

San Mateo County Environmental Services Agency

Planning and Building Division

County Government Center • 590 Hamilton St. • Redwood City CA 94063
Mail Drop PLN 122 • 415 • 363 • 4161

Application for Appeal

To the Planning Commission

To the Board of Supervisors

1. Appellant Information

Name: OSCAR BRAUN

COASTAL FAMILY ALLIANCE

Phone, W: 726-3307 H: 726-3307

Address: 1589 Higgins Canyon Rd

HALF MOON BAY, CA 94019

Zip:

2. Appeal Information

Permit Numbers involved: 2001-00799

I have read and understood the attached information regarding appeal process and alternatives.

yes

no

I hereby appeal the decision of the:

Staff or Planning Director

Zoning Hearing Officer

Design Review Committee

Planning Commission

Appellant's signature:

Oscar A Braun Date: March 27, 2002

made on March 27 2002 to approve/deny the above-listed permit applications.

3. Basis for Appeal

Planning staff will prepare a report based on your appeal. In order to facilitate this, your precise objections are needed. For example: Do you wish the decision reversed? If so, why? Do you object to certain conditions of approval? If so, then which conditions and why?

ATTACHED PLEASE FIND COMPLETE SET OF APPEAL DOCUMENTS: COVER LETTER DATED MARCH 5, 2002 - FINAL DOCUMENT LETTER DECEMBER 2, 2000 (FROM JOHN PLECK) ALL DOCUMENT GIVEN TO MINDO BRAUN.

Received above package from Mr. Braun

Mindo A. Braun

Half Moon Bay Coastside Foundation

NOAA's Water Quality Protection Program



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

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
- SAVEOURBAY.ORG 1589 HIGGINS CANYON RD. HALF MOON BAY, CA 94019 PH 650-599-1954 FAX 650-726-2799

Half Moon Bay Coastside Foundation

NOAA's Water Quality Protection Program



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

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 paced 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

NOAA's Water Quality Protection Program



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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 Bosa 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 Bosa 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 Zumbun, Esquire, Pacific Legal Foundation

Jerry Hill, President, San Mateo County Board of Supervisors

SAVEOURBAY.ORG 1589 HIGGINS CANYON RD. HALF MOON BAY, CA 94019 PH 650-599-1954 FAX 650-726-2799

"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 polices, 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."



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."

Half Moon Bay Coastside Foundation



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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



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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.

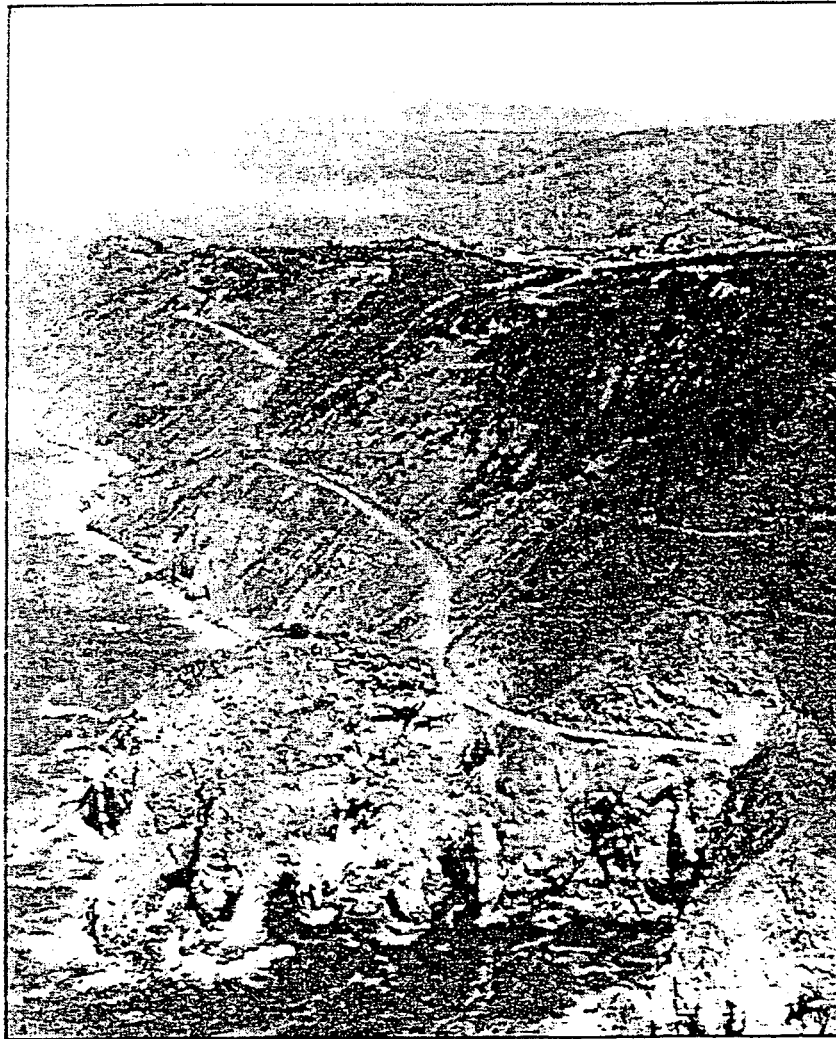
According to San Mateo County Planning Department, even with existing access roads limited to two lanes, the coastal population can increase 5,800 to 15,500 people. **ABAG has recommended, in its coastal plan, that growth on the mid-coast side be limited by limiting road access as well as the water and 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.

**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

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.

REGULAR AGENDA
 7:00 a.m.

- 3. **Owner:** Dana Denman
- Applicant:** Caltrans
- File Number:** PLN 2000-00536
- Location:** Shamrock Ranch on Peralta Road
- APN:** 023-741-010

Consideration of a Coastal Development Permit, pursuant to Section 6528.4 of the County Zoning Regulations to allow the construction of a 2,000 square foot pond. The pond is part of a habitat enhancement project for the endangered red-legged frog. This project is not appealable to the California Coastal Commission. Application filed July 27, 2000. PROJECT PLANNER: Mike Schaller. Telephone: 650/363-1849.

Caltrans to build pond for red-legged frogs

By Rebecca Wallace
 STAFF WRITER

REDWOOD CITY — Instead of road asphalt or retaining walls, the Caltrans project approved Wednesday by the County Planning Commission has a most unusual ingredient — frogs.

A pond full of threatened red-legged frogs lies in the way of getting the Devils Slide tunnel built, so Caltrans officials plan to build another pond and move the frogs there, Caltrans spokesman Jeff Weiss said.

The frogs live on the Shamrock Ranch near Pacifica, close to where an access road is slated to be built as part of the \$160 million tunnel project, Weiss said. Caltrans officials plan to build a shallow, 2,000-square-foot pond just down the hill.

Weiss said the U.S. Fish & Wildlife Service requires Caltrans to build the pond to ease the environmental impacts of the road, which will be on a bridge over the ranch land.

"It's more mitigation than we've ever planned, but we're

happy and prepared to do the work," Weiss said.

The planned tunnel through Montara Mountain is designed to keep officials from having to continue closing the narrow, unstable stretch of state Highway 1 at Devils Slide when the ground slides. Before construction can begin, Caltrans officials need the Federal Highway Administration to approve their environmental-impact report about the tunnel project. They expect to hear back from the FHWA by the end of the year, Weiss said.

The pond project, which includes planting native vegetation, should cost about \$110,000, Weiss said.

County environmentalist Lennie Roberts said she was pleased that Caltrans would construct the pond before building the access road. "Mitigation should not follow the project, Caltrans is really doing it right," she said.

Planning Commission Chairman Ralph Nobles said the commission approved the pond project unanimously.

- 7. Director's Report
- 8. Adjournment

"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.

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
BUDGET AND FISCAL REVIEW
LOCAL GOVERNMENT
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PLANNING FOR CALIFORNIA'S GROWTH
STATE PROCUREMENT AND EXPENDITURE PRACTICES
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

federally-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]
QUENTIN 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).

It's time to bypass Devil's Slide

By MIKE NEVIN

San Mateo County Supervisor

4/5 1995

Point of View

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

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 coastside 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.



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

Julia Bort

Julia Bort, Chapter Director

Chris Thollaug

Chris Thollaug, Sierra Club
Devil's Slide Campaign

Tim Duff

Tim Duff, Co-Chair
Coastside 2000 Committee
Sierra Club

Martin Litton

Martin Litton, Former National

EXHIBIT 11

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 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

"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 black ink that reads "Oscar Braun".

Oscar Braun , Executive Director

"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 there 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

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are protected by specific limitations with respect to uses which may occur in the wetlands and by the requirement that there be no feasible less environmentally damaging alternative. (to a finding of) wetlands and where feasible mitigation measures have been provided to adverse effects. Indeed, the Commission's guidelines provide that "of all the environmentally sensitive 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!

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



Fax Transmission: Total Pages 19
August 25, 2000
To: Michael Murphy, Chief Deputy
Honorable Board of Supervisors, San Mateo County
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

Dear Michael,

On behalf of the Save Our Bay Foundation, I will be coming over to the Planning Department on the morning of Tuesday the 29th of August in order to pay the \$184 CDP appeal fee. The Foundation is requesting that Project Planner Mike Schaller provide the Foundation on Tuesday a copy of the complete Permit File # 2000-00536 that was presented to the Planning Commission. This would include the original Caltrans project CDP application, development plans with engineering drawings, certified soils analysis, EIR study showing the 5 & 10 year cumulative effects on the listed endangered species in the proposed north portal area of the Devil's Slide Tunnels project. Also, Caltrans must provide the complete EIR analysis of the NEPA/CEQA required EIR project alternatives.....as an example, the "No Build or Avoidance" alternatives that were proposed by the U.S. Fish & Wildlife Service to the Tunnel Task Force.

I have enclosed in this fax a courtesy copy of the Devil's Slide Final Supplemental Environmental Impact Statement/Environmental Impact Report. The document of course speaks for itself and clearly declares which of the eight studied Devil Slides alternatives was approved and granted a Record of Decision. The Martini Creek Alignment is still the only NEPA/CEQA/CCC certified alternative declared most protective of coastal resources and least environmentally damaging as of this date. I have also enclosed the Sierra Club Tunnel Campaign letter, Measure-T Ballot Measure and two prophetic letters from State Senator Quentin L. Kopp, Chair of Transportation Committee and Supervisors Mike Nevin. With regard to Supervisor Gordon and Lennie Roberts assertion that the County's LCP and the Tunnel Task Force policies somehow pre-empt NEPA/CEQA or the federal Endangered Species Act environmental review process is in fact without any legal merit.

The voter approved Measure T did not authorize Caltrans to build two Tunnels, each with two lanes crossing two north portal 1000 foot bridges. They did not approve the 300 foot high south portals fill destroying protected wetlands or intrude 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 are none of those things and the U.S. Fish & Wildlife Service and the FHWA are not going to approve the Second Supplemental EIS-Devil's Slide study or change their ROD or fund this Sierra Club sponsored act of environmental terrorism against this protected Sanctuary watershed area.

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 proven 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.

The Save Our Bay Foundation applauds this Board of Supervisors, the Coastal Commission, U.S. Fish & Wildlife Service, 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 on the NEPA/CEQA/CCC approved Martine Creek Alignment.

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



September 26, 2000

To: Mark Delaplaine, Federal Consistency Supervisor
From: Oscar Braun, Executive Director
Re: Bosa Chica Ruling on Project Alternatives, Section 30240
& 30007.5 and Standards of Review for the Coastal Commission.

Please find enclosed page 12, 13 & 14 of Caltrans Devil's Slide Tunnels Improvement Project submittal for a Certification of Consistency and a complete copy of the 1999 Bosa Chica Land Trust decision of the Court of Appeal of California. Caltrans submittal is citing the findings adopted in 1997 in the CCC Staff Report, San Mateo County LCP No. 1-86 (1997), CCC Staff Report No. 1-96, pp 24 (1997), CCC Staff Report No.1-96, pp.28-29 (1997). Those sitings were found **inconsistent** by the Court of Appeals in 1999.

The Court's Bolsa Chica ruling clearly found against the Commission use of 30007.5 in the resolving of conflicts among competing Coastal Act policies under Section 30240 . "The reasoning Commission employed is seductive but, in the end, unpersuasive. The interpretation was not contemporaneous with enactment of section 30240 or the result of any considered official interpretative effort and it did not carry any other of the indicia of reliability which normally requires deference to an administrative interpretation. Secondly, the language of section 30240 does not permit a process by which the habitat values of an ESHA can be isolated and then recreated in another location. Rather, a literal reading of the statue protects the area of an ESHA from uses which threaten the habitat values which exist in the ESHA. Importantly, while the obvious goal of section 30240 is to protect habitat values, the express terms of the statute do not provide that protection by treating those values as intangibles which can be moved from place to place to suit the needs of development. Rather , the terms of the statute protect habitat values by placing strict limits on the uses which may occur in an ESHA and by carefully controlling the manner uses in the area around the ESHA are developed. The Commission has decided that an area is an ESHA, section 30240 does not itself provide Commission power to alter its strict limitations. There is simple no reference in section 30240 which can be interpreted as diminished the level of protection an ESHA receives based on its viability. Rather, under the statutory scheme, ESHA's whether they are pristine and growing or fouled and threatened, receive uniform treatment and protection. In short, while compromise and balancing in light of existing conditions is appropriate and indeed encourage under other applicable portions of the Coastal Act, the power to balance and compromise conflicting interest cannot be found in section 30240."

The SOB Foundation is respectfully requesting that the Consistency Supervisor include the Foundation's above entire Bola Chica siting in staff's final briefing packet being prepared on the Caltrans Consistency submittal to the Commission.

CC. San Mateo County Board of Supervisors and Planning Commission

5.2 Development

Section 30254 states that new or expanded public works facilities shall be designed and limited to accommodate needs generated by development or uses permitted consistent with the provisions of this division; provided, however, that it is the intent of the Legislature that State Highway route 1 in rural areas of the coastal zone remain a scenic two-lane road.

The proposed tunnel is consistent with the Coastal Act and the San Mateo County LCP which 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.

Section 30251 of the Coastal Act requires that scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, and where feasible, to restore and enhance visual quality in visually degraded areas.

Two design options were evaluated for crossing the Shamrock Ranch Valley from existing Route 1 to connect the approach road at the north portal. The fill option, which re-used spoils from the tunnel excavation to construct a raised roadway, and the bridge option, which provides a concrete cast-in-place bridge spanning the Shamrock Ranch Valley. With the bridge option, an estimated 574,000 cubic meters of fill material would be placed at the south disposal site, and an additional 150,000 cubic meters would be hauled to an off-site location. The fill option would place 558,158 cubic meters of fill in the valley at Shamrock Ranch and an additional 165,918 cubic meters of fill at the south disposal site.

The bridge structure would span an estimated 320 meters (1,050 feet) in total length. The structure itself would present some negative visual effects on the small Shamrock Valley which enjoys minimal intrusion from development. Trees and hillside vegetation would be cleared for construction of the tunnel portal resulting in visual contrasts between cleared areas and chaparral-blanketed hillsides.

5.3 Wetland and Biological Resources

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

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

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

California Code of Regulations (CCR), Title 14, Section 13577(b)(2) further states that definition of wetland shall not include wetland habitat created by the presence of and associated with agricultural ponds and reservoirs where: (a) the pond or reservoir was in fact constructed by a farmer or rancher for agricultural purposes; and (b) there is no evidence (e.g., aerial photographs, historical survey, etc.) showing that the wetland habitat pre-dated the existence of the pond or reservoir.

CCR Section 13577(b)(2) is mentioned as it relates to the restoration and partial filling of some wetland habitat in association with the south pond which meets the definition outlined above. Details of the pond restoration and dam repair are discussed later in this section.

The Commission has previously applied a three part test to projects involving the filling of environmentally sensitive wetland habitat areas regarding consistency with the Coastal Act³. The three part test requires that :

1. The project has no feasible less environmentally damaging alternative;
2. That the project is one of the eight stated uses allowed under PRC Section 30233;
3. That adequate mitigation measures have been provided to minimize adverse environmental effects of the proposed project.

All of the potential alternatives to a solution to the sliding and road closures at Devil's Slide were discussed in the Commission's January 1997 Staff Report. The Commission concluded that construction of a tunnel, as called for by the proposed LCP amendment, is the least environmentally damaging feasible alternative for providing a permanent solution to the sliding and road closure problems at Devil's Slide consistent with Section 30233 of the coastal Act⁴.

Regarding the determination that the fill generated by the project qualifies as one of the eight allowable uses permitted for wetland fill described in PRC Section 30233(a)(1-8), the Commission found that the proposed roadway fill was not an incidental public service, nor an allowable use. However, through the application of PRC Section 30007.5 (resolving conflicts among competing Coastal Act policies) the Commission found that the project presented a conflict between competing policies of the Coastal Act, in that it would promote and encourage public access and recreation along the coast, as well as implement the public access and recreation policies of the Coastal Act. These benefits would be lost if the project is not approved⁵

³ California Coastal Commission Staff Report, San Mateo County LCP Amendment No. 1-96 (1997)

⁴ California Coastal Commission Staff Report No. 1-96, pp. 24 (1997)

⁵ California Coastal Commission Staff Report No. 1-96, pp. 28-29 (1997)

For these reasons, the commission found that on balance, it was more protective of coastal resources to resolve this conflict by approving the proposed project and allowing the wetland fill and encroachment into environmentally sensitive habitat areas.⁶

Lastly, the commission found that adequate mitigation measures could be provided to minimize the adverse environmental effects of the project. At the time of the Commission's decision, a conceptual mitigation plan depicting the construction of habitat for the California red legged frog, off-site mitigation areas, and on-site habitat enhancement measures were conceptual in nature. A complete analysis of planned mitigation measures is included in the text below and in the Biological Assessment (1999). The proposed mitigation plan is being prepared and coordinated with the USFWS, CDFG, ACOE, San Mateo County Planning Department, and the California Coastal Commission. The USFWS is preparing the Biological Opinion for the project. The contact biologist is Cecilia Brown.

5.3.1 Shamrock Ranch/North Portal Drainage Area

Setting

The north portal drainage area and portions of Shamrock Ranch include five separate wetlands. These include: a seasonal depression and strip of wetlands at the access road's north entrance, an earthen bank and pond (north) at the bridge structure, strips of wetlands that parallel the construction access road, a seasonal pond and the south pond (earthen bank) and a wetland area. The riparian vegetation of the Shamrock Ranch north pond is dominated by arroyo willow (*Salix lasiolepis*), blackberry (*Rubus vitifolius*), tule (*Scirpus californicus*), curly dock (*Rumex crispus*), and rush (*Juncus balticus*). The western end of Shamrock Ranch is predominately agricultural, and includes horse grazing as part of a private ranching operation. These agricultural land uses have greatly altered the natural environment and disturbed native vegetation.

Earthen dams were installed within two different drainage locations at Shamrock Ranch which created the North Pond and the South Pond. These Shamrock Ranch ponds date from the 1950's when the existing drainages were impounded to form stock or irrigation ponds. In spite of the 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 (*Salix spp.*), tule (*Scirpus californicus*), rush (*Juncus spp.*), and blackberry (*Rumex vitifolius*).

The ponds also provide habitat for a listed wildlife species. The California red-legged frog (*Rana aurora draytonii*) populates the North and South Ponds and uses the area for breeding, feeding, and refuge habitat. This species is a federally threatened species and also is designated as a State of California "Species Of Special Concern". The peregrine falcon (*Falco peregrinus anatum*), a former endangered species, nests on a coastal bluff near the south portal of the proposed tunnel.

⁶ California Coastal Commission Staff Report No. 1-96, pp. 30 (1997)

BOLSA CHICA LAND TRUST et al., Petitioners, v. THE SUPERIOR COURT OF SAN DIEGO COUNTY, Respondent; BOLSA CHICA LAND TRUST et al.,
71 Cal. App. 4th 493; 1999 Cal. App. LEXIS 332; 83 Cal. Rptr. 2d 850; 99 Cal. Daily Op. Service 2821;
99 Daily Journal DAR 3619
D029461, D030270
April 16, 1999, Filed
COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION ONE
BENKE, J. WE CONCUR: WORK, Acting P.J. HUFFMAN, J.

Disposition

Petitions granted and denied.

Counsel

Nossaman, Guthner, Knox & Elliott, Alvin S. Kaufer, John J. Flynn III and William M. Boyd for Petitioners and Real Parties in Interest Koll Real Estate Group and Signal Bolsa Corporation.

Paul Horgan, Philip A. Seymour and Deborah A. Cook for Petitioners and Real Parties in Interest Bolsa Chica Land Trust, Huntington Beach Tomorrow, Shosone-Gabrielino Nation, Sierra Club and Surfrider Foundation.

Daniel E. Lungren, Attorney General, Roderick E. Walston, Chief Assistant Attorney General, Richard M. Frank, Senior Assistant Attorney General, and Jamee Jordan Patterson, Deputy Attorney General, for Petitioners and Real Parties in Interest California Coastal Commission.

No appearance for Respondent.

Editorial Information: Prior History

Real Parties in Interest. Petitions for writs of mandamus. San Diego County Super. Ct. No. 703570. Judith D. McConnell, Judge.

Opinion

Opinion by: BENKE

{71 Cal. App. 4th 498} {83 Cal. Rptr. 2d 852} This case concerns development plans for a large tract of land in southern Orange County known as Bolsa Chica. Although California Coastal Commission (Commission) approved a Local Coastal Program (LCP) for Bolsa Chica, the trial court found defects in the program and remanded it to Commission for further proceedings. In this court both {83 Cal. Rptr. 2d 853} the opponents and proponents of the LCP contend that the trial court erred.

{71 Cal. App. 4th 499} The opponents of the LCP contend the trial court erred in finding a planned relocation of a bird habitat was permissible under the Coastal Act. The proponents of the LCP contend the trial court erred in preventing residential development of a wetlands area and in requiring preservation of a pond that would have been eliminated under the LCP in order to make room for a street widening. The proponents also attack the trial court's award of attorney fees to the opponents of the LCP.

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.

We agree with the trial court's rulings as to the two substantive issues raised by the proponents of the LCP: on the record developed by Commission, neither residential development in the wetlands nor destruction of the pond are permissible. With respect to the trial court's award of attorney fees, we find no abuse of discretion.

FACTUAL BACKGROUND

Bolsa Chica is a 1,588-acre area of undeveloped wetlands and coastal mesas. Urban development

surrounds Bolsa Chica on three sides. On the fourth side is the Pacific Ocean, separated from Bolsa Chica by a narrow strip of beach, coastal dunes and coastal bluffs.

Approximately 1,300 acres of Bolsa Chica consist of lowlands ranging from fully submerged saltwater in Bolsa Bay to areas of freshwater and saltwater wetlands and islands of slightly raised dry lands used by local wildlife for nesting and foraging. However, a large part of the lowlands is devoted to an active oil field and at one time the area was farmed.

The lowlands are flanked by two mesas, the Bolsa Chica mesa on the north and the Huntington mesa on the south. The Bolsa Chica mesa consists of 215 acres of uplands hosting a variety of habitat areas. Although much of Huntington mesa is developed, a long narrow undeveloped strip of the mesa abutting the lowlands is the planned site of a public park.

In 1973 the State of California acquired 310 contiguous acres of the Bolsa Chica lowlands in settlement of a dispute over its ownership of several separate lowland parcels and the existence of a public trust easement over other lowland areas.

{71 Cal. App. 4th 500} In 1985 the County of Orange and Commission approved a land use plan for Bolsa Chica which contemplated fairly intense development. The 1985 plan allowed development of 5,700 residential units, a 75-acre marina and a 600-foot-wide navigable ocean channel and breakwater.

By 1988 substantial concerns had been raised with respect to the environmental impacts of the proposed marina and navigable ocean channel. Accordingly, a developer which owned a large portion of Bolsa Chica, a group of concerned citizens, the state lands commission, the County of Orange and the City of Huntington Beach formed the Bolsa Chica Planning Coalition (coalition). The coalition in turn developed an LCP for Bolsa Chica which substantially reduced the intensity of development. The coalition's LCP was eventually adopted by the Orange County Board of Supervisors. Commission approved the LCP with suggested modifications which were adopted by the board of supervisors.

As approved by Commission, the LCP eliminated the planned marina and navigable ocean channel, eliminated 3 major roads, reduced residential development from a total of 5,700 homes to 2,500 homes on Bolsa Chica mesa and 900 homes in the lowlands and expanded planned open space and wetlands restoration to 1,300 acres.

