table, then soon we will no longer be invited. And that would be a tragedy, not just for environmentalists, but the environment itself. Much as we would work to protect our environment, so we must protect our honor. Or neither will survive.

CC

Honorable Grey Davis, Governor, State of California
Edwin Pang, California Department of Transportation
Ging P. Bill Wong, U.S. Department of Transportation
Peter Douglas, California Coastal Commission
San Mateo County Board of Supervisors
Sierra Club Tunnel Task Force
City of Half Moon Bay
City of Pacifica
Released to Media

RICHARD GORDON

Board of Supervisors
County of San Mateo

August 8, 2000

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

Dear Oscar,

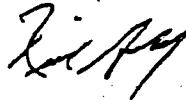
Your August 1st request for the Board of Supervisors to co-sponsor a ballot measure in support of a bypass for Devil's Slide, is inconsistent with Board of Supervisors policy, the voters of San Mateo County, and the adopted local coastal program.

Your memo contains false information and misstatements of fact. Most importantly, it also fails to include significant information.

The Devil's Slide tunnel project, as approved by the voters of San Mateo County, is moving forward. We fully expect a record of decision from Federal Highways later this fall. That will lead to design contracting and construction.

As is usual with a project of this magnitude, the progress is not as swift as we would like. Progress, however, is being made and if you support an alternative to the current Highway 1 route at Devil's Slide I am sure that you will applaud the next steps that CalTrans and San Mateo County will take to bring this project on line.

Sincerely,



Richard Gordon



County Government Center
401 Marshall Street
Redwood City, CA 94063

Direct (650) 363-4569
Coastside (650) 573-2222
Fax (650) 599-1027

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



August 10, 2000

To: Honorable Richard Gordon & Board of Supervisors County of San Mateo
From: Oscar Braun, Half Moon Bay Coastside Foundation (dba Save Our Bay)
Re: Your Letter of August 8, 2000

Dear Supervisor Gordon,

As you know, the Save Our Bay Foundation is a non profit publicly supported charity. The mission of the Foundation is marine and watershed conservation within the boundaries of the Monterey Bay National Marine Sanctuary. Our letter of August 1st clearly states the purpose of the proposed ballot measure.

- **Purpose of This Measure:** The purpose of this measure is to provide the citizens of California a permanent solution to the Devil's Slide Route 1 Bypass that complies with the NEPA/CEQA and Coastal Act environmental review process, Record of Decision and qualifies for Federal funding.

You state in your letter, "Your memo contains false information and misstatements of facts. Most importantly, it also fails to include significant information." Other than the opening and closing paragraphs regarding credibility and honor, the entire body content of the Foundation's letter was drawn from published public and court documents exclusively dealing with the NEPA/CEQA and Coastal Act environmental review process for the Devil's Slide project. The Foundation respectfully requests that you provide them with documentation of "any" false information and misstatements contained in our letter. Further, please include "all" significant information that you claim we failed to disclose in our letter. The Foundation believes that if we are to maintain our credibility and the public trust, we must be beyond reproach. The Foundation would appreciate your cooperation in providing us the documents supporting your assertion of false and misstatement of facts by August 15th. Let's set the record straight.

Your letter further states "We fully expect a record of decision from Federal Highways later this fall." What information has the FHWA provided the Tunnel Task Force that has given you this expectation? Could you please provide us with documentation supporting your expectations? What Findings stated below are false or inaccurate?

Findings: In light of the County's response to the Second Supplemental Environmental Statement/Environmental Impact Report as well as the concerns expressed by the Coastal commission staff, Caltrans and the FHWA are not able to approve the Second Supplemental Environmental Statement/Environmental Impact Report or issue a new Record of Decision for the Tunnel alternative. A tunnel alternative was considered and rejected as part of the CEQA/NEPA environmental review process in 1986. The Coastal Commission found that the selection of the Martini Creek Alignment was the alternative most protective of coastal resources and least environmentally damaging. The U.S. District Court subsequently determined that the treatment of alternatives in the 1986 FEIS was proper. The Tunnel alternative has been reviewed a third time by the County of San Mateo, the Coastal Commission, Caltrans and the FHWA and it is determined that the tunnel is not a reasonable alternative because it is not the most protective of coastal resources, it is inconsistent with current Local Coastal Program policies, various safety and cost issues.

The Foundation applauds this Board of Supervisors, the Coastal Commission, Caltrans and the FHWA for performing their due diligence on behalf of our local citizens by providing their best efforts to serve the needs of all Californians, protect our precious coastal resources and support our coastal communities need for safe and dependable roadways. It's now time for the electorate to make their final decision.

Sincerely,

A handwritten signature in dark ink, appearing to read "Oscar Braun". The signature is fluid and cursive, with a long, sweeping underline.

Oscar Braun, Executive Director

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



HALF MOON BAY REVIEW • Wednesday, Aug. 16, 2000 • 9A

Gordon responds to fax from Braun

By JANET ZICH
Half Moon Bay Review

Normally mild-mannered San Mateo County Supervisor Rich Gordon had obviously reached his limit.

Responding last week to a fax from Oscar Braun, executive director of Save Our Bay (SOB), Gordon told Braun in no uncertain terms: "Your August 1 request for the Board of Supervisors to cosponsor a ballot measure in support of a bypass for Devil's Slide is inconsistent with Board of Supervisors policy, the voters of San Mateo County and the adopted local coastal program."

SOB had asked the supervisors to reconsider the Martini Creek bypass, the same bypass that was soundly defeated by San Mateo County voters in 1996 in favor of a tunnel.

Retreating even further into the past, Braun quoted the 1986 California Coastal Commission finding that of all the proposals for a Devil's Slide solution, "the Martini Creek Alignment is the alternative most protective of coastal

resources and least environmentally damaging."

Braun and SOB neglected to mention that the three-mile Martini Creek bypass was considered "most protective" only when compared to the six-mile, Montara-bisecting alternative that would have exited across from the Half Moon Bay Airport.

A tunnel had not even been considered at that time.

"As environmentalists," Braun wrote, "we are proud of the higher standard we set for ourselves and others."

Replied Gordon: "Your memo contains false information and misstatements of fact." And, in the unkindest cut of all, Gordon wrote of the three-and-a-half page, single-space missive from SOB, "Most importantly, it also fails to include significant information."

Gordon concluded by noting that the tunnel project is "moving forward. We fully expect a record of decision from Federal Highways later this fall. That will lead to design contracting and construction."

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



August 24, 2000

To: Honorable Richard Gordon & San Mateo County Board of Supervisors
From: Oscar Braun, Half Moon Bay Coastside Foundation (dba Save Our Bay)
Re: Appeal of CDP Permit File # PLN 2000-00536
Location: Shamrock Ranch on Peralta Road
APN: 023-741-010
Project Planner: Mike Schaller

The Save Our Bay Foundation is appealing to the San Mateo County Board of Supervisors the above captioned Coastal Development Permit granted to Caltrans for the construction of a mitigation pond for transfer of endangered species red-legged frogs. The primary reasons for the appeal are:

- The Devil's Slide Tunnel project has not been granted a Record of Decision nor approval of the Second Supplemental Environmental Impact Study.
- The Coastal Act does not permit mitigation of sensitive habitats if their is a reasonable alternative to accomplish the basic goals of the development project....ie Martini Creek Alignment alternative.
- The voter approved LCP Tunnel Alternative has virtually no impact on the NEPA/CEQA and Coastal Act environmental review process or the FHWA Record of Decision.
- The public documents clearly state that the U.S. District Court and the California Coastal Commission found that the selection of the Martini Creek Alignment was the alternative most protective of coastal resources and least environmental damaging.
- In the Spring of 1996, the Sierra Club proposed and asked the residents of San Mateo County to pass Measure T, the Devil's Side Tunnel Initiative which was placed on the November 5, 1996 ballot. They promised the electorate on the Measure T ballot that: "A tunnel (singular) will protect the environment. A tunnel would have virtually no harmful effects on the environment. It would be consistent with coastal laws. It would avoid serious damage and preserve the streams, parks, watershed, scenic beauty, endangered species, wildlife and other vital natural resources of the San Mateo Coast. A tunnel would be cost effective. A tunnel would be built for less money than the proposed by-pass. A tunnel is a safe and reliable solution. No dangerous bridges or fill for the Sierra Club two lane tunnel" Their campaign slogan was "Tunnel: Sooner, Safer, Cheaper! Measure T was passed by a wide margin by the voters. The County of San Mateo change their LCP selecting the "tunnel alternative". The California Coastal Commission certified the County's LCP revisions. The FHWA, in cooperation with Caltrans, issued a draft Second Supplemental Environmental Impact Statement/Environmental Impact Report (SEIS) in April of 1999 for public review and comment. The Tunnel alternative was compared for the third time with the CEQA/NEPA certified Martini Creek Alignment.
- By letter dated May 11, 1999, Paul Koenig, Director of Environmental Services for the County of San Mateo, advised Caltrans that the County could not find that the proposed tunnel design complies with the Local Coastal Program. Reason given was the filling of wetlands and destruction of sensitive habitat.
- 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 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."
- San Mateo County Senior Planner/Biologist Roman Gankin conducted a field investigation of the nature of two wetland areas that were a point of concern with staff of the Coastal Commission, CalTrans and the County on July 30, 1999. In his letter to Paul Koenig dated August 11, 1999 Mr. Gankin concluded that the area of concern does contain "wetlands". Under the Coastal Act, wetlands

are protected by specific limitations with respect to uses which may occur in the wetland and by the requirement that there be no feasible less environmentally damaging alternative to the filling of wetlands and where feasible mitigation measures have been provided to adverse environmental effect. Indeed, the Commission's guidelines provide that "of all the environmentally sensitive habitat areas mentioned specifically in the Coastal Act, wetlands and estuaries are afforded the most stringent protection."

- Safety: Tunnels have potential for catastrophic accidents with confined space of long tunnels and also have a higher actual rate of accidents within the local Bay Area tunnels than on comparable open air roadways. Tunnels are built only when there are no other alternatives.
- Two Lanes: The 1996 Sierra Club sponsored Tunnel alternative has two, mile long tunnels and two, thousand foot bridges with two lanes in each direction to provide emergency vehicle access. Currently the Coastal Act only allows a total of two lanes on rural Scenic Hwy Route 1.
- Costs: The Tunnel 1999 projected costs exceeds \$180 million versus \$112 for the Martini Creek Alignment. The Tunnel annual maintenance is estimated \$2.26 million versus \$340,000 for the open air Martini Creek bypass.

In light of the County's written response regarding the Second Supplemental Environmental Statement/Environmental Impact Report as well as the concerns expressed by the Coastal commission staff, U.S. Fish & Wildlife Service, Caltrans and the FHWA are not able to approve the Second Supplemental Environmental Statement/Environmental Impact Report or issue a new Record of Decision for the Tunnel alternative. A tunnel alternative was considered and rejected as part of the CEQA/NEPA environmental review process in 1986. The Coastal Commission found that the selection of the Martini Creek Alignment was the alternative most protective of coastal resources and least environmentally damaging. The U.S. District Court in 1995 subsequently determined that the treatment of alternatives in the 1986 FEIS was proper. The Tunnel alternative has been reviewed a third time by the County of San Mateo, the Coastal Commission, U.S. Fish & Wildlife Service, Caltrans and the FHWA and it is determined that the tunnel is not a reasonable alternative because it is not the most protective of coastal resources, it is inconsistent with the Coastal Act and the current Local Coastal Program policies, various safety and cost issues.

Earlier this month, Save Our Bay wrote the San Mateo County Board of Supervisor informing them that Caltrans and FHWA have concluded their second supplemental environmental review of the Devil's Slide project. As of today, the Martini Creek Alignment remains the only alternative that the County of San Mateo, state and federal agencies have approved and certified. The U.S. District Court reviewed and ruled in 1995 that all eight Devil's Slide project alternatives (including the tunnels) were properly reviewed and the 1986 Final Environmental Impact Statement is upheld. The Save Our Bay Foundation is asking the Board to acknowledge and support the current findings of the NEPA/CEQA and Coastal Act review process and accept the FHWA's Record of Decision. The Local Coastal Program requires that any alternative other than the Tunnels be placed on the ballot. The Foundation has offered a resolution to the Board that the Martini Creek Alignment (aka Sanctuary Scenic Bypass) for State Highway Route 1 be placed on the November 2000 ballot for voter approval.

Supervisor Gordon responded to the Foundation November 2000 ballot measure request on August 8, 2000 by stating: "Your memo contains false information and misstatements of fact. Most importantly, it also fails to include significant information." The Foundation respectfully requested that Supervisor Gordon's Devil's Slide Tunnel Task Force provide the entire Board of Supervisors, Caltrans, the FHWA, the SOB Foundation and the voters of this County with "all" their documentation of "any" false information and "any" significant information that he claims the Foundation is withholding. The public documents speak for themselves; the U.S. District Court and the California Coastal Commission found that the selection of the Martini Creek Alignment was the alternative most protective of coastal resources and least environmental damaging. The Save Our Bay Foundation believes that a Coastal Act mandated appeal hearing will provide an opportunity to set the record straight!

SAVE OUR BAY FOUNDATION



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Hard Copies to follow via U.S. Mail
November 30, 2000

Sarah Wan, Chair, and Members
California Coastal Commission
C Fax Transmission, Total 8 Pages
/O Peter Douglas, Executive Director
45 Fremont Street, Suite 2000
San Francisco, CA. 94105

Dear Ms. Wan and Members:

Subject : Notice of Violation of the San Mateo County Local Coastal Program, California Coastal Act ,
U.S. Endangered Species Act and the CEQA/NEPA .

On November 24, 2000, Save Our Bay staff 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 SOB staff that the Tunnels/Bridges mitigation project activities conducted by Caltrans, their agents or others has resulted in a "take" of federally listed *Rana Aurora 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

Tunnels/Bridges Mitigation Project Description: This Tunnels/Bridges mitigation project as proposed involves the excavation of an upland area between two existing ponds. The Tunnels mitigation pond will be deep enough to hold water of 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 wooded flats would be placed in the pond. Biologist will monitor vegetative growth in the new pond and replant as necessary to ensure success.

Factual Tunnels/Bridges Mitigation Project Background :

Th U.S. Fish and Wildlife Service by letter to Caltran's Sid Shadle on September 26, 2000 stated: " 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 concur. Therefore, the project as proposed is in compliance with the Act, with the understanding that authorized under this agreement."



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"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. If you have any questions regarding this response, please contact Cecilia Brown or Ken Sanchez at (916) 414-6625." Signed, Karen J. Miller, Chief, Endangered Species Division

- The November 1996 voter approved Devil's Slide Tunnel LCP ballot initiative Section 2 Findings (3) "A tunnel will protect the environment. A tunnel would have virtually no harmful effects upon the environment. It would be consistent with the coastal laws. It would avoid the serious damage to the watersheds, wildlife habitats and parks of Montara and San Pedro Mountains."
- February 18, 1997 CCC Adopted Findings San Mateo County LCP No. 1-96 (Devil's Slide Tunnel Initiative. Elimination or Degradation of Endangered species habitat page 17 & 18. "Construction of the tunnel project could adversely affect the habitat of the red-legged frog (*Rana aurora draytonni*) an endangered species that lives in or near riparian corridors or freshwater ponds and marshes. Construction of the North Portal approach road could fill portions of the two red-legged frog ponds in that location. Even constructing a bridge that did not directly fill the ponds would adversely affect the red-legged frog by shading portions of the pond during most of the day, thereby reducing the basking opportunities for frogs and possibly lowering the spring pond water temperatures. The latter could in turn affect the development of time of frog eggs and larvae. Any one or combination of the above possible events could result in the reduction or negation of the red-legged frog population at the site. Furthermore, construction and grading activities for the bridge could either permanently block or destroy the spring site that serve as the water source for the ponds, cause siltation in the ponds, and temporarily disrupt adjacent upland foraging/retreat area for the frogs."
- 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.



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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 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 August 23, 2000 renowned lobbyist/professional land use planning consultant and co-author of the original San Mateo County Local Coastal Program with lawyer/developer Michael McCracken, addressed the County Planning Commission in support of Caltrans' frog pond "Tunnel 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, 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."

Planning Commission Chair: Anyone else? Silence.....move to close the hearing.

Note: Neither Ms. Roberts nor Planning Administrator Terry Burns or anyone on planning staff inform the Planning Commission that CalTrans' Office of Environmental Planning had been informed in spring of 1999 that the Tunnels do not comply with the Coastal Act, Local Coastal Program of San Mateo County or CEQA. The Tunnels have failed for the third time to be selected as the most protective of coastal resources and least environmentally damaging alternative.



