

# Half Moon Bay Coastside Foundation

## Coastside CRMP & Fire Safe Councils aka California Watershed Posse (CWP)



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

May 26, 2004

To: San Mateo County Planning Commission  
From: Oscar Braun, Executive Director  
RE: Regular Agenda item: # 6 at 1:p.m.

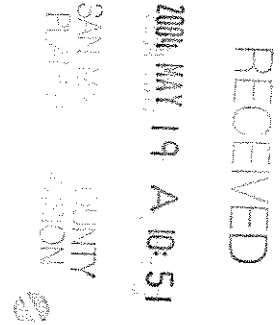
Owners: Dana Denman, Andrea Bechtolshiem,  
June Schanbacher, Charlise Heiser, Trust

Applicant: Caltrans

File No: PLN2003-00428

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

Assessor's Parcel No: 023-731-020



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

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

Dear Commissioners,

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

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

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

# California State Senate

STATE SENATOR  
Quentin L. Kopp

Eighth Senatorial District  
Representing San Francisco and San Mateo Counties

SACRAMENTO ADDRESS  
STATE CAPITOL  
95814  
9164450503

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

COMMITTEES  
TRANSPORTATION CHAIRMAN  
AGRICULTURE & WATER  
RESOURCES  
BANKING COMMERCE AND  
INTERNATIONAL TRADE  
BUDGET AND FISCAL REVIEW  
LOCAL GOVERNMENT  
REVENUE AND TAXATION

SELECT COMMITTEES  
DEFENSE BASE CLOSURES  
MARITIME INDUSTRY  
NORTHRIDGE EARTHQUAKE  
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

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

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

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

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

Yours truly,

*[signed]*

JENTIN L. KOPP

QLK:tt

Enclosure

cc: Hon. Ted Lempert

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

*[handwritten]*

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

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

---

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

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



Wednesday, September 6, 1995

50 Cents

# Feds: Study tunnel option

## Lempert asks that report answer funding questions

By ERIC RICE  
Half Moon Bay Review

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

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

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

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

prohibitive."

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

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

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

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

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

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

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

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

Please see TUNNEL, Page 6A

# Tunnel

Continued from Page 1A

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

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

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

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

to be completed next spring or early summer.

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

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

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

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

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

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

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

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

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

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

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

**Jeff Weiss,  
CalTrans**

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

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

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

Lempert said the study must

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

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

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

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

# It's time to bypass Devil's Slide

By MIKE NEVIN

San Mateo County Supervisor

4/5 1995

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 inconvenient, causing bumper traffic, it is also dangerous, severely limiting medical services.

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

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

## Point of View

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

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

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

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

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

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

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

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

## Oscar Braun

---

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



SFGate\_Bridge  
cost tops \$1 bl...

SF Chron - Benicia-Martinez bridge cost overrun

-----  
This article was sent to you by someone who found it on SFGate. The original article can be found on SFGate.com here: <http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2004/05/13/MNGLU6KKVII.DTL>  
-----

Thursday, May 13, 2004 (SF Chronicle)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Any time you go underground, you don't know what you're going to run into," he said. "And when you go underground and underwater, there are a double number of unknowns."

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

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

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

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

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

E-mail Michael Cabanatuan at [mcabanatuan@sfchronicle.com](mailto:mcabanatuan@sfchronicle.com). Benicia-Martinez Bridge's climbing cost

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

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

Source: Bay Area Toll Authority  
Chronicle Graphic

-----  
Copyright 2004 SF Chronicle



## County auditor's independence questioned

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

BY JUSTIN NYBERG  
Staff Writer

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

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

support for a renewal of the local transportation sales tax known as Measure A. Supervisor Jerry Hill said the decision was not in retaliation for Huening's stance, but was in accordance with the recommendations of a grand jury report issued Dec. 4, 2002.

"No. We don't work that way here," Hill said when asked whether the change was tied to Huening's Measure A stance. Hill suggested the change in procedure.

"Being a department head himself, that could influence his decision-making and independence. I felt that it would be

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

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

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

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

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

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

"We believe that the current elected

WHISTLEBLOWER page 13A



## WHISTLEBLOWER: Huening off job

*Continued from 1A*

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

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

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

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

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

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

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

Despite the angry rhetoric, Hill

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

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

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

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

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

E-mail: [jnyberg@smindependent.com](mailto:jnyberg@smindependent.com)



**NOBODY ASKED ME, BUT**

**BY JERRY FUCHS**

## County's top 10 for past year

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

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

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

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

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

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

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

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

Moving up a few notches to the

**NOBODY:** page 6A

# NOBODY: Huening jumps into spotlight

Continued from 1A

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

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

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

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

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

...

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

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

...

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

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

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

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

...

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

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

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

...

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

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

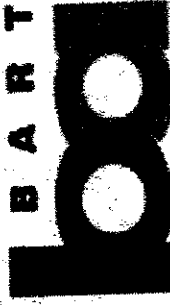
## SamTrans to pay BART operating expenses

Agreement reached in dispute over costly new system expansion

BY JUSTIN NYBERG  
Staff Writer

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

After two months of nego-



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

SamTrans directors agreed to



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

On March 10, BART held a

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

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

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

Mike Nevin,  
chairman of SamTrans

figure each day since opening last summer.