The material features of the LCP which are in dispute here are: the replacement of a degraded eucalyptus grove on Bolsa Chica mesa with a new raptor habitat consisting of nesting poles, native trees and other native vegetation on Huntington mesa at the sight {83 Cal. Rptr. 2d 854} of the planned public park; the residential development in the lowland area which the LCP permits as a means of financing restoration of substantially degraded wetlands; and the elimination of Warner Pond on Bolsa Chica mesa in order to accommodate the widening of Warner Avenue.

Throughout the approval process several interested parties and public interest groups, including the Bolsa Chica Land Trust, Huntington Beach Tomorrow, Shoshone-Gabrieleno Nation, Sierra Club and Surfrider Foundation (collectively the trust) objected to these and other portions of the LCP.

PROCEDURAL HISTORY

On March 6, 1996, the trust filed a timely petition for a writ of mandate challenging the LCP. In addition to Commission, the petition named two local agencies, the County of Orange and the Orange County Flood Control District, as real parties in interest. The petition also named a number of {71 Cal. App. 4th 501} landowners as real parties in interest. Of those landowners, only real parties in interest Koll Real Estate Group (Koll) and Fieldstone Company (Fieldstone) actively participated in the litigation.

On April 16, 1997, before the matter could be heard on the merits, Commission made a motion to have the LCP remanded to it so that Commission could reconsider the plan in light of the state's recent acquisition of Koll's lowland property and the state's adoption of an independent plan to fund restoration of degraded portions of the lowlands. 1(1) All the other parties in the litigation opposed Commission's motion to remand. The trial court deferred ruling on the state's motion until it conducted a hearing on the merits.

Upon hearing the merits of the trust's challenge, the trial court determined that, consistent with the requirements of the Coastal Act, the eucalyptus grove on Bolsa Chica mesa could be eliminated in order to permit residential development there and the habitat which existed at the grove regenerated

on Huntington mesa. However, the trial court found that residential development of wetlands was not permitted by the act, even if it would fund restoration of other portions of the wetlands. The court found that although wetlands could be eliminated if needed for a road or highway, Commission had not made a required finding that the need to widen Warner Road outweighed the value of preserving Warner Pond.

Given its disagreement with Commission, the trial court remanded the entire LCP matter to Commission for further proceedings. The court found that, in light of its ruling on the merits and remand, the state's prior motion to remand was moot. The trial court awarded the trust its attorney fees and apportioned the award among Koll, Fieldstone and Commission.

I

Appealability

The trust, Fieldstone and Koll each filed a notice of appeal from the substantive portions of the trial court's judgment. Fieldstone, Koll and Commission also filed separate appeals challenging the trial court's attorney fee award.

Prior to oral argument we advised the parties of our concern that the trial court's order remanding this case to Commission was not appealable. (See {71 Cal. App. 4th 502} *Board of Dental Examiners v. Superior Court* (1998) 66 Cal. App. 4th 1424, 1430-1431.) Notwithstanding the lack of appellate jurisdiction, the parties have asked that we reach the merits of their respective claims. Because of the public interest in this matter and because the case has been fully briefed on the merits, we will treat the appeals as petitions for writs of mandamus. (*Ibid.*)

II

Standards of Review

The standards which govern our review of the trial court's decision are set forth in our opinion in *Sierra Club v. California Coastal Com.* (1993) 19 Cal. App. 4th 547, 556-557, 23 {83 Cal. Rptr. 2d 855} Cal. Rptr. 2d 534 (*Batiquitos Lagoon*): "Because this matter came to the trial court on a petition for a writ of mandate under Code of Civil Procedure section 1094.5, the trial court was obligated to determine 'both whether substantial evidence supports the administrative agency's findings and whether the findings support the agency's decision.' [Citation.]

"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 court's attention to the analytic route the administrative agency traveled from evidence to action. In so doing, we believe that the Legislature must have contemplated that the agency would reveal this route.' [Citation.]

"While a reviewing court must make certain an agency has adequately disclosed its reasoning process, *Topanga* reiterates the long established rule in California that administrative findings need not be as precise or formal as would be required of a court [citation]. Indeed, the Supreme Court there considered a planning commission's summary of "factual data" to be agency findings [citation]. . . . Other examples of the judiciary's willingness to focus on the substance rather than the form of administrative actions are legion. "As a practical matter, omissions in [administrative] findings may sometimes be filled by such relevant references as are available." [Citation.] Thus, where reference to the administrative record informs the parties and reviewing courts of the theory upon which an agency has arrived at its ultimate finding and decision it has long been recognized that the decision should be upheld if the agency "in truth found those facts which as a matter of law are essential to sustain its . . . [decision]." [Citations.] [Citation.]

{71 Cal. App. 4th 503} "In determining whether substantial evidence supports an agency's reasoning process, the trial court must look at the 'whole record.' [Citations.] "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.] [Citations.] 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.] [Citation.]"

"Finally, 'our role here is precisely the same as that of the trial court. "In an administrative mandamus action where no limited trial de novo is authorized by law, the trial and appellate courts occupy in essence identical positions with regard to the administrative record, exercising the appellate function of determining whether the record is free from legal error. [Citations.]" [Citation.] Thus, the conclusions of the superior court, and its disposition of the issues in this case, are not conclusive on appeal. [Citation.]" [Citation.] [Citation.]"

III

Administrative Interpretations

A recurring dispute among the parties concerns the level of deference which we must accord Commission's interpretation of the Coastal Act. The Supreme Court recently discussed the role of administrative interpretation at some length. (See *Yamaha Corp. of America v. State Bd. Of Equalization* (1998) 19 Cal. 4th 1, 10-13, 960 P.2d 1031.) "It is a 'black letter' proposition that there are two categories of administrative rules and that the distinction between them derives from their different sources and ultimately from the constitutional doctrine of the separation of powers. One kind -- quasi-legislative rules -- represents an authentic form of substantive lawmaking: Within its {83 Cal. Rptr. 2d 856} jurisdiction, the agency has been delegated the Legislature's lawmaking power. [Citations.] Because agencies granted such substantive rulemaking power are truly 'making law,' their quasi-legislative rules have the dignity of statutes. When a court assesses the validity of such rules, the scope of its review is narrow. If satisfied that the rule in question lay within the lawmaking authority delegated by the Legislature, and that it {71 Cal. App. 4th 504} is reasonably necessary to implement the purpose of the statute, judicial review is at an end.

" . . .

"It is the other class of administrative rules, those *interpreting* a statute, that is at issue in this case. Unlike quasi-legislative rules, an agency's interpretation does not implicate the exercise of a delegated lawmaking power; instead, it represents the agency's view of the statute's legal meaning and effect, questions lying within the constitutional domain of the courts. But because the agency will often be interpreting a statute within its administrative jurisdiction, it may possess special familiarity with satellite legal and regulatory issues. It is this 'expertise,' expressed as an interpretation (whether in a regulation or less formally, as in the case of the Board's tax annotations), that is the source of the presumptive value of the agency's views. An important corollary of agency interpretations, however, is their diminished power to bind. Because an interpretation is an agency's legal opinion, however 'expert,' rather than the exercise of a delegated legislative power to make law, it commands a commensurably lesser degree of judicial deference. [Citation.]

" . . .

"Whether judicial deference to an agency's interpretation is appropriate and, if so, its extent -- the 'weight' it should be given -- is . . . fundamentally *situational*. A court assessing the value of an interpretation must consider complex factors material to the substantive legal issue before it, the particular agency offering the interpretation, and the comparative weight the factors ought in reason to command. Professor Michael Asimow, an administrative law adviser to the California Law Revision Commission, has identified two broad categories of factors relevant to a court's assessment of the weight due an agency's interpretation: Those 'indicating that the agency has a comparative interpretive advantage over the courts,' and those 'indicating that the interpretation in question is probably correct.' [Citations.]

"In the first category are factors that 'assume the agency has expertise and technical knowledge, especially where the legal text to be interpreted is technical, obscure, complex, open-ended, or entwined with issues of fact, policy, and discretion. A court is more likely to defer to an agency's interpretation of its own regulation than to its interpretation of a statute, since the agency is likely to be intimately familiar with regulations it authored and sensitive to the practical implications of one interpretation over another.' [Citation.] The second group of factors in the Asimow classification -- those suggesting the agency's interpretation is likely to be correct -- {71 Cal. App. 4th 505} includes indications of careful consideration by senior agency officials ('an interpretation of a statute contained in a regulation adopted after public notice and comment is more deserving of deference than [one] contained in an advice letter prepared by a single staff member' [citation]), evidence that the agency

'has consistently maintained the interpretation in question, especially if [it] is long-standing' [citation] ('[a] vacillating position . . . is entitled to no deference' [citation]), and indications that the agency's interpretation was contemporaneous with legislative enactment of the statute being interpreted. If an agency has adopted an interpretive rule in accordance with Administrative Procedure Act provisions -- which include procedures (e.g., notice to the public of the proposed rule and opportunity for public comment) that enhance the accuracy and reliability of the resulting administrative "product" -- that circumstance weighs in favor of judicial deference. However, even formal interpretive rules do not command the same weight as quasi-legislative rules. Because "the ultimate resolution of . . . legal questions rests with the courts" [citation], judges play a greater role when reviewing the persuasive value of interpretive rules than they do in determining the validity of quasi-legislative {83 Cal. Rptr. 2d 857} rules." (*Yamaha Corp. of America v. State Bd. Of Equalization*, *supra*, 19 Cal. 4th at pp. 10-13.)

With these principles in mind we turn to the substantive issues raised by the parties.

IV

Eucalyptus Grove

A. History and Condition of the Grove

The LCP would permit residential development over five acres of a six and one-half-acre eucalyptus grove on Bolsa Chica mesa. The five acres where development would be permitted is owned by Koll; the remainder of the grove is owned by the state.

The eucalyptus grove is not native to the area and was planted almost 100 years ago by a hunting club which owned large portions of Bolsa Chica. Since the time of its planting, the original 20-acre grove has diminished considerably because of development in the area and the lack of any effort to preserve it. Indeed, although the eucalyptus grove was nine and two-tenths acres large as recently as 1989, it had shrunk to no more than six and one-half acres by 1994 and portions of it were under severe stress. According to expert testimony submitted to Commission, the grove is probably shrinking because of increased salinity in the soil.

{71 Cal. App. 4th 506} Notwithstanding its current diminished and deteriorating condition, Commission identified the grove as an ESHA within the meaning of Public Resources Code section 30107.5.2(2) The ESHA identification was based on the fact the grove provided the only significant locally available roosting and nesting habitat for birds of prey (raptors) in the Bolsa Chica area. At least 11 species of raptors have been identified as utilizing the site, including the white-tailed kite, marsh hawk, sharp skinned hawk, Cooper's hawk and osprey. According to Commission, a number of the raptors are dependent upon the adjacent lowland wetlands for food and the eucalyptus grove provides an ideal nearby lookout location as well as a refuge and nesting site.

B. Section 30240

Under the Coastal Act, Commission is required to protect the coastal zone's delicately balanced ecosystem. (§ 30001, subds. (a)-(c); § 30001.5, subd. (a); *City of San Diego v. California Coastal Com.* (1981) 119 Cal. App. 3d 228, 233, 174 Cal. Rptr. 5; *Sierra Club v. California Coastal Com.* (1993) 12 Cal. App. 4th 602, 611 (*Pygmy Forest*)). Thus in reviewing all programs and projects governed by the Coastal Act, Commission must consider the effect of proposed development on the environment of the coast. (See *City of San Diego v. California Coastal Com.*, *supra*, 119 Cal. App. 3d at p. 234.)

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) (§§ 21000-21174). (*Coastal Southwest Dev. Corp. v. California Coastal Zone Conservation Com.* (1976) 55 Cal. App. 3d 525, 537, 127 Cal. Rptr. 775.) 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 purposes. [Citation.] The highest priority must be given to environmental consideration in interpreting the statute [citation]." (*Ibid.*)

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. (*Pygmy Forest*, *supra*, 12 Cal. App. 4th at p. 611.) 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 status 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 within those areas. [P](b) Development in areas adjacent to environmentally {83 Cal. Rptr. 2d 858} sensitive habitat areas 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 recreation 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." (*Pygmy Forest*, *supra*, 12 Cal. App. 4th at p. 611.)

Commission found that residential development in the eucalyptus grove was permissible under section 30240 because the LCP required that an alternate raptor habitat be developed on Huntington mesa. Commission reasoned that section 30240 only requires that "habitat values" be protected and that given the deteriorating condition of the grove, creation of a new raptor habitat on Huntington mesa was the best way to promote the "habitat values" of the eucalyptus grove.

The reasoning Commission employed is seductive but, in the end, unpersuasive. First, contrary to Koll's argument, we are not required to give great weight to the interpretation of section 30240 set forth by Commission in its findings approving the LCP. The interpretation was not contemporaneous with enactment of section 30240 or the result of any considered official interpretative effort and it did not carry any other of the indicia of reliability which normally requires deference to an administrative interpretation. (See *Yamaha Corp. of America v. State Bd. of Equalization*, *supra*, 19 Cal. 4th at pp. 12-13.)

Secondly, the language of section 30240 does not permit a process by which the habitat values of an ESHA can be isolated and then recreated in another location. Rather, a literal reading of the statute protects *the area* of an ESHA from uses which threaten the habitat values which exist in the ESHA. Importantly, while the obvious goal of section 30240 is to protect habitat values, the express terms of the statute do not provide that protection by treating those values as intangibles which can be moved from place to place to suit the needs of development. Rather, the terms of the statute protect habitat values by placing strict limits on the uses which may occur in an ESHA and by carefully controlling the manner uses in the area around the ESHA are developed. (*Pygmy Forest*, *supra*, 12 Cal. App. 4th at p. 611.)

Thirdly, contrary to Commission's reasoning, section 30240 does not permit its restrictions to be ignored based on the threatened or deteriorating {71 Cal. App. 4th 508} condition of a particular ESHA. We do not doubt that in deciding whether a particular area is an ESHA within the meaning of section 30107.5, Commission may consider, among other matters, its viability. (See *Pygmy Forest*, *supra*, 12 Cal. App. 4th at pp. 614-615.) However, where, as is the case here, Commission has decided that an area is an ESHA, section 30240 does not itself provide Commission power to alter its strict limitations. (*Id.* at p. 617.) There is simply no reference in section 30240 which can be interpreted as diminishing the level of protection an ESHA receives based on its viability. Rather, under the statutory scheme, ESHA's, whether they are pristine and growing or fouled and threatened, receive uniform treatment and protection. (See *Pygmy Forest*, *supra*, 12 Cal. App. 4th at p. 617.)

In this regard we agree with the trust that Commission's interpretation of section 30240 would pose a threat to ESHA's. As the trust points out, if, even though an ESHA meets the requirements of section 30107.5, application of section 30240's otherwise strict limitations also depends on the relative viability of an ESHA, developers will be encouraged to find threats and hazards to all ESHAs located in economically inconvenient locations. The pursuit of such hazards would in turn only promote the isolation and transfer of ESHA habitat values to more economically convenient locations. Such a system of isolation and transfer based on economic convenience would of course be completely contrary to the goal of the Coastal Act which is to protect *all* coastal zone resources and provide heightened protection to ESHA's. (§§ 30001, subds. (a)-(c), 30001.5, subd. (a); {83 Cal. Rptr. 2d 859} *Pygmy Forest*, *supra*, 12 Cal. App. 4th at p. 613, 15 Cal. Rptr. 2d 770.)

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 conflicting interests cannot be found in section 30240.

C. Section 30007.5

Koll argues that even if transfer of habitat values was not permissible under section 30240, such a transfer was permissible under the provisions of section 30007.5 and our holding in *Batiquitos Lagoon*. Section 30007.5 states: "The Legislature further finds and recognizes that conflicts may occur between one or more policies of the [Coastal Act]. 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 {71 Cal. App. 4th 509} 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."

In *Batiquitos Lagoon* we were confronted with "the conflicting interests of fish and fowl." (*Batiquitos Lagoon, supra*, 19 Cal. App. 4th at p. 550.) Each interest was protected by a specific provision of the Coastal Act: the fish were protected by section 30230 which directed that marine resources be preserved and where feasible, restored; the fowl were protected by the requirement of section 30233, subdivision (b), that the very substantial dredging needed to restore the fish habitat avoid significant disruption of the bird habitat. We found that under section 30007.5, Commission could resolve these conflicting policy interests by favoring long-term restoration of the fish habitat over the short term, but significant, disruption of the bird habitat. (19 Cal. App. 4th at p. 562.)

Here, in contrast to the situation in *Batiquitos Lagoon*, the record at this point will not support application of the balancing power provided by section 30007.5. Unlike the record in that case, here our review of the proceedings before Commission does not disclose any policy or interest which directly conflicts with application of section 30420 to the eucalyptus grove. (See *Pygmy Forest, supra*, 12 Cal. App. 4th at p. 620.)

Although the Coastal Act itself recognizes the value and need for residential development (see § 30001.5, subd. (b), § 30007), nothing in the record or the briefs of the parties suggests there is such an acute need for development of residential housing in and around the eucalyptus grove that it cannot be accommodated elsewhere. (Compare *Pygmy Forest, supra*, 12 Cal. App. 4th at p. 620 [no showing residential development needed in ESHAs].) Rather, the only articulated interests which the proposed transfer of the "habitat values" serves is Commission's expressed desire to preserve the raptor habitat values over the long term and Commission's subsidiary interest in replacing non-native eucalyptus with native vegetation. However, as the trust points out, there is no evidence in the record that destruction of the grove is a prerequisite to creation of the proposed Huntington mesa habitat. In the absence of evidence as to why preservation of the raptor habitat at its current location is unworkable, we cannot reasonably conclude that any genuine conflict between long-term and short-term goals exists.

In sum then the trial court erred in sustaining that portion of the LCP which permitted development of the eucalyptus grove.

{71 Cal. App. 4th 510}

V

Lowland Wetlands³⁽³⁾

The Coastal Act provides a separate protection regime for wetlands. Under {83 Cal. Rptr. 2d 860} section 30121: "'Wetland' means lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens."

Section 30233, subdivision (a), protects wetlands by providing: "The diking, filling, or dredging of . . . wetlands . . . shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

"(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

"(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

"(3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary

navigation channels, and any necessary support service facilities shall not exceed 25 percent of the degraded wetland.

"(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

{71 Cal. App. 4th 511} "(5) Incidental public service purposes, including, but not limited to, burying cables and pipes or inspection of pier and maintenance of existing and outfall lines.

"(6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

"(7) Restoration purposes.

"(8) Nature study, aquaculture, or similar resource-dependent activities."

Although section 30233, subdivision (a), permits development of wetland areas when needed as a means of accommodating a whole host of varied uses, residential development is not a use permitted in wetlands. Nonetheless Commission found that residential development of portions of the Bolsa Chica lowlands was permissible, even though it would require destruction of otherwise protected wetlands, because the development would be used to finance needed restoration of other degraded portions of the wetlands.

Commission reasoned that, although section 30233, subdivision (b), does not expressly permit residential development of wetlands, authority for such development can be found in the related provisions of section 30411, subdivision (b). Section 30411, subdivision (b), states: "The Department of Fish and Game, in consultation with the commission and the Department of Boating and Waterways, may study degraded wetlands and identify those which can most feasibly be restored in conjunction with development of a boating facility as provided in subdivision (a) of Section 30233. Any such study shall include consideration of all of the following:

"(1) Whether the wetland is so severely degraded and its natural processes so substantially impaired that it is not capable of recovering and maintaining a high level of biological productivity without major restoration activities.

"(2) Whether a substantial portion of the degraded wetland, but in no event less than 75 percent, can be restored and maintained as a highly productive wetland in conjunction with a boating facilities project.

"(3) Whether restoration of the wetland's natural values, including its biological productivity and wildlife habitat features, can most feasibly be achieved and maintained in {83 Cal. Rptr. 2d 861} conjunction with a boating facility or whether there are other feasible ways to achieve such values."

Commission found that section 30411, subdivision (b)(3), permits wetland restoration to be achieved by way of any means which are more feasible than {71 Cal. App. 4th 512} development of boating facilities. Because the county had previously found that development of a marina at Bolsa Chica was not feasible, Commission further reasoned that "residential development qualifies as a more feasible method of achieving restoration . . . since the construction and sale of the Lowland residential units would fund the restoration program and allow it to be implemented."

The trial court rejected Commission's reasoning. The trial court stated: "Section 30411 [, subdivision (b),] also does not authorize residential development. Rather, it authorizes the Department of Fish and Game to study and identify which degraded wetlands can feasibly be restored in conjunction with the development of a boating facility. In conducting its study, the Department of Fish and Game must consider whether the restoration of the wetlands' values can be achieved and maintained in conjunction with a boating facility 'or whether there are other feasible ways to achieve such values.' The most logical interpretation of the quoted language, construed in light of the Coastal Act as a whole, requires the Department of Fish and Game to consider whether alternative less intrusive than developing a boating facility are feasible. The Commission's interpretation would open the door to any type of development in a wetland whenever a finding could be made that funds were otherwise unavailable to restore degraded wetlands." We agree with the trial court.

First, we note the trial court's interpretation comports with the plain meaning of section 30411, subdivision (b), which expressly limits the power of the Department of Fish and Game to the *study* of boating projects authorized by section 30233, subdivision (a). There is nothing on the face of section

30411, subdivision (b), which *authorizes* the development of residential projects in wetland areas or for that matter authorizes any development which is not permitted by section 30233.

Moreover, the alternative analysis required by section 30411, subdivision (b)(3), cannot be read to inferentially permit the development of facilities which are not otherwise permitted by section 30233, subdivision (a). By its terms section 30233, subdivision (a), purports to set forth the purposes, in their entirety, for which coastal wetlands can be developed. If the Legislature intended that residential development of wetlands was to be permitted, logic would suggest that such a use be set forth unambiguously on the face of section 30233, subdivision (a), rather than as an implied power under section 30411, subdivision (b)(3).

Another difficulty with Commission's interpretation of section 30411 is that the power to study the feasibility of boating facilities rests with the {71 Cal. App. 4th 513} Department of Fish and Game, not Commission. We think it would be somewhat incongruous to provide the Department of Fish and Game with the power to determine, by way of a study, when residential development may occur in a coastal wetland. That power, it would seem, would be more appropriately directly exercised by Commission. Indeed section 30411, subdivision (a), provides, in pertinent part: "The Department of Fish and Game and the Fish and Game Commission are the principal state agencies responsible for *the establishment and control of wildlife and fishery management programs.*" (Italics added.) There is nothing in the Coastal Act or any other provision of law, which suggests the Department of Fish and Game has any expertise with respect to the need for or impacts of residential development in the coastal zone.

We are also unpersuaded by the fact that Commission's interpretation has been set forth in Interpretative Guidelines it adopted pursuant to authority granted to Commission under section 30620, subdivision (b). (See *California Coastal Com. v. Office of Admin. Law* (1989) 210 Cal. App. 3d 758, 761-762, 258 Cal. Rptr. 560.) Although, because the guidelines were subject to a formal review and adoption process analogous to the Administrative Procedure Act (Gov. Code, § 11340 et seq.) and for that reason are entitled to great {83 Cal. Rptr. 2d 862} weight (*Coronado Yacht Club v. California Coastal Com.* (1993) 13 Cal. App. 4th 860, 868), here the guidelines themselves obliquely recognize that Commission's interpretation expands the uses and processes contemplated by sections 30233 and 302411. The guidelines describe a process under which Commission developers, agencies and Commission, rather than the Department of Fish and Game, consider alternatives to boating facilities. Importantly, however, the guidelines concede: "The Coastal Act does not require the Department of Fish and Game to undertake studies which would set the process described in this section in motion. . . This section is, however, included to describe, clarify, and encourage, public and private agencies to formulate innovative restoration projects to accomplish the legislative goals and objectives described earlier." In light of the express limitation which appears on the face of section 30233 and the express delegation of responsibility to the Department of Fish and Game under section 30411, Commission's admittedly innovative interpretation cannot be sustained.

In short, the trial court's interpretation is supported by the plain language of the statute, the need to give significance to every word and phrase of the statute and the requirement that "statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible." (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal. 3d 1379, 1387, 241 Cal. Rptr. 67, 743 P.2d 1323.) Thus we {71 Cal. App. 4th 514} find no error in the trial court's finding that residential development of the lowland wetlands was not permitted.

VI

Warner Avenue Pond

The parties agree Warner Avenue Pond, which is located on Bolsa Chica mesa, is both an ESHA within the meaning of section 30107.5 and a wetland within the meaning of section 30121. As we have noted under section 30240, the habitat values in an ESHA may not be significantly disrupted and no use of an ESHA may occur which is not dependent on resources which exist in the ESHA. As we have also noted under section 30233, subdivision (a), wetlands are protected by specific limitations with respect to uses which may occur in a wetland and by the requirement that there be no feasible less environmentally damaging alternative to diking, filling or dredging of a wetland.