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Save Our Bay believes that the 1990 California Supreme Court Ruling of *Citizen of Goleta Valley vs. Board of Supervisors of Santa Barbara County* will demonstrate why the Tunnels/Bridges fail to comply with the CEQA/NEPA and Coastal Act review process:

- "The foremost principle under CEQA is that the Legislature intended the act to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language."
- "It's purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus , the EIR protects not only the environment but also informed self-government."
- "The core of an EIR is the mitigation and alternative sections. The Legislature has declared it the policy of the State to "consider alternatives to proposed actions affecting the environment."
- "The purpose of an EIR isto list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project."
- "....the Legislature has decreed that local agencies shall be guided by the doctrine of feasibility. It is the policy of the state that public agencies should NOT approve projects as proposed if there are feasible alternatives ..."
- "CEQA Guidelines, which state that EIR must describe a range of reasonable alternatives to a project, or to the location of a project, which could feasibly attain the basic objectives of the project, and evaluate the comparative merits of the alternatives."
- "As the underscored language suggests, project alternatives typically fall into one of two categories; on-site alternatives, which generally consist of different uses of the land under consideration; and off-site alternatives, which usually involve similar uses at different locations."
- "Each case must be evaluated on its facts, which in turn must be reviewed in light of statutory purpose. Informed by that purpose we here affirm the principle that an EIR for any project subject to CEQA review must consider a reasonable range of alternatives to the project or the location of the project which (1) offer substantial environmental advantage over the project proposal, and (2) may be feasibly accomplished in a successful manner" considering the economic, environmental, social and technological factors involved"

Sierra Club Bolsa Chica Victory! In early 1999, the Sierra Club and Surfrider Foundation were victorious in blocking State Hwy 56 from crossing the Bolsa Chica Environmentally Sensitive Habitat Area (ESHA) in Orange County, California. Their successful roadblock began earlier last year, when a state appeals court threw out 25 years of practice, precedent and common sense in ruling that CalTrans could not replace a diseased group of trees with a larger, healthier group of native trees. That's because these near-dead trees were part of what is known as an Environmentally Sensitive Habitat Area in the state's coastal zone. The court said state Coastal Act law did not permit the tradeoffs—or mitigation—that local government and the Coastal Commission had allowed when it approved this project. The coastal ESHA of dying trees in Bolsa Chica and others like it throughout the state cannot be touched for roads or



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housing or dozen of the other public uses, no matter how badly damaged they were and no matter what the local government is willing to do to restore them.

In the spring of 1996, Tim Duff, Co-Chair of the Sierra Club Coastside 2000 Committee asked the Executive Committee of the newly chartered Half Moon Bay Surfrider Foundation to conduct an environmental review of their proposed Tunnel Initiative. Save Our Bay's John Plock and Oscar Braun were the Co-chairs and Blue Water Task Force Chapter leaders for the HMB Surfriders. We could not endorse the Tunnel Project as a 501(c)3 non-profit public benefit Foundations. State and Federal laws prohibit 501(c)3 non-profits from political activities or campaigning. John and I each have brought over 25 years of experience in professional due diligence work and environmental studies review expertise to the Sierra Club Tunnel Project EIR Study. The Save Our Bay Foundation currently monitors all projects that impact the Monterey National Marine Sanctuary and has always insisted on full compliance with the Coastal Act and CEQA/NEPA environmental protection laws.

The voter approved Measure T did not authorize CalTrans to build two Tunnels, each with two travel lanes crossing two north portal 1000 foot bridges. They did not approve the 300 foot high south portals fill destroying protected wetlands or the destructive intrusion on the endangered species sensitive habitat in the north portal area. The tax paying voters did not authorize Caltrans to spend the \$68 million dollar higher price for the two lane Tunnels with their \$2.2 million annual maintenance cost. The electorate voted for the alternative most protective of coastal resources and least environmentally damaging, that was cheaper, safer and funded. The Tunnels/Bridges are none of those things.

The Save Our Bay Foundation respectfully requests that the Coastal Commission "rescind" immediately CalTran's Coastal Development Permit, File PLN 2000-00536 and red-tagging the Tunnels/Bridges mitigation project site to prevent further ESHA damage and species take. Caltrans mitigation activities do not comply with the Local Coastal Program, Coastal Act, Endangered Species Act or the CEQA/NEPA environmental protection statutes. Lastly, a take of listed species was not authorized under CalTrans agreement with U.S. Fish and Wildlife Service"

Sincerely,

John Plock, RCE 26066
Chair, Environmental Director

CC. Marcia Raines, San Mateo County, Environmental Services Agency
Karen J. Miller, U.S. Fish & Wildlife Service, Chief, Endangered Species Division
Thomas Pederson, Regional Patrol Director, California Department of Fish & Game
Robert Gross, Caltrans District 4, Office of Environmental Planning
G.P. Bill Wong, FHWA, Senior Transportation Engineer
Judge D. Lowell Jensen, U.S. District Court
Release to Media

Attachments: 1 each Mitigation Project Location Map and 2 Native Species Survey Reports

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January 4, 2001

To: Norman Y. Mineta, Secretary of Commerce (Transportation)
From: Oscar Braun, SOB Executive Director
Subject: Help Stop the \$185 Million Devil's Slide Hwy 1 Environmental Disaster

Dear Mr. Secretary,

I had the pleasure of meeting you just a few weeks ago at the Chamber of Commerce breakfast in Pacifica. We spent a few minutes after your wonderful presentation talking about the Monterey Bay National Marine Sanctuary and NOAA's Water Quality Protection Program in which our Foundation is a long time coalition participant in good standing. We are asking for your immediate attention and assistance by directing the FHWA to submit the 1986 Devil's Slide Highway 1 Second Supplemental EIS/EIR study just concluded to the U.S. District Court (Judge D. Lowell Jensen) so the Court can conclude their judicial review of the Devil's Slide Hwy 1 Improvement Project (Tunnel Alternative) SSEIS/EIR.

Applicant: California Department of Transportation (Caltrans)

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

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

INVESTIGATE TUNNEL OPTION: "A tunnel alternative was part of the CEQA/NEPA environmental review process in 1986. The U.S. District Court subsequently determined that the treatment of alternatives in the 1986 FEIS was proper. Although only noise-related issues were addressed in the 1995 Draft Supplemental Environmental Statement, comments were received indicating a tunnel alternative would avoid project noise impacts. Several comments requested investigation of the tunnel option. This issue have been reviewed, and it is determined that the tunnel is not a reasonable alternative because of it's inconsistency with the current planning policies (LCP), the lack of funding, and various safety and cost issues." Quotation from 1995 SEIS.

It is the Save Our Bay Foundation's findings that the "tunnel alternative" is not a reasonable project alternative because of it's **INCONSISTENCY** with the Coastal Act, Local Coastal Program of San Mateo County, the Endangered Species Act, the lack of funding, 50% more costly than the other alternatives and is not as safe as open air highways. SOB and it's members are particularly concerned by the fact that Caltrans has already caused a "take" of Federally listed species in their efforts to pre-mitigate the tunnel/bridge project site area. This Devil's Slide Highway 1 tunnel alternative clearly jeopardizes listed species (Peregrine Falcon & Red Legged Frog) and destroys and fragments their prime critical habitat. The Devil's Slide Hwy 1 project requires Federal permits and funding. The U.S. District Court approved 1986 SEIR/EIR Martini Creek alignment alternative does not put listed species at risk. There are a total of six other feasible and reasonable alternatives that fulfill the goals of this highway project...none which jeopardize listed species or destroy statutory delineated critical environmentally sensitive habitat areas!

We appreciated your past efforts on behalf of protecting our sensitive coastal resources and know we can count on you to see that this project's CEQA/NEPA review process is not politically corrupted after 15 years of effort. Congratulations on your new appointment as Secretary of Transportation. We at the Foundation are eager to provide your staff with further information and support on the captioned project. Happy New Year and all the best.

CC.

G.P. Bill Wong, Devil's Slide Project Team Leader, FHWA

SAVE OUR BAY FOUNDATION



*"Change is inevitable...
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February 1, 2001

To: Honorable Mike Nevin & Board of Supervisors
From: Oscar Braun, Executive Director
Subject: EnviroBank LCP March 2001 Ballot Measure-E: Frog Recovery Plan
Providing Critical Habitat, Open Space & Equestrian Trail Networks

The EnviroBank program focuses on projects that are carried out in a strategic framework in which sustainable landscapes that comprise entire natural systems can be conserved while economic and natural values important to the community they serve are maintained or enhanced. The California red-legged frog, a native amphibian believed to have inspired Mark Twain's fabled short story "The Celebrated Jumping Frog of Calaveras County", gained Endangered Species Act protection as a threatened species in May 1996. Just six months after their listing, the voters of San Mateo County approved the LCP Measure-T ballot initiative. The frog has suffered a 70 percent reduction in its geographic range in California as a result of habitat loss and alteration, overexploitation, and introduction of exotic predators. The Shamrock Ranch red-legged frog pond population is the largest known in San Mateo County.

The strategy for recovery of the California red-legged frog will involve protecting existing populations by reducing threats; restoring and creating critical habitat that will be protected and managed in perpetuity; surveying and monitoring populations and conducting research on the biology and threats of the species; and re-establishing populations of the species within the historic coastal range.

The SOB EnviroBank proposes acquiring and designating the Corral De Tierra Ranch (4200 acres) as critical habitat for the red-legged frog, open space and an equestrian trails network. This property adjoins the current path of the already approved Inland Bypass Alignment. Additionally, the historic Johnston Ranch, Madonna Creek Ranch and the Burleigh Murray Ranch State Park could create red-legged frog critical habitat, equestrian trails network and open space corridors. This contiguous Rural Lands area extends from the City of Half Moon Bay eastward to Skyline Boulevard. Moon Acres Ranch is the last remaining parcel that would be needed to strategically connect nearly six thousand acres. My wife and I will make this strategic link possible through the EnviroBank.

What will it take to make it all happen?

- LCP amendment approval by the voters in March 2001 for the currently approved (ROD) two lane rural Inland Bypass Alignment road alternative. Note: Cost \$112 million which over half is already funded.
- Acquisition/Conservation Easement of Corral De Tierra Ranch and Moon Acres Ranch. Note: Cost estimated between \$30 to 50 million. Total new critical habitat and recreational lands would be approximately ten thousand acres. Total Project Cost \$142 to 162 million versus Tunnel Alternative cost of \$165 with no Federal Funding.

Yesterday, John Blake, Chair EnviroBank Board of Trustees and I met with Marcia Raines and Michael Murphy to discuss the Devil's Slide funding situation. Our Foundation Board of Directors has invited Marcia to join the EnviroBank Board of Trustees on behalf of the County. We sincerely hope Marcia will join the other Trustees soon and that the San Mateo County Board of Supervisors will support the proposed EnviroBank March 2001 LCP Ballot Measure-E.

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April 3, 2001

Norman Y. Mineta, U.S. Secretary of Transportation
C/O David G. Ortiz, Assistant Chief Counsel, FHWA
201 Mission Street, Suite 2100
San Francisco, CA 94105

Subject: Federal Permit and Funding of Devil's Slide Hwy 1 Project

Dear Mr. Secretary,

This letter is to update you on the Foundations efforts to secure Federal funding for the 1986 Devil's Slide Highway 1 Improvement Project. In my letter of January 4, 2001, I requested your immediate attention and assistance as Secretary of Transportation, by directing the FHWA to submit the 1986 Devil's Slide Highway 1 Second Supplemental EIS/EIR study just concluded to the U.S. District Court (Judge D. Lowell Jensen) so the Court could conclude the judicial review of the Devil's Slide Hwy 1 Improvement Project (Tunnel Alternative) SSEIS/EIR. Litigation regarding the project was commenced in U.S. District Court in the Northern District of California in June 1986 (Sierra Club, et al. v. United States Department of Transportation, et al, Civ. No. 86-3384-DLJ). The project has been enjoined since September 1986, prior to the commencement of any construction. It is with great regret and frustration that I must inform you that Caltrans has violated the U.S. District Court injunction by building a Tunnel mitigation habitat breeding pond in the path of the current FHWA Record of Decision holder and partially funded 1986 SEIR/EIR Martini Creek alignment alternative. The Martini Creek alignment alternative did not put listed species at risk. There are a total of six other feasible and reasonable alternatives that fulfill the goals of this highway project and none which jeopardize listed species or destroy statutory delineated critical environmentally sensitive habitat areas. The Devil's Slide Hwy 1 improvement project requires Federal permits and funding. Caltrans Tunnel construction mitigation actions have caused the loss of obtaining Federal permits or highway funding for the following reasons:

- Caltrans commenced Tunnel mitigation construction activities within the currently 1986 SEIR/EIR approved Martini Creek alignment alternative path in November 2000 prior to receiving approval by the U.S. District Court or the FHWA.
- Caltrans commenced Tunnel mitigation construction on the Devil Slides Tunnel project prior to the FHWA having issued their Record of Decision on the 1986 Devil's Slide Tunnel Alternative Second SEIS/EIR.
- Caltrans Tunnel mitigation construction activities in November 2000 violated Section 9 of the Endangered Species Act and its implementing regulations that prohibits the "take" of federally listed fish and wildlife. The California red-legged frog, a native amphibian believed to have inspired Mark Twain's fabled short story "The Celebrated Jumping Frog of Calaveras County", gained Endangered Species Act protection as a threatened species in May 1996. Just six months after their listing, the voters of San Mateo County approved the LCP Measure-T ballot initiative. The frog has suffered a 70 percent reduction in its geographic range in California as a result of habitat loss and alteration, overexploitation, and introduction of exotic predators. The Shamrock Ranch red-legged frog pond population is the largest known in San Mateo County. See attached Notice of Violation Endangered Species Act dated November 30, 2000.
- The U.S. Fish and Wildlife has designated Shamrock Ranch as critical habitat containing listed species. Critical habitat refers to specific geographic areas that are essential for the

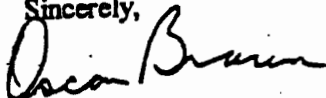
conservation of a threatened or endangered species and which may require special management considerations. A critical habitat designation sets up a preserve if the project requires Federal funding or a Federal permit. Violation of Section 9 of the Act will cause the loss of Federal permits and funding.

- U.S. Fish and Wildlife Service Endangered Species Division Senior Biologist Ken Sanchez informed this Foundation that he would block and impede any investigation of Caltrans Devil's Slide Tunnel project mitigation construction activities in November 2000 that violated Section 9 of the Endangered Species Act and its implementing regulations that prohibits the "take of federally listed fish and wildlife." Caltrans Tunnel construction mitigation actions have caused the loss of obtaining Federal permits or highway funding.
- The San Mateo County Planning Commission denied an appeal by this Foundation to stop the Tunnel mitigation construction and issued Caltrans a Coastal Development Permit to construct a Tunnel mitigation frog pond in the path of the U.S. District Court enjoined Martini Creek alignment alternative. Caltrans Tunnel construction mitigation actions have caused the loss of obtaining Federal permits or highway funding.
- The California Coastal Commission denied an appeal from this Foundation to stop the Tunnel mitigation construction and granted Caltrans a "Conceptual Concurrence" on the Devil's Slide Tunnel project 1986 SSEIS/EIR. Caltrans Tunnel construction mitigation actions have caused the loss of obtaining Federal permits or highway funding.

Mr. Secretary, the Save Our Bay Foundation is asking you to direct Deputy Counsel Ortiz of the U.S. Department of Transportation Federal Highway Administration to report Caltrans violation of the U.S. District Court 1986 construction injunction. We request that Mr. Ortiz ask the U.S. District Court to direct the U.S. Attorney's office to investigate all Caltrans, U.S. Fish and Wildlife Service and the San Mateo County Planning Commission activities in connection with the Devil's Slide Tunnel Project 1986 SSEIS/EIR. The CEQA/NEPA review process has been politically corrupted in San Mateo County after fifteen years of tireless effort by the FHWA. Caltrans Tunnel construction mitigation scheme has violated the Courts injunction, violated the Endangered Species Act and caused the loss of obtaining Federal permits or highway funding.

I have enclosed a letter from former State Senator Quentin L. Kopp, Chair Transportation Committee to a Sierra Club Tunnel proponent for your review. Judge Kopp is a man of great integrity and his understanding of the Sierra Club agenda appears to have been quite prophetic. Please don't allow the potential permanent closure of Devil's Slide and the non-existence of any roadway between Pacifica and Half Moon Bay on the Coastside. My warm regards to you and your family.