## Environmental Services Agency Planning Commission

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

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

### Notice of Public Hearing

MEETING NO. 1411

**NOTE: Special  
Meeting Time**

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

**Board of Supervisors Chambers  
400 County Center, Redwood City**

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

#### **SPEAKING AT THE PUBLIC HEARING:**

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

#### **CORRESPONDENCE TO THE COMMISSION:**

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

#### **RETENTION OF MATERIALS PRESENTED AT HEARING:**

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

**REGULAR AGENDA****1:00 p.m.**

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

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

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

**Wednesday, May 26, 2004  
7:00 p.m.  
Ted Adcock Community/Senior Center  
535 Kelly Avenue, Half Moon Bay**

**NOTE: Special  
Meeting Time  
and place.**

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

Midcoast LCP Update Project:

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

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

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

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



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

**DRAFT**



**Federal Highway Administration**

**March 1999**



**California Department of Transportation**



# Half Moon Bay Coastside Foundation



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

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

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

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

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

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

# Half Moon Bay Coastside Foundation



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

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

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

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

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

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

# COASTSIDE PROTECTION INITIATIVE OF 1994

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

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

## Section 1. Purpose of This Measure

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

## Section 2. Findings

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

## NOTICE OF INTENTION TO CIRCULATE PETITION

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

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

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

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



# GREEN FOOTNOTES

COMMITTEE FOR GREEN FOOTHILLS [www.GreenFoothills.org](http://www.GreenFoothills.org)

SUMMER 2005



© Robert Buelteman, courtesy of POST

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

## Rancho Corral de Tierra — A treasure protected at last!

BY LENNIE ROBERTS

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

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

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

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

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

The bill passed and today, visitors enjoy

See *TIERRA*, page 9

## Green Feet profile: Meet Mike Kahn

BY KATHY SWITKY

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

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

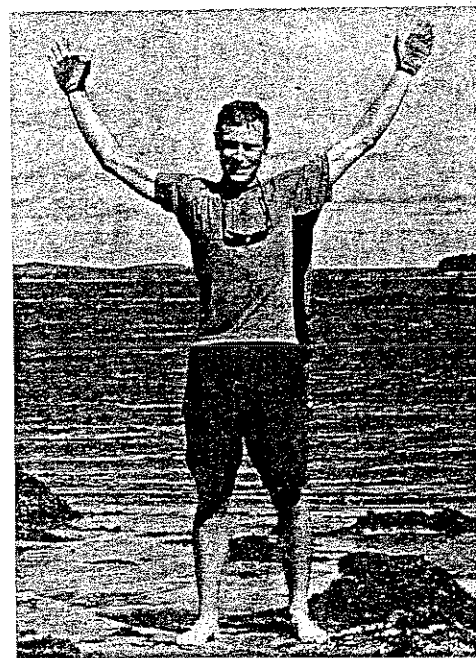
An enthusiastic bicyclist, Mike spent last summer on a 105-day bike ride that took him the 5,135 miles from his hometown of Palo Alto to Bar Harbor, Maine. Mike equipped his bike with camping gear, a digital camera, and a solar-powered laptop, and used the trip to reach out to environmental organizations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

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

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

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

"I'm so glad to be doing work that



Mike Kahn

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

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

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

### *TIERRA, continued from page 1*

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

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

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

ing seven separate watersheds.

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

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

new attempts at development.

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

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

## 1.0 INTRODUCTION

---

### 1.1 HISTORY

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

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

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

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

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



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

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

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

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

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

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

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

## 1.2 CURRENT STATUS

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

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

§ 771.130. Supplemental environmental impact statements:

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

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

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

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

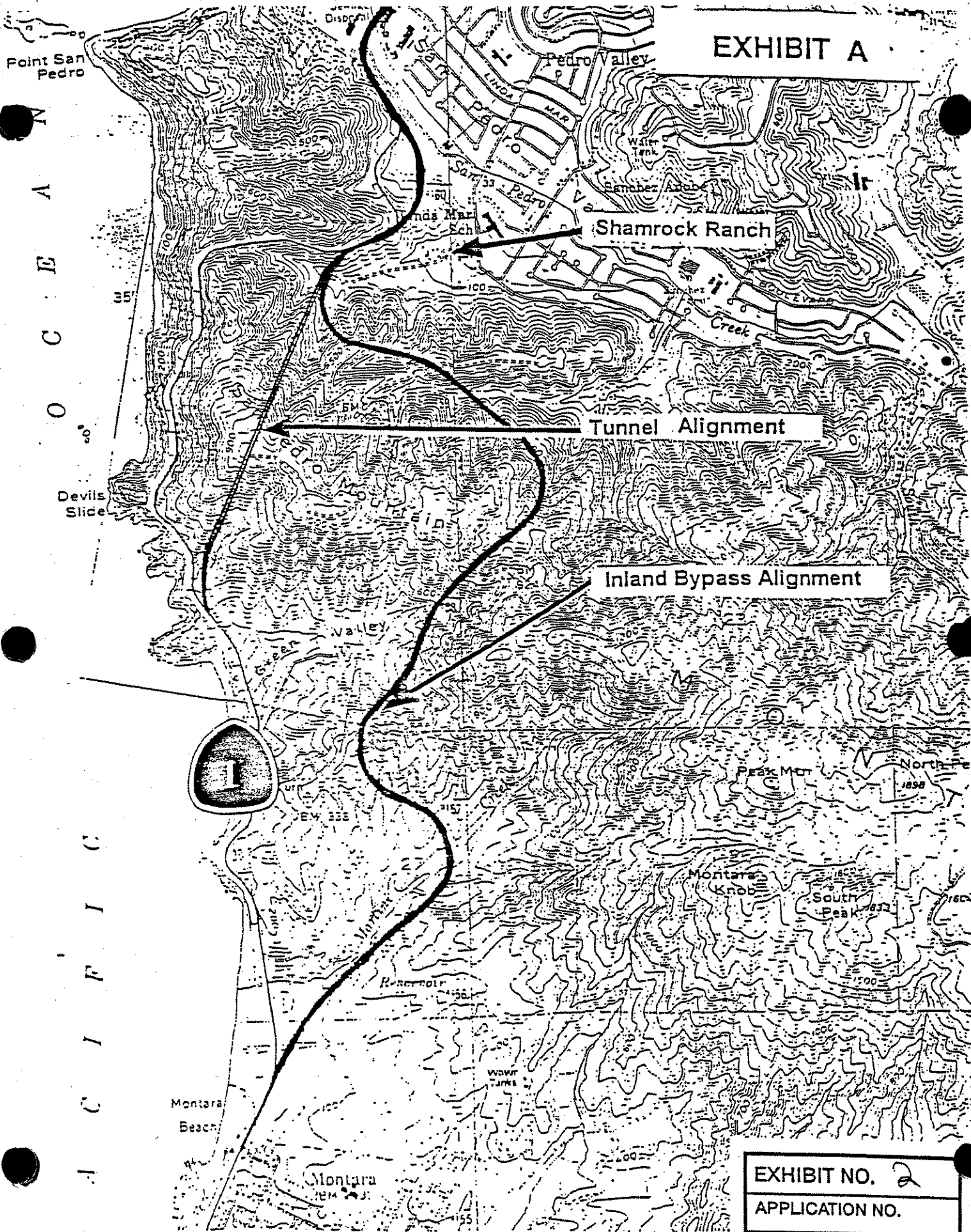
- (1) Any of the conditions described in Section 15162 would require the preparation of a subsequent EIR, and*
- (2) Only minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation.*



TABLE S-1: Summary of Impacts

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

**AVOIDANCE** →



# EXHIBIT A

Shamrock Ranch

Tunnel Alignment

Inland Bypass Alignment

EXHIBIT NO. 2

APPLICATION NO.

CC-94-00

04-SM-  
4243-1



Dear Sierra Club Member,

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

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

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

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

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

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

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

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

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

*Mary Hobbs*  
Mary Hobbs, Co-Chair  
Coastside 2000 Committee  
Sierra Club

*Julia Britt*  
Julia Britt, 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

ARGUMENTS IN SUPPORT OF OPPOSITION TO THE PROPOSED LAWS AND THE OPINIONS OF THE AUTHORS  
**DEVIL'S SLIDE TUNNEL INITIATIVE**

Attachment

**MEASURE T**

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

**(TEXT)**

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

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

**Section 1. Purpose 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

000024

EXHIBIT 1

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



Date: August 1, 2000  
To: Honorable San Mateo County Board of Supervisors  
From: Oscar Braun, Save Our Bay Foundation  
Re: Devil's Slide, Credibility & November 2000 Ballot Measure

As environmentalists, we are proud of the higher standard we set for ourselves and others, especially landowners and public officials. But lately, too many of us are walking away from too many promises. Too many people can no longer take our word. The long-term consequences of people losing faith in us as environmentalists are devastating. It's almost as if telling the truth and living up to our word was nothing more than a tactic that we can use and discard, as convenient. Let's look at the Devil's Slide Bypass Project here in San Mateo County for the clearest example of how some environmental organizations have squandered their credibility with the public in pursuit of their special interest agendas.

Devil's Slide, located within one of the most seismically active regions of the United States, is an actively eroding ocean-facing cliff which is sliding into the sea. The operation of Route 1 has suffered from frequent closures caused by slip-outs and landslides. The California Department of Transportation pursued a solution to this for approximately 30 years. The purpose and need of the project is to provide a safe, dependable and stable State highway route that avoids the geologically unstable Devil's Slide area. The instability of Devil's Slide and the problems with the existing roadway, including landslides and rock falls through that area, remain the same today as set forth in the Final Environmental Impact Statement approved on April 16, 1986.

On April 9, 1986 the California Coastal Commission voted to grant Consistency Certification No. CC-45-85. "The Commission hereby concurs with the consistency certification made by the California Department of Transportation for the proposed project, finding that the project is consistent with the policies and objectives of the California Coastal Management Program. Where conflicts occur between one or more policies, the Commission must resolve such conflicts in a manner which is most protective of significant coastal resources (Section 30007.5). The Commission finds that the selection of the Martini Creek Alignment is the alternative most protective of coastal resources and least environmentally damaging. The Commission finds that the construction of the Martini Creek Alignment will assure the balanced utilization of coastal resources while meeting the social and economic needs of the people of the State. The Commission finds that the provisions of a safe and reliable Highway 1, for all the citizens of the State of California, sensitively designed and adequately mitigated, will enhance and protect for future generations the overall quality of the Coastal Zone."