In approving the LCP, Commission found Warner Avenue Pond could be filled to permit the widening of Warner Avenue and that the filling could be mitigated by offsite restoration of other wetlands on a ratio of four to one. Commission found that widening of the road was an "incidental public service" within the meaning of section 30233, subdivision (a)(5), and therefore a permissible use of the

wetland. Commission's findings do not discuss the pond's status as an ESHA.

The trial court found Commission's findings were inadequate. The trial court reasoned that in this instance the protection provided by section 30240 to ESHA's and the development permitted by section 30233, subdivision (a)(5), were conflicting policies within the meaning of section 30007.5 which empowered Commission to resolve such policy conflicts in a manner which is "most protective of coastal resources." (§ 30007.5, *Batiquitos Lagoon, supra*, 19 Cal. App. 4th at pp. 562-563.) However the trial court further found that in order to exercise its power under section 30007.5, Commission was required by section 30200, subdivision (b), to make findings which identified and resolved the policy conflict. The trial court concluded Commission's findings did not meet these requirements.

We agree with the trial court that Commission's findings were inadequate with respect to Warner Avenue Pond. However, we reach that conclusion by way of a somewhat different analytical path. In particular, we do not believe the policies embodied in sections 30240 and 30233 are in direct conflict necessitating resort to the power provided by section 30007.5. Rather, in this {71 Cal. App. 4th 515} instance we agree with Commission's guidelines that the ESHA protections provided by section 30240 are more general provisions and the wetland protections provided by section 30233 are more specific and controlling when a wetland {83 Cal. Rptr. 2d 863} area is also an ESHA. The guidelines state: "The Commission generally considers wetlands, estuaries, streams, riparian habitats, lakes and portions of open coastal waters to be environmentally sensitive habitat areas because of the especially valuable role of these habitat areas in maintaining the natural ecological functioning of many coastal habitat areas and because these areas are easily degraded by human developments. In acting on an application for development [of] one of these areas, the Commission considers all relevant information. The following specific policies apply to these areas: Sections 30230; 30231; 30233; and 30236. Section 30240, a more general policy, also applies, but the more specific language in the former sections is controlling where conflicts exist with general provisions of Section 30240 (e.g., port facilities may be permitted in wetlands under Section 30233 even though they may not be resource dependent). This guideline addresses wet environmentally sensitive habitat areas only. The discussion in this section and in section VII is not intended to describe or include all environmentally sensitive habitat areas which may fall under Section 30240 of the Coastal Act."

The guidelines go on to provide: "Of all the environmentally sensitive habitat areas mentioned specifically in the Coastal Act, wetlands and estuaries are afforded the most stringent protection. In order to approve a project involving the diking, filling, or dredging of a wetland or estuary, the Commission must first find that the project is one of the specific, enumerated uses set forth in Section 30233 of the Act (these developments and activities are listed in section A. and B. below). The Commission must then find that the project meets all three requirements of Section 30233 of the Act (see pp. 14-17). In addition, permitted development in these areas must meet the requirements of other applicable provisions of the Coastal Act.

"A. *Developments and Activities Permitted in Wetlands and Estuaries*

"1. Port facilities.

"...

"5. Incidental public service purposes *which temporarily impact the resources of the area, which include, but are not limited to, burying cables and pipes, inspection of piers, and maintenance of existing intake and outfall lines (roads do not qualify).*" (Italics added, fns. omitted.)

Significantly, by way of a footnote Commission explains that "incidental services" may include, under certain circumstances, road expansion: "When {71 Cal. App. 4th 516} no other alternative exists, and when consistent with the other provisions of this section, limited expansion of roadbeds and bridges necessary to maintain existing traffic capacity may be permitted."

We agree with these aspects of Commission's guidelines. We note Commission's determination that section 30233, subdivision (a), was meant to supplant the provisions of section 30240 is supported by section 30233, subdivision (a)(6), which permits mineral development in wetlands "*except in environmentally sensitive areas.*" (Italics added.) Because none of the other permitted wetland uses set forth in section 30233, subdivision (a), has such an express exception for ESHA's, the inference arises that had the drafters intended the uses permitted by section 30233, subdivision (a), to be subject to ESHA protection, they would have made their intention explicit.

In addition to the inferential support found by reference to section 30233, subdivision (a)(6),

Commission's interpretation is also supported by a broader view of the statutory scheme. Wetland ESHA's are unique in that although like all ESHA's they need extraordinary protection, there are important activities such as fishing, boating, shipbuilding and other commercial and industrial activities which of necessity may occur on or near wetland areas. Importantly, the value of such activities is specifically recognized by the act and Commission is empowered to permit them to occur notwithstanding their adverse impact on coastal resources. (See §§ 30001.2, 30708.)

The activities which may occur in wetland areas are, as Commission noted, set forth with great specificity and detailed limitation in section 30233, subdivision (a). Such specificity and detail does not occur either in the general provisions accommodating industrial {83 Cal. Rptr. 2d 864} and commercial uses (see §§ 30001.2, 30708) or in the limitation on ESHA development set forth in section 30240. Given that section 30233, subdivision (a), provides specific and detailed limitation on the uses permitted in wetland areas, we believe it was reasonable for Commission to conclude that with respect to wetland ESHA's, section 30233, subdivision (a), is a more specific guideline for what may occur in a wetland ESHA than either the accommodation of development expressed in sections 30001.2 and 30708 or the more general limitation set forth in section 30240.

Practicality, as well as the need to maintain a consistent level of wetland protection, suggest that development of wetland ESHA's are governed by the very specific and uniform limitations set forth in section 30233, subdivision (a), rather than by way of the essentially ad hoc balancing process permitted by section 30007.5. Given the myriad of wetland areas which exist in the coastal zone and the inherent conflict between the permissive policy expressed in sections 30001.2 and 30708 and the restrictive policy of section {71 Cal. App. 4th 517} 30240, in the absence of the limitation set forth in section 30233, subdivision (a), case by case balancing of interests under section 30007.5 would be repeatedly required.

Although we accept Commission's interpretation of sections 30233 and 30240, we do not accept Commission's application of that interpretation to Warner Avenue Pond. In particular we note that under Commission's interpretation, incidental public services are limited to temporary disruptions and do not usually include permanent roadway expansions. Roadway expansions are permitted only when no other alternative exists and the expansion is necessary to maintain existing traffic capacity. As the trust points out, Commission found that the widening of Warner Avenue was needed to accommodate future traffic created by local and regional development in the area. Contrary to Koll's argument, this limited exception cannot be extended by finding that a roadway expansion is permissible when, although it increases the vehicle capacity of a roadway, it is designed to maintain an existing level of traffic service. Such an interpretation of the exception would entirely consume the limitation Commission has put on the incidental public services otherwise permitted by section 30233, subdivision (a)(2).

In sum then, like the trial court we find that the LCP is defective insofar as it approves the filling of Warner Avenue Pond.

VII

Attorney Fees

The trial court awarded the trust its attorney fees under the provisions of section Code of Civil Procedure section 1021.5 and divided those fees between Koll, Fieldstone and the state. Those parties do not challenge the amount of fees awarded but the propriety of any award in the context of a dispute over adoption of an LCP.

For their part, Koll and Fieldstone contend that it is improper and indeed unconstitutional to award fees where Commission, not they, were found to have made inadequate findings. This argument is, frankly, somewhat disingenuous. Both Koll and Fieldstone vigorously defended Commission's findings both in the trial court and do so again on appeal. Indeed, the vigor of their defense of Commission's findings was so great that they *opposed* Commission's efforts to have the matter remanded so that it could make new findings. It suffices to say the vigor of Koll and Fieldstone's defense no doubt compelled the trust to incur substantial attorney fees and accordingly make it fair under the equitable principles embodied in Code of Civil {71 Cal. App. 4th 518} Procedure section 1021.5 to impose some of those costs on Koll and Fieldstone. (See *San Bernardino Valley Audubon Society, Inc. v. County of San Bernardino* (1984) 155 Cal. App. 3d 738, 755-757, 202 Cal. Rptr. 423; *Serrano v. Priest* (1977) 20 Cal. 3d 25, 42-47, 141 Cal. Rptr. 315, 569 P.2d 1303.)

Commission argues the trial court abused its discretion in awarding attorney fees against it because it

believes a great deal of the expense the trust incurred could have been avoided if the trust had agreed to Commission's effort in the trial court to remand the wetlands issues in light of the {83 Cal. Rptr. 2d 865} state's acquisition of Koll's lowland holdings. This argument presupposes that the trust's opposition to the remand would have persuaded the trial court to remand the matter even in light of Koll and Fieldstone's separate opposition to the remand. Because the trial court both denied the remand and awarded the attorney fees, we must conclude that it did not believe the trust's position with respect to the remand compelled the trust to incur unnecessary fees.

Finally, Commission contends that the imposition of attorney fees has imposed an undue hardship on it. As the trust points out, this is not a factor which courts are required to consider in awarding attorney fees against a public agency. (See *San Bernardino Valley Audubon Society, Inc. v. County of San Bernardino*, *supra*, 155 Cal. App. 3d at p. 755, fn. 2.) Rather, this is a concern Commission should more properly address to the Legislature in either securing an appropriation to relieve the hardship or in obtaining an amendment to Code of Civil Procedure section 1021.5 which would require that trial courts consider the impact on the operations of public agencies before imposing fees on them.

DISPOSITION

The trust's petition is granted in part and the superior court is directed to grant the trust's administrative mandamus petition with respect to the eucalyptus grove; in all other respects, the parties' petitions are denied. Trust to recover its costs.

BENKE, J.

WE CONCUR:

WORK, Acting P.J.

HUFFMAN, J.

Footnotes

Footnotes for Opinion

1 Financing for the state's acquisition of Koll's lowland holdings as well as its restoration plan was provided by the Ports of Los Angeles and Long Beach as mitigation for dredging and expansion the ports planned.

2 All statutory references are to the Public Resources Code unless otherwise indicated.

3 Commission contends the propriety of the trial court's rulings on the lowland wetlands and the Warner Avenue Pond issues are moot in light of the acquisition of the lowland wetlands by the state and Koll's agreement to limit development on Bolsa Chica mesa. However, the propriety of the trial court's award of attorney fees depends in part on the propriety of its ruling on these issues, and thus we are required to consider them on the merits. (See *Save Our Residential Environment v. City of West Hollywood* (1992) 9 Cal. App. 4th 1745, 1751.)

Endnotes

1 (Popup)

1

Financing for the state's acquisition of Koll's lowland holdings as well as its restoration plan was provided by the Ports of Los Angeles and Long Beach as mitigation for dredging and expansion the ports planned.

2 (Popup)

2

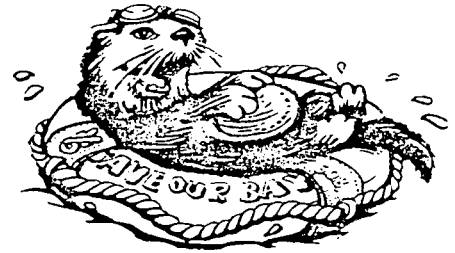
All statutory references are to the Public Resources Code unless otherwise indicated.

3 (Popup)

3

Commission contends the propriety of the trial court's rulings on the lowland wetlands and the Warner Avenue Pond issues are moot in light of the acquisition of the lowland wetlands by the state and Koll's agreement to limit development on Bolsa Chica mesa. However, the propriety of the trial court's award of attorney fees depends in part on the propriety of its ruling on these issues, and thus we are required to consider them on the merits. (See *Save Our Residential Environment v. City of West Hollywood* (1992) 9 Cal. App. 4th 1745, 1751.)

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

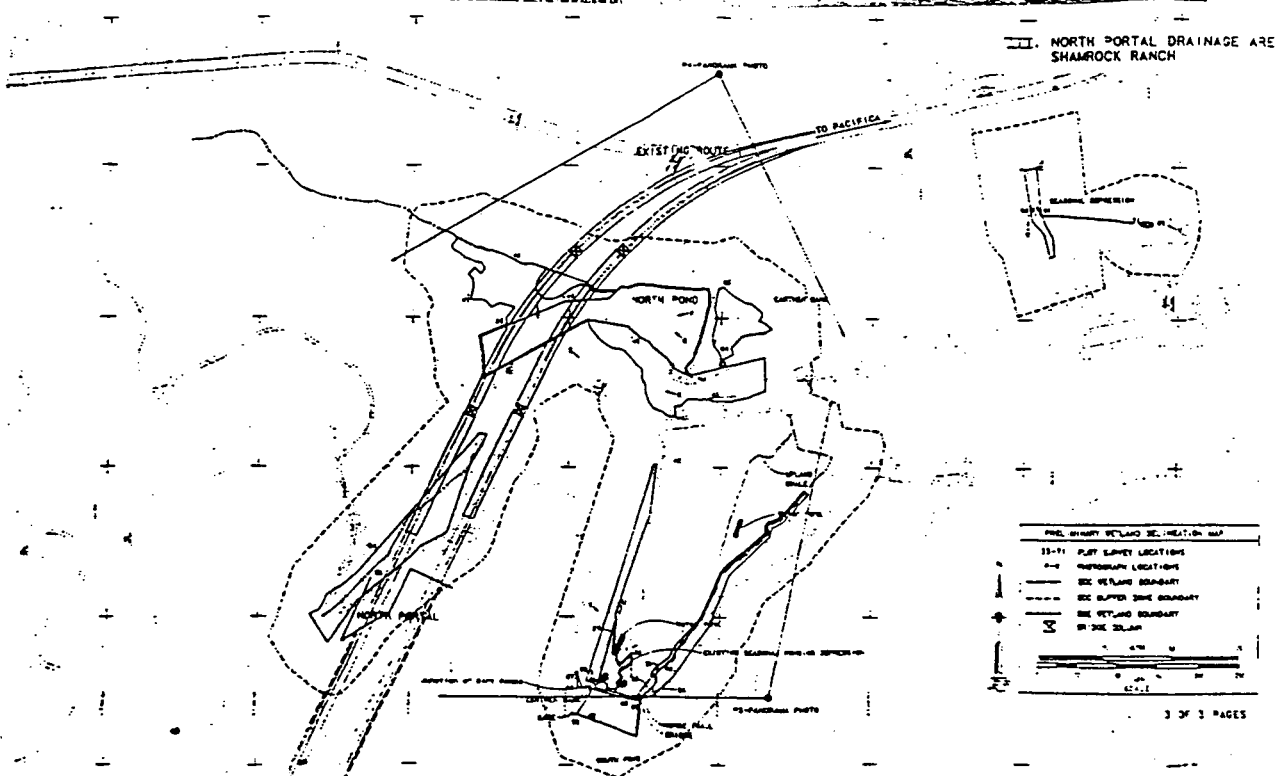
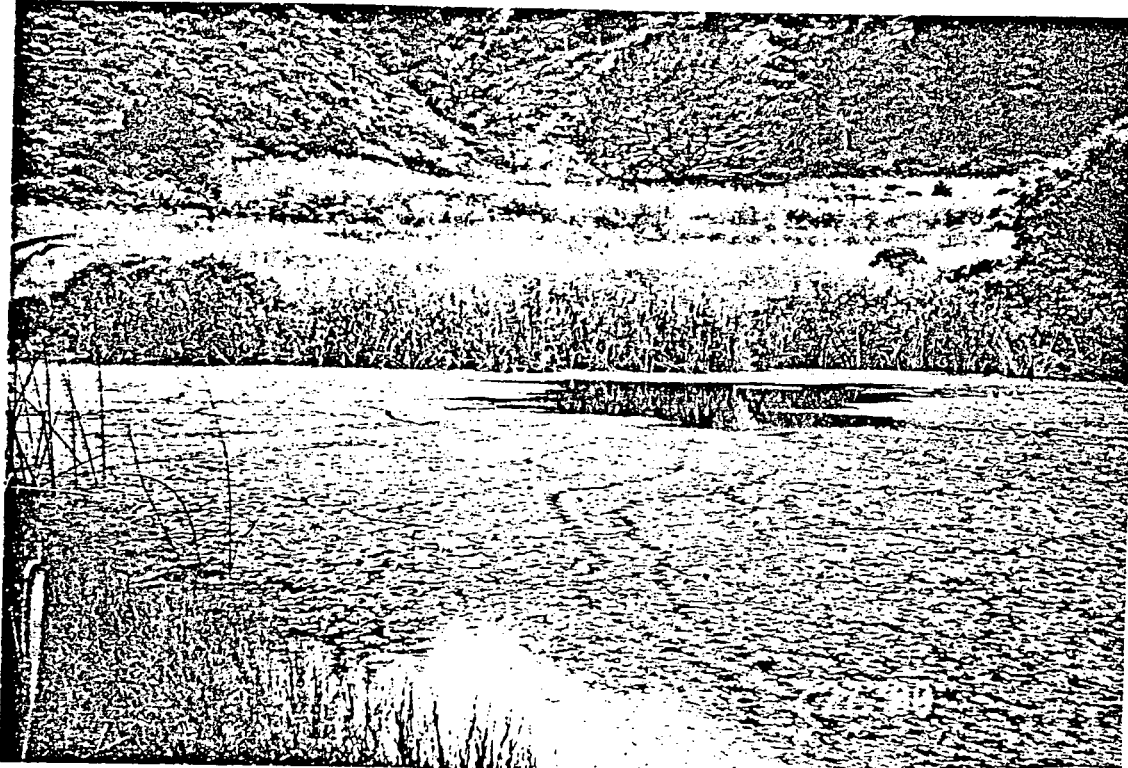


DEVIL'S SLIDE TUNNELS PROJECT

ESHA Statutory Delineation Map & Photo

Date: Oct. 10, 2000, 10am, Item Tu 12a

Re: No Project Alternative, Violation of Section 30240



COUNTY OF SAN MATEO
PLANNING AND BUILDING DIVISION

INTERDEPARTMENTAL CORRESPONDENCE

Date: August 30, 2000
Hearing Date: September 12, 2000
Set Time: 9:45 a.m.

To: Honorable Board of Supervisors

From: Planning Commission, Pony PLN122, Telephone 363-1859
via Terry Burnes, Planning Administrator, Telephone 363-1861

Subject: EXECUTIVE SUMMARY: Consideration of an appeal of the Planning Commission's decision to approve a Coastal Development Permit to allow the construction of a 2,000 sq. ft. pond. The pond is part of a habitat enhancement project for the endangered red-legged frog. 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, County File No. PLN 2000-00536, by adopting the required findings and conditions of approval in Attachment A.

PROPOSAL

The applicant, CalTrans, is proposing to construct an approximately 2,000 sq. ft. pond on the Shamrock Ranch, near Pacifica, just downslope from an existing water storage pond. The purpose of the new pond is to provide new habitat for the endangered red-legged frog. The pond was designed in conjunction with the U.S. Fish and Wildlife Service. As a State agency, CalTrans is not required to comply with building and zoning regulations (Government Code Section 53091); however, a Coastal Development Permit in compliance with Local Coastal Program Policy 2.1 must be obtained. It should be noted that this Coastal Development Permit does not authorize any activity beyond construction of the pond and stocking of the pond with endangered red-legged frogs. Any additional activities will require the issuance of appropriate permits from the California Department of Fish and Game and the U.S. Fish and Wildlife Service, and the possible issuance of a Coastal Development Permit from the County of San Mateo.

SUMMARY

The appellant filed a letter with the Board of Supervisors regarding this project on August 24, 2000 and an appeal with the Planning Department on August 29. The letter and appeal are included as Attachment B. They state that the Save Our Bay Foundation is appealing the granting of this Coastal Development Permit based upon reasons that are to be explained later in the letter. The appellant then discusses at great length the Devil's Slide Tunnel and the merits of that project, the pond. However, at no time does the appellant state what his point of appeal is about this project. While the pond does provide a resource for potentially mitigating impacts associated with the construction of the Tunnel, this Coastal Development Permit is not for that project. The pros and cons of the tunnel project are not under consideration at this time. As discussed in the attached report, the pond complies with the County Local Coastal Program and, therefore, qualifies for a Coastal Development Permit.

MJS:kcd - MJSK1309_WKU.DOC



Planning and Building Division

County of San Mateo

Mail Drop PLN122 · 455 County Center · 2nd Floor · Redwood City
California 94063 · Telephone 650/363-4161 · Fax 650/363-4849

Rose Jacobs Gibson
Richard S. Gordon
Mary Griffin
Jerry Hill
Michael D. Nevin

Planning Administrator
Terry L. Burnes

October 3, 2000

Sarah Wan, Chair; and Members
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Dear Ms. Wan and Members:

SUBJECT: CalTran's Frog Pond Appeal (A-2-SMC-00-035)

The above-referenced project will be heard by the Coastal Commission at their October 10, 2000 hearing in Oceanside. I would like to state for the record that the County of San Mateo fully supports this project. This project was approved by unanimous votes of both the County Planning Commission and the Board of Supervisors. While the project is intended to serve as mitigation for the proposed Devil's Slide tunnel, it also serves to increase habitat for a threatened species, the red-legged frog. Please assist the County in improving the habitat by denying this appeal.

Sincerely,

Marcia Raines
Director, Environmental Services Agency

MLR:MJS/kcd - MJSK1482_WKN.DOC

cc: Rich Gordon, Supervisor, District 3
John Maltbie, County Manager
Michael Murphy, County Counsel

RECEIVED
OCT 05 2000
CALIFORNIA
COASTAL COMMISSION

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



Fax Transmission: 1-916-414-6713

Total Pages: 9

Date: November 28, 2000

To: Ken Sanchez, U.S. Fish & Wildlife Service 916-414-6623

From: Oscar Braun, Executive Director

Re: Refusal To Investigate Violation of Endangered Species Act

This memo is to acknowledge your telephone notification to the Save Our Bay Foundation this morning that the U.S. Fish & Wildlife Service will not be investigating the enclosed notice of violation dated 11/24/2000. You have also acknowledge receiving all the enclosed documents from Save Our Bay and the fact that USFWS Agent Scott Pierson has conducted a telephone interview with our Executive Director.

Sincerely,

A handwritten signature in cursive script that reads "Oscar Braun".

Oscar Braun, Executive Director

Enclosures: Letter Marcia Raines, 11/24/00, Regular Agenda item 3, Interdepartmental Correspondence Date August 30, 2000, California Native Species Field Survey Form 7/27/00 & 11-24-00, Project location map, Adopted findings LCP No 96-1

CC.

Grey Davis, Governor, State of California

Mary Nichols, California Secretary of Resources, Resources Agency of California

Marcia Raines, Director Environmental Services, San Mateo County

Richard Gordon, President, San Mateo Board of Supervisors

Peter Douglas, Executive Director, California Coastal Commission

Harry Y. Yahata, District Director, District 4, California Department of Transportation

Jeffrey A. Lindley, Division Administrator, Federal Highway Administration

Judge D. Lowell Jensen, U.S. District Court

Media

Briefs

New pond completed for red-legged frogs

As CalTrans recently completed a new pond on Shamrock Ranch property to house red-legged frogs that could be displaced from existing ponds during the construction of the Montara Mountain tunnel, representatives of the Half Moon Bay grassroots organization Save Our Bay are claiming that something is awry with the old pond. According to organization spokesman John Plock, all the water is gone, along with the endangered frogs.

This, according to the organization, has something to do with the CalTrans operation.

The U.S. Fish and Wildlife Service declined the organization's invitation to investigate the missing water and frogs.

According to Ken Sanchez, senior biologist for U.S. Fish and Wildlife, that the water and frogs are gone is no surprise.

"It dries up like this at this time every year," he

said. "Frogs just move to other ponds."

That's why, he added, that it is important that the frogs have multiple ponds available to them.

As to the organization's charge that something went wrong with the CalTrans operation, Sanchez said, "We just don't believe it."

Save Our Bay is currently pressing California Fish and Game, San Mateo County and CalTrans to investigate.

Planning Commission to hold special meeting

The Half Moon Bay Planning Commission will hold a special meeting on Thursday, Nov. 30, to consider two coastal development permit applications.

The first application is for a restaurant proposed in the Growers Building located at 845 Main St. Although the building is an old landmark downtown, it is not a historical landmark, according to the staff

report. However, the downtown historic district is on the historical Inventory.

For this reason, the project will require the retention of the character of the building.

The project includes the demolition of the building and the construction of a new building. The project also proposes a parking lot which will require the demolition of the building. This, according to the applicant, will aid the preservation of the building.

The applicant on the project is the former partner in the Pastors Building is David

The planning staff is currently reviewing the application. The commission will approve the project.