Sincerely,



Oscar Braun
Executive Director

CC: Honorable Michael Nevin, President of the San Mateo County Board of Supervisors
Special Agent Steve Furrer, U.S. Fish and Wildlife Services Division of Law Enforcement
Sara Wan, Chair and Members of the California Coastal Commission
John Blake, Chair EnviroBank Board of Trustees
Rubin Borrales, Deputy to POTUS

Enclosures: Sierra Club letter, Kopp letter, Nevin Op/Ed piece, Feds order study 9-6-95, NOV to CCC



U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
CALIFORNIA DIVISION
980 Ninth Street, Suite 400
Sacramento, CA. 95814-2724
May 3, 2001

IN REPLY REFER TO
HDA-CA
File #: 04-SM-1
Document #: P35340
Control Number: 010423-013 HOA

Mr. Oscar Braun, SOB Executive Director
1589 Higgins Canyon Road
Half Moon Bay, California 94019

Dear Mr. Braun:

SUBJECT: REQUEST FHWA TO SUBMIT SSFEIS FOR JUDICIAL REVIEW

Thank you for your January 4, 2001, letter to Secretary Mineta regarding the Devil's Slide project Second Supplemental Environmental Impact Statement/Environmental Impact Report (SSFEIS/EIR) in San Mateo County.

This is in further response to your letter of January 4, 2001, to Secretary of Transportation Norman Mineta. By letter of April 19, 2001, you were advised that my office would respond to the concerns expressed in your letter. Your letter requested that the Secretary direct the Federal Highway Administration (FHWA) to submit the "just concluded" Second Supplemental EIS/EIR for Devil's Slide to the U.S. District Court "so that the Court can conclude [its] judicial review."

As you are aware, the Devil's Slide litigation, Sierra Club v. U.S. Department of Transportation, begun in 1986, is still before the court. However, the Second Supplemental EIS/EIR for the project has not yet been completed. While a draft EIS/EIR was circulated for public and agency review and comment, a final EIS/EIR is not anticipated until this summer. After that, the National Environmental Policy Act (NEPA) process will be completed when FHWA issues a Record of Decision (ROD).

Given FHWA's role as the agency responsible for satisfying the NEPA requirements for this project, our view that those requirements have been satisfied will be reflected in our approval of the final EIS and issuance of the ROD. While these actions may or may not be a consideration in the on-going litigation, given FHWA's role in the NEPA process it is not appropriate for us to seek judicial review of the documents that reflect the agency's position that NEPA requirements have been satisfied.

While we cannot accede to your request, we want to assure you that the concerns that you have raised in your letter to the Secretary and other letters are being fully considered in FHWA's environmental processing of this project. In fact, on January 30, 2001, after you wrote to Secretary Mineta, you and Mr. John Plock met in San Francisco with Glenn Clinton, Joan Bollman, and Bill Wong of my staff, along with Dan Harris of the FHWA Western Resource

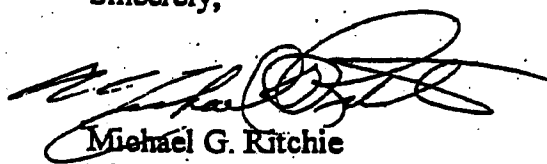
Center, and David Ortiz of the FHWA Chief Counsel's Office, to discuss a number of issues and concerns, including those reflected in your January 4th letter.

We appreciate your interest and that of Save Our Bay in the environmental processing of this project. As you know there has been extensive public involvement and outreach as part of the development of this project. The various views and concerns that have been expressed through this process will be an important consideration when FHWA makes its decision regarding this vital transportation project.

We encourage you to continue working with Caltrans and my staff in the development of this project through the NEPA process.

If you have any questions, please contact Bill Wong, Senior Transportation Engineer or Glenn Clinton, Team Leader, Program Delivery Team - North at (916) 498- 5042/5020.

Sincerely,



Michael G. Ritchie
Division Administrator

Half Moor. Bay Coastside Foundation

Water Quality Protection Program Mission : Implementation



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

May 23, 2001

To : San Mateo County Planning Commission
From: Oscar Braun, Captain SOB Watershed Conservation Posse
Subject: CGF and Staff Proposed Confined Animal Regulations Ordinance
Purpose: Protect water quality, environmentally sensitive habitats, livestock ,
the agricultural interests the state, and the publics health and safety.

The Save Our Bay Foundation in 1995 became San Mateo County's most active participant of the Water Quality Protection Program (WQPP) of the National Oceanic and Atmospheric Administration and San Mateo Countywide Storm Water Pollution Prevention Program (STOPPP). The WQPP is a coalition of twenty-seven federal, state and local agencies, public groups, representatives of the agricultural, boating, equestrian communities, and businesses working to develop and carry out a long-term, proactive water quality management plan for the Sanctuary's eleven watershed regions. The program's goals are to address existing water quality concerns and to prevent the kinds of expensive water pollution crises that have occurred elsewhere in the county. SOB Watershed Conservation Posse goal is to inform the public and responsible officials of the environmental consequences of their decisions before they are made and to consider alternatives to proposed actions affecting water quality and watershed ecosystem.

The Peninsula watershed produces, collects and stores high quality drinking water for 2.4 million Bay Area residents and is a haven for a variety of habitats and supports the "highest concentration" of rare, threatened and endangered species in the Bay Area. The Clean Water Act and the Endangered Species Act are Federal environmental regulatory statutes that are meant to protect and sustain our communities and sensitive and crucial natural resources. A violation of these Acts disqualifies the violating County from being granted Federal and State permit approval (ROD) or funding.

San Mateo County has allowed, without benefit of USFWS or State Fish & Game site plan or EIR review, at least four prohibited and detrimental commercial/industrial classified operations that violate the Clean Water Act and the Endangered Species Act. The prohibited and detrimental commercial/industrial operations are Shamrock Ranch, Wildlife Associates, Half Moon Bay Sealing & Paving and Johnston Ranch unlicensed landfill. The County of San Mateo Planning Commission has reclassified prohibited uses and found, based on the advice of the Planning Administrator and lobbying by the Committee for Green Foothills, that these four commercial/industrial operators activities conducted in statutory delineated critical environmentally sensitive habitats qualify as *a non-residential uses accessory to agriculture and permitted by right in the Planned Agricultural District on either prime or non-prime soils*. By allowing these four reclassified prohibited and detrimental commercial/industrial facilities uses to operate without benefit of EIR review or permits, the County of San Mateo violates both CEQA/NEPA environmental review statutes. Clean Water Act or Endangered Species violations disqualifies the County from receiving State or Federal permit approval (ROD) and funding..

→ In the Spring of 1997, the Shamrock Ranch stable owners were notified by USFWS that tenant Wildlife Associates must vacant Shamrock Ranch area because they cannot house their prohibited "wild Detrimental species" on statutory delineated critical habitat areas containing endangered species and prohibited under a proposed Caltrans "conservation easement". The California Legislature finds and declares prohibited "wild Detrimental species" are listed because they pose a treat to native wildlife, the agricultural interest of the sate and the publics health and safety. ". The State ONLY requires a permit for prohibited wild Detrimental species and specifically declares: "Family Equidae (horses) is

Half Moon Bay Coastside Foundation

Water Quality Protection Program Mission : Implementation



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Survival is not."*

not prohibited and is exempt from permit requirements. Also, the State exempts cattle, yak, sheep, goat, swine, Llama, Alpaca, or hybrids of llama, alpaca and guanacos. The Federal and State only require a permit for "WILD ANIMALS". All farm animals and livestock are exempt.

SOB Findings: Proposed Confined Animal Ordinance:

- The keeping of horses and other livestock does not pose a treat to native wildlife, the natural environment, the agricultural interests of the State or to the publics health and safety.
- The keeping of horses and other domestic livestock does not violate either the Clean Water Act or Endangered Act and does not disqualify this County from being granted State and Federal permit approval (ROD) or funding.
- **The keeping of horses and farm animal livestock is in fact a use accessory to agriculture and thus a permitted right of use in this State .**
- The San Mateo County equestrian community has circulated the following SOB Posse authored petition and have gathered over 2500 signatures: **SAVE OUR HORSES!** Our horse community is under siege and rapidly becoming a candidate for the "endangered species" list. Horse owners throughout the County of San Mateo are fighting a losing battle against the unfair burden of sky rocketing "special" taxes, fees and zoning laws that are destroying the rich historical legacy that these magnificent animals have represented. This State considers horses to be livestock and requires no fees or taxes on these farm animals herbivores...horses, cows, sheep, goat etc. San Mateo County has a special "non-livestock" definition for horses and assess extremely high fees and taxes. Our horse population is literally disappearing from rural San Mateo County. Sign this petition to save our horse heritage. Sign this petition to bring San Mateo County horse ordinance into conformance with the USDA and California definition of livestock. Sign this petition to end special taxes and fees on horses. Sign this petition to protect the quality of life in San Mateo County! It's a rural legacy worth passing on to our children!

The SOB Posse proposes that the Planning Commission declare: "horses and all farm animal livestock keeping a use accessory to agriculture and thus a permitted right of use in the Rural Lands. All livestock is exempt from any confined animal regulation ordinances in the San Mateo County Rural Lands.

A SOB Posse Invitation: In the afternoon (between 2 to 4 pm) of June 13, 2001, the SOB Posse would like to invite the Staff and Planning Commissioners on a brief Coastside tour of a existing private horse stables on the Coastside. The first is located in an urban area, Hwy 92 beside the Hilltop Market at the entrance of the City of Half Moon Bay. The other stable is in the Rural Lands just outside the City of Half Moon Bay on Higgins Purisima Road (less than 2 miles from Main St.) The Moon Acres Ranch occupies the upper boundaries of the historic Johnston Ranch; Moon Acres over looks the Arroyo Leon and Mill Creek environmentally sensitive habitat areas (ESA) The Ranch is used as the SOB Posse staging facility and trail head for the Peninsula Watershed Equestrian Trail network. My wife and I applied for a stable permit back in 1998 and have spent nearly \$27,000 on stable permit fees, mandated development plans and legal representation . The Planning staff after nearly four years has yet to process our stable application and issued us a stable permit. San Mateo County has issued only 32 stable permits in the last 50 years for a horse population estimated between 5,000 to 8,000 animals.

Half Moon Bay Coastside Foundation

Water Quality Protection Program Mission : Implementation



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October 1, 2001

Ms. Loretta Barsamian
Executive Officer
1515 Clay St., Suite 1400
Oakland, California 94612

Subject: STOPPP's Pollution Control Efforts and Eco-terrorism

Dear Ms. Baramian:


On September 11, 2001 the Bay Area lost one of it's finest environmental protection soldiers. Alan Beaven, former Chief Clean Water Act Legal Counsel for our non-profit Half Moon Bay Coastside Foundation aka Save Our Bay died on the terrorist hi-jacked United Airline Flight 93 bound for San Francisco. Alan's fearless passion was the protection of the Bay Area's drinking water, its quality and the watershed's natural systems. He was instrumental in the formation of the SOB Foundation's EnviroBank and the Watershed Quality Protection Partnership MOU. Alan's last endeavor on behalf of the WQPP was to bring the new owners of an illegal landfill into full compliance. This open space landfill has no NPDES Stormwater Permit, as required by the Clean Water Act, 33 U.S.C. Sec.1311(a) and has the potential to pollute, if it is not already doing so, the steel head stream Arroyo Leon, it's adjoining wetlands and coastal waters. Unfortunately, Alan did not live to see the fulfillment of his efforts. On behalf of the WQPP and as a tenured guest on the San Mateo Countywide STOPPP TAC, I am requesting your support and that of the State RWQCB staff members Susan Gladstone, Habte Kifle and Ann Crum, in fulfilling Alan's quest for the owners of the unlicensed landfill, Peninsula Open Space Trust - to come into full compliance.

This past week, our WQPP Executive Director, Oscar Braun provided an extensive briefing to the FBI Terrorism Task Force outlining risk assessment for the SFPUC and Peninsula watershed unsecured areas and suspected eco-terrorist activities in San Mateo County. San Mateo County harbors many organizations that have gone to extreme measures to prevent the sustainability of SF Peninsula communities dependent on the Hetch Hetchy regional water system. These organizations have lobbied for decades that the Peninsula coastal zone, which comprises 75% of Peninsula watershed, should only be provided substandard levels of law enforcement, fire protection, water, sewer, emergency access roads and other infrastructure elements required to sustain watershed dependent communities and their natural systems. The Natural Resource Defense Council 1999 & 2000 report has identified San Mateo County as containing the most polluted waters in the Bay Area, posing the highest level of risk to the public's health and safety. Decades of anti-infrastructure policies has virtually killed the SF Peninsula's urban watershed.

The Bay Area's drinking water supply is at greater risk now more than ever: From disruptions and shortages in the event of a Peninsula watershed wildland area firestorm, drought or arson/chemical/biological terrorist attack. All Bay Area community elected officials should take immediate steps to reduce the risk of a catastrophic outage for more than 2.5 million regional water system users. Now is the time to increase our efforts to protect California's future by joining a new Watershed Quality Protection Partnership (MOU) and implementing it's goals.

I have enclosed the some of Alan Beaven's case documents regarding his illegal landfill compliance efforts. EnviroBank WQPP program information and some background material on anti-community activities for your files.

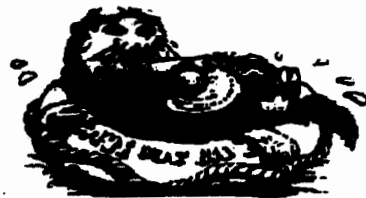
Sincerely,


John Plock, RCE 26066
Chair, Environmental Review Director

CC. Honorable San Mateo County Board of Supervisors, Anna Eshoo, Byron Sher, Joe Simitian, Louis J. Papan, Dianne Feinstein John Burton, Willy Brown, James Asche, Steven Wert, Joe Naras, Arthur Jensen

Half Moon Bay Coastside Foundation

Alan Beaven's Living Legacy



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

October 23, 2001

To: Christopher Sproul, Assistant Regional Counsel, EPA
Joseph Tabacco Jr., Berman, DeValerio, Pease, Tabacco, Burt & Pucillo
Ms. Rosie Slaughter, Director-Examination TE/GE Division, IRS
Ms. Loretta Barsamian, Executive Director, San Francisco Regional Water Quality Control Board
From: Oscar Braun, Executive Director, WQPP Coastside Posse

Re: Continued Violations of Clean Water Act and Endangered Species Act by Peninsula Open Space Trust (POST).

Enclosed please find discovery documents and a deposition for the last Clean Water Act lawsuit brought by Alan Beaven on my behalf; Oscar A. Braun versus Towne Pacific Half Moon Bay L.L.C. On November 19, 1999 the parties settled case (# 406800) and the plaintiff filed a notice of dismissal within ten days of the parties signing a settlement agreement. Please note that a portion of the deposition of Christopher Lau accompanied by selected POST discovery documents are marked "Confidential Available to Counsel and Retained Experts Only". Alan informed me after the settlement, that POST had acquired the property in "As Is" condition and "Fully Indemnified" Towne Pacific prior to purchasing the property. He also informed me that Towne had fully disclosed "all" information regarding the twenty-five year landfill operation. The confidential deposition documents also reveals Tom Pacheco's role as operator of the 250 acre landfill and the fact that it was Tom Pacheco and Gary Giovannoni that conducted the Level II survey sample borings of their landfill operation on behalf of Towne (note site sampling photos). Finally, the confidential documents reveal that POST representatives were present during the Level II sampling by Pacheco and Giovannoni contrary to instructions issued by the County of San Mateo Environmental Health's Ann Jensen to be notified in advance of the Level II survey. Alan sent me all his case documents for storage prior to his planned one year sabbatical in India. The Half Moon Bay Coastside Foundation is a tenured coalition member of NOAA's Water Quality Protection Program and as such is formally requesting that the EPA and RWQCB issue POST a Notice of Violation and Enforcement Orders for the following violations:

- The Coastside Posse is asking EPA to file a NOV of the Clean Water Act (CWA) Section 404. Issue Peninsula Open Space Trust an Enforce Order for their unlicensed landfill located in a wetland environmentally sensitive area (ESA) containing listed species without applying for the required CWA NDPES permits. The Watershed Posse further requests EPA ask the Court to assess the maximum fines for each and every violation committed by this 501C3 open space land Trust's breach of the public trust. Additionally, we are asking the EPA to seek Court protection for the water resources controlled or managed by POST. The Half Moon Bay Coastside Foundation is requesting that the Court appoint the HMBC Foundation as a conservator of the lands of POST. We further are requesting that POST be disqualified from receiving any State or Federal permits or funding because of their multiple violation of the CWA and gross breach of the public trust.
- We are requesting that the EPA issue a referral to the U.S. Fish and Wildlife Service of multiple violations of the Endangered Species Act Section 9 (take) of listed species in a dedicated ESA wetland and Arroyo Leon steelhead stream. The Coastside Watershed Posse is asking that the Service issue an enforcement order and recommend the maximum fines and penalties be assessed by the Court. POST should be disqualified from receiving any State or Federal issued permits or funding grants because of their multiple Section 9 violations and gross breach of the public trust.