Caltrans reviewed a number of other alternatives, but withdrew these alternatives from active consideration for various reasons. The other alternatives were Sierra Club's proposed Marine Disposal Alternative (MDA) Freeway Option, No Project Alternative, Modified LH Alignment, Widening Existing Highway 1 from Two to Four Lane, and a Tunnel Alternative. "This Tunnel Alternative would entail a tunnel through San Pedro Mountain, and was suggested by the Sierra Club in 1973. This alternative was withdrawn from active consideration because the tunnel would cost an estimated \$100 million. In addition, a tunnel would have to be two lanes in each direction to provide access for emergency vehicles in the event of an accident or stalled vehicles" Note: Scenic Highway 1 by State law can have only two lanes in rural areas in the coastal zone. Note: (Quotations from 1986 CCC Consistency Certification)

In 1986 the Sierra Club filed suit in U.S. District Court over the issue of deficiencies in the FIES with regards to "noise" and its environmental consequences and mitigation measures. "In March 1995, the Federal Highway Administration (FHWA), in cooperation with the California Departments of Transportation (Caltrans), issued a Draft Supplemental Environmental Impact Statement/Environmental Impact Report (SEIS). The Final Environmental Impact Statement (FEIS) was originally approved on April 16, 1986, for a proposal to improve State Route 1 in San Mateo County, California. The preferred

alternative, identified in the FEIS and selected in the FHWA Record of Decision signed on May 30, 1986, is known as the Martini Creek Alignment."

"As indicated in the Draft Supplement, the purpose of the document is to comply with the Order and subsequent Judgement of the U.S. District Court following litigation regarding the project. The Supplement is limited to addressing the deficiencies in the FEIS determined in the litigation, and therefore, only addresses noise issues. A tunnel alternative was considered and rejected as part of the CEQA/NEPA environmental review process in 1986. The U.S. District Court subsequently determined that the treatment of alternatives in the 1986 FEIS was proper. Although only noise-related issues were addressed in the 1995 Draft SEIS, comments were received indicating a tunnel alternative would avoid project noise impacts. This issue has been reviewed, and it is determined that the tunnel is not a reasonable alternative because of its inconsistency with current planning policies, the lack of funding, and various safety and cost issues." (Quotation from SEIS June 1995 Tunnel Investigation)

In the Spring of 1996, the Sierra Club proposed and asked the residents of San Mateo County to pass Measure T, the Devil's Side Tunnel Initiative which was placed on the November 5, 1996 ballot. They promised the electorate on the Measure T ballot that: "A tunnel (singular) will protect the environment. A tunnel would have virtually no harmful effects on the environment. It would be consistent with coastal laws. It would avoid serious damage to the watersheds, wildlife habitats and parks of Montara and San Pedro Mountain that would be caused by a surface bypass. A tunnel would be cost effective. A tunnel would be built for less money than the proposed by-pass. A tunnel is a safe and reliable solution. No dangerous bridges or fill for the Sierra Club two lane tunnel" Their campaign slogan was "Tunnel: Sooner, Safer, Cheaper! Measure T was passed by a wide margin by the voters. The County of San Mateo change their LCP selecting the "tunnel alternative". The California Coastal Commission certified the County's LCP revisions. The FHWA, in cooperation with Caltrans, issued a draft Second Supplemental Environmental Impact Statement/Environmental Impact Report (SEIS) in April of 1999 for public review and comment. The Tunnel alternative was compared for the third time with the CEQA/NEPA certified Martini Creek Alignment.

- By letter dated May 11, 1999, Paul Koenig, Director of Environmental Services for the County of San Mateo, advised Caltrans that the County could not find that the proposed tunnel design complies with the Local Coastal Program. Reason given was the filling of wetlands and destruction of sensitive habitat.
- San Mateo County Senior Planner/Biologist Roman Gankin conducted a field investigation of the nature of two wetland areas that were a point of concern with staff of the Coastal Commission, CalTrans and the County on July 30, 1999. In his letter to Paul Koenig dated August 11, 1999 Mr. Gankin concluded that the area of concern does contain "wetlands". Under the Coastal Act, wetlands are protected by specific limitations with respect to uses which may occur in the wetland and by the requirement that there be no feasible less environmentally damaging alternative to the filling of wetlands and where feasible mitigation measures have been provided to adverse environmental effect. Indeed, the Commission's guidelines provide that "of all the environmentally sensitive habitat areas mentioned specifically in the Coastal Act, wetlands and estuaries are afforded the most stringent protection."
- Safety: Tunnels have potential for catastrophic accidents with confined space of long tunnels and also have a higher actual rate of accidents within the local Bay Area tunnels than on comparable open air roadways. Tunnels are built only when there are no other alternatives.
- Two Lanes: The 1996 Sierra Club sponsored Tunnel alternative has two, mile long tunnels and two, thousand foot bridges with two lanes in each direction to provide emergency vehicle access. Currently the Coastal Act only allows total of two lanes on rural Scenic Hwy 1.
- Costs: The Tunnel 1999 projected costs exceeds \$180 million versus \$112 for the Martini Creek Alignment. The Tunnel annual maintenance is estimated \$2.26 million versus \$340,000 for the open air Martini Creek bypass.

In light of the County's response to the Second Supplemental Environmental Statement/Environmental Impact Report as well as the concerns expressed by the Coastal commission staff, Caltrans and the FHWA are not able to approve the Second Supplemental Environmental Statement/Environmental Impact Report or issue a new Record of Decision for the Tunnel alternative. A tunnel alternative was considered and

rejected as part of the CEQA/NEPA environmental review process in 1986. The Coastal Commission found that the selection of the Martini Creek Alignment was the alternative most protective of coastal resources and least environmentally damaging. The U.S. District Court subsequently determined that the treatment of alternatives in the 1986 FEIS was proper. The Tunnel alternative has been reviewed a third time by the County of San Mateo, the Coastal Commission, Caltrans and the FHWA and it is determined that the tunnel is not a reasonable alternative because it is not the most protective of coastal resources, it is inconsistent with current Local Coastal Program policies, various safety and cost issues.