The second application

Obituaries

Louise Eleanor Praeder

To those who knew her, Louise Eleanor Praeder was a quintessential matriarch. Quietly dignified with twinkling eyes, she lovingly shepherded her family and watched her town grow and change over more than a century.

Mrs. Praeder died peacefully with her family at her side, on Nov. 26, 2000, at the Millbrae-Serra Convalescent Hospital where she had lived for the past year. She was 103.

Mrs. Praeder was born on June 3, 1897, in San Mateo. When she was 8, her family moved to the Coastside, where her father farmed the land now occupied by the Half Moon Bay Airport as well as the former radar station. Young Louise attended the one-room schoolhouse in Moss Beach.

She was a tomboy, and among her favorite things was horseback riding, at which she was accomplished.

Later, the family moved to



Louise Eleanor Praeder

collection of family photos, covering four generations, which filled her mantel and every wall and shelf in her home. She enjoyed preparing and serving holiday meals for her family and their families, something she continued to do well into her 80s.

Her family also remembers her as a gracious lady with a positive and accepting attitude, to which they attribute her long and healthy life.

"I think just the fact that she accepted everything that came her way, did everything she tried to

tuguese societies.

In addition to her husband, Mrs. Praeder is preceded in death by her eldest son, Jack Praeder, and a daughter-in-law, Roberta Praeder. She is survived by her children and their spouses, Harold and Katherine Praeder of Santa Rosa, Louis Praeder of Oakland and Mary Lou and Patrick McDougall of Half Moon Bay. She is also survived by four grandchildren, Michael McDougall of Santa Cruz, Patrick McDougall III of Half Moon Bay, Connie Weimeyer of Santa Rosa, Wayne Praeder of Pennsylvania; four great-grandchildren, Derek McDougall of Santa Cruz, Kellyn McDougall of Santa Cruz, Laura Keita of Santa Rosa and Darren Weimeyer of Santa Rosa; and one great-great-grandson, Jakari Keita of Santa Rosa.

Visitation will be held on Wednesday, Nov. 29, beginning at 5 p.m., followed by a Rosary service at 7 p.m. at the Miller-Dutra Coastside Chapel at 645 Kelly Ave. in Half Moon Bay. A funeral Mass will be celebrated on Thursday, Nov. 30, at 11 a.m. at Our

Half Moon Bay for 12 years on Nov. 10, 2000, in Berkeley.

Mrs. Coleman worked in marketing and management for the Mateo-based Coleman Company for 20 years.

She is preceded in death by her parents, Leo McConnell and Estel Haslett, and her brother, Mark McConnell. She is survived by her husband of 28 years, Coleman, her son, Mark, and her sisters Dawn Rice and Marilyn Cywan.

Services were held at Our Lady of the Pillar Church in Half Moon Bay.

Allan Conrad Pederson

Allan Conrad Pederson was a resident of Half Moon Bay for 31 years, died on Nov. 22, at the Enloe Hospital in Calif., at age 70.

Mr. Pederson was born in City on April 19, 1930. a

ADOPTED FINDINGS
SAN MATEO COUNTY LCP AMENDMENT NO. 1-96 (Devil's Slide Tunnel
Initiative)
Page 18

pools in the Green Valley drainage, which would be unaffected by the preferred tunnel alternative. These sites were also identified as having the potential to support a second endangered species, the San Francisco garter snake (*Thamnophis sirtalis tetrataenia*), because the red-legged frog is the primary prey of the snake. No San Francisco garter snakes have yet been identified at these locations, however.

Construction of the North Portal approach road could fill portions of the two red-legged frog ponds in that location. Even constructing a bridge that did not directly fill the ponds would adversely affect the red-legged frog by shading portions of the pond during most of the day, thereby reducing the basking opportunities for frogs and possibly lowering the spring pond water temperatures. The latter could in turn affect the development of time of frog eggs and larvae. Any one or combination of the above possible events could result in the reduction or negation of the red-legged frog population at the site. Furthermore, construction and grading activities for the bridge could either permanently block or destroy the spring sites that serve as the water source for the ponds, cause siltation in the ponds, and temporarily disrupt adjacent upland foraging/retreat area for the frogs.

Both of these possibilities could result in a temporary degradation of red-legged frog habitat at the site and reduction of the species.

3. Sedimentation of Environmentally Sensitive Wetland Habitat.

Construction of a tunnel project could contribute to sedimentation of area streams and ultimately to sedimentation of the marine sanctuary along the coast. Runoff from construction sites where grading will occur and from new roadway slopes created as part of the project will carry sediment into the of San Pedro Creek drainage near the north portal and into the minor drainages near the South Portal and the South Disposal site. All of these drainages ultimately discharge to the ocean. The increased turbidity in stream and ocean waters created by the runoff could adversely affect fisheries, especially anadromous species such as salmon. San Pedro Creek is considered one of the more important spawning area for certain kinds of salmon along the entire San Mateo County coast. Increased sedimentation can also smother wetland vegetation lining the creek channels and adversely affect other kinds of wildlife. Given that a total of approximately 947,000 cubic yards of material will need to be excavated to create the tunnel proposed under the preferred alternative, a great deal of sedimentation could occur if the grading work is not properly controlled.

C. Alternatives

The first general limitation set forth by the above referenced Chapter 3 policies is that any proposed fill project must have no less environmentally damaging feasible alternative.

SAVE OUR BAY FOUNDATION



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

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 Avrora Draytonii*, .. aka California Red-Legged Frog. **Take** is defined by the Endangered Species Act as " to harass, **harm**, pursue, hunt, shoot, wound, **kill**, trap, capture, or collect any listed wildlife species. **"Harm"** in this definition includes significant habitat modification or degradation where it actually kills or injures wildlife, by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. (50 CFR & 17.3)The Foundation's Executive Director reported the **take** to Sheila Larson of the U.S. Fish & Wildlife Service on Friday the 24th of November by telephone. On Monday November 27th, by telephone, Oscar Braun filed the notice of violation with U.S. Fish & Wildlife Service Agent Scott Pierson and provided him via fax the field survey forms and mitigation project site location map. The Foundation also inform Agent Pierson that they have photos of the ESHA starting 7/27/2000 up to and including 11/24/2000. On the 24th, the Foundation also notified the California Department of Fish & Game and San Mateo County Environmental Services Agency

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 take is not authorized under this agreement.**"

SAVEOURBAY.ORG 1589 HIGGINS CANYON RD. HALF MOON BAY, CA 94019 PH 650-599-1954 FAX 650-726-2799



"Change is inevitable...

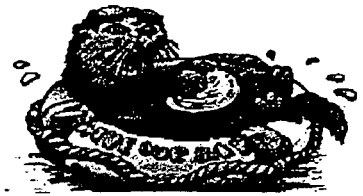
Survival is not."

"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.

SAVEOURBAY.ORG 1589 HIGGINS CANYON RD. HALF MOON BAY, CA 94019 PH 650-599-1954 FAX 650-726-2799



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

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** renown 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.



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

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



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

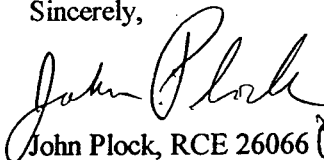
housing or dozen of the other public uses, no matter how badly damaged they were and no matter what the local government is willing to do to restore them.

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

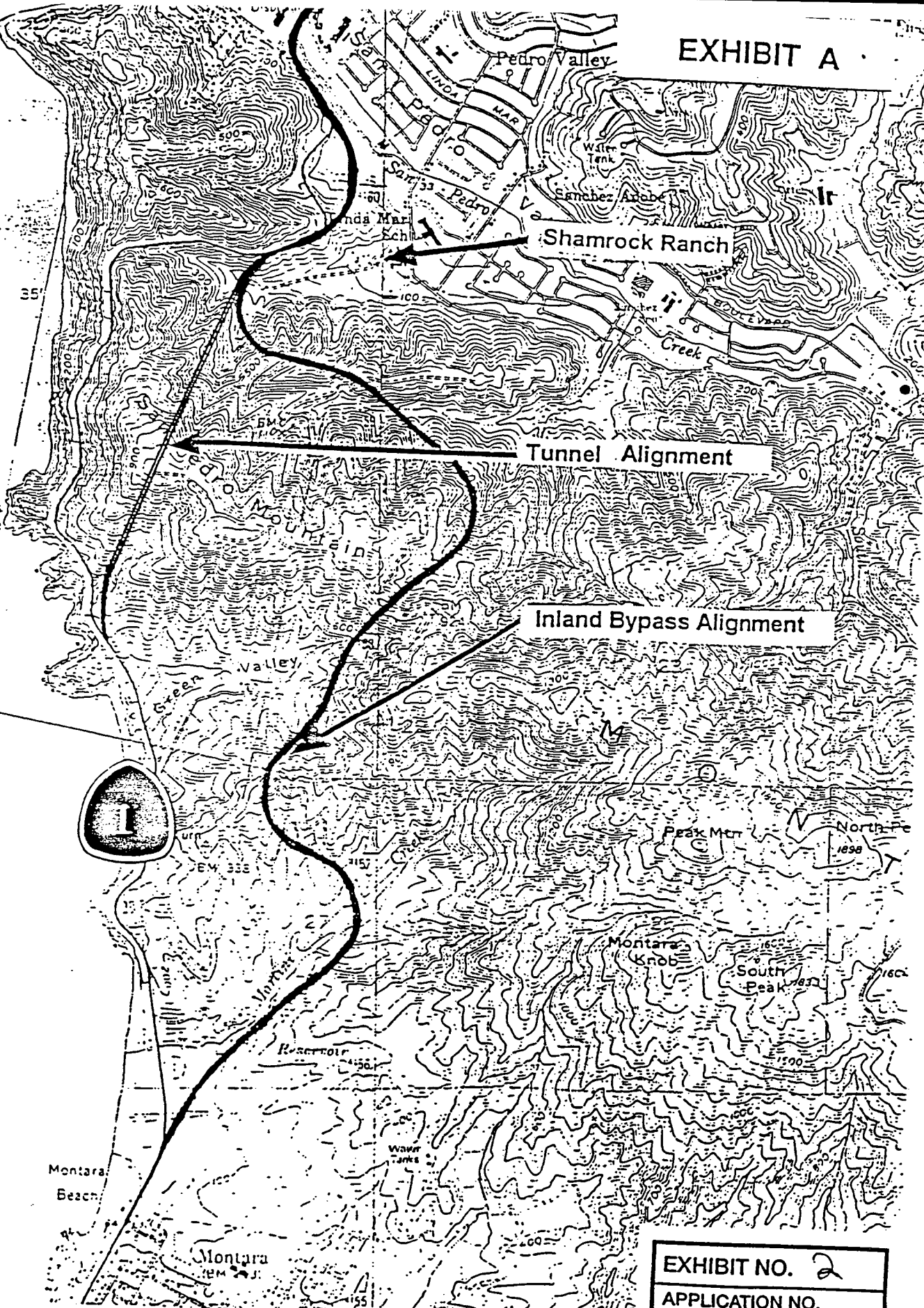
EXHIBIT A

Point San Pedro

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Devils Slice

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Tunnel Alignment

Inland Bypass Alignment

Shamrock Ranch

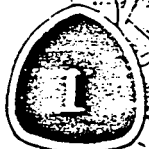
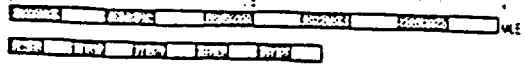
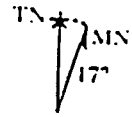


EXHIBIT NO. 2
APPLICATION NO.
CC-94-00

04-SM-4243-1 Devil's



California Native Species Field Survey Form

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

For Office Use Only

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

Date of Field Work: 7 - 27 - 2000
month day year

Scientific Name: RAVA AURORA DRATONII

Common Name: CALIFORNIA RED LEGGED FROG

Species Found? 15 ADULTS
yes no
 Total No. Individuals 56 Subsequent Visit? yes no
If not, why? FRESH
 Is this an existing NDDDB occurrence? no unk.
Yes, Occ. #
 Collection? If yes: _____
Number Museum / Herbarium

Plant Information

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

Animal Information

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

Location (please also attach or draw map on back)

E S A

County: SAN MATEO Landowner / Mgr.: DANA DERMAN - SHAMROCK RANCH
 Quad Name: USGS MONTARA Mtn. 7.5' QUAD T4S, R6W Elevation: _____
 T _____ R _____ 1/4 of _____ 1/4 of Section _____ T _____ R _____ 1/4 of _____ 1/4 of Section _____
 UTM: Zone: _____ (10, 11) Datum: _____ (NAD83, NAD27, WG584, other)
 Source: _____ (GPS, map & type, etc.) Point Accuracy: _____ Meters
 UTM Coordinates _____

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

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

Site Information Overall site quality: Excellent Good Fair Poor

Current / surrounding land use: HORSE RANCH - DUG-KEMUELS

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

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

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

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

Photographs: (check one or more)

Plant / animal	Slide	Print
Habitat	_____	<input checked="" type="checkbox"/>
Diagnostic feature	_____	<input checked="" type="checkbox"/>

May we obtain duplicates at our expense? yes no

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

For Office Use Only

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

Date of Field Work: 11 - 24 - 2000
month day year

Scientific Name: RANA AURORA DRAYTONII

Common Name: CALIFORNIA RED LEGGED FROG

Species Found? yes no POND HAS BEEN DRAINED
If not, why?

Total No. Individuals 0 Subsequent Visit? yes no

Is this an existing NDDB occurrence? no unk.
Yes, Occ. #

Collection? If yes: _____
Number Museum / Herbarium

Plant Information

Phenology: 50 50 50
% vegetative % flowering % fruiting

Animal Information

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

Location (please also attach or draw map on back)

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

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

JULY 2000
THIS SITE ON LAST SURVEY RICH WITH C R F BOTH ADULT AND
SMALL AND TADPOLES - CALIFORNIA NEWTS 200+
41↑ ? MANY - TARICHA TOROSA -

Other rare species?

Site Information Overall site quality: WAS Excellent Good Fair Poor

Current / surrounding land use: DOG ~~AND~~ KENNELS + HORSES

Visible disturbances / possible threats: WORK STARTING - FOR A FUTURE TUNNEL

Comments: NORTH POND HAS BEEN DRAINED - NO SIGN OF FROGS AND NEWTS -

ARTIFICIAL POND HAS BEEN DUG 100 YARDS SOUTH EAST WITH NO COVER NO PLANTS
ONE FORTH OF THE SIZE OF THE NORTH POND - OPEN TO BIRDS AND OTHER PREY -

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

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

Photographs: (check one or more) Slide Print

Plant / animal _____
 Habitat _____
 Diagnostic feature _____

May we obtain duplicates at our expense? yes no

KANAKA PUKUKU
 HYLIA REGILLA H-F
 TARICHA TOROSA T-T

1641000 N
 T. 35
 T. 45

RUNOFF →
 DITCH → RA-A FEW
 APERTS

RED LEGGED FROGS RESTORED FROG PONDS
 PACIFIC CHORUS FROGS IN BOTH AREAS

Rock
 Shelter Cove
 San Pedro

TWO PONDS IN HAMMOCK RAUKA 35'
 LOADED WITH RED LEGGED FROGS AND PACIFIC CHORUS FROGS
 AND ALPHEUS NEWTS T-T



SAVE OUR BAY FOUNDATION



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

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.

County may become frog habitat

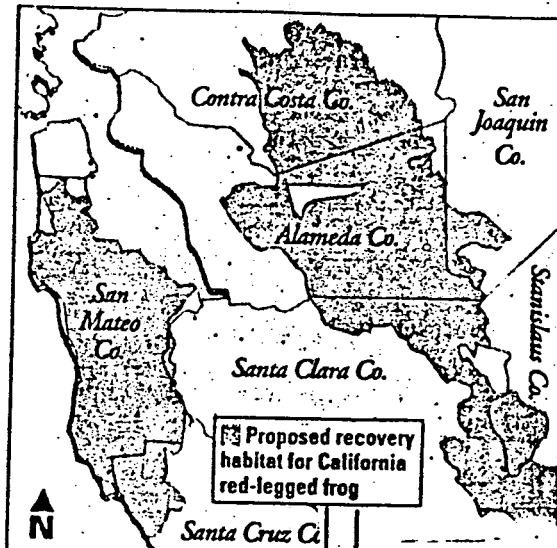
By Douglas Fischer
STAFF WRITER

Friday was a good day to be a California red-legged frog.

Federal biologists proposed listing 5.4 million acres — including hundreds of thousands of acres in the Bay Area including almost all of San Mateo County — as critical habitat for the threatened species, bowing to a court order sought by environmentalists.

California property owners will see change only in rare instances under the designation, said Patricia Foulk, a U.S. Fish and Wildlife Service spokeswoman. Environmentalists countered that protective status is heavy ammunition in the fight to keep development out of critical wetlands and promised to use it in further court battles if necessary.

"This provides wildlife and open space advocates very valid arguments for why these



Frog: Nearly 60% of land is private

Continued from NEWS-1

developments should not go forward," said Peter Galvin, a conservation biologist with the Berkeley-based Center for Biological Diversity, which sought the order with two other groups. The Fish and Wildlife Service, he added, cannot grant a development permit that harms critical habitat.

Friday's action would sweep up huge chunks of San Mateo County as protected habitat as well as Alameda, Contra Costa and Santa Clara counties.

In all, 31 counties are affected by the designation. Nearly 60 percent of the earmarked land rests in private hands.

The California red-legged frog is the West's largest native frog and the alleged inspiration for Mark Twain's short story, "The Celebrated Jumping Frog of Calaveras County." While the frog's historic range extended from Point Reyes National Seashore in Marin County to northwestern Baja California, Mexico, development and new predators such as the bullfrog have hemmed its numbers.

Today it is found primarily in coastal drainages of central California. Just four areas within its historic range harbor more than 350 frogs, according to the wildlife service.

ISRAA Club
TUNNEL
ALTERNATIVE

NEWS-9

MEASURE-T
No Fed Permits

Frog habitat has been protected since the amphibian's listing in 1996 as a threatened species. Friday's decision would extend that protection to lands that may not be occupied by red-legged frogs but nonetheless would be suitable habitat.

That scares Guy Bjerke, vice president of the Home Builders Association of Northern California.

"What this does is ... try and protect all sorts of land that, in these particular biologists' minds, the frog may someday want to live on," he said. "It raises the fundamental issue of what's the point of the Endangered Species Act, and have they gone overboard. We think they're really pushing it."

Foulk said a court-imposed deadline forced the agency to hastily select a broad swath of land that may not all be critical habitat. But biologists would only intervene in developments requiring federal cash or permits, she said, and the public can still comment on the matter.

"If you don't have that federal (requirement), then this has absolutely no impact on you," Foulk said. "We're strongly aware that 5.4 million acres is not chump change."

Red-legged frogs' habitat may affect area development

The jumping frog of Calaveras County made famous by Mark Twain could end up limiting development from one end of California to the other.

On Friday the U.S. Fish and Wildlife Service proposed setting aside 5.4 million acres of critical habitat for the threatened California red-legged frog. One-fifth of that is in a swath that runs from the East Bay to Fresno County. San Francisco County is among the areas affected.

Development and fragmentation of wetland habitat have driven down the numbers of the frog, which was listed in 1996 as a threatened species under the Endangered Species Act.

The frog is hanging on, especially on the central coast and in the East Bay.

"The East Bay area is a last bastion," said Patricia Foulk, a spokeswoman for the Fish and Wildlife Service.

A coalition of environmental groups had sued to force the federal agency to establish critical habitat for the red-legged frog, the largest native frog in the western United States and the subject of Twain's short story "The Celebrated Jumping Frog of Calaveras County."

The critical habitat designation would affect proposed development only if it would require a federal permit in areas that regularly see water. If an area proposed for development had habitat potentially valuable to the frog — even if no frogs currently lived on it — the agency could impose restrictions.

"If these frogs are so endangered, why do they need 5 million acres?" said Guy Bjerke, vice president of the Home Builders Association of Northern California. "It's no longer about protecting species, but about protecting places where biologists think some species might want to live someday."

The habitat rule will be the subject of four public meetings this month.

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POST expands its turf along the coast

Deal completes acquisition of Johnston Ranch south of Half Moon Bay

BY NICOLE ACHS FREELING
Half Moon Bay Review

The grass will stay a little greener on this side of the hill thanks to the latest purchase of the Peninsula Open Space Trust. POST announced last week that it has acquired 215 acres of farmland and rolling hills just outside the city limits of Half Moon Bay.

"What this purchase does is ensure that the agriculture and open space that are the heritage of Half Moon Bay will stay right next to the city limits forever," said Audrey Rust, president of the Menlo Park-based land trust.

The acquisition, which completes POST's ownership of the 862-acre Johnston Ranch, seals the urban-rural border of Half Moon Bay at the current city limits.

POST's purchase eliminates the possibility that the city limits could be expanded to allow construction of new development.

"A reasonable proposal to expand the city limit might have succeeded, resulting in the permanent loss of the farmland, scenic views and coastal hills that define the rural character," Rust said.

The parcel is located southeast of Half Moon Bay city limits and east of Highway 1.

POST is a nonprofit organization that purchases open space with money it raises through private contributions. After it has acquired property, it sells or transfers it to owners who will comply with the conservation easements it imposes. The organization has been involved in protecting more than 43,000 acres in the Bay Area, includ-

ing 1,719 acres surrounding the Pigeon Point Lighthouse and Cowell Ranch.

POST's goal is to have the highlands on the property become public trail and recreation areas and the flat lands used for agriculture. The Johnston Ranch lands border the Burleigh Murray State Park and the Madonna Creek Ranch, also owned by POST.

According to Rust, strategic links with these open spaces could create parkland and trail corridors that would extend from Skyline Boulevard to Half Moon Bay.

"We would be very interested in taking a look at what they have in mind," said Steve Jespersen, director of the Half Moon Bay Parks and Recreation Department.

See POST, Page 9A

Continued from 1A

It could be several years, however, before such plans can be realized.

"Right now, there isn't a public agency capable of managing it," Rust said. "Nobody has the resources."

The acquisition is good news for the Giusti family, which has been farming land on the property since 1949. For years, John Giusti said, his family rented from developers for whom "agriculture was the last thing in their plans. We were really there as a filler to get some income." "Now my future is clear, knowing I won't be pushed out by development."

POST's interest in the property dates back to 1991, when a consortium of offshore buyers purchased the property to develop a golf course and high-end housing. Local voters overwhelmingly defeated a ballot measure that would have extended the city limits to allow for the development. POST acquired a 47-acre portion of the property in 1998.

A few months ago, the owner of the remaining part of the ranch, Kiyohiro Yoshikawa, contacted POST to negotiate a sale.

According to Rust and Giusti, Yoshikawa was a conservation-oriented landowner, with very different ambitions from his predecessors.

POST paid \$3.05 million for the smaller portion of the ranch, compared with the \$2.6 million it paid for the larger parcel four years ago.

"The difference in the prices for the two parcels illustrates both the appreciation of real estate and the threat of potential development along the San Mateo Coast," Rust said.

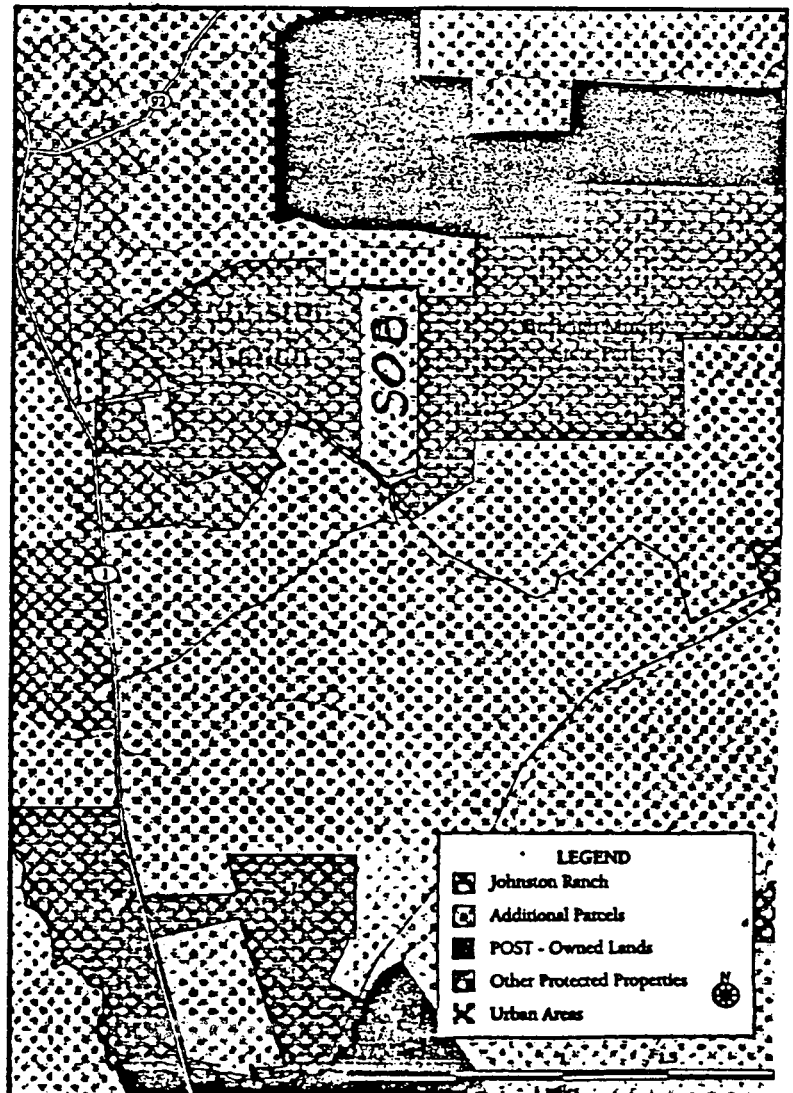
Rust said POST would like to sell 49 acres of prime soil to local farmers.