Half Moon Bay Coastside Foundation

Alan Beaven's Living Legacy



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- The Half Moon Bay Coastside Foundation is formally filing this complaint with the IRS Ms. Rosie Slaughter, Director of Examination TE/GE, regarding POST's multiple violations of the Federal Clean Water Act and Endangered Species Act while benefiting from being granted their special 501(c)(3) tax exempt status. We are requesting a full and complete examination and audit of the Peninsula Open Space Trust books and business dealings. We are requesting that POST's 501(c)(3) tax exempt status be immediately suspended until such time a final determination can be issued by the Internal Revenue Service. POST continues to receive ten of millions of State and Federal funding grants in addition to the millions pledged or donated to their open space trust by the public at large. POST has breached the public trust, continues to pollute our coastal steelhead streams and the waters contained within the borders of the Monterey Bay National Marine Sanctuary. Alan Beaven notified POST on February 22, 1999 that "when POST acquires the property it will become liable in nuisance for any pollutants emanating from its property." Ergo, POST had full environmental disclosure from the seller Towne, tenant Tom Pacheco, Coastside Watershed Posse Executive Director Oscar Braun and the Foundation's Clean Water Act legal counsel Alan Beaven prior to the purchase of the Johnston Ranch landfill and thus POST exercised informed consent.

In closing, our Coastside Watershed Posse, co-founded by Alan Beaven, would appreciate an acknowledgement of receipt of this formal complaint from the EPA, RWQCB and IRS. The Half Moon Bay Coastside Foundation has additional documents regarding the POST properties and will make their staff and records available to all regulatory agencies involved in processing this complaint. We are asking Alan's friend and colleague Joseph Tobacco Jr. to monitor the actions of the captioned regulatory agencies and assist them before the Courts if required.

Sincerely,

Oscar Braun, Executive Director WQPP

Enclosures: Documents RE: General Order 97-03 State Water Resource Control Board, Deposition of Christopher Lau October 21, 1999, Confidential Deposition of Christopher Lau Available to Counsel and Retained Experts Only, Mission Statement, Coastside Posse's Living Legacy, Memorial Services Celebrating the Life of Alan Anthony Beaven with Poem by his son John Beaven.

CC: FBI Terrorist Task Force, Marcia Raines, San Mateo County Director of Environmental Services

SAVE OUR BAY FOUNDATION



Protecting California's Future

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December 26, 2001

To: Honorable SMC Board of Supervisors
From: Oscar & Andrea Braun
Subject: Stable/Affordable Housing Appeal of PLN-1999-00079

The purpose of this letter is to respectfully request that the Board of Supervisors uphold the SMC Planning Commission's legalization of our horse stable and affordable housing without conditions or mitigation measures. We request that the Board also take into consideration the following track record of the appellants during their review.

On December 6, 1995, Lenny Roberts told the San Mateo County Board of Supervisors that they are "partners" with the Committee for Green Foothill and Sierra Club for implementing the 1994 Coastsides Protection Initiative. Ms. Roberts directed the Board of Supervisors to instruct the Planning Commission to begin the legislative process contained in their 1994 initiative. The Board was further instructed that the Planning Commission focus only on the specific amendments contained in their initiative and not broaden the proposal beyond that. These specific amendments included: Reduction of government expenditures; reduction of costs to San Mateo County taxpayers for roads, law enforcement, fire protection, and other government services for scattered and remote development (aka Rural Lands). The initiative defined perceived "Development Treats" and claimed that pressure for extensive development on the Coastsides was severe, especially with proposed construction of increased water supplies, additional sewage treatment facilities, and larger highways.

The official public record shows what accomplishments the 1994 Coastsides Protection Partnership has brought to the voters of San Mateo County and the quality of life on the Coastsides.

- In 1999 & 2000 San Mateo County was found to be the most polluted county in the Bay Area...from sewage discharge and stormwater runoff by the Natural Resource Defense Council.
- All roads in the San Mateo County coastal zone are sub-standard and the CGF/Sierra Club Tunnel boondoggle has successfully failed the EIR process for the third time. The Tunnel Task Force greatest achievement has been Devil's Slide Hwy 1 improvement delay and loss of Federal funding.
- The San Mateo County Wildlands/Urban Interface (WUI) now has the highest risk level in history for a catastrophic WUI wildfire threatening the Bay Area's regional water system. The CCWD currently cannot deliver enough water or head pressure in the event of a WUI fire in approximately 40% of the Coastsides.
- Effectively blocked PMAC supported flood control implementation measures to protect CDF Fire/Rescue/Emergency access to Pescadero



Protecting California's Future

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Survival is not."

from the West continues to be delayed . Endless CCC appeals resulting in: No Boys & Girls Club, no middle schools, no nun convents, no expanded health care clinic services, no affordable housing for our community employees, even less substandard sheriff and fire protection throughout the Rural Lands.

- San Mateo County has allowed, without benefit of USFWS or State Fish & Game site plan or EIR review, at least four prohibited and detrimental commercial/industrial classified operations that violate the Clean Water Act and the Endangered Species Act. The prohibited and detrimental commercial/industrial operations are Shamrock Ranch, Wildlife Associates, Half Moon Bay Sealing & Paving and Johnston Ranch unlicensed landfill. The County of San Mateo Planning Commission has reclassified prohibited uses and found, based on the advice of the Planning Administrator and lobbying by the Committee for Green Foothills Lenny Roberts, that these four commercial/industrial operators activities conducted in statutory delineated critical environmentally sensitive habitats qualify as non-residential uses accessory to agriculture and permitted by right in the Planned Agricultural District on either prime or non-prime soils. By allowing these four reclassified prohibited and detrimental commercial/industrial facilities uses to operate without benefit of EIR review or permits, the County of San Mateo violates both CEQA/ NEPA environmental review statutes. Clean Water Act or Endangered Species violations disqualifies the County from receiving State or Federal permit approval (ROD) and funding.

In closing, as stated on the record before the Planning Commission: Applicants do not concur with the Mitigation Measures for Case #PLN 1999-0079, a project to legalize Moon Acres agricultural structures. San Mateo County Environmental Services Agency, at the direction of Lenny Roberts, has conducted a four year campaign of unlawful punitive retaliation against the Braun family in response to their "lawful whistle blowing" complaints brought by the Half Moon Bay Coastsides Foundation's Watershed Posse against the County. Environmental Services has coerced and unlawfully compelled the Brauns to sign the mitigation agreement document. The Brauns have suffered significant financial damages from the actions of the San Mateo County Environmental Services Agency and are not precluded from now giving their notice of intent (NOI) to file a criminal complaint with the U.S. Attorney for violations under the U.S. anti-racketeering and environmental protection statutes.

In our opinion, as long as the San Mateo County Board of Supervisor's supports the agenda and purpose of the Anti-Community Alliance's (Committee for Green Foothills, Sierra Club, Peninsula Open Space Trust, Mid-Peninsula Open Space District) 1994 Coastsides Protection Initiative, the quality of life, health and safety of all communities in San Mateo County will continue to be at risk.

Half Moon Bay Coastside Foundation

Water Quality Protection Program Mission : Implementation



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January 17, 2002

To: Honorable Jerry Hill, President, San Mateo County Board of Supervisors
From: Oscar Braun, Executive Director, WQPP Coastside Watershed Posse
Subject: Final Notice of Violations: POST, Half Moon Bay Sealing & Paving, Wildlife Associates

Dear Jerry,

Enclosed please find three Notices of Violations (NOV) of the Clean Water Act, Endangered Species Act and Coastal Act presented to the County of San Mateo over the last twenty five months. The Coastside Watershed Posse has requested that the County:

- Require the three cited violators to apply for the required Coastal Development Permits (CDP).
- Require the three cited violators to conduct EIR studies for their illegal development within a delineated Environmentally Sensitive Area (ESA),
- Require POST to fully comply with State Water Resources Control Board, Water Quality Order No.97.03 by applying for a permit to operate a landfill.
- POST must comply with the 1998 County of San Mateo's order to conduct a full sub-surface level II (soil) assessment/survey on the entire landfill area (250 acres) while being supervised by SWRCB certified engineers. NOTE: The sworn declaration of Anne T. Jensen, R.E.H.S. provided by the County to the Court stated in part...."*Defendant provided me with a copy of its Level I and Level II assessment of the property. The Level II assessment contained the analysis of three (3) soil borings. No water quality samples were included. At no time was I notified of the implementation of this investigation and therefore, I am unable to comment on the adequacy of the sampling.* (attached please find Jensen's signed declaration before the Court)
- POST must place water quality monitoring wells throughout their Johnston Ranch landfill operation area.
- POST must acquire a NPDES permits for discharging pollutants into the States' water bodies.

The Coastside Watershed Posse has petitioned the Court to appoint the Half Moon Bay Coastside Foundation as a conservator of the POST Johnston Ranch landfill holdings. The Foundation intends to establish an environmental remediation fund to benefit the Arroyo Leon and the ground water reservoir lying only fifteen feet below the landfill. The C.W.Posse is requesting for the final time that the County exercise their regulatory responsibility by enforcing full compliance with the CA, CWA, ESA environmental protection laws. Without enforcement, the County and the Foundation will not be able to secure any Proposition 13 funding because of these three cited commercial and industrial non-permitted violators. We are respectfully requesting that the Planning Administrator Terry Burnes notify our Executive Director Oscar Braun, by close of business Friday the 25th of January of the County's intentions regarding issuing their Notices of Violation (NOV) for the above captioned violations.

Sincerely,

Oscar Braun,
Executive Director

CC. Marcia Raines, Terry Burnes, Mark Delaplaine CCC, C.Sproul EPA, Loretta Barsamian RWQCB, FBI Task Force, R. Slaughter TE/GE IRS, Willy Brown, Dianne Feinstein, John Burton, Anna Eshoo, Byron Sher, Joe Simitian, Louis J. Papan,

Half Moon Bay Coastside Foundation

NOAA's Water Quality Protection Program



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Transmitted Via Email & U.S. Postal Service
Published at www.saveourbay.org in 9/11 Dispatch
March 5, 2002

Sarah Wan, Chair, and Members
California Coastal Commission
C/O Peter Douglas, Executive Director
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Dear Ms. Wan and Members:

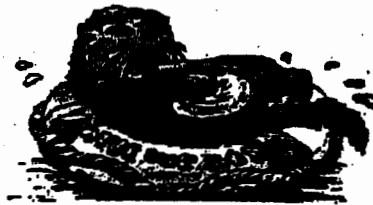
Subject : Final Notice of Violation of the San Mateo County Local Coastal Program, California Coastal Act, U.S. Endangered Species Act and the CEQA/NEPA.

- On August 1st, 10th and August 25, 2000, the Foundation requested via letters (enclosed) that the Board of Supervisors place the Devil's Slide Highway 1 Improvement Project alternatives on the ballot as required by Measure T; "It's now time for the electorate to make their final decision on the NEPA/CEQA/CCC approved Martine Creek Alignment." On August 8th, by enclosed letter, Supervisors Richard Gordon responded for the County of San Mateo and as Chair of the Sierra Club Tunnel Task Force.
- On August 24, 2000, the Half Moon Bay Coastside Foundation aka Save Our Bay appealed by letter (see enclosed) to the San Mateo County Board of Supervisors to deny the Coastal Development Permit granted to Caltrans for the construction of a Tunnel mitigation pond for transfer of endangered species red-legged frogs granted by the San Mateo County Planning Commission. The Board of Supervisors denied our appeal without cause.
- On September 26, this Foundation via letter (enclosed) requested that Mark Delaplaine, the Federal Consistency Supervisor for the California Coastal Commission include the Foundation's provided Bosa Chica Ruling citation on Project Alternatives, Section 30240 & 30007.5 and Standard of Review for the Coastal Commission. Our CCC written request was courtesy copied to the San Mateo County Board of Supervisors and San Mateo County Planning Commission. Please note that the two primary Petitioners and Real Parties in Interest Bolsa Chica Land Trust were the Sierra Club and Surfrider Foundation. On April 16, 1999 the Fourth Appellate District Court filed their ruling: "We find the trial court erred with respect to relocation of the bird habitat. 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." Find enclosed entire Bosa Chica ruling provided the Coastal Commission.
- On November 30, 2000, via enclosed letter, this Foundation notified Sara Wan, Chair, and Members of the California Commission re: Subject : Notice of Violation of the San Mateo County Local Coastal Program, California Coastal Act, U.S. Endangered Species Act and the CEQA/NEPA. The Coastal Commission refused to acknowledge or investigate our November 30, 2000 NOV. Enclosed please find a letter from the U.S. Fish and Wildlife Service to Caltrans

Half Moon Bay

Coastside Foundation

NOAA's Water Quality Protection Program



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Mr. Sid Shadle received by the California Coastal Commission on October 5, 2000 re: Subject: Pond Construction, Devil's Slide Highway 1 Project Site, Pacifica, San Mateo County, California. The document speaks for itself and the CCC had full disclosure as to the scope of the permit issued by the Service. Enclosed please find a memo of acknowledgement to USFWS Ken Sanchez dated November 28, 2000 informing this Foundation that he will not allow an investigation of the Caltrans Section 9 "take" violation report by us on 11/24/00.

- January 8, 2001, via letters enclosed, Marcia Raines, Director of Environmental Services informed Save Our Bay Environmental Director John Plock that "Our earlier investigation found no evidence to support your allegations and your most recent letter does not change that situation. We consider the matter closed and see no basis for taking the extraordinary step of scheduling a hearing before the Planning Commission on an alleged violation for which there is no corroborating evidence." Enclosed please find the corroborating evidence Save Our Bay was provided by Caltrans Office of Environmental Planning, South "Biological Survey Report For The Devil's Slide Tunnel Bridge Geotechnical Investigation Program" dated November 20, 2001. On page 42 under Wildlife Species Of Concern, Caltrans states in part : " *The boring sites are within the footprint of the project site for the Devil's Slide Tunnel Bypass Project. As stated previously, a Biological Assessment was prepared in 1999 that included protective measures in regard to the California re-legged frog. A Biological Opinion was issued by the U.S. Fish and Wildlife Service (Opinion letter received by CCC on October 5, 2000) that concluded that the tunnel bypass, including the proposed conservation measures, is not likely to jeopardize the continued existence of the red-legged frog or destroy or adversely modify proposed critical habitat (USFWS, September 26, 2000). Due to the potential effect of the tunnel bypass, one of the conservation measures called for all of the California re-legged frogs to be removed from the pond and placed in a new pond located in a former horse pasture outside of the footprint of the project. The removal of the frogs from the north pond to the new pond has now been achieved, and a barrier fence has been installed around the north pond. This barrier fence will prevent any California red-legged frogs from getting out of the north pond. Since the frog population has been removed from the north pond, it is expected that the Geotechnical Investigation Program will have no effect on foraging or extivating frogs in the pond area. However, California red-legged frogs are present in the area and their natural instincts to seek out the ranch ponds could result in red-legged frogs wandering into the vicinity of Boring Sites 6, 7, 8, and 9. The barrier fence at the north pond is equipped with one-way funnel openings that allow wandering frogs to enter the pond enclosure but prevent them from leaving the enclosures.*"
- Enclosed please find San Mateo County Counsel letter dated January 25, 2001 to Harry Yahata, District Director Caltrans District 4, Re: Devil's Slide Tunnel Project. The opening paragraph states in part: "You have requested that the County clarify statements made in a letter dated May 11, 1999, from Paul M. Koenig, San Mateo County Director of Environmental Services, to Robert Gross and Ed Pang of your office. The letter offered comments regarding the Second Supplemental Impact Report. Your specific request is that the County further explain the statement made at page four of the letter that off-site mitigation of wetland impact is not allowed under the Coastal Act, and that, as a result, the County could not find that the proposed tunnel design complies with the County's Local Coastal Program. After further review of this matter, we have concluded the this statement was made in error. Our view is that a coastal development permit for a tunnel at Devil's Slide could be approved as consistent with the Country's Local Coastal Program notwithstanding some impacts to wetlands." San Mateo County and the

Half Moon Bay Coastside Foundation

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Petitioners and Real Parties in Interest Bolsa Chica Land Trust Sierra Club and Surfrider Foundation have declared themselves exempt from any ESHA Appellate Court rulings regarding their Devil's Slide Hwy 1 Improvement Tunnel alternative. County Counsel asserts that Director Paul Koenig erred with respect to the April 16, 1999 Fourth Appellate District Court Bolsa Chica Land Trust ruling: "We find the trial court with respect to relocation of the bird habitat. 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." County Counsel Michael Murphy clarifies for Caltrans that not only did Director Paul Koenig misquote the Court's Bolsa Chica ruling, so did the Coastal Commission's Jack Liebster. The Caltrans November 2000 USFWS unauthorized "take" was in fact proposed, authorized and concealed by the County of San Mateo and the California Coastal Commission. Why? Because the Sierra Club Tunnel Task Force and Committee For Green Foothills Lenny Roberts concocted the entire "ESHA Tunnels Mitigation Scheme". The County of San Mateo, at the direction of the Sierra Club Tunnel Task Force, required Caltrans to implement their ESHA mitigation scheme while knowingly violating the U.S. District Courts injunction against any construction activities regarding the 1986 Devil's Slide Highway 1 Improvement Project.