**Resolution:** The Half Moon Bay Coastside Foundation (dba Save Our Bay) request the Board of Supervisors, County of San Mateo, State of California to co-sponsor and adopt a resolution approving submission of a measure to the electorate to amend policy of the land use plan of the Local Coastal Program relating to the construction of the Martini Creek Alignment alternative for the Devil's Slide Bypass on State Route 1.

**Purpose of This Measure:** The purpose of this measure is to provide the citizens of California a permanent solution to the Devil's Slide Route 1 Bypass that complies with the NEPA/CEQA and Coastal Act environmental review process, Record of Decision and qualifies for Federal funding.

**Findings:** On April 9, 1986 the California Coastal Commission voted to grant Consistency Certification No. CC-45-85. "The Commission hereby concurs with the consistency certification made by the California Department of Transportation for the proposed project, finding that the project is consistent with the policies and objectives of the California Coastal Management Program. Where conflicts occur between one or more policies, the Commission must resolve such conflicts in a manner which is most protective of significant coastal resources (Section 30007.5) The Commission finds that the selection of the Martini Creek Alignment is the alternative most protective of coastal resources and least environmentally damaging. The Commission finds that the construction of the Martini Creek Alignment will assure the balanced utilization of coastal resources while meeting the social and economic needs of the people of the State. The Commission finds that the provisions of a safe and reliable Highway 1, for all the citizens of the State of California, sensitively designed and adequately mitigated, will enhance and protect for future generations the overall quality of the Coastal Zone."

The goal of the Measure T's proponents was never to build a tunnel; they simply wanted to stop the Martini Creek bypass and maintain limited access to the coast. The Tunnel Initiative has proved to be a fiasco. San Mateo County cannot afford an environmental movement that cannot be trusted. Think of all the work left to do: The endangered species protection; smart growth to prevent urban sprawl and the preservation of wetlands and other sensitive habitats. If environmentalist cannot be trusted at the table, then soon we will no longer be invited. And that would be a tragedy, not just for environmentalists, but the environment itself. Much as we would work to protect our environment, so we must protect our honor. Or neither will survive.

CC

Honorable Grey Davis, Governor, State of California  
Edwin Pang, California Department of Transportation  
Ging P. Bill Wong, U.S. Department of Transportation  
Peter Douglas, California Coastal Commission  
San Mateo County Board of Supervisors  
Sierra Club Tunnel Task Force  
City of Half Moon Bay  
City of Pacifica  
Released to Media



# RICHARD GORDON

Board of Supervisors  
County of San Mateo

August 8, 2000

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

Dear Oscar,


Your August 1<sup>st</sup> request for the Board of Supervisors to co-sponsor a ballot measure in support of a bypass for Devil's Slide, is inconsistent with Board of Supervisors policy, the voters of San Mateo County, and the adopted local coastal program.

Your memo contains false information and misstatements of fact. Most importantly, it also fails to include significant information.

The Devil's Slide tunnel project, as approved by the voters of San Mateo County, is moving forward. We fully expect a record of decision from Federal Highways later this fall. That will lead to design contracting and construction.

As is usual with a project of this magnitude, the progress is not as swift as we would like. Progress, however, is being made and if you support an alternative to the current Highway 1 route at Devil's Slide I am sure that you will applaud the next steps that CalTrans and San Mateo County will take to bring this project on line.

Sincerely,



Richard Gordon

County Government Center  
401 Marshall Street  
Redwood City, CA 94063



Direct (650) 363-4569  
Coastside (650) 573-2222  
Fax (650) 599-1027



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



August 10, 2000

To: Honorable Richard Gordon & Board of Supervisors County of San Mateo  
From: Oscar Braun, Half Moon Bay Coastside Foundation (dba Save Our Bay)  
Re: Your Letter of August 8, 2000

Dear Supervisor Gordon,

As you know, the Save Our Bay Foundation is a non profit publicly supported charity. The mission of the Foundation is marine and watershed conservation within the boundaries of the Monterey Bay National Marine Sanctuary. Our letter of August 1<sup>st</sup> 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,

Oscar Braun, Executive Director

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



HALF MOON BAY REVIEW • Wednesday, Aug. 16, 2000 • 9A

# Gordon responds to fax from Braun

By JANET ZICH  
Half Moon Bay Review

Normally mild-mannered San Mateo County Supervisor Rich Gordon had obviously reached his limit.

Responding last week to a fax from Oscar Braun, executive director of Save Our Bay (SOB), Gordon told Braun in no uncertain terms: "Your August 1 request for the Board of Supervisors to cosponsor a ballot measure in support of a bypass for Devil's Slide is inconsistent with Board of Supervisors policy, the voters of San Mateo County and the adopted local coastal program."

SOB had asked the supervisors to reconsider the Martini Creek bypass, the same bypass that was soundly defeated by San Mateo County voters in 1996 in favor of a tunnel.

Retreating even further into the past, Braun quoted the 1986 California Coastal Commission finding that of all the proposals for a Devil's Slide solution, "the Martini Creek Alignment is the alternative most protective of coastal

resources and least environmentally damaging."