"This represents some of the best prime soil for farming in the community," Lennie Roberts, chair of the Committee for Green Foothills, said. "It's contiguous land that has been farmed for 150 years."

The land may be there for farming, but the market may not, according to Jack Olsen of the San Mateo County Farm Bureau. Olsen noted that the scenario is getting increasingly difficult for farmers on the Coastside because of competition from cheaper foreign produce.

"Just having the ground to plant in doesn't mean you have something economically viable to grow," he said.

This map, courtesy of POST, shows their newly acquired and adjacent property.



By Fax 363 4849
11/24/00

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



Marcia Raines
Director of Environmental Services
San Mateo County

Re: Coastal Development Permit # 2000-00536 for the
construction of a Red Legged Frog enhancement project.

Save Our Bay has received written reports and photographs indicating that CalTrans has violated the conditions imposed in the issuance of San Mateo County Coastal Development Permit # 2000-00536 for the construction of a Red Legged Frog enhancement project.

This morning the following email was sent to many of the interested parties;

"Save Our Bay has just learned, (this morning), that the supplemental frog pond for which CalTrans was issued a Coastal Development Permit by the County of San Mateo has been constructed on the Shamrock Ranch property.

However, we have also been told that the permanent existing North Pond, which was to remain undisturbed until verification was obtained that the proposed additional pond was a viable habitat for the Red Legged Frog, has been emptied of water, destroying not only the habitat, but most, if not all, of the Red Legged frog population.

Our information is incomplete at the moment, but we are doing further investigation and could use any information about this activity that could be provided by readers of this posting.

At a minimum, it is Save Our Bay's intention to file appropriate complaints with the U.S. Fish & Wildlife and, California Fish & Game, and also call for investigations to determine the perpetrators of this wanton, unpermitted destruction of a sensitive habitat and its occupying species. We will also call for penalties to be imposed upon those parties which have acted unlawfully.

John Plock
Environmental Director
Save Our Bay"

Save Our Bay is now respectfully requesting that you, as Director of Environmental Services, order the construction site be red-tagged to prevent further environmental and species damage and that the Coastal Development Permit be suspended pending a public hearing to consider the revocation of said Coastal Development Permit.

John Plock RCE 26066
Environmental Director
Save Our Bay

A handwritten signature in black ink, appearing to read "John Plock". The signature is fluid and cursive, written over a light background.



Planning and Building Division

County of San Mateo

Mail Drop PLN122 · 455 County Center · 2nd Floor · Redwood City
California 94063 · Telephone 650/363-4161 · Fax 650/363-4849

Board of Supervisors

Rose Jacobs Gibson
Richard S. Gordon
Mary Griffin
Jerry Hill
Michael D. Nevin

Planning Administrator
Terry L. Burnes

December 7, 2000

John Plock, Environmental Director
Save Our Bay
1589 Higgins Canyon Road
Half Moon Bay, CA 94019

Dear Mr. Plock:

SUBJECT: Alleged Violations of the Conditions of Approval
CalTrans, Red-Legged Frog Enhancement Project
County File No. PLN 2000-00536

On November 24, 2000, and again on November 30, 2000, you faxed copies of letters to me regarding the above-referenced matter. In your letters, you alleged that a violation of the County's Local Coastal Program had occurred at the Shamrock Ranch property. Specifically, you claimed that a runoff pond located on this property had been "emptied of water, destroying not only the habitat, but most, if not all, of the red-legged frog population." This pond, commonly referred to as the North Pond, is in proximity to a habitat enhancement project which was recently completed by CalTrans. This pond is also in proximity to the entrance portals for the proposed Devil's Slide Tunnel.

In response to your letters, the County Planning Division initiated an investigation of this matter. Ed Pang and Skip Sowko of CalTrans were contacted. Both of these gentlemen were involved in the enhancement project hearings and are actively involved in the ongoing evaluation of the Tunnel Project. They both responded, emphatically, that CalTrans did not remove any water from the North Pond, nor did they disturb it in anyway. Dana Denman, the owner of Shamrock Ranch, was also contacted. She also stated that no water had been removed from the pond.

Moreover, both Mr. Pang and Ms. Denman pointed out that this is a seasonal runoff pond. The watershed that feeds this pond is of a limited size and there is no year round spring or creek which feeds it. During the wet spring and winter seasons, the pond fills up with runoff from the adjacent slopes and Highway 1. Depending upon the amount of rainfall in the area and the amount of cloud cover/fog during the summer months (this affects the rate of evapotranspira-

John Plock, Environmental Director
December 7, 2000
Page 2

tion), the pond can sometimes hold water well into the dry season. However, according to Ms. Denman, whose family has owned the property for many years, the pond typically dries out by the beginning of November.

County Planning staff visited the site on November 28, 2000, to investigate. County staff found no indication that mechanical equipment had been in the pond. There was no evidence that the earthen dam which embanks the pond had been breached. There was no evidence that the mechanical equipment associated with a pump had been operated in or near the pond. Examination of the surface mud layer in the pond would seem to indicate that the only intrusion into the pond was from wild animals. There was no disturbance trail as would be typically associated with the suction hose of a pump. The surface mud layer was still moist indicating that some runoff had recently been in the pond, which would correspond with the rainfall that occurred in the area in October. Sheila Larsen of the U.S. Fish and Wildlife Service also inspected the site on December 6, 2000, and found no evidence that the pond had been drained.

Finally, review of the literature pertaining to red-legged frogs indicates that the ideal habitat for this species is one in which there is a lack of standing water for a portion of the year, i.e., a seasonal pond which dries up for a portion of the year. Bullfrogs, a non-native predator of the red-legged frog, typically favor ponds which have standing water year round. In conclusion, investigation by the County staff indicates that no withdrawal of water from the North Pond has occurred and, therefore, there has been no violation of the County's Local Coastal Program.

Sincerely,

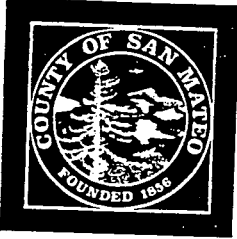


Marcia Raines
Director of Environmental Services

MR:MS:fc - MJSK1807_WFN.DOC

cc: Karen Miller, U.S. Fish and Wildlife Service, Chief, Endangered Species Division
Thomas Pederson, Regional Patrol Director, California Department of Fish and Game
Sarah Wan, Chair, California Coastal Commission
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

ENVIRONMENTAL SERVICES AGENCY



Administration • Agricultural Commissioner • Animal Control
Building Inspection • Cooperative Extension • County Library
Fire Protection • Parks & Recreation • Planning • LAFCo

COUNTY OF SAN MATEO

455 COUNTY CENTER, 4TH FLOOR • REDWOOD CITY • CALIFORNIA 94063-1646

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MICHAEL D. NEVIN

MARCIA RAINES
DIRECTOR

(650) 599-1388

FAX (650) 599-1721

January 8, 2001

John Plock
Chair, Environmental Director
Save Our Bay
1589 Higgins Canyon Rd.
Half Moon Bay, CA 94019

Dear Mr. Plock:

I have reviewed your December 14, 2000 letter which responded to my letter of December 7, 2000 which in turn responded to your earlier allegations regarding the "draining" of the north pond at Shamrock Ranch. My most recent review included further consultations with County Planning Staff, County Counsel and with staff of the U.S. Fish and Wildlife Service.

Our previous conclusion that there was no violation at the north pond was based on a substantial investigation, including interviews with relevant staff from Caltrans and the property owner, an on-site inspection and consultation with other affected agencies. USF&WS conducted their own investigation, including a site inspection.

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.

Sincerely,



Marcia Raines
Director of Environmental Services

MR:kdr Mlrl0037_wkrn.doc

Attachments

1. December 14, 2000 letter from John Plock to Marcia Raines.
2. December 7, 2000 letter from Marcia Raines to John Plock

John Plock
January 8, 2001
Page 2

cc: San Mateo County Board of Supervisors
San Mateo County Planning Commission
Michael Murphy, Chief Deputy County Counsel
Michael Schaller, San Mateo County Planning Division
Karen Miller, USF&WS
Shiela Larsen, USF&WS
Nancy Cave, California Coastal Commission
Thomas Pederson, California Department of Fish and Game

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



December 14, 2000

Marcia Raines, Director of Environmental Services
County of San Mateo
455 County Center
Redwood City, CA. 94063

Dear Director Raines,

Subject: Your Letter Dated December 7, 2000 re: Listed Species "take"

The Foundation received your captioned letter yesterday and reviewed the County Planning Division staff "investigation and findings" regarding the unauthorized take at the site of CalTran's Highway 1 Tunnel mitigation project File No. PLN 2000-00536. We have the following questions and comments.

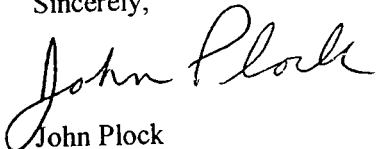
- Who from County Planning Division investigated the SOB notice of violation? Did the investigator complete a California Native Species Field Survey Form? Did the investigator question all parties that have had access or worked in the mitigation project area? Did the investigator find any listed species? How many? Where? Any photos of surveyed area? What are the qualifications of the Planning Department investigators to conduct a "take of listed species"? Any previous experience? Is it still the Planning Department's position that the North Pond dries out annually by summer and can't be viewed from Hwy 1?
- Enclosed please find photo taken from Hwy 1 prior to start of Caltrans tunnel frog pond mitigation project activities.
- Who constructed the new frog mitigation pond? Was it CalTrans staff, an outside contractor or Shamrock Ranch personnel? What agency monitored the construction process? Did CalTrans use their inspectors? Did San Mateo County provide any on site monitoring or inspection? Any observers from the Planning Department during construction activities? Has the Planning department reviewed or examined copies of the "mitigation construction inspection reports"? Are there any certified "as built" engineering reports from CalTrans? Any photography taken during construction activities?
- Did Planning investigators calculate the rate of evaporation as to determine how long it would take to deplete 5' to 6' feet of water from the North pond in November 2000? Did your Planning staff investigators view the North pond from Hwy 1? Did they comment on the round, regularly spaced paired holes leading from the south-easterly pond corner of the North pond to the center of the North pond?
- Does Planning staff usually conclude their investigation of violations after contacting the CDP holders and inquiring if they have complied with all the conditions of their Coastal Development Permit or are responsible for the unauthorized listed species take? Didn't Caltrans, Denman and the County originally publicly proclaimed this was a listed species "enhancement" project before admitting it was intended as "mitigation" for the tunnel project.
- On November 24, 2000 our Executive Director reported to U.S. Fish & Wildlife Service Sheila Larsen via telephone the Foundation's preliminary survey findings. Ms. Larsen stated that "water from the North pond had been used to construct and fill the "frog mitigation pond" by Caltrans. (Enclosed please find photo of Ms. Larsen & Caltrans staff conducting mitigation pond project site inspection on 12/6/00) By letter dated September 27, 2000, from the Service Endangered Species Chief to CalTrans Sid Shadle, Chief Karen Miller stated "Flows would be diverted from an adjacent creek into the (mitigation) pond." The water from

the North pond was not authorized for construction use. The critical ESHA was not to be disturbed in any way.

- Ms. Denman told Save Our Bay's Dave Cohn and Oscar Braun this past summer during a discussion regarding a conservation easement proposal at her Shamrock Ranch that the North pond rarely dries out. The CCC 1997 Adopted Findings for the Tunnel alternative clearly states that the ponds are "spring fed" in addition to being located in a natural drainage. Does the County Planning Department investigators have an opinion as to where the 5' to 6' feet of North pond water disappeared to in November 2000? How does a newly constructed tunnel mitigation pond retain water while an established substantially full spring fed pond is suddenly empty.....but still very wet? Did Planning staff investigate the possible use of a floating pump devise? Can staff identify a pond that has dried out over time from one that is drained quickly by some other means?
- The Foundation has enclosed a courtesy copy of a letter to the CCC Federal Consistency Supervisor dated September 26, 2000. Attached to the letter is the 1999 Bolsa Chica decision. We call the Planning Department attention to the "Standards of Review" used by the court in an administrative mandamus action. Also, please find enclosed photos taken during the SOB field survey of CalTrans mitigation tunnel project on 11/23/00. And please find a courtesy copy for background purposes dated October 1, 2000 Supplemental Appeal for Tunnel mitigation ponds.

Save Our Bay is requesting that their captioned violation complaint be brought before the San Mateo County Planning Commission so that they are able to present evidence and give public testimony on this "take" of listed species and violation of the terms of the Caltrans mitigation project CDP conditions.

Sincerely,



John Plock
Chair, Environmental Director

CC.

San Mateo County Planning Commission
Nancy Cave, Enforcement Chief, California Coastal Commission
Thomas Pederson, Brian Arnold, California Dept. of Fish & Game
Karen Miller, Steve Furrer, U.S. Fish and Wildlife Service, Endangered Species Division
G.P. Bill Wong, Dan Harris, FHWA
Marc Roddin, MTC
Judge D. Lowell Jensen, U.S. District Court
Release to Media

BIOLOGICAL SURVEY REPORT
FOR THE DEVIL'S SLIDE TUNNEL BRIDGE
GEOTECHNICAL INVESTIGATION PROGRAM

STATE ROUTE 1 DEVIL'S SLIDE TUNNEL PROJECT
GEOTECHNICAL INVESTIGATION PROGRAM
SAN MATEO COUNTY, CALIFORNIA



Office Of Environmental Planning, South

November 20, 2001

ADOPTED FINDINGS
SAN MATEO COUNTY LCP AMENDMENT NO. 1-96 (Devil's Slide Tunnel
Initiative)
Page 18

pools in the Green Valley drainage, which would be unaffected by the preferred tunnel alternative. These sites were also identified as having the potential to support a second endangered species, the San Francisco garter snake (*Thamnophis sirtalis tetrataenia*), because the red-legged frog is the primary prey of the snake. No San Francisco garter snakes have yet been identified at these locations, however.

Construction of the North Portal approach road could fill portions of the two red-legged frog ponds in that location. Even constructing a bridge that did not directly fill the ponds would adversely affect the red-legged frog by shading portions of the pond during most of the day, thereby reducing the basking opportunities for frogs and possibly lowering the spring pond water temperatures. The latter could in turn affect the development of time of frog eggs and larvae. Any one or combination of the above possible events could result in the reduction or negation of the red-legged frog population at the site. Furthermore, construction and grading activities for the bridge could either permanently block or destroy the spring sites that serve as the water source for the ponds, cause siltation in the ponds, and temporarily disrupt adjacent upland foraging/retreat area for the frogs.

Both of these possibilities could result in a temporary degradation of red-legged frog habitat at the site and reduction of the species.

3. Sedimentation of Environmentally Sensitive Wetland Habitat.

Construction of a tunnel project could contribute to sedimentation of area streams and ultimately to sedimentation of the marine sanctuary along the coast. Runoff from construction sites where grading will occur and from new roadway slopes created as part of the project will carry sediment into the of San Pedro Creek drainage near the north portal and into the minor drainages near the South Portal and the South Disposal site. All of these drainages ultimately discharge to the ocean. The increased turbidity in stream and ocean waters created by the runoff could adversely affect fisheries, especially anadromous species such as salmon. San Pedro Creek is considered one of the more important spawning area for certain kinds of salmon along the entire San Mateo County coast. Increased sedimentation can also smother wetland vegetation lining the creek channels and adversely affect other kinds of wildlife. Given that a total of approximately 947,000 cubic yards of material will need to be excavated to create the tunnel proposed under the preferred alternative, a great deal of sedimentation could occur if the grading work is not properly controlled.

C. Alternatives

The first general limitation set forth by the above referenced Chapter 3 policies is that any proposed fill project must have no less environmentally damaging feasible alternative.

Tu 12a



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Sacramento Fish and Wildlife Office
2800 Cottage Way, Room W-2605
Sacramento, California 95825-1846

RECEIVED

OCT 05 2000

CALIFORNIA
COASTAL COMMISSION

September 26, 2000

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

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

RECEIVED
OCT 05 2000
Office of Environmental Planning,
South

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

Dear Mr. Shadle:

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

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

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

Mr. Sid Shadle

2

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

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

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

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

Sincerely,



^{for}
Karen J. Miller
Chief, Endangered Species Division

I. INTRODUCTION AND BACKGROUND

The California Department of Transportation, in cooperation with the Federal Highway Administration, is proposing to provide a safe, dependable, and stable bypass around the geologically unstable area of State Route 1 at Devil's Slide in San Mateo County. A Second Supplemental Environmental Impact Statement/Report (Caltrans, 2001) has been prepared that identifies the Tunnel Alternative (Variation "A") as the preferred alternative for the project.

Variation "A", is a 1,219 m (4,000-foot) long, double bore facility with one lane in each direction. Proceeding south from Pacifica, the alignment departs from existing Route 1 along an uphill grade, crosses the valley at Shamrock Ranch, passes through a small ravine, enters the tunnel beneath San Pedro Mountain, and exits the tunnel just south of the Devil's Slide area where it rejoins the existing highway. The tunnel would be on a slight downgrade to the south. The north approach road is approximately 457 m (1,500 feet) long and primarily on structure. The south approach road is approximately 305 m (1,000 feet) long.

A Biological Assessment (Caltrans, 1999) and a Natural Environment Study were approved for the tunnel project on December 23, 1999. A Biological Opinion was issued on December 18, 2000 by the U.S. Fish and Wildlife Service which determined that the Devil's Slide Tunnel Project, including the conservation measures proposed, is not likely to jeopardize the continued existence of California red-legged frog (Rana aurora draytonii) or destroy or modify proposed critical habitat. A Conceptual Mitigation Plan was prepared for the California red-legged frog and was completed on December 22, 1999 (see Appendix 8 of the BA).

II. PROJECT DESCRIPTION

Initial geotechnical investigations were conducted on the proposed tunnel alignment in 1996 to identify surface and subsurface geological conditions as part of a tunnel feasibility study. Additional boring and trenching is required to further evaluate and characterize soil and geologic conditions on the project site in preparation for detailed design. Improvements to existing paths, trails, and dirt roads, and the creation of additional paths and trails, are proposed to provide vehicular and foot access to the boring and trenching sites.

This report, addressing and evaluating the biological impacts of the geotechnical investigation program work activities for the proposed bridge at the north tunnel approach, has been prepared to support the Coastal Development Permit application to the County of San Mateo. The geotechnical investigation program for this bridge proposes 11 borings at a total of 8 new drilling sites on Shamrock Ranch (see Appendix 1). Another report, entitled "State Route 1 Devil's Slide Bypass: Biological Surveys Of Geotechnical Investigation Sites" (HNTB, 2001), assesses the biological impacts of the geotechnical investigation program for the rest of the project site, including the tunnel,

- Provide worker environmental awareness training for all construction personnel
- Designate Environmentally Sensitive Areas (ESA) for sensitive habitats
- Minimize soil and invasive plant seed transfer between sites
- Develop an exotic species control plan
- Limit all construction activities to the construction zones and prohibit access and traffic from off-road routes
- Limit construction activities to daylight hours
- Allow only authorized vehicles, which have been inspected to insure fire safety requirements, in the construction zone
- Prohibit pets, camping, firearms, trash-burning, or fires from the construction zone
- Implement a trash and litter program for construction workers
- Prohibit the refueling and storage of hazardous materials within 100 feet of ESA's
- Prohibit harm to all wildlife and the collection of any plants

A detailed discussion of these mitigation measures is included in Section V of the HNTB Biological Survey Report. With these mitigation measures implemented as part of the Geotechnical Investigation Program, the general construction impacts to vegetation and wildlife are not considered a significant impact.

Wildlife Species Of Concern

As stated previously, no wildlife species of concern were observed on the bridge boring sites during the field surveys conducted during the week of September 3, 2001. However, the California red-legged frog is known to be present in the upper pond areas of Shamrock Ranch, including the north pond, which is adjacent to, and downslope of, Boring Sites 6, 7, 8, and 9. As stated previously, this species uses the upland areas surrounding the ponds as foraging and estivation habitat. Breeding habitat for California red-legged frog will be designated as an Environmentally Sensitive Area (ESA) during the work activities for the Geotechnical Investigation Program (see Appendix 2). The potential foraging and estivation habitat will also be designated as an ESA during the program. An orange, plastic fence will be installed along all ESA boundaries at the direction of the Caltrans biologist.

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 red-legged frog. A Biological Opinion was issued by the U.S. Fish and Wildlife Service 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, 2000).

Due to the potential effect of the tunnel bypass, one of the conservation measures called for all of the California red-legged frogs to be removed from the north 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 estivating frogs in the north 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 enclosure.

Furthermore, before any project work begins at each boring site or new access road location, the Caltrans biologist will first survey the site for California red-legged frog. If any California red-legged frogs are observed within any new boring site or access road site, work will be temporarily halted until measures have been taken to ensure that work will not adversely affect the red-legged frog. If necessary, Dr. Samuel McGinnis, Caltrans California red-legged frog consultant, will be called to trap and relocate the frog(s) to the existing pond habitats.

A Caltrans biologist will monitor each activity site once a day until the work is completed. The biologist will evaluate the work site and prepare a 'Construction Monitoring Field Sheet' for each field review. The biologist will also inspect the Storm Water Pollution Plan Prevention Measures. If construction monitoring shows that unexpected adverse impacts, such as excavated soil or slurry accidentally falling into drainages flowing into the pond habitats, then construction in the affected area will be temporarily halted until the responsible resource agencies are contacted with an assessment of the impact, and the agencies approve of the course of action and methods needed to address the adverse impact.

Plant Species Of Concern

Since no plant species of concern were identified within the areas potentially affected by the Geotechnical Investigation Program for the bridges, there will be no effect to plant species of concern.

VI. REFERENCES

California Department of Fish and Game (CDFG). 2001. California Natural Diversity Data Base.

California Department of Transportation (Caltrans). 2001. Second Supplemental Environmental Impact Statement/Report for the Devil's Slide Tunnel Project on State Route 1 in San Mateo County.

California Department of Transportation (Caltrans). 1999. Biological Assessment for State Route 1 Devil's Slide Project in San Mateo County.

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



December 1, 2000

Karen J. Miller
Chief, Endangered Species Division
U.S. Fish & Wildlife Service
2800 Cottage Way, Room W-2605
Sacramento, California 95825-1846

Subject: U.S. Fish & Wildlife Service Biological Opinion, Devil's Slide Second Supplement to the 1986 EIS/EIR, Route 1 from Half Moon Bay Airport to Linda Mar Boulevard, Pacifica, San Mateo County, California

Dear Chief Miller,

Earlier this week Save Our Bay was notified by the Service's Ken Sanchez of your Division that the preliminary biological risk assessment determination for the Devil's Slide Improvement Project for Highway 1 1986 SSEIS/EIR had been completed and was about to be issued. He indicated that the opinion was "the project would not result in incidental take of any Federally listed species" (ie: Red Legged Frog and Peregrine Falcon) at this highway construction site and the listed species and critical habitat would not be placed in jeopardy.