The Half Moon Bay Coastside Foundations asserts that the Sierra Club, Surfrider Foundation, Committee for Green Foothills, County of San Mateo and the California Coastal Commission have conspired to prohibit all legal and approved coastal zone community growth by limiting road access as well as the water and sewer systems. The Coastal Commission has illegally delayed and blocked voter approved development of our schools, Boys & Girls Clubs, housing, water and sewage systems in the San Mateo Coastal Zone. The California Superior Court last year ruled that the California Coastal Commission violates the states' separation of powers as embodied in our California Constitution. The Half Moon Bay Coastside Foundation demands that the California Coastal Commission immediately exempt "ALL" locally approved development projects in the San Mateo County Coastal Zone that provide mitigation schemes for their proposed statutory delineated coastal ESHA development. The Half Moon Bay Coastside Foundation asserts that "ALL" Californians receive equal treatment under the Coastal Act. We demand a public hearing regarding this Final Notice of Violations of the San Mateo County Local Coastal Program, California Coastal Act, U.S. Endangered Species Act and the CEQA/NEPA review process.

Sincerely,

Oscar Braun, Executive Director
CC.

Harry Yahata, District Director Caltrans

Norman Y. Mineta, U.S. Secretary of Transportation

Rubin Borrales, Deputy Assistant to the President of the United States

Maiser Khaled, FHWA Team Leader, 1986 Devil's Slide Highway 1 Improvement Project

Ken Sanchez, U.S. Fish & Wildlife Service, Devil's Slide Hwy 1 Project

Judge D. Lowell Jensen, U.S. District Court

Judge Charles Kobayashi, California Superior Court

Ronald Zumbrun, Esquire, Pacific Legal Foundation

Jerry Hill, President, San Mateo County Board of Supervisors

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Via Certified Mail

April 5, 2002

Harry Yahata, District Director
Caltrans, District 4
P.O. Box 23660
Oakland, CA 94623-0660

Re: Devil's Slide Tunnels Freeway Mitigation Project : File Number PLN2001-00799

Dear Director Yahata,

On March 27, 2002, based on information provided by staff memorandum presented at the hearing, the San Mateo County Planning Commission accepted staff's recommendation and approved a Coastal Development Permit (CDP) for the \$270 million Sierra Club Devil's Slide Hwy 1 Tunnels Freeway Project for illegal ESHA mitigation construction activities. Within minutes following the Planning Commission's non-compliant CDP approval, I filed an appeal with Notice of Violation (NOV) documents on behalf of the Coastal Family Alliance and the Half Moon Bay Coastside Foundation aka Save Our Bay to the Board of Supervisors.

The Coastal Family Alliance is requesting that Caltrans withdraw their non-compliant Devil's Slide Tunnels Project mitigation application File # PLN2001-00799 that has been appealed to the San Mateo County Board of Supervisors. The reason supporting Caltrans withdrawing their Devil's Slide Tunnels Freeway mitigation project application is that the County of San Mateo on May 11, 1999 lawfully notified Caltrans during the CEQA/NEPA statutory comment period that "the County could not find that the proposed tunnel design complies with the County's Local Coastal Program (LCP)." The Coastal Commission lawfully notified Caltrans on May 12, 1999 that the Devil's Slide Tunnels Freeway Project does not comply with the San Mateo County LCP or Coastal Act and Caltrans could not be granted a Coastal Development Permit (CDP) for the Tunnels Freeway Project. By memorandum dated March 21, 2002 to the SMC Planning Commission, Project Planner Michael Schaller, noted that the revised Devil's Slide Tunnels Freeway Mitigation Site CDP application was: "as much as possible into compliance with the County's LCP. The applicant redesigned the project after consultation with the County and the Coastal Commission regarding the applicability of Measure-T and its provisions." This memo is a clear restatement by the County and Coastal Commission that the \$270 million Devil's Slide Tunnels Freeway Project does not fully comply with the LCP and the Coastal Act. Ergo, San Mateo County Planning staff ESHA mitigation opinions regarding the Devil Slide Tunnels Freeway Project will not indemnify Caltrans or nullify the Coastal Commission's Adopted Findings for the San Mateo County LCP regarding NO ESHA MITIGATION.

If Caltrans proceeds with the \$270 million Sierra Club Tunnels Freeway mitigation activities, it is with the full knowledge that this "mitigation project" DOES NOT comply with the LCP and Coastal Act. Violations of the LCP and Coastal Act by Caltrans will disqualify Caltrans from being granted Federal permits and the \$270 million in needed FHWA funding. Measure-T as adopted into the LCP requires FULL compliance (not "as much as possible compliance") with the Local Coastal Program and Coastal Act. The Coastal Family Alliance is asking Caltrans to cease and desist their statutory declared non-compliant mitigation activities until the County of San Mateo and the Coastal Commission rescind their LCP adopted findings for the Sierra Club Devil's Slide Tunnels Freeway Project. The SMC voter approved Measure-T requires full compliance with the LCP and the Coastal Act.

Sincerely

Oscar Braun, Executive Director

CC

Norman Y. Mineta, U.S. Secretary of Transportation
Maiser Khaled, FHWA Team Leader, 1986 Devil's Slide Highway 1 Improvement Project

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Mr. Gary N. Hamby
Division Administrator
Federal Highway Administration
California Division
980 Ninth Street, Suite 400
Sacramento, CA 95814-2724

November 21, 2002

Attention: G. P. Bill Wong & David Ortiz Esq.

Dear Mr. Hamby

SUBJECT: REVIEW OF RECORD OF DECISION OF THE FINAL SSEIS-DEVIL'S SLIDE

The Half Moon Bay Coastside Foundation aka Save Our Bay (SOB) has reviewed the above captioned ROD in order to determine "both whether substantial evidence supports the FHWA ROD findings and whether the findings support the agency's decision". (Citation) SOB's review of the Devil's Slide project Final SSEIS has determined that the FHWA ROD approved preferred twin tunnels/bridges/mitigation alternative does NOT cause the least damage to the biological and physical environment and is not consistent with the local and regional planning. Therefore, in remembrance for Flight 93 hero, SOB's California Watershed Posse co-founder Alan Anthony Beaven, Esq., "a Californian aboard Flight 93 who helped prevent the terrorists from crashing another airplane into its intended target on September 11, 2001" (Senator Feinstein), we respectfully ask the FHWA to re-open the Final SSEIS document for the purpose of providing the FHWA new documented factual information revealing effects of the Devil's Slide Highway Improvement Project that may affect federally listed species or critical habitat in a manner not identified to date. For further information please visit: www.cwposse.org or www.thepebble.info

STANDARDS OF REVIEW : SIERRA CLUB v. CCC PETITION FOR WRIT OF MANDATE

The standards which governed SOB's review of your agency's decision are set forth in the Court of Appeals opinion in *Sierra Club v. California Coastal Commission* (1993). *"The agency which renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order....By focusing....upon the relationships between evidence and findings and between findings and ultimate action, the Legislature sought to direct the reviewing courts attention to the analytic route the administrative agency traveled from evidence to action. In so doing, we believe that the Legislature must have contemplated the agency would reveal this route."* (Citation)

"In determining whether substantial evidence supports an agency's reasoning process, the trial court must look at the whole record (Citation) "The "in light of the whole record" language means that the court reviewing the agency's decision cannot just isolate the evidence supporting the findings and call it a day, thereby disregarding other relevant evidence in the record. (Citation) Rather, the court must consider all relevant evidence, including evidence detracting from the decision, a task which involves some weighing to fairly estimate the worth of the evidence. (Citation) That limited weighing is not an independent review where the court substitutes its own findings or inferences for the agency's. (Citation) It is for the agency to weigh the preponderance of conflicting evidence (citation). Courts may reverse an agency's decision only if, based on the evidence before the agency, a reasonable person could not reach the conclusion reached by the agency." (Citation)

ADOPTED FINDINGS SAN MATEO COUNTY LCP AMENDMENT NO. 1-96 DEVIL'S SLIDE TUNNELS PAGE 11

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Twin Tunnels Alternative: *"The conceptual tunnel design discussed above may very well be representative of the tunnel that is actually constructed. However, the design is only preliminary and the political process for securing funding, the environmental review process, the permitting process, and the final design process could all lead to significant changes in the design. Thus, in its review of the proposed LCP amendment, the Commission must consider the possibility that other designs that meet the basic criteria set forth in the Tunnel Initiative could ultimately be proposed and that in CERTIFYING the proposed LCP amendment, the Commission is NOT APPROVING ANY PARTICULAR TUNNEL DESIGN. NOTE: Page 4 of Adopted Finding for SMC LCP Amendment No. 1-96, Timing and Capacity of Later Phases 2.54c "Require that the roadway improvements be consistent with policies of the Local Coastal Plan, particularly the Sensitive Habitats and Agriculture Components."*

Bypass Alternative: *"Existing LUP Policy 2.54(b) describes the bypass alternative in the following terms: For Route 1, allow construction of a two-lane bypass with slow vehicle lanes on uphill grades around Devil's Slide. The County's preferred alignment is in the area of Martini Creek which bypasses Devil's Side and rejoins the existing Route 1 north of Montara..."*

Just as the proposed amendment would not dictate a particular tunnel alignment or design, the existing LCP policies do not dictate a particular bypass design. However, in February of 1986, Commission reviewed Consistency Certification No. CC-45-85-submitted by Caltrans for the development of an overland bypass. The consistency certification was necessary because Caltrans was applying for federal funding for the project. The Commission concurred with the consistency certification. As the design was approved by the Commission and other agencies, and CalTrans has invested significant resources in design, environmental review, and litigation in the project, the bypass project approved by the Commission under Consistency Certification No. CC-45-85 represents the most likely bypass alternative design that would be built pursuant to the LCP policies.

FACTUAL HISTORY

In 1986 the Sierra Club filed suit in U.S. District Court over the issue of deficiencies in the FIES with regards to "noise" and its environmental consequences and mitigation measures. "In March 1995, the Federal Highway Administration (FHWA), in cooperation with the California Departments of Transportation (Caltrans), issued a Draft Supplemental Environmental Impact Statement/Environmental Impact Report (SEIS/EIR). The Final Environmental Impact Statement (FEIS) was originally approved on April 16, 1986, for a proposal to improve State Route 1 in San Mateo County, California. The preferred alternative, identified in the FEIS and selected in the FHWA Record of Decision signed on May 30, 1986, is known as the Martini Creek Alignment."

"As indicated in the Draft Supplement, the purpose of the document is to comply with the Order and subsequent Judgment of the U.S. District Court following litigation regarding the project. The Supplement is limited to addressing the deficiencies in the FEIS determined in the litigation, and therefore, only addresses noise issues. A tunnel alternative was considered and rejected as part of the CEQA/NEPA environmental review process in 1986. The U.S. District Court subsequently determined that the treatment of alternatives in the 1986 FEIS was proper. Although only noise-related issues were addressed in the 1995 Draft SEIS, comments were received indicating a tunnel alternative would avoid project noise impacts. This issue has been reviewed, and it is determined that the tunnel is not a reasonable alternative because of its inconsistency with current planning policies, the lack of funding, and various safety and cost issues." (Quotation from SEIS June 1995 Tunnel Investigation)

"CONSISTENCY WITH THE COASTAL ZONE ACT HAS NOT BEEN OBTAINED"

FHWA to CALTRANS 8/02/00 *"Consistency with the Coastal Zone Act has not been obtained. The response to the County of San Mateo's comments that the wetlands and riparian habitat impacts and the off-site mitigation is not currently allowed under the Coastal Act or Local Coastal Program. There is no indication that an alternative analysis of fill disposal option and request for preliminary Federal Consistency Determination is in progress and therefore we do not have closure on the consistency determination. These alternatives may have additional*

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unevaluated impacts that would not be disclosed in this document." (citation from HAD-CA File #04-SM-1 Document # P32748)

SMC to CALTRANS 01/25/01 " Dear Mr. Yahata: You have requested that the County clarify statements made in a letter dated May 11, 1999, from Paul M. Koenig, San Mateo County Director of Environmental Services, to Robert Gross and Ed Pang of your office. The letter offered comments regarding the Second Supplemental Environmental Statement/Environmental Report. Your specific request is that the County further explain the statement made at page four of the letter that off-site mitigation of wetland impact is not allowed under the Coastal Act, and that, as a result, the County could not find that the proposed tunnel design complies with the County's Local Coastal Program. After further review of this matter, we have concluded that this statement was made in error. Our view is that a coastal development permit for a tunnel at Devil's Slide could be approved as consistent with the County's Local Coastal Program notwithstanding some impacts to wetlands. The basis for our conclusions is set out below. "

" Moreover, by certifying Measure T and employing a Section 30007.5 conflict analysis, the Coastal Commission confirmed that the choice made favoring the tunnel notwithstanding some impacts to wetlands was, on balance, more protective of coastal resources. Any County approval of a coastal development permit for the Devil's Slide project requires that the County find that the project conforms to the policies of the County's Local Coastal Program. By virtue of the Coastal Commission's certification, that Local Coastal Program now includes Measure T, which calls for a tunnel at Devil's Slide, and allows for some impacts to wetlands as a result of tunnel construction. "

"In summary, Public Resources Code sections 30007.5 and 300200(b) require both the Coastal Commission and local governments to resolve conflicts between competing policies of the Coastal Act when carrying out the provisions of the Act. The electorate resolved policy conflicts in favor of the tunnel when it adopted Measure T. The Coastal Commission has twice performed the analysis prescribed in Section 30007.5, certifying Measure T despite the conclusion that construction of tunnel would result in some wetland impacts. Measure T is now a part of the County's certified Local Coastal Program. It is our view that a coastal development permit can be approved for construction of a tunnel despite some impact to wetlands.

SOB to FHWA 11/21/02

SOB's review of the ROD for the Devil's Slide Final SSEIS finds that the above stated SMC and CCC opinions and LCP Measure T conceptual certification do not meet the standard of review adopted and set forth by the Court in *Sierra Club v. California Coastal Commission*. Why? Because a reasonable person could not reach the conclusion reached by the SMC, CCC or FHWA. The CCC "conceptual LCP certification" is NOT supported by any factual or legal findings or consistent with the Court of Appeal of California 04/16/99 *Bolsa Chica* ruling regarding Coastal Act Section 30240 (ESHA's) and the use of Coastal Act Section 30007.5. The CCC and SMC have provided the FHWA no evidence in the record that destruction of the ESHA's within the Devil's Slide project area is a prerequisite to the creation of their "new" red legged frog twin tunnels off-site mitigation pond. Although the Coastal Act itself recognizes the value and need for access to the coastal zone and coastal recreational areas, nothing in the record or the letter from San Mateo County suggests there is such an acute need for development of Route 1 in and around ESHA's that cannot be accommodated elsewhere. The certified Measure-T LCP amendment states: "The County will (2.54a) "require that the roadway improvements be consistent with policies of the Local Coastal Plan, particularly the Sensitive Habitats and Agriculture Components." (citation Adopted Findings SMC LCP 1/97 page 4) Rather, the only articulated interests which the proposed transfer of the "habitat values" serves is SMC subsidiary interest in retaining "the electorate Measure-T preference for a tunnel alternative". The Court of Appeal ruled on April 16, 1999 " *In the absence of evidence as to why preservation of the ESHA at its current location is unworkable, we cannot reasonably conclude that any genuine conflict between long-term and short-term goals exist.* (Citation) *In short, while compromise and balancing in light of existing conditions is appropriate and indeed*

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encouraged under other applicable portions of the Coastal Act, the power to balance and compromise conflicting interests (30007.5) cannot be found in 30240." (citation)

The January 25, 2001 response letter authored by San Mateo County Counsel offering clarification regarding SMC Director of Environmental Services Paul Koenig official statutory SSEIS/EIR comments letter directed to CalTrans on May 11, 1999 is without proper legal foundation. The CCC and SMC interpretation of section 30240 was not contemporaneous with the 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. (See *Yamaha Corp. of America v. State Board of Equalization*, supra, 19 Cal, 4th at pp.12-13) Caltrans specific request was that the County further explain the statement made at page four of the letter "that off-site mitigation of wetlands impact is not allowed under the Coastal Act, and that, as a result, the County could not find that the proposed tunnel design complies with the County's Local Coastal Program. After further review of this matter, we have concluded that this statement was made in error. Our view is that development permit for a tunnel at Devil's Slide could be approved as consistent with the County's Local Coastal Program, notwithstanding some impacts to wetlands." The reasoning that SMC and CCC employed is unpersuasive and clearly not supported by the April 16, 1999 Court of Appeal Bolsa Chica ruling :

First, contrary to their argument, a court would not uphold their interpretation of section 30240 as set forth by the Commission in its conceptual findings for the Measure-T LCP amendment certification. The CCC and SMC provide NO factual basis for their assertion that supports the application of the balancing power provided by section 30007.5. SOB's review of the Adopted Findings for San Mateo County LCP NO. 1-96 (Devil's Slide Tunnel Initiative) proceedings before the CCC did not disclose any policy or interest which directly conflicts with the application of section 30240.