Braun and SOB neglected to mention that the three-mile Martini Creek bypass was considered "most protective" only when compared to the six-mile, Montara-bisecting alternative that would have exited across from the Half Moon Bay Airport.

A tunnel had not even been considered at that time.

"As environmentalists," Braun wrote, "we are proud of the higher standard we set for ourselves and others."

Replied Gordon: "Your memo contains false information and misstatements of fact." And, in the unkindest cut of all, Gordon wrote of the three-and-a-half page, single-space missive from SOB, "Most importantly, it also fails to include significant information."

Gordon concluded by noting that the tunnel project is "moving forward. We fully expect a record of decision from Federal Highways later this fall. That will lead to design contracting and construction."

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



August 24, 2000

To: Honorable Richard Gordon & San Mateo County Board of Supervisors  
From: Oscar Braun, Half Moon Bay Coastside Foundation (dba Save Our Bay)  
Re: Appeal of CDP Permit File # PLN 2000-00536  
Location: Shamrock Ranch on Peralta Road  
APN: 023-741-010  
Project Planner: Mike Schaller

The Save Our Bay Foundation is appealing to the San Mateo County Board of Supervisors the above captioned Coastal Development Permit granted to Caltrans for the construction of a mitigation pond for transfer of endangered species red-legged frogs. The primary reasons for the appeal are:

- The Devil's Slide Tunnel project has not been granted a Record of Decision nor approval of the Second Supplemental Environmental Impact Study.
- The Coastal Act does not permit mitigation of sensitive habitats if 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

are protected by specific limitations with respect to uses which may occur in the wetland and by the requirement that there be no feasible less environmentally damaging alternative to the filling of wetlands and where feasible mitigation measures have been provided to adverse environmental effect. Indeed, the Commission's guidelines provide that "of all the environmentally sensitive habitat areas mentioned specifically in the Coastal Act, wetlands and estuaries are afforded the most stringent protection."

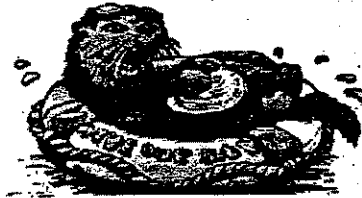
- Safety: Tunnels have potential for catastrophic accidents with confined space of long tunnels and also have a higher actual rate of accidents within the local Bay Area tunnels than on comparable open air roadways. Tunnels are built only when there are no other alternatives.
- Two Lanes: The 1996 Sierra Club sponsored Tunnel alternative has two, mile long tunnels and two, thousand foot bridges with two lanes in each direction to provide emergency vehicle access. Currently the Coastal Act only allows a total of two lanes on rural Scenic Hwy Route 1.
- Costs: The Tunnel 1999 projected costs exceeds \$180 million versus \$112 for the Martini Creek Alignment. The Tunnel annual maintenance is estimated \$2.26 million versus \$340,000 for the open air Martini Creek bypass.

In light of the County's written response regarding the Second Supplemental Environmental Statement/Environmental Impact Report as well as the concerns expressed by the Coastal commission staff, U.S. Fish & Wildlife Service, Caltrans and the FHWA are not able to approve the Second Supplemental Environmental Statement/Environmental Impact Report or issue a new Record of Decision for the Tunnel alternative. A tunnel alternative was considered and rejected as part of the CEQA/NEPA environmental review process in 1986. The Coastal Commission found that the selection of the Martini Creek Alignment was the alternative most protective of coastal resources and least environmentally damaging. The U.S. District Court in 1995 subsequently determined that the treatment of alternatives in the 1986 FEIS was proper. The Tunnel alternative has been reviewed a third time by the County of San Mateo, the Coastal Commission, U.S. Fish & Wildlife Service, Caltrans and the FHWA and it is determined that the tunnel is not a reasonable alternative because it is not the most protective of coastal resources, it is inconsistent with the Coastal Act and the current Local Coastal Program policies, various safety and cost issues.

Earlier this month, Save Our Bay wrote the San Mateo County Board of Supervisor informing them that Caltrans and FHWA have concluded their second supplemental environmental review of the Devil's Slide project. As of today, the Martini Creek Alignment remains the only alternative that the County of San Mateo, state and federal agencies have approved and certified. The U.S. District Court reviewed and ruled in 1995 that all eight Devil's Slide project alternatives (including the tunnels) were properly reviewed and the 1986 Final Environmental Impact Statement is upheld. The Save Our Bay Foundation is asking the Board to acknowledge and support the current findings of the NEPA/CEQA and Coastal Act review process and accept the FHWA's Record of Decision. The Local Coastal Program requires that any alternative other than the Tunnels be placed on the ballot. The Foundation has offered a resolution to the Board that the Martini Creek Alignment (aka Sanctuary Scenic Bypass) for State Highway Route 1 be placed on the November 2000 ballot for voter approval.

Supervisor Gordon responded to the Foundation November 2000 ballot measure request on August 8, 2000 by stating: "Your memo contains false information and misstatements of fact. Most importantly, it also fails to include significant information." The Foundation respectfully requested that Supervisor Gordon's Devil's Slide Tunnel Task Force provide the entire Board of Supervisors, Caltrans, the FHWA, the SOB Foundation and the voters of this County with "all" their documentation of "any" false information and "any" significant information that he claims the Foundation is withholding. The public documents speak for themselves; the U.S. District Court and the California Coastal Commission found that the selection of the Martini Creek Alignment was the alternative most protective of coastal resources and least environmental damaging. The Save Our Bay Foundation believes that a Coastal Act mandated appeal hearing will provide an opportunity to set the record straight!