Save Our Bay respectfully requests that your Division review their 1986 SSEIS/EIR preliminary determination that listed species and their environmentally sensitive habitat area (ESHA) would not be placed in "jeopardy". The Service had recommended an "avoidance" alternative in the 1986 SSEIS/EIR draft (Table S-1: Summary of Impacts attached). The Fish and Wildlife Service mission is to protect Federally listed species and critical habitat from being degraded or harmed. 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 consideration. The Shamrock Ranch near Pacifica contains listed species and listed species critical habitat areas. The Devil's Slide Highway 1 project requires Federal permits and funding and clearly is not an "Endangered Species Habitat Enhancement and Breeding Project." Marcia Raines, Director, Environmental Services Agency in a letter to the California Coastal Commission on October 3, 2000 states the County of San Mateo intent of the Devil's Slide Highway 1 Tunnels/Bridges project : "While the project is intended to serve as mitigation for the proposed Devil's Slide tunnel, it also serves to increase habitat for a threatened species, the red-legged frog." Caltrans Jeff Weiss said "the U.S. Fish & Wildlife Service requires Caltrans to build a pond to ease the environmental impacts of the road, which will bridge over the ranch land. It's more mitigation than we've ever planned..."

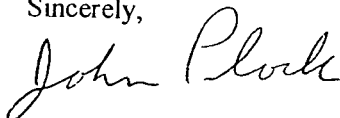
Questions & Comments

- Is it consistent with the Endangered Species Act for the Service to grant mitigation development permits within 100 feet of ESHA as defined under the Coastal Act prior to the approval of the project EIS/EIR or the Record of Decision?
- Did the Service authorize a "take" under their "Caltrans tunnel/bridges critical ESHA mitigation" project?
- This Devil's Slide Highway 1 Tunnel alternative clearly jeopardizes listed species while destroying and fragmenting prime critical habitat.

- The draft 1986 SSEIS/EIR reveals other alternative project sites that provide no risk to listed species or their critical habitat.
- Neither the Coastal Act nor Endangered Species Act permit the destruction of an environmentally sensitive habitat area (ESHA) or listed species take simple because the destruction is mitigated offsite.
- "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."
- "CEQA Guidelines: 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"

The Save Our Bay Foundation requests that the Service review their tentative biological opinion for the Devil's Slide 1986 SSEIS/EIR and then issue a "jeopardy" determination for the Devil's Slide Highway 1 "tunnel alternative".

Sincerely,



John Plock, RCE 26066
Chair, Environmental Director

CC.

Nancy Cave, Enforcement Chief, California Coastal Commission
 Marcia Raines, San Mateo County, Environmental Services Agency
 Mary Nichols, California Secretary of Resources, Resources Agency of California
 Harry Y. Yahata, District Caltrans District 4, Office of Environmental Planning
 Jeffrey A. Lindley, Division Administrator, Federal Highway Administrator
 Marc Roddin, Metropolitan Transportation Commission
 John Burton, California State Senator
 Judge D. Lowell Jensen, U.S. District Court
 Release to Media

Attachments: 1986 SSEIS/EIR Table S-1 Summary of Impacts
 October 3, 2000 Letter from Marcia Raines, Director Environmental Services
 Planning Agenda & San Mateo Times "Caltrans to build pond

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 <u>avoidance measures</u> .	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
→

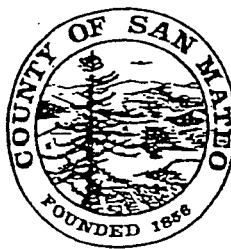
COUNTY COUNSEL

THOMAS F. CASEY III

CHIEF DEPUTIES

CHRISTINE E. MOTLEY

MICHAEL P. MURPHY



COUNTY COUNSEL

COUNTY OF SAN MATEO

HALL OF JUSTICE AND RECORD - 6TH FLOOR
400 COUNTY CENTER - REDWOOD CITY, CA 94063-1662
TELEPHONE (650) 353-4250 - FACSIMILE: (650) 353-4034

Please respond to: (650) 363-4762

January 25, 2001

DEPUTIES

MARY M. AS

JOHN C. BEER

DESGRAH PENNY BENNET

BRENDA B. CARLSON

PETER K. FINE

BETH LAEBSON FREDMAN

PORTER GOLT

LEIGH HERMAN

LISA SOTO HERNANDEZ

MILTON H. MARE

KIMBERLY A. MARLOW

JOHN J. MCGUIRE

MARY K. RAFTER

WILLIAM E. SMITH

MIRUNI SOOSAIPILLAI

V. RAYMOND SWOPE II

LEE A. THOMPSON

CAROL L. WOODWARD

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

Harry Yahata, District Director
January 25, 2001
Page 2

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

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. Swopan (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. (See, 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.

Harry Yahata, District Director
January 25, 2001
Page 3

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 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
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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

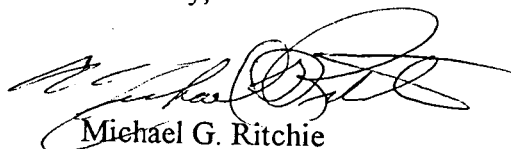
Center, and David Ortez of the FHWA Chief Counsel's Office, to discuss a number of issues and concerns, including those reflected in your January 4th letter.

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.

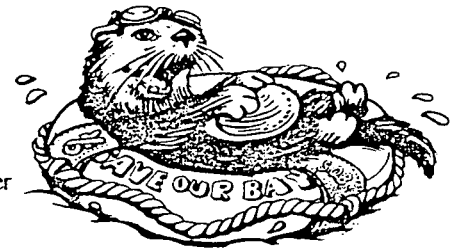
If you have any questions, please contact Bill Wong, Senior Transportation Engineer or Glenn Clinton, Team Leader, Program Delivery Team – North at (916) 498- 5042/5020.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael G. Ritchie", with a large, stylized flourish at the end.

Michael G. Ritchie
Division Administrator

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



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" in 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 in not politically corrupted after 15 years of effort. Congratulation 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

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



April 3, 2001

Norman Y. Mineta, U.S. Secretary of Transportation
C/O David G. Ortez, 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

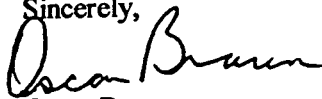
conservation of a threatened or endangered species and which may require special management considerations. A critical habitat designation sets up a preserve if the project requires Federal funding or a Federal permit. Violation of Section 9 of the Act will cause the loss of Federal permits and funding.

- 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 Ortez 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. Ortez 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

Initiative Measure To Be Submitted Directly to the Voters of San Mateo County

The County Counsel has prepared the following title and summary of the chief purpose and points of the proposed measure:

**INITIATIVE AMENDING PROVISIONS OF THE SAN MATEO COUNTY GENERAL PLAN,
LOCAL COASTAL PROGRAM, AND ZONING REGULATIONS,
AFFECTING DEVELOPMENT IN THE COASTAL ZONE AND THE SKYLINE AREA**

Initiative measure proposing ordinance amending San Mateo County General Plan, Local Coastal Program, and Zoning Regulations. Area affected by proposed ordinance includes urban area of the San Mateo County Coastal Zone, rural area of the San Mateo County Coastal Zone, and Skyline Area as designated on County General Plan land use maps on January 1, 1994. Sets forth statement of purposes and findings. Deletes specified existing provisions, amends other existing provisions, and adds new provisions to the San Mateo County General Plan, Local Coastal Program and Zoning Regulations, affecting property within the Coastal Zone, which (1) revise the method of calculating and using density credits for non-agricultural land uses in rural areas of the Coastal Zone, and specify certain exemptions from density credit requirements, (2) eliminate density bonus for parcel mergers, (3) prohibit increases in density credits because of public acquisition of land for park or other public purposes, (4) require that each parcel created by a subdivision of property in rural areas of the Coastal Zone have its own on site well water source for non-agricultural uses, (5) continue existing program for transfer of density credits for parcels covered by prime soil and for construction of water impoundments, and add provisions allowing transfer of density credits for contiguous parcels in common ownership and for houses exceeding five thousand (5000) square feet, (6) revise policies addressing the protection of visual resources, including provisions regulating location of development, height of development, development on ridgelines, alterations of land forms, development design, and coastal views, (7) prohibit development on slopes of 30% or more, except under specified circumstances, (8) specify that regulations regarding uses and development in areas designated General Open Space, Agriculture or Public Recreation-Community Park shall be those in effect on January 1, 1994, and that they shall apply within the urban area of the Coastal Zone, (9) require a use permit to build or enlarge a structure on parcels of less than five thousand (5000) square feet in size in the urban area of the Coastal Zone, (10) add requirement for a minimum 50 foot setback for any development on coastal cliffs or bluff tops. Requires voter approval for the establishment or expansion of existing Rural Service Centers and Rural Subdivisions in the Coastal Zone or Skyline Area. Requires density credits, as measured by average daily water use, for most non-agricultural uses in rural areas within the Skyline Area. Applies designated Local Coastal Program visual resource policies to the Skyline Area. Applies the provisions of the ordinance to all development occurring after the effective date of the ordinance except to the extent that a legally vested right to proceed with development has been perfected. Supersedes any inconsistent provision of the General Plan, Local Coastal Program, area or special plan, Zoning Regulations, or other ordinance or resolution. Requires submission of Local Coastal Program amendments to the Coastal Commission for certification. Requires a four-fifths (4/5) vote of the Board of Supervisors and a vote of the people for any amendments to, or repeal of, the ordinance, other than amendments further restricting non-agricultural development, density, or use. Defines specific terms as used in the ordinance.

COASTSIDE PROTECTION INITIATIVE OF 1994

107

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

Half Moon Bay Coastside Foundation

Coordinated Resource Management Plan "CRMP"
Coastside Fire Safe Council aka "CWP"



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

50 Cents

Vol. 103 - No. 32

WEDNESDAY, DEC. 12, 2001

Wavecrest: 11th-hour hurdles

By BEN SCHNAYERSON
Half Moon Bay Review

The state Coastal Commission is set to decide the fate of the controversial Wavecrest Village project at a hearing Wednesday in San Francisco.

Coastal Commission staff members have recommended that the project be approved, although an 11th-hour identification of additional wetlands has angered the developer of the 279-home subdivision that includes a middle school and Boys and Girls Club.

"In my mind, that site (Wavecrest) is the Golden Gate Park of Half Moon Bay."

—Mark Massara

"Why is this always brought up at the last minute?" asked Wavecrest Partners project manager Pat Fitzgerald.

Wavecrest Partners is a partnership between Ocean Colony Partners and the

Plumbers and Steamfitters' Union, which owns 90 percent of the project.

"I think it is disappointing that some of the information was not brought forward sooner so that the staff and ourselves would have adequate time to tell the commission what is out there," she said.

Located on 206 acres west of Highway 1 and south of downtown Half Moon Bay, the project would include 225 market-rate homes, 54 affordable homes, a middle school, a Boys and Girls Club, 165,000

See WAVECREST Page 15A

Streamlining : Strategic Regional EIR Template & Coastal Zone Boundary Revision

The Coastside Fire Safe Council CRMP recommends streamlining the environmental approval process by proposing that the San Mateo County Board of Supervisors adopt the certified (January 11, 2001) Peninsula Watershed Management Plan and Final Environmental Impact Report for utilization as a strategic regional EIR template for the entire wildlands/coastal zone areas of San Mateo County for "Fire Mitigation" purposes. The Coastside Fire Safe Council further recommends that the San Mateo County Local Coastal Zone boundaries be revised westerly to one hundred feet from the coastal bluffs. These streamlining proposals will provide maximum environmental protection while eliminating needless and expensive duplication of EIR processing. The EIR Regional template and Coastal Zone boundary revision will save the County and coastal communities tens of millions of dollars annually in EIR and CDP processing and years of unnecessary CCC project review delays. San Mateo County and the City of Half Moon Bay will reduce their land use/development permit processing costs by over 30% and permit processing time by nearly 50%. This Fire Safe Council CRMP provides substantial cost savings while maximizing local control of all land use policies and community development. San Mateo County and the City of Half Moon Bay should return to managing their communities land use and natural resources under their currently adopted General Plans as does 99% of the communities in the State of California.

Our organization shares the streamlining goals of this Coordinated Resource Management Plan and supports adoption by the San Mateo County Board of Supervisors.

Name, Address, Telephone and other methods of contact of Agency, Organization or Individual

Signature:

Date

WAVECREST: Commission deciding fate Wednesday

Continued from Page 1A

square feet of commercial space, 10 acres of ball fields, a community garden, and 60 acres of open space.

The project was approved by the City Council in 1999, but was appealed to the commission by two local landowners and two Coastal Commissioners shortly thereafter.

The project has since been held up because of concerns over its impact on the environment. But it is the latest findings that have the developer up in arms.

Last week Half Moon Bay Councilman Mike Ferreira told the commission that he had found some wetlands on the property where the commercial buildings are planned.

"It ticks me off," Ferreira said. "What confidence can I have in the data if it is that easy to find a problem."

The commission staff filed an addendum to their staff report late Tuesday afternoon addressing Ferreira's discovery, stating that there is not sufficient evidence of wetlands in that area.

However, just west of Ferreira's discovery and also within the commercial area, the commission staff found new wetlands and is requiring the developers to perform a wetlands study before it builds the commercial complex.

There is a condition in the approval prohibiting development within 100 feet of a wetland.

This addendum does not change the staff's recommendation for approval, but the commission has previously asked Wavecrest Partners project planners to move physical aspects of the development before the meeting in order to protect the newly discovered wetlands.

"We keep consolidating the residential units into smaller units, which means there is less revenue for the project," Fitzgerald said.

Fitzgerald, who argues that there aren't any wetlands where the commercial buildings will be constructed, was upset that Ferreira brought this issue up last week because it will be harder for the developers to deal with it in the time before the meeting.

But Ferreira said that he found the wetlands shortly after he saw the developer's final plans. He said he was not aware of the wetlands before the June meeting.

"If I had known back then, they should have known back then," he said of the developer.

The other hitch in the developer's plans

could be several abandoned concrete bunkers that opponents claim were used during World War II and are of historical significance.

The bunkers are located right where the middle school is planned and the commission staff is recommending that the developers get a determination about the historic value of the bunkers from the state Historic Preservation Office.

"They are some of the few artifacts we have left from World War II in Half Moon Bay," Ferreira said.

"Incorporate them into the project, for Pete's sake."

Fitzgerald said that these bunkers had never come up as historical in any of the studies.

"Nobody ever raised this issue before. Clearly this has been brought out at the last minute" to stop the project.

This latest complication follows two years of wrestling between the developer, project opponents and the Coastal Commission over the environmental impacts of the project.

Last June commission staff recommended approval of the project, but the commission continued the matter after determining that project plans were incomplete.

During the hearing, some commissioners raised concerns regarding its impact on birds nesting in a grove of trees in the project area and wetlands that provide habitat for the endangered San Francisco garter snake and red-legged frog. These habitats are protected by the Coastal Act.

If the commission approves the project at Wednesday's hearing, Wavecrest Partners will likely be forced to comply with the 25 conditions staff has stipulated in its report on the project.

Among the conditions, the developer must prove to the commission that it has enough water connections from the Coastside County Water District to serve the project.

To date, the developer has secured only 79 of the required 225 residential connections, which are no longer available through the water district.

The developers have made plans to transfer connections from other land they own within the water district's jurisdiction and to purchase the rest from other landowners in the city to meet their needs.

The developers have secured water connections for the school and Boys and Girls Club, as well as the affordable homes.

In addition, the commission is requiring Wavecrest Partners to purchase 225 lots in the undeveloped Redondo Beach subdivi-

sion and elsewhere on the Coastside to preserve as open space.

Staff tacked on this condition to offset traffic impacts of the project on already crowded Coastside roads.

Even if the developer meets all Coastal Commission requirements, the project could face another hurdle once it returns to the slow-growth City Council for a final approval.

This final approval is required because the project has changed significantly during negotiations with the Coastal Commission.

Some of these changes include preservation of additional wetlands, the movement of the Boys and Girls Club and the school on the site to avoid sensitive habitat areas, and the addition of affordable homes.

With many public amenities, millions of dollars and an expansive piece of open land on the line, Wednesday's meeting in San Francisco will likely draw many local supporters and opponents.

Local supporters of the Boys and Girls Club and middle school and opponents of the project have been locked in battle since the project was approved by the City Council.

Joe Angelini, the president of the Boys and Girls Club board, expects 60 supporters at the meeting and he said the club will have a bus to take people to San Francisco.

He said that the project should get approval in order for the city to have its Boys and Girls Club.

"What is this community going to do? Wait until our city becomes a community of gangs? Let's be proactive about our kids, rather than reactive."

Angelini added that the Boys and Girls Club would lose a \$600,000 grant from the Packard Foundation for the proposed facility if Wavecrest is not approved on Wednesday.

Mark Masara, an attorney with the Sierra Club, said that nothing could be built on this property because the land is all environmentally sensitive habitat and should be protected.

"The whole dang property is wet," he said. "You'll sink."

Masara said that roughly 100 Sierra Club members will be at the meeting on Wednesday to pressure the commission to enforce more stringent local coastal programs.

Local coastal programs are each coastal city's version of the Coastal Act.

"In my mind, that site (Wavecrest) is the Golden Gate Park of Half Moon Bay," he said. "It should be the Central Park of Half Moon Bay."

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



Better monitoring of water quality shows the state's coastline to be dirtier than previously thought, report says

Testing closes more beaches



COWELL BEACH: Children play Wednesday near the wharf in Santa Cruz. The popular beach was closed three times in 2000 after elevated bacteria levels were found. A sign, top, warns of a dangerous storm drain at Will Rogers State Beach in Los Angeles.

ABOVE: KAREN T. BORCHERS — MERCURY NEWS; TOP: REED SAXON — ASSOCIATED PRESS

Beach closings

Beach closings and advisories for selected counties, 1999 and 2000:

Monterey County	61	69	1999
San Francisco County	18	31	2000
San Mateo County	94	276	
Santa Cruz County	45	85	

Statewide total, 1999: 3,547
Statewide total, 2000: 5,780

Source: Natural Resources Defense Council
MERCURY NEWS

INSIDE:

A map of regional beaches that have had closings and advisories.

PAGE 10A

By Frank Sweeney, Putsata Reang and David L. Beck
Mercury News

From the fishing haunts of Half Moon Bay to the surfing spots of Santa Cruz, people hoping for a day at one of California's celebrated beaches are more and more likely to run into something besides sun and sand — signs that say "Warning" or "Closed."

The state's beaches, including many in Northern California, are more polluted than previously thought, from urban storm runoff, sewage overflows and bacterial contamination, according to a report released Wednesday by a national environmental group.

The number of beach warnings or closings for health reasons jumped to more than 5,700 last year, up from about 3,500 in 1999, according to the report from the Natural Resources Defense Council. Much of the increase comes from more extensive monitoring at major beaches, and environmental and health care experts say the new findings point to coastal pollution problems that need renewed attention.

"The more you look, the more you find," said resources council spokesman Craig Noble. "It doesn't mean we didn't

See BEACHES, Page 10A

High temperatures expected to persist

The torrid temperatures of the past two days are expected to continue. In the Santa Clara Valley, high temperatures will range from about 80 near the bay to the upper 90s in the southern sections today and Friday, forecasters say. Along the coast, highs in the mid-60s near the ocean to the lower 80s inland are forecast.

Forecast, Page 8B

BEACHES | Water-quality lead to more warnings,

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



Continued from Page 1A

have the same problem the previous year. It just means we have a better idea of the scope."

The majority of pollution problems in the state were in Southern California, which has the greatest coastal population. But Northern California beaches also saw significant increases.

San Mateo County reported the greatest number of warnings or closings, 276, mostly from sewage discharges and bacterial contamination. Santa Cruz County had 85 closings, all for high bacteria levels because of wildlife waste.

Monterey County reported 69 cases of elevated bacteria levels. And San Francisco had 31 overflows in which its sewage treatment plant was unable to handle the flow of its combined storm drain and sewage lines during heavy rains.

Leaving the beach

Beach-goers said they try to take the problems in stride, sometimes steering clear of the water or just taking their chances. Other days, some said, they decide to head for drier ground.

"We were here a couple weeks ago and the signs were up," said Senerchia Hendry, 38, of San Jose, who comes to Capitola Beach near Santa Cruz with her three daughters almost every week in the summer and was at the coast Wednesday. "We just packed up and went home."

In the Santa Cruz area, bird droppings and other wildlife waste often account for the high bacterial counts, county water quality specialist Steve Peters said. Sometimes the problem is seasonal. When birds are beginning to migrate in fall, for example, bacterial counts "spike" at Rio del Mar Beach on the Pacific flyway, Peters said.

In Capitola, a sign on a bridge over Soquel Creek near the beach urges people not to



KAREN T. BORCHERS — MERCURY NEWS

Husam Ovunc of Foster City works with his fishing tackle at a pier near Pillar Point Harbor. He complains of oil slicks caused by boats.

feed the birds for several reasons. Topping the list is the idea that if you feed them, they will come, and the more birds, the dirtier the creek.

But, Peters said, it's not just birds. "We have a problem with the sewage system infrastructure starting to decay."

Most in the nation

California led the nation in beach closings, according to the report, which covered the United States. But that figure may be due to California's more extensive monitoring

programs, which were fully implemented last year.

The law requires weekly testing for bacteria and other pathogens at all beaches with more than 50,000 annual visitors or with adjacent storm drains flowing in summer. Closings or advisories were issued for beaches that exceeded state standards for bacteria such as fecal coliform.

At Pillar Point Beach near Half Moon Bay, locals call such advisories "the E. coli situation" — a sign on the beach warns of bacteria and tells

550-599-1954 FAX 650-726-2799

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



tests closings

people not to swim. Pillar Point Beach is sometimes contaminated with high levels of the E. coli bacteria, and had five warnings or closings posted last year. Despite repeated testing by various agencies, no one knows the source. Some residents have a cavalier approach to the contaminated water.

"There's pollution anywhere there's people," said Mike Bourns, 45, of Princeton who works in construction and is a recreational fisherman. Although there is a "funky smell" coming from drainage pipes under Capistrano Road, the beach looks clean, he said.

"I see the signs, but it doesn't worry me," said his friend, Bill Brissendern, 41, who spent the morning paddling in a kayak. "I'd have no problems swimming in it."

Risks unclear

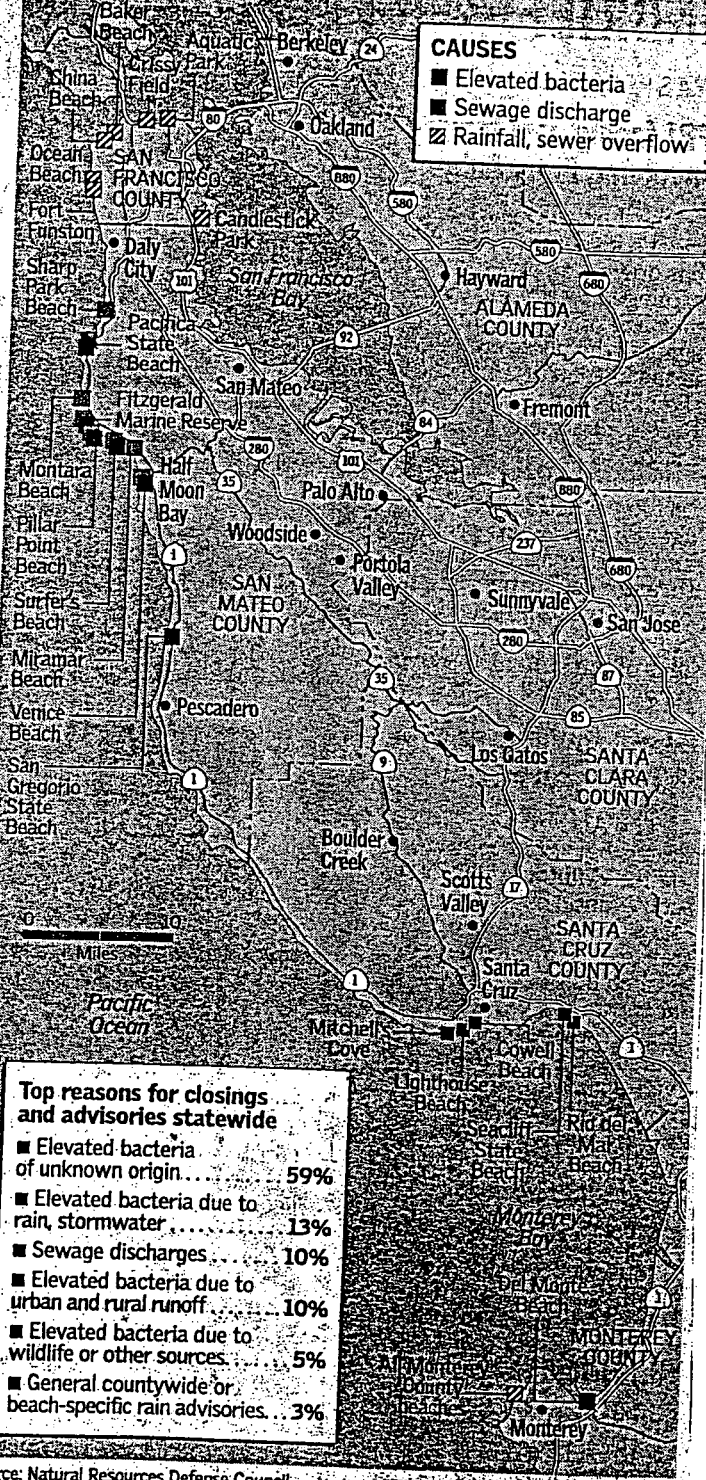
County health department authorities say the contamination is not a major public health risk unless someone swallows large amounts of the water or if the water gets inside an open wound. But several health studies have confirmed that swimming in polluted waters can cause illness, most commonly gastroenteritis, although such ailments are usually not severe or life threatening.