"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 a 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. (Pygmy Forest, supra, 12 Cal. App. 4th at p.611)

COURT OF APPEAL OF CALIFORNIA v. THE SUPERIOR COURT OF SAN DIEGO COUNTY Petitioners and Real Parties in Interest Bolsa Chica Land Trust, Sierra Club and Surfrider Foundation

April 16, 1999" 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." (Citation)

On August 23, 2000, Lennie Roberts, renown legislative lobbyist and self proclaimed 6th member and Chair for life of the San Mateo County Board of Supervisors addressed the San Mateo County Planning Commission in support of Caltrans' frog pond "Tunnel Mitigation" project application for coastal development permit (CDP). Here 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, 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

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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. Planning Commission Chair: Anyone else? Silence.....move to close the hearing."

Notice of Violation of the SMC Local Coastal Program, California Coastal Act, Endangered Species Act Section 7 and Section 9, Clean Water Act Section 404 and the CEQA/NEPA.

On November 24, 2000, Save Our Bay staff 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 SOB staff that the Tunnels/Bridges mitigation project activities conducted by Caltrans, their agents or others has resulted in a "take" of federally listed *Rana Aurora 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. Sheila Larson informed Mr. Braun and Dave Cohn of SOB California Watershed Posse, that CalTrans had diverted the water from the North Pond to construct and fill the new ESHA mitigation pond. CalTrans having been issued a Coastal Development Permit by SMC for the tunnel mitigation pond project, immediately attempted to transfer the resident red legged frogs from the drained North pond with the result being an unauthorized "take" under CalTrans Section 7 agreement with the Service. On Monday November 27th, by telephone, Oscar Braun filed the notice of violation (NOV) 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.

Tunnels/Bridges ESHA Mitigation Project Description: This Tunnels/Bridges ESHA mitigation project as proposed by Lennie Roberts on behalf of San Mateo County involves the excavation of an upland area between two existing ponds found within US Army Corps of Engineers Section 404 Jurisdictional Map and Project Study Area (Figure 5-3) The Tunnels mitigation pond will be deep enough to hold water of 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 wooded flats would be placed in the pond. Biologist will monitor vegetative growth in the new pond and replant as necessary to ensure success. 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 15th and June 30, 2001 and moved to the new mitigation pond, constructed in the fall of 2000"

Factual Sequence of Events, Court Rulings and CalTrans, CCC & SMC Violations

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In October 2000, CalTrans, having been unlawfully issued a Coastal Development Permit by SMC for the tunnels pre-mitigation pond project, immediately conducted mitigation construction activities in the COE delineated project areas that included the draining of the North pond facilitating an "unauthorized take" and violating their section 7 agreement with the F&W Service dated September 26, 2000 (Ref. 1-1-00-TA-2980). By unlawfully and prematurely issuing their Devil's Slide pre-mitigation CDP to CalTrans, San Mateo County has 1) defied the 1986 U.S. District Courts injunction prohibiting "all" construction activities within the Devil's Slide Route 1 project area from the Half Moon Bay Airport to Linda Mar Boulevard Pacifica, San Mateo County, California. 2) Disregarded the CCC declaration shortly after the Court of Appeals April 1999 Bolsa Chica decision regarding Coastal Zone ESHA's and Section 30007.5 that the CCC would accept the courts findings and opinion and would NOT file an appeal petition with the California Supreme Court seeking to overturn the Court of Appeal ruling. What does that mean? It means that neither the CCC nor SMC can overrule or freely superced with de novo proceedings the April 1999 Court's ruling or legally revert back to their pre-Bolsa Chica interpretation (circa January 1997) of section 30007.5 by re-certifying their conceptual consistency of the SMC Measure-T LCP amendment. Note: June 17, 2002, The California Superior Court of San Mateo County, Case # 402781, Joyce Yamagiwa, v. California Coastal Commission ruled "The Commission's self-righteous contention that it was merely acting pursuant to the Coastal Act is not convincing. In fact, this Court is disheartened with any such argument that completely eliminates this Court's prior order as though it was nothing more than some minor hindrance to the Commission's exertion of power. That the Commission considers orders of the Superior Court as matters to be freely superseded with de novo proceedings is saddening. The Court of Appeal has appellate jurisdiction where the Superior Courts has original jurisdiction (Cal. Constitution Article VI, section 11) The State Constitution limits the power to overturn a Superior Court's order to the appellate courts. (People v Gonzalez (1998) 12 Cal.4th. 804, 815) Moreover, the Legislature may not restrict appellate review in a manner that would substantially impair the constitutional powers of the courts, or practically defeat their exercise. (Leone v Medical Board (2000) 22 Cal.4th 660, 668) Any action by the Commission which has the effect of superseding this Court's order would be an infringement of the appellate court's authority, and would be improper." 3) By authorizing and issuing the Lennie Roberts proposed "pre-project mitigation scheme activities CDP prior to seeking either District Court approval or being granted federally required authorizations and permits from the Corp of Engineers (COE) or F&W Service clearly violates both the Endangered Species Act section 7 & 9 and the Clean Water Act section 404. These premeditated violations of federal environmental protection laws clearly disqualifies the County of San Mateo from receiving required and needed federal permits or funding for the Devil's Slide Route 1 Improvement Project. 4) The COE has verified the SOB review findings by confirming that CalTrans did NOT acquire any of the required COE 404 permits to divert waters of the United States or conduct "tunnels pre-mitigation construction activities in the COE delineated 404 ESHA. Please note Final SSEIS/EIR volume 1 APPENDIX C : U.S. ARMY CORPS OF ENGINEERS NATIONWIDE PERMIT AUTHORIZATION letter dated April 4, 2001 to CalTrans re: "You are advised to refrain from commencement of your proposed activity until a determination has been made that your project is covered under a existing permit."

Factual Tunnels/Bridges ESHA Mitigation Project Background :

Th U.S. Fish and Wildlife Service by letter to Caltran's Sid Shadle on September 26, 2000 stated: "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 concur. Therefore, the project as proposed is in compliance with the Act, with the understanding that take is not authorized under this agreement." NOTE: CalTrans characterized their "pre-mitigation" construction activities as "conservation avoidance measures." A clear violation of the Courts ruling regarding ESHA off-site mitigation activities.

"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. If you

Half Moon Bay Coastside Foundation

Water Quality Protection Program

Mission : Implementation



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

have any questions regarding this response, please contact Cecilia Brown or Ken Sanchez at (916) 414-6625.
Signed, Karen J. Miller, Chief, Endangered Species Division

Devil's Slide Draft Supplemental EIS/EIR page 67. " While the south pond at Shamrock Ranch is not within the project limits of the proposed tunnel alternative, to ensure that the habitat will be protected from construction activities, the south pond will be designated as an Environmentally Sensitive Area (ESA) This designation restricts "any" construction activities from occurring within its boundaries. Instead, the transport of construction vehicles, equipment and personnel will "only" be allowed to occur on temporary roads from existing Route 1. Note: All activities within this COE 404 delineated areas require prior approval and permits from the COE.

"In terms of the general protection, the Coastal Act provides for the coastal environment, we have analogized it to the California Environmental Quality Act (CEQA). (citation) We have found that under both the Coastal Act and CEQA The courts are enjoined to construe the statute liberally in light of its beneficent purpose. (Citation) The highest priority must be given to environmental consideration in interpreting the statute (citation)."

" In addition to the protection afforded by the requirement that Commission consider the environmental impact of all its decisions, the Coastal Act provides heightened protection to ESHA's. Section 30107.5 identifies an ESHA as "any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments. The consequences of ESHA statue are delineated in section 30240(a). Environmentally sensitive habitat areas shall be protected against any(71 Cal. App. 4th 507) significant disruption of habitat values, and only uses dependent on those resources shall be allowed in those areas. Development in areas adjacent to environmentally (63 CalRptr. 2d 858) sensitive habitat area and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with continuance of those habitat and recreational areas. Thus development in ESHA areas themselves is limited to uses dependent on those resources, and development in adjacent areas must carefully safeguard their preservation."

We respectfully ask the FHWA to re-open the Final SSEIS document for the purpose of providing the FHWA new documented factual information revealing effects of the Devil's Slide Highway Improvement Project that may affect federally listed species or critical habitat in a manner not identified to date.

Sincerely,


Oscar Braun

Executive Director, CWP Water Quality Protection Program , www.saveourbay.org or www.cwpdx.org

CC.

Norman Y. Mineta, U.S. Secretary of Transportation
Honorable Senator Dianne Feinstein
Honorable Senator Barbara Boxer
Robert Gross, District 4 Branch Chief, Office of Environmental Planning South
Bob Smith, Army Corp of Engineers
Karin J. Miller, F&W Service, Chief, Endangered Species Division

April 4, 2004

'Last big hurdle' for tunnels RANCH OWNER SEEKS TO BLOCK PLAN TO BYPASS DEVILS SLIDE

**By Thaa Walker
Mercury News**

For all of its beauty, the breathtaking drive along Devils Slide has often been a journey through hell. The hairpin turns on the narrow coastal stretch of Highway 1 are unnerving enough. But it's the landslides and rocks tumbling down the mountainside that have caused motorists the greatest anxiety for more than 60 years.

This month, Caltrans expects a San Mateo County commission to approve the last major permit needed for construction of twin 4,000-foot-long tunnels. With that final hurdle removed, the project could be under way as early as fall, and by 2009 Devils Slide would be left to bicyclists and hikers.

But not if Oscar Braun has anything to say about it.

"You're talking to the last big hurdle," said Braun, the 60-year-old owner of a sprawling multimillion-dollar ranch in the hills high above Half Moon Bay, who vows to do his best to stop the tunnels.

For 25 years, environmental groups such as the Committee for Green Foothills and the Sierra Club waged war against Caltrans over its plan to shoot a highway bypass over pristine peaks and across a verdant valley where horses graze. They finally forced Caltrans to accept their alternative: a tunnel, which San Mateo County voters approved in 1996. One tunnel evolved into two.

Caltrans officials and environmentalists have worked together since then and expect the San Mateo County Coastal Commission to approve the coastal development permit when it comes up for a scheduled review this month.

The total project is expected to cost \$270 million, which will come primarily from federal emergency relief funds. It's thought the tunnels could open by 2009.

Braun has fought the tunnel plan with appeals and a lawsuit ever since San Mateo County voters approved it. He opposes the project because he doesn't believe it would be the least expensive, least environmentally damaging alternative. He'll appeal again if the permit is granted this month, he says. And if that doesn't stop the project, he's sure a new lawsuit he's planning to file against an array of organizations, will.

Caltrans has built into its scheduled fall groundbreaking the time to resolve Braun's anticipated appeals, and anticipates that he may sue.

"We always know there's going to be folks who will challenge it," said Caltrans project manager Skip Sowko, who has seen most of the battles up close, having worked on Devils Slide since 1981.

The current fight is only one of many times Braun has tangled with the county and environmentalists. He sued to stop plans to bring 140,000 acres of coastal rural land under the jurisdiction of the Midpeninsula Regional Open Space District in 2003, and when a wildlife sanctuary moved into his Higgins Canyon neighborhood a few years ago, he sued, but the case was dismissed.

"I don't know what his problem is," said San Mateo County Supervisor Rich Gordon. "There's hardly a thing that folks talk about doing on the coast that he doesn't oppose or appeal."

Braun waged his first legal battle in the 1980s, when a breach-of-contract suit he filed against his employer, Johnson & Johnson, netted him millions. He considers himself a whistle-blower, fighting for the protection of the coast and landowner rights against the so-called collective rights of the greater community.

He believes certain environmental groups use "eco-terrorism" tactics to acquire huge swaths of land to exploit and control the natural resources. He accuses them of colluding with the county.

"Their motivation is as old as biblical times," said Braun, who in 1995 joined with a small group of coastal landowners to explore the idea of seceding from the county, and last year initiated an effort to form a new town by taking over open space land.

"It has to do with power. It has to do with corruption. It has to do with greed."

Lennie Roberts, the legislative advocate for the Committee for Green Foothills, said she thought construction on the tunnels would begin in 1997, the year after voters approved the plan.

Instead, the years since have been filled with environmental reviews, design studies, permit hearings and Braun's challenges, which she said have been baseless.

"He's never stopped anything, he's never won in court, he hasn't gotten very far," said Roberts, who in the 1960s evolved from a Ladera homemaker into one of the most influential environmental activists in San Mateo County.

"But Caltrans has been very gun-shy because of all of his threats and initial actions," Roberts said. "It's slowed everything down."

Roberts and Braun agree that the hostilities between them began in 1990. Roberts has long reviewed proposed coastal development permits for her group in an effort to ensure compliance with environmental protection guidelines. She told Braun the ridge top he had selected to build his dream house was inappropriate because it would spoil the scenic vista. He eventually built the house at a lower spot on the hill.

"He said, 'I'm very litigious, don't get in my way,'" Roberts recalled. "The board of supervisors ended up making him move the house off the ridge top. I think ever since then he's had it in for us."

Braun denied using those words and said he hasn't been the instigator in the 14 years of animosity among him, the county and various environmental groups.

"They brought the battle to me," Braun said from his Spanish-style home, which he also refers to as "the compound."

The next step in forestalling the Devils Slide tunnels, he said, is his plan to file a civil RICO lawsuit, for Racketeer Influenced and Corrupt Organizations Act, a federal strategy created in the 1970s to take down criminal enterprises. Braun plans to aim the suit at a number of open space non-profit organizations, county officials and employees, and environmental activists, arguing that there is a pattern of corruption on the coast.

"The lawsuit will stop a whole lot of activity, including Devils Slide," he said, adding that he believes the suit will disqualify the county from receiving federal money for the project. "These are not hollow accusations. This is just as much Oscar Braun's last stand as anything else. This is going to be the big battle. I plan on taking everything they've got."

The battle-hardened tunnel advocates say they're ready.

"We sued and were successful in stopping the bypass," Roberts said. "He hasn't been successful in stopping the tunnel yet. And we don't expect him to be."

Contact Thaa Walker at twalker@mercurynews.com or (510) 790-7316.

May 4, 2004

Martha Poyatos
Executive Officer
San Mateo LAFCO
555 County Center
Redwood City CA 94063

RECEIVED

2004 MAY -4 A 10:50

SAN MATEO COUNTY
PLANNING DIVISION

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



Statutory Request for LAFCO to Reconsider Approving the Annexation of the San Mateo Coastal Area to the Mid-peninsula Regional Open Space District

Dear Commissioners:

It is requested that the San Mateo LAFCO, reconsider its resolution adopted on April 7 approving the Annexation of the San Mateo County Coastal Area to the Mid-peninsula Regional Open Space District (District). This request is submitted pursuant to Government Code Section 56985.

Request for rescission or reduction of approved annexation

The specific modification to the resolution of approval that is being requested is either rescission of the approval in its entirety, or substantially reducing the annexation area to those properties that are presently owned in fee by the District.

There are several bases for this request that constitute new or different facts that could not have been previously presented and which warrant reconsideration. These are summarized below.

No further action until the commission considers this request

It is my understanding that you are directed by this statute not to take any further action until the Commission acts on this request.