Cleanup solutions are neither cheap nor quick fixes for what may be an increasing environmental and health problem, according to David Beckman, an attorney with the resources council. Local water and health officials must survey their systems to find pollution sources, and facilities must be built to divert urban runoff to treatment plants before it reaches the ocean. The state's aging sewer systems may also need repairs.

"It's not getting any better any time soon, despite the efforts of so many different groups, including city governments," said John Hoskinson of the Surfside Foundation in

Beach closings and advisories

There were 5,780 beach closings and advisories in California in 2000, including these in the region:



Source: Natural Resources Defense Council

San Clemente. The organization, composed mostly of surfers, was founded to improve health conditions on beaches.

"We're making strides, but we're dealing with problems that took 50 years to create," he said.

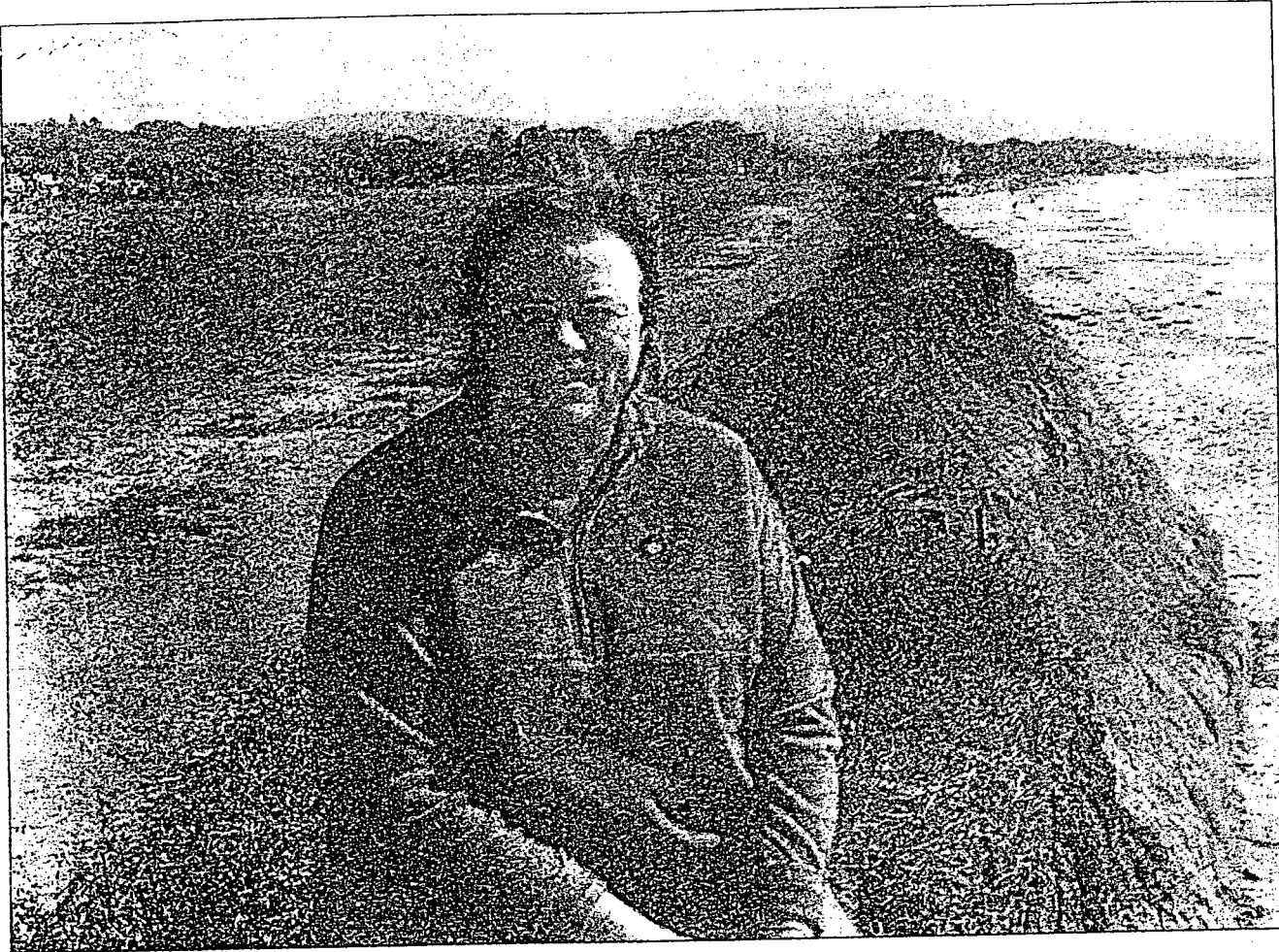
Hoskinson called public ed-

much of urban runoff is preventable," he said. "Everybody is part of it, so it's difficult to make any overnight changes. It's going to cost a lot of money and a lot of time."

Contact Frank Sweeney at fsweeney@sjmercury.com or 110

Leave it to Lennie

Activist Lennie Roberts is the hero behind Mirada Surf



Thanks largely to the efforts of local activist Lennie Roberts, the grassy fields and rugged bluffs of El Granada's Mirada Surf will no longer be the site of protracted legal battles and Coastal Commission appeals.

Instead, following a decision by the county to purchase the land and make it a park, this area will be the place for lazy afternoon horseback rides and soccer pick-up games, for flying kites in the brisk ocean breeze and picnicking with a view of the sea.

Roberts helped bring together various arguing factions and broker a truce that will provide a major tract of green space in park-poor El Granada.

In December, one of the key owners of the property, McCracken & Buyers partner Michael McCracken, came to Roberts to discuss a proposal that he hoped she could build support for in the community. He offered to donate 12 acres of shoreline property, planning to build 18 houses on the rest of the land.

"I told him that wasn't going to work," Roberts said. "I said the county should step up to the plate and buy the whole thing. He said that sounded like an interesting idea." The land has been designated in local land-use plans as a com-

munity park for more than 20 years.

Roberts said she realized when McCracken approached her that she had a rare window of opportunity. "It was the first time we've ever had lunch."

The owners, forced to scrap a previous proposal, were about to renew their efforts to develop the land. But they had yet to invest any money in the latest rounds of planning. Now would be the time to broker a deal with the county, before any further headway on development plans was.

"It's great for the community," Roberts said. "From the beginning, McCracken and I both thought this would be a very exciting thing to have happen. But it is very much to (McCracken's) credit this happened. He could have just blown me off and gone ahead and built on it."

Eight months after the two first had lunch, a mere blink in the 20-year battle-history of the land, the county and owners announced a deal. The county would buy the land at fair market value and turn it into a community park.

"There is so much potential for this land," Roberts said. By linking the Surf to existing parklands, she said, "You could ride a bike or a horse or take a hike (almost) all the way from Surfers Beach over Montara Mountain to Pacifica without ever getting near the highway." ■



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Coyote Valley
 Experts look at Stanford's future growth
 The Big Battle
 Another battle

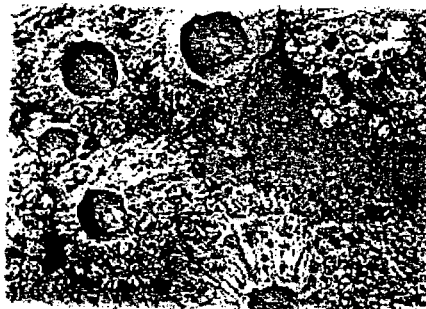
NEWS

Court Ruling Threatens Coastal Commission

by Kathy Switky

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The California Coastal Commission, established by the voters in 1972 to protect our coastline, is under attack. One of the Commission's oldest antagonists has finally found an ally in Superior Court judge Charles Kobayashi, who ruled that because Commission members are appointed by both the Governor and the Legislature, the panel violates the state's separation-of-powers doctrine.



In the eyes of the judge, the Coastal Commission is not "accountable to" (under the direct control of) the Executive Branch because the Governor does not make the majority of the appointments. In fact, the Commission's accountability comes from this very structure. The agency is governed by three appointing authorities: four Commissioners are appointed by the Assembly Speaker, four by

the Senate Rules Committee, and four by the Governor. It is precisely this separation of appointments that provides checks and balances. In addition, virtually all Commission decisions are subject to full judicial review.



The ruling came as part of a court case filed by a Newport Beach resident who illegally dumped tires, plastic, concrete and other materials into the ocean, claiming that he sought to create artificial reefs — but without the coastal development permit required by the Coastal Commission. When the Commission filed a cease-and-desist order and ordered him to

remove his garbage, he sued the Coastal Commission.

He hired as his attorney long-time Commission foe Ron Zumbun of the Pacific Legal Foundation, which has been making the separation-of-powers argument against the Commission for more than a decade. This issue is not about the

constitutionality of the Commission — it is the latest in the ongoing attempt to cripple the strongest environmental law in the state.

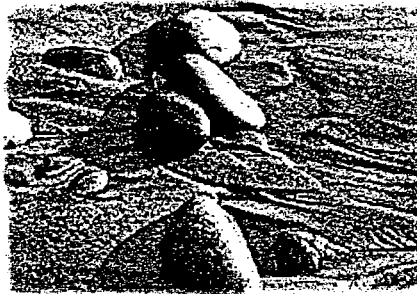
Anti-environmental forces — including former Governor Deukmejian — have tried for decades to eradicate or weaken the Commission. The judge making the April ruling was one of the last appointments Deukmejian made before he left office in 1991.

What you can do

The state is appealing the case. Both the Attorney General and the Coastal Commission, while they are confident that their arguments will prevail in a more deliberative court, are taking this very seriously, as should we.

Write letters to the editor and op-ed pieces. It's important to let fellow citizens know that the existing appointment structure is crucial to the independence of our Coastal Commission.

Write to our state legislators. Let the Governor, Attorney General, and State Senators and Assembly Members know that we will not tolerate any compromises of coastal protection. To find your legislators' names and addresses, visit www.leginfo.ca.gov/yourleg.html.



Save the Coastal Commission!

Since its creation by a vote of the people in 1972, the Coastal Commission has been a strong guardian of our state's incomparable coastal resources.

We must let our legislators know that the Commission is a vital agency charged with the protection of one of our State's

most valuable and valued resources. The stakes extend far beyond California's borders: the Commission is the only state agency empowered to review — and veto — offshore oil drilling in federal waters. Under the Bush Administration, oil drilling is again a real possibility.

California needs a strong Coastal Commission now more than ever. The Commission must be preserved and strengthened, not destroyed!

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Page last updated September 3, 2001.

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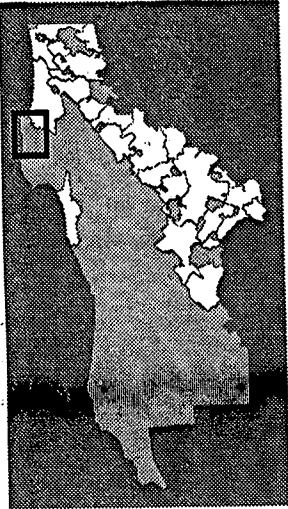
Photos 182 by Charles Wenber, California Academy of Sciences

Oscar Braun

From: "John Plock" <plck@pacbell.net>
To: <oscar@oscarknows.com>; <scampbe@msn.com>; <GOODRICH4@prodigy.NET>;
<threezero@aol.com>; <challsr@aol.com>; <Larry3Kay@aol.com>;
<deirdre@hmbreview.com>; <aboutprint@earthlink.net>
Sent: Saturday, December 02, 2000 7:08 AM
Subject: [Fwd: Midcoast: Caltrans 56, Frogs 0 = Red-tagged tunnels]

Michael Murphy wrote:

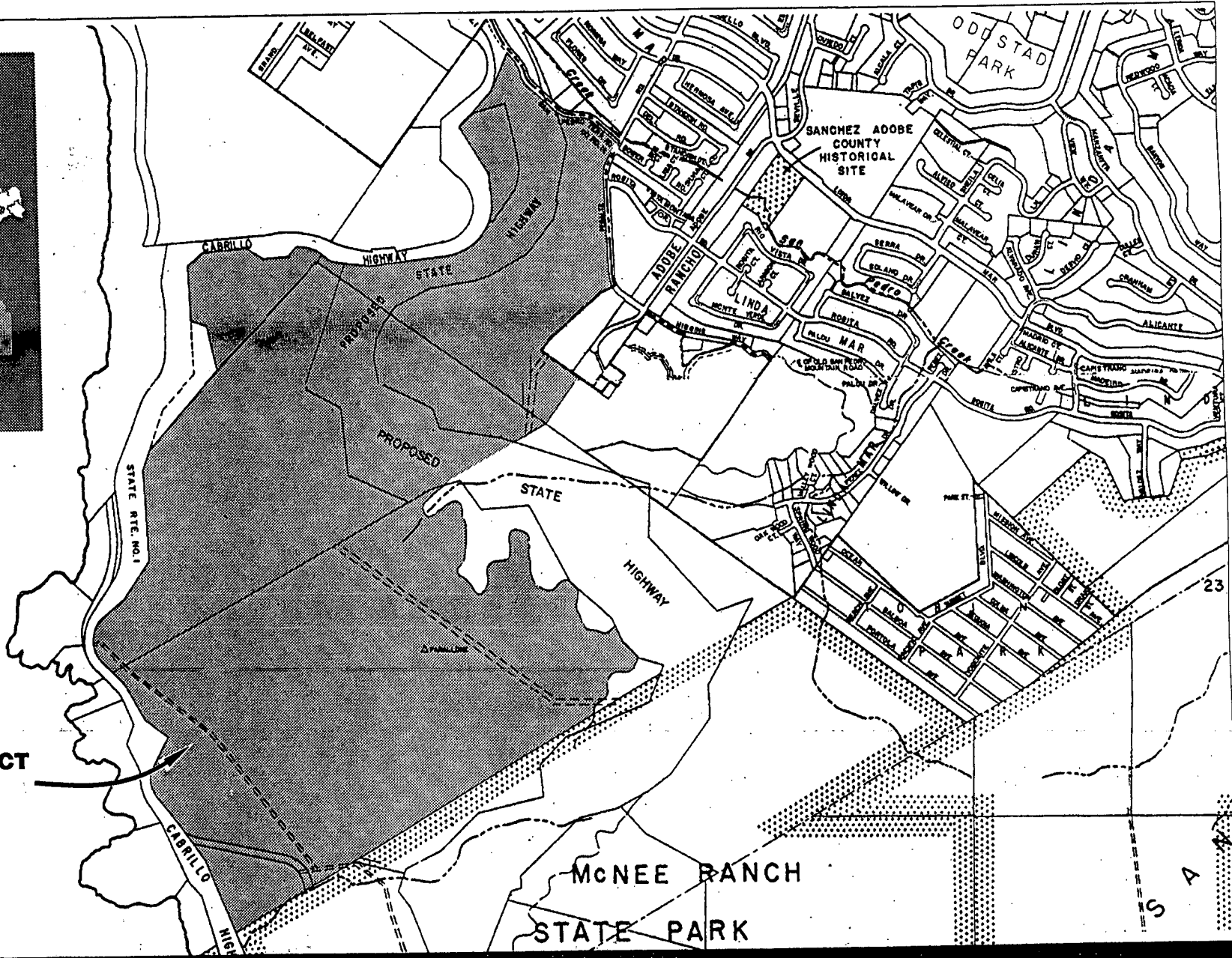
- > Well, that was quick. We have pictures of the red-legged tree frog pond at
- > the north entrance to the tunnel showing water, plant life and frogs all
- > summer long. The last count was 56 adults and hundreds of tadpoles.
- With
- > the early rains the pond didn't dry out seasonally this year. But, alas, it
- > has been drained and there is not a live frog to be seen. So now my
- Sierra
- > Club has established a new principle: if it's a project we like, we can kill
- > endangered species to get our way. The developers and Caltrans will
- have a
- > field day with this precedent: get the Coastal Commission to approve a
- > project in "concept" and go in before the project starts to do something
- > that is "not mitigation" but will create a potential alternate pond to test
- > for the species - and then "disappear" the species. Final irony: looks like
- > whoever did it acted on Thanksgiving Day, when our guard was down.
- Another
- > lesson learned, but this time somebody went too far. It's time for the Feds
- > to step in and red-tag this project permanently, before the rest of the area
- > is wrecked by the underground freeway.



115

DEVILS SLIDE

PROJECT SITE



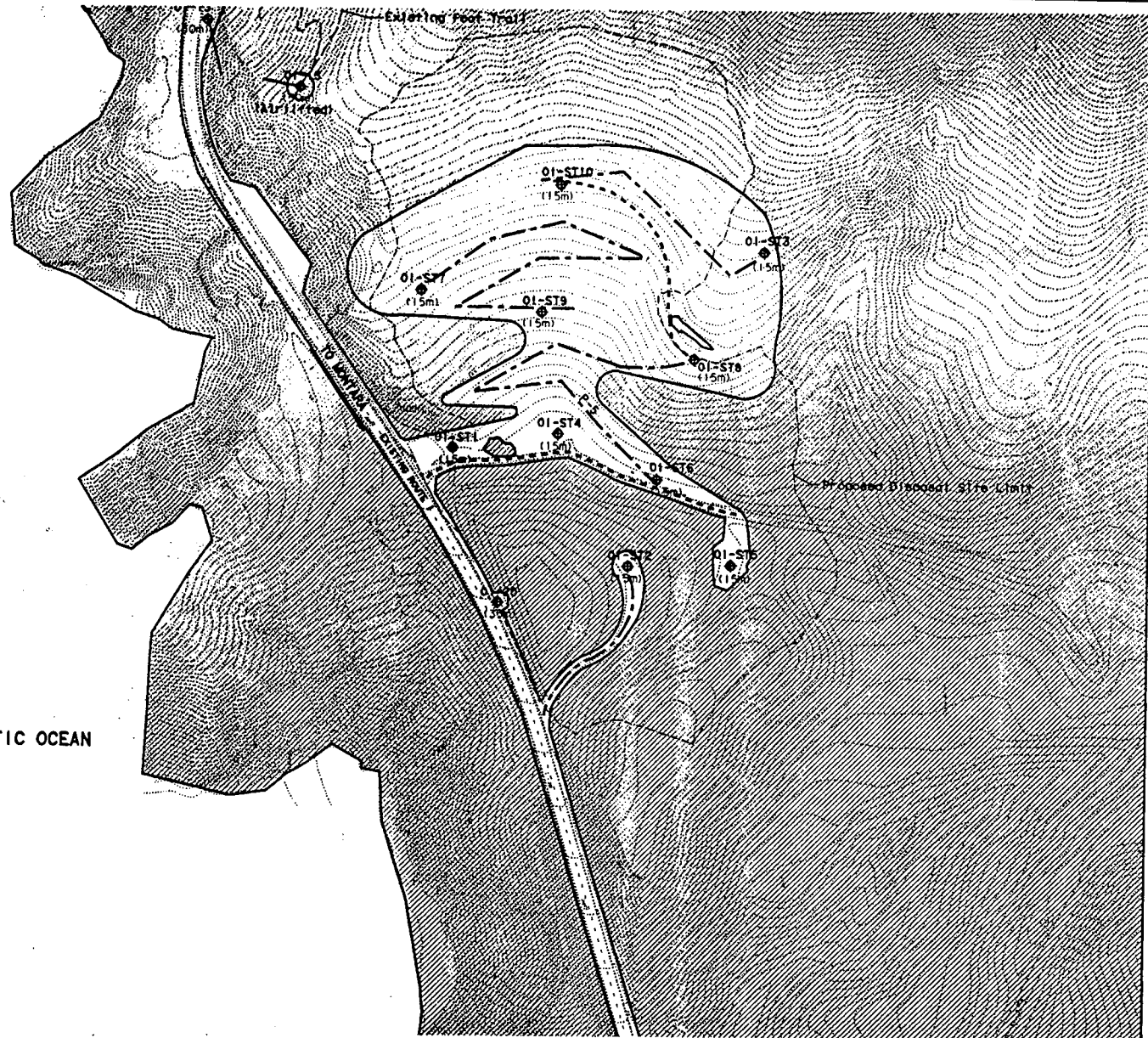
San Mateo County Board of Supervisors Meeting

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Applicant: CalTrans

File Numbers: PLN 2001-00799

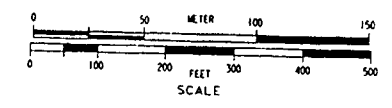
ATTACHMENT C



Appendix 2-1
Environmentally Sensitive Areas Map
Geotechnical Investigation Program
Fill Disposal Area



- LEGEND:**
- ENVIRONMENTALLY SENSITIVE AREA FOR GEOTECHNICAL INVESTIGATION PROGRAM
 - EXISTING TRAIL/ROAD TO BE USED FOR EXPLORATION WORK BY CONSULTANTS/CALTRANS
 - PROPOSED NEW ACCESS PATH
 - 01-ST (Target depth) (50m)



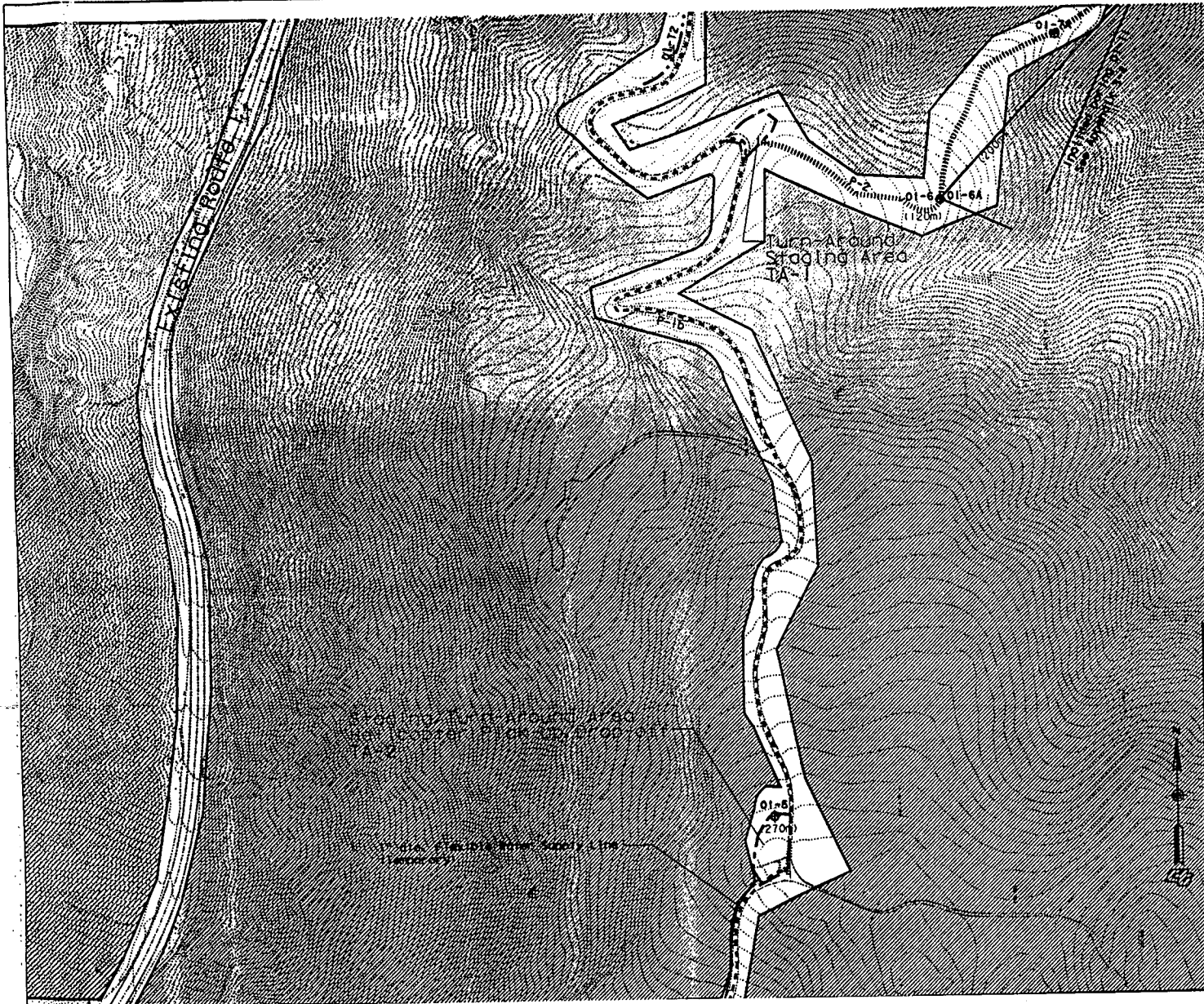
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San Mateo County Board of Supervisors Meeting