I also understand that you are required to place this request on the agenda of the next meeting of the Commission for which notice can be given. I read Section 56985(e) as stating that you shall give notice of the reconsideration in the same manner as notice was given for the original proposal and that, in addition, you may give notice in any other manner you choose

Fatal flaw under CEQA

The "project" considered by LAFCO is the annexation to the District. There are no other actions or entitlements for use. In fact, the District forswears any knowledge of even what parcels it would intend to acquire after the annexation is completed. The changes in the Government Code that establish LAFCO as the "conducting authority" have changed the role of the District for this annexation so that it can not legally serve as either the lead agency or as a responsible agency.

The fact that the Commission would rely on the environmental document prepared by the District, when it was not authorized to act as the lead agency, was not known until after the Commission acted and constitutes new or different facts.

The Commission has no choice but to declare the applicant District's Coastside Protection Program EIR null and void for purposes of this annexation. In addition, we are formally requesting that San Mateo County LAFCO notify the Santa Clara Superior Court that their Commission illegally transferred the role of

Martha Poyatos
May 3, 2004
PAGE 2 OF 4

"lead agency or responsible agency" to the applicant District and that they have adopted a finding declaring the District's Program EIR null and void.

The District has NO legal standing that empowers it to act as lead agency or responsible agency for this annexation under the Public Resources Code or the Government Code that establishes LAFCO as the "conducting authority" by the Cortese/ Knox/Hertzberg Local Government Reorganization Act of 2000.

Lack of data regarding inflated acquisition costs

Although information was disclosed to staff and legal counsel prior to the Commission hearing, this data did not find its way into the staff report and therefore did not become part of the public record. This data concerns the true costs to the public for the District to acquire various pieces of land.

The LAFCO commissioners and public should have been provided a copy of the Ron Sturgeon San Mateo County Civil Grand Jury referral regarding the Coastal Conservancy November 2002 funding grant to the District for the transfer of Rancho Miramontes lands from POST at 400% inflated market value of \$4.2 million. The public record indicates that POST acquired Rancho Miramontes in 1997 with an assessed market value according to the Assessor-County Clerk-Recorder for the County of San Mateo (best & highest use) of \$1 million.

At the very least, reference to Grand Jury reports and disclosure of purported land appreciation values between the time they were acquired by POST in 1997 and the District in 2002, would be crucial to the Commission's consideration of the reasonableness of this proposed annexation. How do POST's undeveloped open space lands appreciate 400% in less than five years? Why should taxpayers pay POST and MROSD multiple times over inflated prices for the same lands that are being transferred between Coastal Open Space Alliance (COSA) partners of record? Are POST and the District running a real estate Ponzi scheme here in San Mateo County with Proposition 12, 13, and 40 and Congressional funding boondoggles? How much more will occur after the annexation is completed? Are these RICO activities?

The Save Our Bay Foundation requests that the San Mateo County's Controller's Office perform a comprehensive fiscal analysis and audit of the District's and POST's real estate transactions in San Mateo County "prior" to and as part of a reconsideration of the reorganization.

The Board of Supervisors, County Counsel, and District Attorney's office must recuse themselves from this Whistle Blower referral for an audit of the District and POST in order to prevent a clear conflict of interest or appearance of conflict of interest with the non-independent LAFCO controlled by the San Mateo County Board of Supervisors.

Too cozy a relationship between the LAFCO staff and the County organization

There is apparently no separation between the LAFCO staff, that is supposed to be independent, and the County staff. Even your Commission's web page shows LAFCO as part of the County's Environmental Services Agency. The Commission staff distributes reports in manila envelopes a return address of the "County Planning and Building Division."

How can the Commission expect to receive free and unbiased information when the LAFCO staff are County employees and considered to be part of a County agency? This is contrary both to the concept of

Martha Poyatos
May 3, 2004
PAGE 3 OF 4

an independent LAFCO and the amendments in the law brought about by the Cortese/Knox/Hertzberg Local Government Reorganization Act of 2000.

This lack of independence and representation for the Coastal area is further evidenced by the fact that San Mateo County is the only county out of fifty eight counties that entered the 21st Century electing their Supervisors at large rather than by districts they are assigned to represent.

We thought the LAFCO staff would provide full disclosure and not hide this relationship at the hearing on the proposed annexation from the public. We are requesting full disclosure of the relationship of all Commissioners and staff with the County of San Mateo as part of the official record of the proceeding.

Identification of parcels owned by the District in the annexation area and District history

There was no identification of the parcels already owned by the District within the annexation area, despite the request that these facts be disclosed. This information itself may have been influential in the hearing to support the "reduced annexation area" option or the "no annexation" option by showing the District is able to acquire lands without prior annexation.

The boundary maps provided by the District for their LAFCO application are inaccurate according to a December 16, 2003 audit by the Assessor's office. The applicant District must present LAFCO and the public boundary maps with accurate cartography certified by Warren Slocum, Chief Elections Officer, & Assessor-County Clerk-Recorder for the County of San Mateo.

The LAFCO staff did not disclose to the Commissioners or public the District's history of policies or practices regarding the concealment of information regarding toxics (PCB's) from their neighbors in Santa Clara County or violating the California Environmental Quality Act i.e. *McQueen v. MROSD Board of Directors*.

The LAFCO staff did not report to the Commissioners or public the District's Administrative Record (AR) disclosure that the District long established pattern of using Federal and State "tax avoidance schemes" when acquiring privately held lands from "willing sellers". The Save Our Bay Foundation has requested that the IRS investigate and audit the District and all Coastal Open Space Alliance (COSA) members financial and administrative records to see if the COSA enterprise have not violated their Federally granted tax exempt status. The Foundation will provide searchable pdf copies of the Districts AR and the Ron Sturgeon Civil Grand Jury referral of November 2002 to all investigating agencies and Congressional committees looking into what appears to be pattern of RICO activities.

The LAFCO staff and legal counsel concealed from the Commission and public the fact that the California Court of Appeal found in *McQueen v. MROSD Board of Directors*, that the EIR was incomplete and misleading and clearly concealed the risks to the environment and public's health and safety. Neither the District nor POST have disclosed the value of their oil, mineral and timber resources or the potential cost to remediate their toxic polluted illegal landfill holdings in San Mateo County.

All of this should have been part of the record of the LAFCO hearing and was not presented, which constitutes a violation of the obligation to provide an informed, fair and balanced public record.

The District's false declaration that they have implemented a substantial "vegetative fuel management plan" in compliance with the California Fire Plan in their Program EIR has been shown to be without any factual basis by the FireWise 2000 consultant retained by the District. The District's 48,000 acres, without an implemented state mandated vegetative fuel management plan, poses the greatest risk for a

Martha Poyatos
May 3, 2004
Page 4 of 4

catastrophic wildfire that, according to a State Auditors report, could shut down our Hetch Hetchy regional water system on the Peninsula for four to eight weeks.

The District's fatally flawed Program EIR did not disclose to the Commission or public the fact that the District's current lands contain over 300,000 feral pigs (State Fish & Game statistic) that are destroying the entire S.F. Peninsula watershed while spreading invasive pathogens such as "sudden death oak". The District's abatement efforts claim to have trapped approximately 200 pigs in the last three years. According to the National Invasive Species Management Plan, 90% of all feral pigs are on public lands. These feral pigs cause over \$2.4 billion of damage to the California watershed and agriculture per year.

This information should have been part of the record of the LAFCO hearing and was not presented by the LAFCO staff, preventing an informed, fair and balanced public record for the Commission.

In closing, please note that the Commission's decision to strictly limit the ability of the public to provide useful testimony at the hearing, especially limiting individuals from providing information more than once, despite the fact that the hearing was held on different dates, restricted the ability to bring these and other pertinent facts to light at the hearings.

We look forward to the ability to expound upon these concerns when the Commission reconsiders its prior approval. Please provide our Foundation with a notice of that meeting. Thank you.

Sincerely,



John Plock
Chairman, Board of Directors

CC. Honorable Arnold Schwarzenegger, Governor of California
Honorable Dianne Feinstein, U.S. Senator
Honorable Barbara Boxer, U.S. Senator
Honorable Charles Grassley, U.S. Senator, Chair, Senate Budget Committee
Honorable Richard Pombo, U.S. Congressman, Chair, Congressional Resource Committee
Honorable John Ashcroft, U.S. Attorney General
Honorable Thomas Ridge, U.S. Secretary of Homeland Security
Honorable Norman Mineta, U.S. Secretary of Transportation
Frank Iwama, Governmental Affairs Director, Save Our Bay Foundation
Mimi Iwama, Communications Director, Save Our Bay Foundation

August 8, 2004

California Coastal Commission
North Central Coast District Office
Charles Lester, Deputy Director
Chris Kern, District Manager
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

RECEIVED
AUG 10 2004
CALIFORNIA
COASTAL COMMISSION

Dear California Coastal Commission,

I was shocked, disappointed, frustrated, and dismayed to read about the Coastal Commission's recent effort to delay the Devil's Slide Tunnel Project. I have watched the progress of this project for years, and it has served as a brilliant example of the way state agencies can slow progress, add enormous expense and fail to serve the community. Although I'm sure the Coastal Commission believes its actions appropriate for its mandate, the timing of this last move was unfortunate at best, and the consequences are severe. May I remind you that will be 10 years ago this January that the road was closed for 5 months due to collapse of the road adding four hours to commute times. We have waited for this tunnel for a very long time, and it's is long past time we allow this project move forward.

I was delighted to hear that the last major hurdle to construction of the tunnel had been removed with the approval from the San Mateo County Board of Supervisors. Hearing that now one more hurdle has been placed in front of the project and causing further delay frankly disgusted me. I assure you that this action will be one I keep in mind as I consider my support of the Coastal Commission in future. I intend to express my outrage to the governor and my representative in the state legislature and recommend they take a seriously look at the Coastal Commission as they consider the hard budget cuts they must face in the years ahead.

Sincerely,



Stephen Miller
Resident of Moss Beach

cc: Governor Arnold Schwarzenegger
State Capitol Building
Sacramento, CA 95814

cc: Assemblyman Gene Mullin
1528 South El Camino Real
State Capitol
Suite 302
Room 2170
San Mateo, CA 94402

EXHIBIT NO. 22
APPLICATION NO.
A-2-SMC-04-011



PUBLIC INPUT TO:

Appeal No. A-2-04-11
(Devil's Slide Tunnel, San Mateo Co.)
Hearing Date: September 8, 2004

via fax(415) 904-5400 on August 22, 2004 @ 6:30pm

Hon. Mike Reilly, Chair
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105-5260

Attn: Chris Kern
Coastal Program Manager
North Central Coast District

Following is what you may choose to think of partially as public relations material... a letter to Editor of the Pacifica Tribune, and also, simultaneously shown by the same document, public input, things I hope the California Coastal Commission will consider in preparing the Staff's report on this controversial Caltrans Coastal project which seems environmentally quite destructive to me.

There has been no slippage problem, no closure, not even once, since some years ago when Caltrans dewatered the Devil's Slide section of SR#1.

Sincerely,

s/Signed

Larry M. Kay
address at bottom

RECEIVED
AUG 23 2004
CALIFORNIA
COASTAL COMMISSION

EDITOR:

The August 18, 2004 Pacifica Tribune contained a ltr-to-editor from Ms. April Vargas who is a paid political lobbyist of the Committee for Green Foothills, an organization which (in spite of its glowing name) backs developers in their development of the real estate area from Shamrock Ranch in Pacifica to the southern city limits of Half Moon Bay. Ms. Vargas' boss is Ms. Lennie Roberts of the Committee for Green Foothills who personally and strangely testified before the Board of Supervisors IN FAVOR of the large Moss Beach Highlands sub-division which would have been located exactly in the magnificent Green Foothills of the village of Moss Beach. This was a few years ago.

The Vargas' August 18th. letter to the Tribune correctly refers to the Devil's Slide Tunnels in the plural, two, not one. Although the Pacifica Tribune headed her letter incorrectly as "TUNNEL" it is April's term that is correct, "tunnels". The California Coastal Commission settles this issue of one tunnel vs. two tunnels with their official Agenda of the upcoming September 8th hearing in Eureka which declares:



Appeal No. A-2-04-11 (Devil's Slide Tunnel, San Mateo Co.) Appeal by Oscar Braun and Commissioners Reilly & Caldwell from decision of San Mateo County granting permit with conditions to Caltrans for two parallel 4,000-ft-long highway tunnels, approach bridges, operations & maintenance building, and public access improvements, at Devil's Slide, San Mateo County. (MPD-SF)"

Certain intrigue is not dealt with fairly in the Vargas' letter. There is no plan for the State to dispose of the existing Caltrans Martini Bypass right of way. Rather, the legislative plan is to keep the Caltrans' right of way under state ownership by transferring it to State Parks & Recreation. It could later by legislation be transferred back to Caltrans, or any State agency.

It has been more than 5 years since the EIR for the proposed project was performed, and there has been change in significant circumstances. One change I refer to is this:

Dewatering has now been done by Caltrans and has repaired the previously existing sliding condition on the short section of Highway #1 we've come to call "Devil's Slide". The Coastal Commission may decide to consider this date of EIR in their report/hearing.

This proposed project may need the mysterious second tunnel to accommodate a kind of future "light rail, transit villages on the Coast" thought of some political group. Certainly, no one, not one person, has ever voted on the present proposed two tunnels project. That project has never seen the ballot, not ever. The Vargas' contention that any plebescite matches the current project is in error.

There are other things... Montara would be destroyed forever from its present environmental status by dirt-loaded dump trucks, and unceasing dynamite blasting rocking the area, for years. The total dugout-then-disposed-of dirt quantity planned for Green Valley, etc. is represented by imagining an unbroken line of loaded dump trucks on Highway #1, SR#92, and Hwy#101; A solid line of filled dump trucks stretching all the way to San Jose from Devil's Slide.

This massive environmental destruction which would be caused by the disposal problem of dugout earth certainly must be confronting the California Coastal Commission as a major, major, problem. Where does Caltrans really intend to place this dugout dirt on the San Mateo Coastside?

The Coastal Commission is bound by State Constitutional Law to enforce the Coastal Act, and they will. That IS their mission, their only mission, clearly put. If Caltrans is willing to destroy the environment, and destroy their own roads with lines of heavily loaded dump trucks, thus, impairing Coastal Access then the Coastal Commission may confront Caltrans. In fairness, to my old outfit, Caltrans, this should be said. They probably don't want any kind of a tunnel project at this point in California history.

Coastal access to visitors and residents would be greatly impaired by this \$275,000,000.00 unnecessary pork barrel project at a time when we desperately need the project's assigned Federal funds to be transferred to the current Bay Bridge project where we have over-run costs on earthquake protection for an extremely major interstate highway artery.



The Federal people might do that, transfer the Devil's Slide funding to a genuine need at the Bay Bridge which is after all an INTERSTATE freeway, so such Federal action would be well founded.

This project actually began at Twenty-seven million dollars some years ago. Now, Caltrans tells us officially the cost will be ten times that. Read that \$400.000, 000.00, if you wish. Money we need to have transferred to the Bay Bridge, if the Federal DOT will understand the emergency status of the Bay Bridge retrofitting and help this State by transferring these already assigned funds from the "tunnels".

Larry Kay
Half Moon Bay
+++

FROM: Larry Kay
Half Moon Bay, Calif.

MAIL TO: P O BOX 394
MONTARA, CALIF. 94037

'Phone (650) 712-9554

Larry3Kay@AOL.com

DEVIL'S SLIDE TUNNEL INITIATIVE

MEASURE T

"shall the initiative ordinance changing the San Mateo County Local Coastal Program to substitute a tunnel alternative at Devil's Slide in place of a bypass on Route 1 be adopted?"

(TEXT)

We, the undersigned, request that this initiative measure be enacted by the Board of Supervisors or submitted to the voters of San Mateo County in accordance with Section 9118 of the California Elections Code.

The people of the County of San Mateo ordain as follows:

Section 1. Purposes of This Measure

(1) **Authorization of Tunnel:** To provide for a safe, stable, and reliable tunnel behind Devil's Slide that expeditiously solves the problems of closure of State Highway Route 1.

(2) **Prevention of Hazards:** To protect highway users against dangers from landslides, rockfalls, cliff drop-offs, steep grades and coastal fog that often shrouds the higher elevations of the proposed Devil's Slide bypass.

(3) **Protection of Quality of Life for Coastside Communities and Visitors:** To protect residents, businesses, property owners and visitors to coastside communities and parklands from flooding, visual blight, noise, air pollution, and traffic congestion resulting from the proposed bypass.