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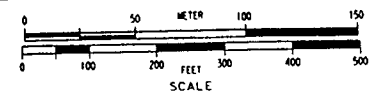
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LEGEND

-  ENVIRONMENTALLY SENSITIVE AREA FOR GEOTECHNICAL INVESTIGATION PROGRAM
-  EXISTING TRAIL/ROAD TO BE USED FOR EXPLORATION WORK BY CONSULTANTS/CALTRANS
-  01-T2 PROPOSED NEW TRENCH ZONE
-  PROPOSED NEW ACCESS ROAD FOR EXPLORATION WORK
-  01-10 (150m) PROPOSED NEW BORING
-  01-10 PROPOSED ALTERNATE BORING



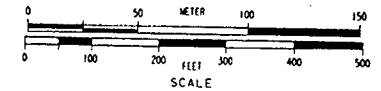
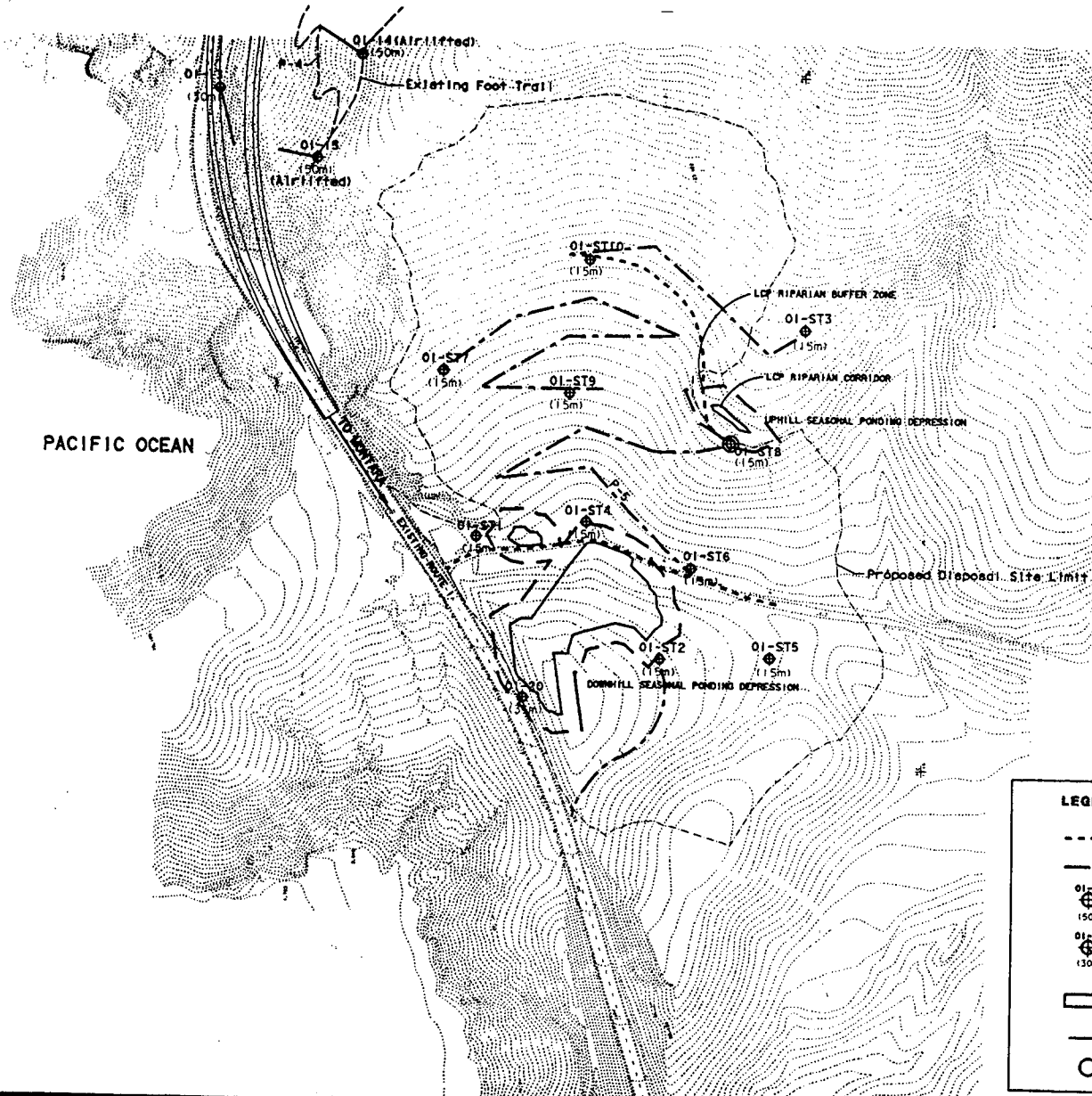
San Mateo County Board of Supervisors Meeting

Applicant: CalTrans

File Numbers: PLN 2001-00799

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461514



LEGEND:

- Exist. Trail/Road to be used for exploration work by Consultants/Caltrans
- - - - Proposed new access path
- ⊕ (150m) Proposed new boring (Target depth)
- ⊕ (130m) Proposed new inclined boring (Target depth)
- ▭ LCP RIPARIAN CORRIDOR (as defined by Section 7.7)
- - - RIPARIAN CORRIDOR BUFFER ZONE BOUNDARY
- RIPARIAN CORRIDOR BUFFER ZONE IMPACT

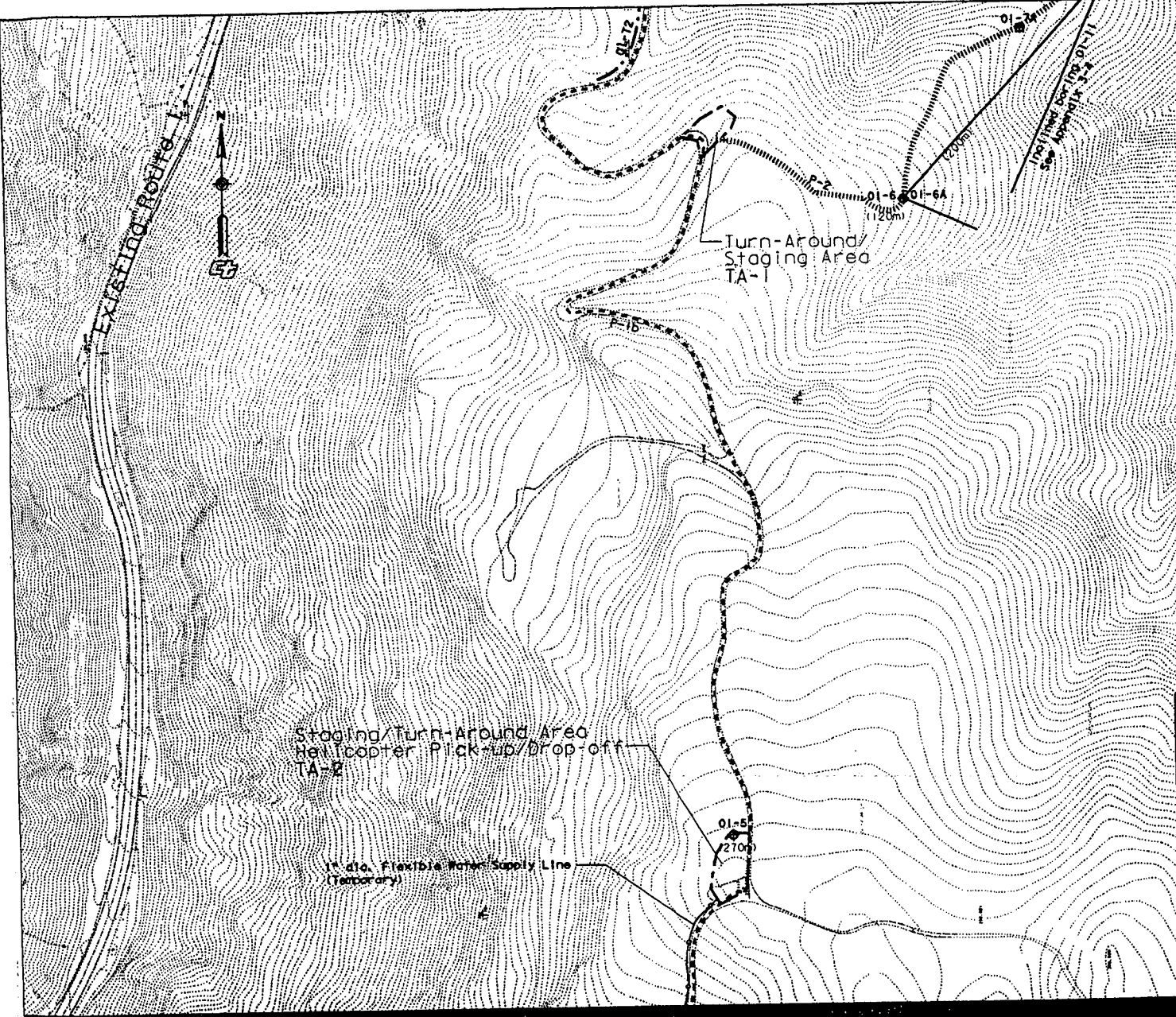
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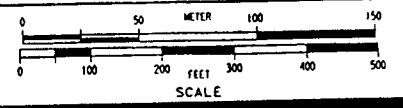
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Appendix 3-3
 San Mateo County Local Coastal Program
 Section 404 Jurisdictional Map
 North Portal/Shamrock Ranch Drainage Ar
 Geotechnical Investigation Impacts
 (No Impact on This Sheet)



LEGEND

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



A S123

San Mateo County Board of Supervisors Meeting

Applicant: CalTrans

File Numbers: PLN 2001-00799

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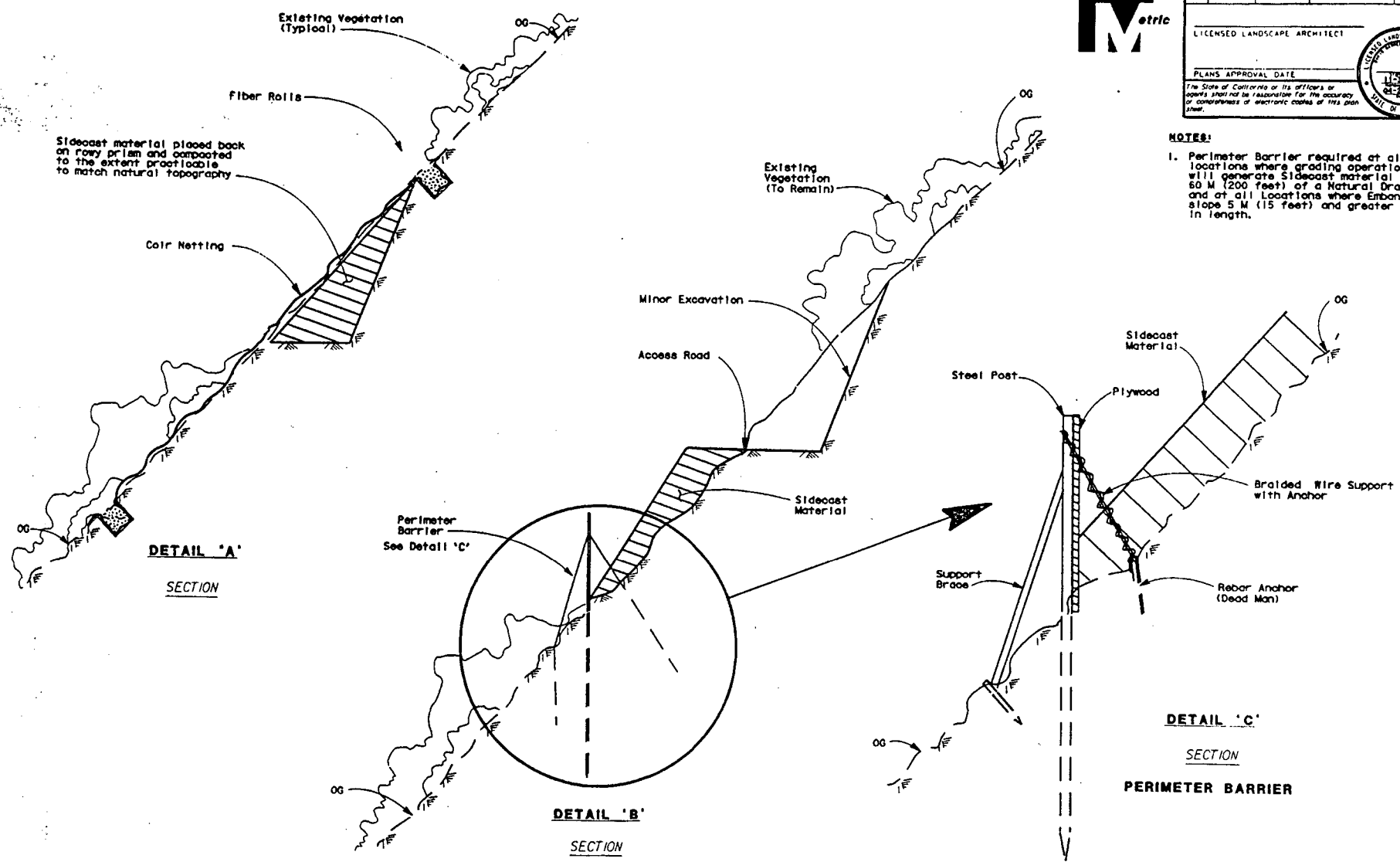


04	SM	1	39.9/40.7
LICENSED LANDSCAPE ARCHITECT			
PLANS APPROVAL DATE			
<small>The State of California or its officers or agents shall not be responsible for the accuracy or completeness of electronic copies of this plan.</small>			



NOTES:

1. Perimeter Barrier required at all locations where grading operations will generate Sidecast material within 50 M (200 feet) of a Natural Drainage and at all Locations where Embankment slope 5 M (15 feet) and greater in length.



This plan accourate for Erosion Control and/or Water Pollution Control only.

All Dimensions are in Meters unless otherwise shown

**CONSTRUCTION DETAILS
EROSION CONTROL PLAN
NO SCALE
EC-1**

San Mateo County Board of Supervisors Meeting

Applicant: CalTrans

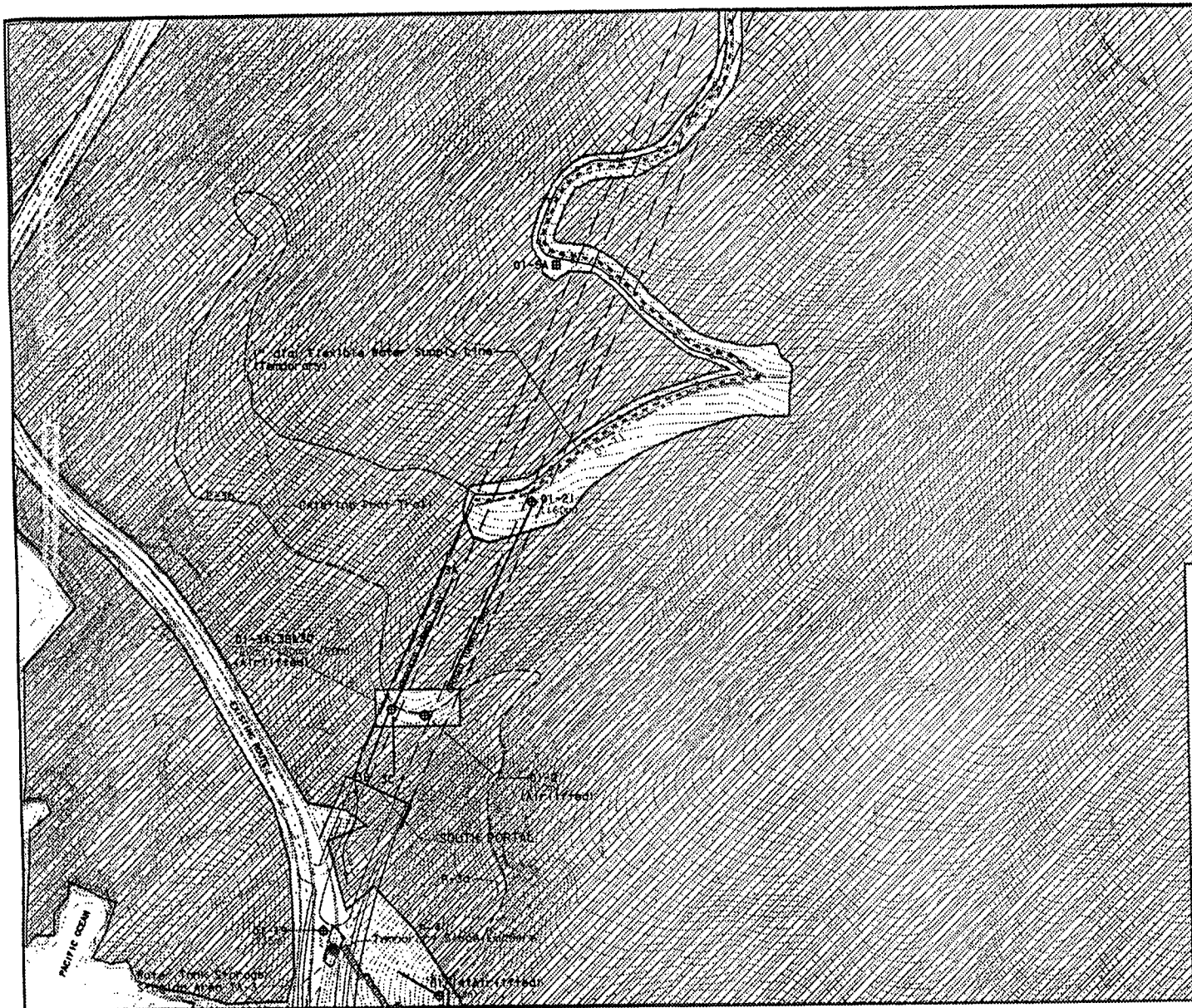
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





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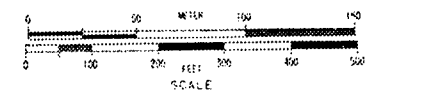
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Appendix 2-2
Environmental Sensitive Areas Map
Geotechnical Investigation Program
South Portal Area



LEGEND:

-  ENVIRONMENTALLY SENSITIVE AREA FOR GEOTECHNICAL INVESTIGATION PROGRAM
-  PROPOSED NEW ACCESS FOOT PATH
-  PROPOSED NEW BORING (DS-01)
-  PROPOSED ALTERNATE BORING (D1-5A)
-  PROPOSED NEW TRENCH (D1-11)
-  EXISTING TRAIL/ROAD TO BE USED FOR EXPLORATION WORK BY CONSULTANTS/CALTRANS



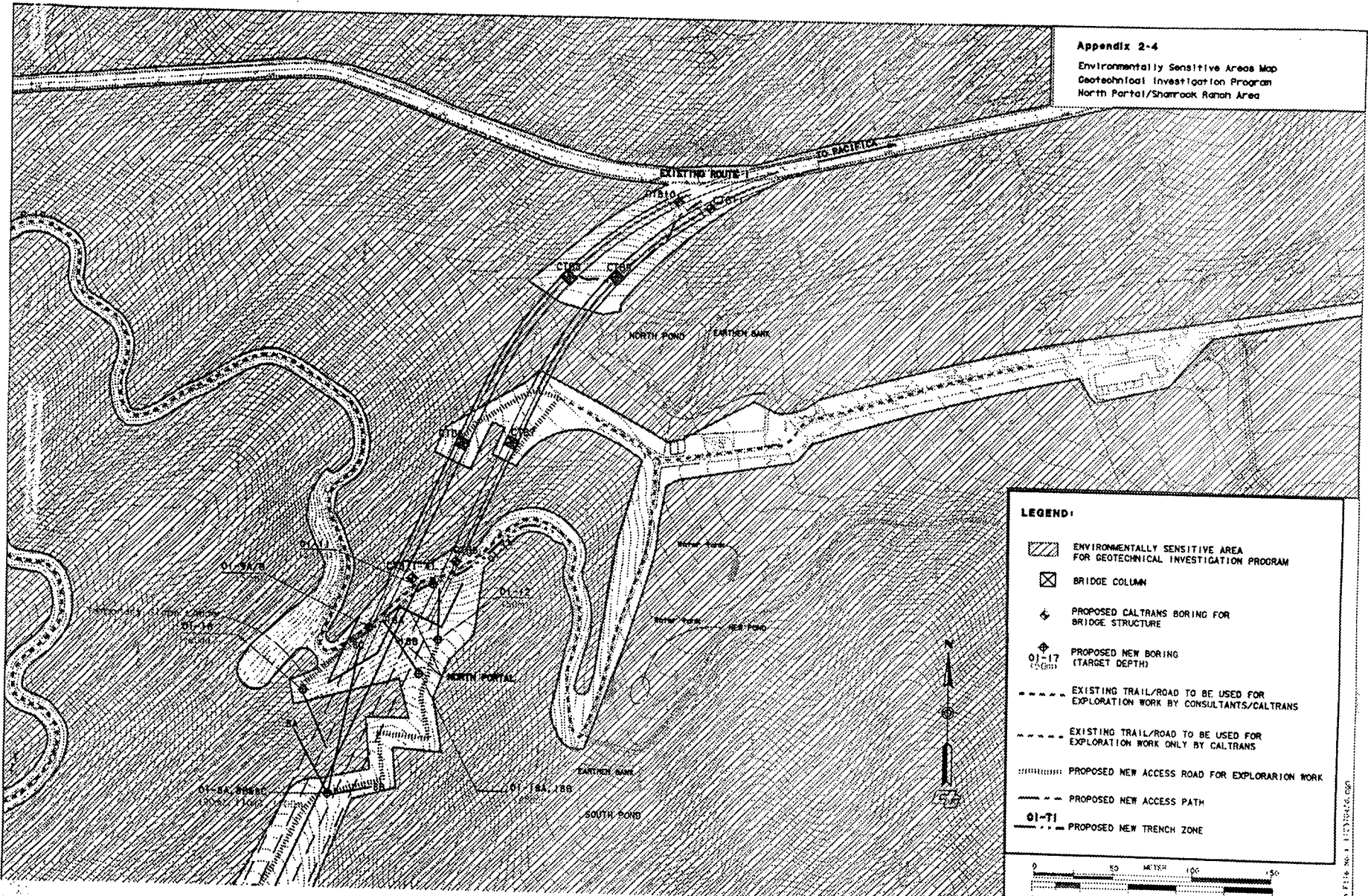
San Mateo County Board of Supervisors Meeting

Applicant: CalTrans

File Numbers: PLN 2001-00799

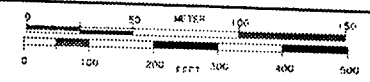
Attachment: _____

Appendix 2-4
Environmentally Sensitive Areas Map
Geotechnical Investigation Program
North Portal/Shattuck Ranch Area



LEGEND:

- ENVIRONMENTALLY SENSITIVE AREA FOR GEOTECHNICAL INVESTIGATION PROGRAM
- BRIDGE COLUMN
- PROPOSED CALTRANS BORING FOR BRIDGE STRUCTURE
- PROPOSED NEW BORING (TARGET DEPTH)
- EXISTING TRAIL/ROAD TO BE USED FOR EXPLORATION WORK BY CONSULTANTS/CALTRANS
- EXISTING TRAIL/ROAD TO BE USED FOR EXPLORATION WORK ONLY BY CALTRANS
- PROPOSED NEW ACCESS ROAD FOR EXPLORATION WORK
- PROPOSED NEW ACCESS PATH
- PROPOSED NEW TRENCH ZONE



San Mateo County Board of Supervisors Meeting

Applicant: CalTrans

File Numbers: PLN 2001-00799

Attachment: _____