(4) **Preservation of the Environment:** To preserve the streams, parks, watersheds, scenic beauty, endangered species, wildlife and other vital natural resources of the San Mateo Coastside.

(5) **Voter Control:** To ensure voter control over critical decisions affecting State Highway Route 1 and the San Mateo Coast.

Section 2. Findings

(1) **A tunnel is a safe and reliable solution.** A tunnel would meet all applicable federal safety standards. Safety features would include ventilation, lighting, and appropriate signage or signaling systems. A tunnel would be safer during earthquakes than bridges and fills, which would be necessary along the proposed bypass.

(2) **A tunnel is cost-effective.** A tunnel could be built for less money than the proposed bypass. Earthwork would be reduced by as much as 95 percent, from six million to two hundred thousand cubic yards.

(3) **A tunnel will protect the environment.** A tunnel would have virtually no harmful effects upon the environment. It would be consistent with coastal laws. It would avoid the serious damage to the watersheds, wildlife habitats and parks of Montara and San Pedro Mountains that would be caused by a surface bypass.

(4) **A tunnel is a timely solution.** A tunnel can be constructed as quickly as the proposed surface bypass. It would meet transportation needs while protecting the environment.

Section 3. Route 1 Improvements

(1) Policy 2.50 b. of the San Mateo County Local Coastal Program is amended to read in its entirety:

2.50 b. On Route 1, limit Phase I improvements to: (1) slow vehicle lanes on uphill grades and the following operational and safety improvements within the existing alignment or lands immediately adjacent: elimination of sharp curves, lane widening, wider shoulders to allow passage for emergency vehicles and signals at major intersections, and (2) construction of a tunnel for motorized vehicles only behind Devil's Slide through San Pedro Mountain. The tunnel design shall be consistent with (a) Coastal Act limits restricting Route 1 to a two-lane scenic highway, and (b) minimum state and federal tunnel standards. A separate trail for pedestrians and bicycles shall be provided outside the tunnel as specified in Policy 2.56 a.

(2) Policy 2.54 b. of the Local Coastal Program is amended to read in its entirety:

2.54 b. For Route 1, allow construction of a tunnel behind Devil's Slide through San Pedro Mountain. The tunnel should be given

high priority for Federal and State highway funds. Until a tunnel is completed, the State should maintain and repair the road on the existing alignment. No part of Route 1 used by motor vehicles shall be built on any alignment that bisects Montara State Beach, including the "McNee Ranch Acquisition" except along the current Route 1 alignment. Any alternative to the tunnel, except the repair and reconstruction of the existing road, shall require approval by a majority of the voters of San Mateo County.

(3) Policy 2.56 a. of the Local Coastal Program is amended to read in its entirety:

2.56 a. Require, if funds are available, that Caltrans provide adjacent or separate facilities for bicycle and pedestrian trails in accordance with the policies of the Recreation and Visitor Serving Facilities Component and the County Bikeways Plan. If a tunnel is constructed behind Devil's Slide, require as part of the project that Caltrans construct a bicycle and pedestrian trail outside the tunnel.

Section 4. Inconsistent County Plans and Ordinances

Except as approved by the voters of San Mateo County subsequent to the effective date of this ordinance, if any existing or subsequently enacted provision of the General Plan, the Local Coastal Program, an area or special plan or other ordinance or resolution of the County of San Mateo, is inconsistent with this ordinance, that provision is superseded and rendered ineffective by this ordinance to the extent, but only to the extent, that it is inconsistent.

Section 5. Submission to Coastal Commission and Metropolitan Transportation Commission

The Board of Supervisors shall submit in a timely and appropriate manner, with necessary supporting documents and information, any amendments made by this ordinance of the Local Coastal Program to the California Coastal Commission, and any amendment of the Regional Transportation Plan to the Metropolitan Transportation Commission.

Section 6. Effective Date of Measure

This ordinance shall become effective as provided by statute except that if all the General Plan Amendments permitted by law during the year in which this ordinance is enacted, this ordinance shall become effective on January 1, 2001.

Section 7. Amendment

This ordinance shall not be repealed by a majority of the voters of San Mateo County.

Section 8. Severability

If any provision or application of this ordinance is held by a court to be invalid, the invalidation shall not affect the validity of any other provision or the application of any part of this ordinance.

INITIATIVE MEASURE AMENDING SAN MATEO LOCAL COASTAL PROGRAM TO ALLOW FOR CONSTRUCTION OF A TUNNEL ALTERNATIVE FOR THE DEVIL'S SLIDE BYPASS ON STATE ROUTE 1

Initiative measure proposing ordinance to amend the San Mateo County Local Coastal Program. Current regulatory policies of the Local Coastal Program allow construction of a two-lane bypass on State Highway 1 around Devil's Slide, with slow vehicle lanes on uphill grades, and designate the Martini Creek alignment as the preferred alignment for a bypass. This measure would substitute a tunnel alternative as the preferred alternative, and would prohibit any other alternative, except repair or reconstruction of the existing roadway, unless approved by a vote of the electorate. Specifically, this measure would amend existing Policy 2.50(b), which specifies limitations on Phase I improvements on State Route 1, to delete the reference to a two-lane bypass, and to provide instead for construction of a tunnel for

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motorized vehicles only behind Devil's Slide through San Pedro Mountain. This measure further provides that the tunnel design shall be consistent with Coastal Act limits restricting Route 1 to a two-lane scenic highway and minimum state and federal tunnel standards. This measure would amend existing Policy 2.54(b), which specifies roadway alignments, to delete the reference to a two-lane bypass with a preferred alignment in the area of Martini Creek, and to provide instead for the construction of a tunnel behind Devil's Slide through San Pedro Mountain. This measure prohibits construction of any part of Route 1 to be used by motor vehicles on any alignment that bisects Montara State Beach, including the McNee Ranch Acquisition, except along the current Route 1 alignment. This measure requires voter approval of any alternative to the tunnel, except repair and reconstruction of the existing road. This measure would amend Policy 2.56(a), which specifies improvements for bicycle and pedestrian trails, to require, as part of the construction of a tunnel, that Caltrans construct a bicycle and pedestrian trail outside the tunnel.

The responsibility and authority to provide funding for improvements to State Route 1 lies with State and Federal agencies, and the responsibility and authority to maintain and repair State Route 1 lies with the State through the California Department of Transportation. This measure states, as a matter of County policy, that the tunnel should be given high priority for Federal and State highway funds, and that the State should maintain and repair the road on the existing alignment until a tunnel is completed.

This measure provides that provisions of the initiative ordinance will supersede other County regulations to the extent they are inconsistent with the provisions of the initiative ordinance.

FISCAL IMPACT STATEMENT

This measure, in and of itself, would have a minimal impact on the County's revenues and expenditures as, according to County Counsel's analysis, "the responsibility and authority to provide funding for improvements to State Route 1 lies with State and Federal Agencies, and the responsibility and authority to maintain and repair State Route 1 lies with the State through the California Department of Transportation". However, certain future events and actions by Federal and/or State entities may occur which may have an indeterminate fiscal impact on the County. A fiscal impact analysis of all of these future events and actions is not possible.

In accordance with the Election Code, the scope of this fiscal impact statement has been limited to the measure's effect on County government's expenditures and revenues. It does not address larger county-wide fiscal issues such as the measure's effect on the overall County economy.

/s/ G. R. Trias
Controller, County of San Mateo

IMPARTIAL ANALYSIS MEASURE T

This measure would amend the San Mateo County Local Coastal Program. Current regulatory policies of the Local Coastal Program allow construction of a two-lane bypass on State Highway 1 around Devil's Slide, with slow vehicle lanes on uphill grades, and designate the Martini Creek alignment as the preferred alignment for a bypass. This measure would substitute a tunnel for the bypass and would prohibit any other alternative, except repair or reconstruction of the existing roadway, unless approved by a vote of the electorate. Specifically, this measure would amend existing Policy 2.50(b), which specifies limitations on Phase I improvements on State Route 1, to delete the reference to a two-lane bypass, and to provide instead for construction of a tunnel for motorized vehicles only behind Devil's Slide through San Pedro Mountain. This measure further provides that the tunnel design shall be consistent with Coastal Act limits restricting Route 1 to a two-lane scenic highway and minimum state and federal tunnel standards. This measure would amend existing Policy 2.54(b), which specifies roadway alignments, to delete the reference to a two-lane bypass with a preferred alignment in the area of Martini Creek, and to provide instead for the construction of a tunnel behind Devil's Slide through San Pedro Mountain. This measure prohibits construction of any part of Route 1 to be used by motor vehicles on any alignment that bisects Montara State Beach, including the McNee Ranch Acquisition, except along the current Route 1 alignment. This measure requires voter approval of any alternative to the tunnel, except

repair and reconstruction of the existing road. This measure would amend Policy 2.56(a), which specifies improvements for bicycle and pedestrian trails, to require, as part of the construction of a tunnel, that Caltrans construct a bicycle and pedestrian trail outside the tunnel.

The responsibility and authority to provide funding for improvement to State Route 1 lies with State and Federal agencies, and the responsibility and authority to maintain and repair State Route 1 lies with the State through the California Department of Transportation. This measure states, as a matter of County policy, that the tunnel should be given high priority for Federal and State highway funds, and that the State should maintain and repair the road on the existing alignment until a tunnel is completed. This measure provides that its provisions would supersede other County regulations to the extent they are inconsistent with the provisions of the measure.

A "yes" vote on this measure would amend existing Policies 2.50(b), 2.54(b), and 2.56(a) of the San Mateo County Local Coastal Program to substitute a tunnel for the bypass around the Devil's Slide.

A "no" vote on this measure would retain existing Policies 2.50(b), 2.54(b), and 2.56(a) of the San Mateo County Local Coastal Program which designate the Martini Creek as the preferred alignment for a bypass.

This measure passes if a majority of those voting on the measure vote "yes."

ARGUMENT IN FAVOR OF MEASURE T

For decades a permanent repair for Highway 1 at Devil's Slide has been delayed because Caltrans has defended an environmentally damaging six-lane freeway bypass since the 1960's. Finally, an innovative and environmentally sensitive alternative for Devil's Slide has emerged—a tunnel.

- The tunnel will be less than one mile long, straight, and level, unlike the 4.5 mile freeway bypass which would curve through steep mountainous terrain.
- The tunnel will be seismically stable. Studies show tunnels are safer in earthquakes than the bridges and fills proposed for the freeway bypass.
- The tunnel will eliminate driving hazards of dense coastal fog which would endanger drivers on the freeway bypass, and will comply with all federal and state highway safety standards.
- The tunnel will have minimal environmental impact. In contrast, the freeway bypass would slash across Montara Mountain, leaving permanent scars visible from Marin County. The freeway bypass would decimate state parkland, destroying campgrounds and an excellent system of hiking and biking trails. Siltation from the freeway bypass cuts and fills would damage local creeks, fisheries and the Monterey Bay National Marine Sanctuary.

With so many good reasons to prefer a tunnel over the proposed freeway bypass, why must we vote on this issue?

Caltrans will not relinquish their outdated, oversized freeway bypass without a clear mandate from the voters. We must tell Caltrans and our San Mateo County Board of Supervisors that we prefer a state-of-the-art and environmentally sensitive solution for Devil's Slide. By voting YES on Measure T, the initiative signed by 34,924 citizens from all over the county, we can preserve our coast and solve the problem of Highway 1 at Devil's Slide for generations to come.

Vote for the Tunnel. Vote YES on Measure T.

/s/ Zoe Kersteen-Tucker
Citizens Alliance for the Tunnel Solution.

August 17, 1996

/s/ Melvin B. Lane
Former Publisher, Sunset Magazine

/s/ Pietro Parravano
Commercial Fisherman

/s/ Carol Mickelsen
Business Owner, Half Moon Bay

/s/ Olive Mayer
Sierra Club

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REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE T

Measure T is a perfect example why voters are fed up with politics.

Like many initiatives, Measure T is full of false promises to fool voters. Its sole purpose is to block solutions to Devil's Slide. And it imposes the will of a small group of outside activists on coastside residents and small business owners who simply want a solution.

FACTS:

- Measure T does not guarantee a tunnel will ever be constructed. The initiative simply blocks all other solutions.
- Measure T does not fund a tunnel. And the Feds say there is no money for a tunnel.
- Measure T is opposed by coastside residents and small business owners because it blocks a solution, endangering the safety of their families and jeopardizing their businesses.
- Claims made by Measure T activists are wildly inaccurate.

The approved and funded bypass is not a six-lane freeway, but rather a "2-lane highway" as stated in the project's environmental impact statement (EIS).

No environmental analysis has been done for the tunnel. Its potential impact is unknown.

The bypass offers beautiful coastal vistas and access to McNee Ranch State Park's picnic areas and camp grounds. Its EIS concludes that the road offers the "least impact on the natural environment..."

- Measure T proponents claim a tunnel is safer than an open road. Remember the Caldicott tunnel fire?

Voters should have the right to choose the best solution, not be tricked into locking in an unfunded, unproven tunnel.

Vote Solutions, Not Roadblocks. Vote No on Measure T.

Tom Huening
Supervisor, San Mateo County

* Mary Ann Sabie
Teacher

John Barbour
Citizens for Solutions, Not Roadblocks

Pete Fogarty
Business Representative, Operating Engineers Local 3

B.J. Burns
President, San Mateo County Farm Bureau

ARGUMENT AGAINST MEASURE T

We are coastside residents and small business owners. We know from personal experience how devastating the loss of Highway One at Devil's Slide can be. Each time the road closes, our businesses are devastated and hundreds of us lose our jobs. In addition, the health and safety of our loved ones is threatened because emergency vehicles can't get through. That's why we need a quick and permanent solution to Devil's Slide. Unfortunately, Measure T is not the solution.

Read the fine print, and you'll find:

- **Measure T takes away voter choice** forcing the county to make the tunnel the only alternative to the current road on Highway 1. All other options are blocked.
- **Measure T does not provide any funding** for a tunnel. It simply states that a tunnel should be given "high priority" for highway funds. Yet, our local elected officials have admitted they cannot guarantee federal funding for a tunnel. There is funding for a bypass, but Measure T blocks consideration of this option and under federal law if we don't use those funds specifically for the bypass, we lose them.
- **Measure T does not guarantee a tunnel will ever be constructed.** If Measure T passes, and Devil's Slide collapses, our businesses will fail, our homes will drop in value, and our families will lose immediate access to emergency services like ambulances and additional fire protection.
- **Measure T makes unproven claims** about the tunnel. An independent study is currently underway. It doesn't make sense to limit our

options to a tunnel before voters have had the opportunity to review the completed analysis.

The simple fact is Measure T is not a quick or permanent solution to Devil's Slide. That's why we urge you to Vote No on Measure T. The future of our families and businesses depend on it.

Victor S. Tigerman
Senior Community Activist

Albert J. Adreveno
Retired flower grower

John D. Barbour
Owner, small business

Alexander M. King
Firefighter

Susan W. Hayward
Owner, Susan Hayward School
of Dancing

REBUTTAL TO ARGUMENT AGAINST MEASURE T

Measure T gives us a clear choice. Vote YES on T for the tunnel, or vote NO and Caltrans will build the freeway bypass. For the first time in thirty years the choice is ours.

Measure T is supported by residents, businesses and by a majority of coastside civic leaders who recognize that preventing the devastation wrought by the freeway bypass is good for business, good for families, and good for the environment.

- A tunnel can be built sooner than the freeway bypass because it has no major environmental impacts.
- Tunnels with modern state-of-the-art lighting, ventilation, and safety systems are proven and recognized worldwide as safe, reliable, and ideally suited for environmentally sensitive areas like Hwy 1 at Devil's Slide.
- Construction costs for a tunnel will be comparable to the freeway bypass, but when all of the costs are considered, the tunnel will be less costly because it will save our State Park, and avoid taxpayer costs from flooding, landslides and fog-related accidents.
- The freeway bypass is NOT funded. Only a fraction of the funding is available and the rest is not guaranteed.

A clear mandate from the voters in favor of a tunnel will empower our legislators to get the money needed to finally fix Devil's Slide. After 30 years of gridlock we deserve our share of highway funds to fix our Coast Highway. The sooner, safer, cheaper and BETTER solution for Devil's Slide is the TUNNEL.

VOTE FOR THE TUNNEL. VOTE YES ON MEASURE T

Deborah Ruddock
Mayor, Half Moon Bay

Ellen Castelli
Mayor, City of Pacifica

Rebekah Donaldson
Citizens for Reliable and Safe Highways
(CRASH)

Jim Rourke
Retired Highway Patrolman

Lennie Roberts
Chair, Save Our Coast

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