# SAVE OUR BAY FOUNDATION



*"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:

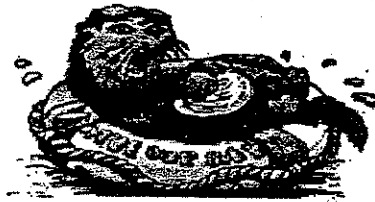
**Subject :** Notice of Violation of the San Mateo County Local Coastal Program, California Coastal Act ,  
U.S. Endangered Species Act and the CEQA/NEPA .

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 24<sup>th</sup> of November by telephone. On Monday November 27<sup>th</sup>, 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 24<sup>th</sup>, 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."



*"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.



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

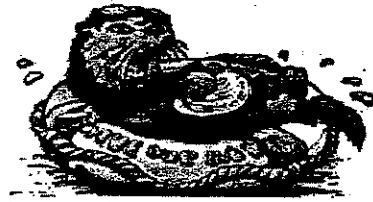
Off-site mitigation of such an impact is not currently allowed under the Coastal Act or Local Coastal Program. As a result, we cannot at this time find that the proposed tunnel design complies with the Local Coastal Program."

- 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 is ....to 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."*

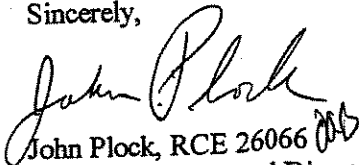
housing or dozen of the other public uses, no matter how badly damaged they were and no matter what the local government is willing to do to restore them.

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

"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" is not a reasonable project alternative because of it's *INCONSISTENCY* with the Coastal Act, Local Coastal Program of San Mateo County, the Endangered Species Act, the lack of funding, 50% more costly than the other alternatives and is not as safe as open air highways. SOB and it's members are particularly concerned by the fact that Caltrans has already caused a "take" of Federally listed species in their efforts to pre-mitigate the tunnel/bridge project site area. This Devil's Slide Highway 1 tunnel alternative clearly jeopardizes listed species (Peregrine Falcon & Red Legged Frog) and destroys and fragments their prime critical habitat. The Devil's Slide Hwy 1 project requires Federal permits and funding. The U.S. District Court approved 1986 SEIR/EIR Martini Creek alignment alternative does not put listed species at risk. There are a total of six other feasible and reasonable alternatives that fulfill the goals of this highway project...none which jeopardize listed species or destroy statutory delineated critical environmentally sensitive habitat areas!

We appreciated your past efforts on behalf of protecting our sensitive coastal resources and know we can count on you to see that this project's CEQA/NEPA review process is not politically corrupted after 15 years of effort. Congratulations on your new appointment as Secretary of Transportation. We at the Foundation are eager to provide your staff with further information and support on the captioned project. Happy New Year and all the best.

CC.

G.P. Bill Wong, Devil's Slide Project Team Leader, FHWA

# SAVE OUR BAY FOUNDATION



*"Change is inevitable..."*

*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.

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



April 3, 2001

Norman Y. Mineta, U.S. Secretary of Transportation  
C/O David G. Ortiz, Assistant Chief Counsel, FHWA  
201 Mission Street, Suite 2100  
San Francisco, CA 94105

Subject: Federal Permit and Funding of Devil's Slide Hwy 1 Project

Dear Mr. Secretary,

This letter is to update you on the Foundations efforts to secure Federal funding for the 1986 Devil's Slide Highway 1 Improvement Project. In my letter of January 4, 2001, I requested your immediate attention and assistance as Secretary of Transportation, by directing the FHWA to submit the 1986 Devil's Slide Highway 1 Second Supplemental EIS/EIR study just concluded to the U.S. District Court (Judge D. Lowell Jensen) so the Court could conclude the judicial review of the Devil's Slide Hwy 1 Improvement Project (Tunnel Alternative) SSEIS/EIR. Litigation regarding the project was commenced in U.S. District Court in the Northern District of California in June 1986 (Sierra Club, et al. v. United States Department of Transportation, et al, Civ. No. 86-3384-DLJ). The project has been enjoined since September 1986, prior to the commencement of any construction. It is with great regret and frustration that I must inform you that Caltrans has violated the U.S. District Court injunction by building a Tunnel mitigation habitat breeding pond in the path of the current FHWA Record of Decision holder and partially funded 1986 SEIR/EIR Martini Creek alignment alternative. The Martini Creek alignment alternative did not put listed species at risk. There are a total of six other feasible and reasonable alternatives that fulfill the goals of this highway project and none which jeopardize listed species or destroy statutory delineated critical environmentally sensitive habitat areas. The Devil's Slide Hwy 1 improvement project requires Federal permits and funding. Caltrans Tunnel construction mitigation actions have caused the loss of obtaining Federal permits or highway funding for the following reasons:

- Caltrans commenced Tunnel mitigation construction activities within the currently 1986 SEIR/EIR approved Martini Creek alignment alternative path in November 2000 prior to receiving approval by the U.S. District Court or the FHWA.
- Caltrans commenced Tunnel mitigation construction on the Devil Slides Tunnel project prior to the FHWA having issued their Record of Decision on the 1986 Devil's Slide Tunnel Alternative Second SEIS/EIR.
- Caltrans Tunnel mitigation construction activities in November 2000 violated Section 9 of the Endangered Species Act and its implementing regulations that prohibits the "take" of federally listed fish and wildlife. The California red-legged frog, a native amphibian believed to have inspired Mark Twain's fabled short story "The Celebrated Jumping Frog of Calaveras County", gained Endangered Species Act protection as a threatened species in May 1996. Just six months after their listing, the voters of San Mateo County approved the LCP Measure-T ballot initiative. The frog has suffered a 70 percent reduction in its geographic range in California as a result of habitat loss and alteration, overexploitation, and introduction of exotic predators. The Shamrock Ranch red-legged frog pond population is the largest known in San Mateo County. See attached Notice of Violation Endangered Species Act dated November 30, 2000.
- The U.S. Fish and Wildlife has designated Shamrock Ranch as critical habitat containing listed species. Critical habitat refers to specific geographic areas that are essential for the

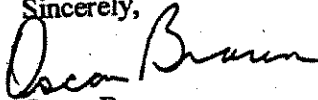
conservation of a threatened or endangered species and which may require special management considerations. A critical habitat designation sets up a preserve if the project requires Federal funding or a Federal permit. Violation of Section 9 of the Act will cause the loss of Federal permits and funding.

- U.S. Fish and Wildlife Service Endangered Species Division Senior Biologist Ken Sanchez informed this Foundation that he would block and impede any investigation of Caltrans Devil's Slide Tunnel project mitigation construction activities in November 2000 that violated Section 9 of the Endangered Species Act and its implementing regulations that prohibits the "take of federally listed fish and wildlife. Caltrans Tunnel construction mitigation actions have caused the loss of obtaining Federal permits or highway funding.
- The San Mateo County Planning Commission denied an appeal by this Foundation to stop the Tunnel mitigation construction and issued Caltrans a Coastal Development Permit to construct a Tunnel mitigation frog pond in the path of the U.S. District Court enjoined Martini Creek alignment alternative. Caltrans Tunnel construction mitigation actions have caused the loss of obtaining Federal permits or highway funding.
- The California Coastal Commission denied an appeal from this Foundation to stop the Tunnel mitigation construction and granted Caltrans a "Conceptual Concurrence" on the Devil's Slide Tunnel project 1986 SSEIS/EIR. Caltrans Tunnel construction mitigation actions have caused the loss of obtaining Federal permits or highway funding.

Mr. Secretary, the Save Our Bay Foundation is asking you to direct Deputy Counsel Ortiz of the U.S. Department of Transportation Federal Highway Administration to report Caltrans violation of the U.S. District Court 1986 construction injunction. We request that Mr. Ortiz ask the U.S. District Court to direct the U.S. Attorney's office to investigate all Caltrans, U.S. Fish and Wildlife Service and the San Mateo County Planning Commission activities in connection with the Devil's Slide Tunnel Project 1986 SSEIS/EIR. The CEQA/NEPA review process has been politically corrupted in San Mateo County after fifteen years of tireless effort by the FHWA. Caltrans Tunnel construction mitigation scheme has violated the Courts injunction, violated the Endangered Species Act and caused the loss of obtaining Federal permits or highway funding.

I have enclosed a letter from former State Senator Quentin L. Kopp, Chair Transportation Committee to a Sierra Club Tunnel proponent for your review. Judge Kopp is a man of great integrity and his understanding of the Sierra Club agenda appears to have been quite prophetic. Please don't allow the potential permanent closure of Devil's Slide and the non-existence of any roadway between Pacifica and Half Moon Bay on the Coastside. My warm regards to you and your family.

Sincerely,



Oscar Braun  
Executive Director

CC: Honorable Michael Nevin, President of the San Mateo County Board of Supervisors  
Special Agent Steve Furrer, U.S. Fish and Wildlife Services Division of Law Enforcement  
Sara Wan, Chair and Members of the California Coastal Commission  
John Blake, Chair EnviroBank Board of Trustees  
Rubin Borrales, Deputy to POTUS

Enclosures: Sierra Club letter, Kopp letter, Nevin Op/Ed piece, Feds order study 9-6-95, NOV to CCC



U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION  
CALIFORNIA DIVISION  
980 Ninth Street, Suite 400  
Sacramento, CA. 95814-2724  
May 3, 2001

IN REPLY REFER TO

HDA-CA

File #: 04-SM-1

Document #: P35340

Control Number: 010423-013 HOA

Mr. Oscar Braun, SOB Executive Director  
1589 Higgins Canyon Road  
Half Moon Bay, California 94019

Dear Mr. Braun:

SUBJECT: REQUEST FHWA TO SUBMIT SSFEIS FOR JUDICIAL REVIEW

Thank you for your January 4, 2001, letter to Secretary Mineta regarding the Devil's Slide project Second Supplemental Environmental Impact Statement/Environmental Impact Report (SSFEIS/EIR) in San Mateo County.

This is in further response to your letter of January 4, 2001, to Secretary of Transportation Norman Mineta. By letter of April 19, 2001, you were advised that my office would respond to the concerns expressed in your letter. Your letter requested that the Secretary direct the Federal Highway Administration (FHWA) to submit the "just concluded" Second Supplemental EIS/EIR for Devil's Slide to the U.S. District Court "so that the Court can conclude [its] judicial review."

As you are aware, the Devil's Slide litigation, Sierra Club v. U.S. Department of Transportation, begun in 1986, is still before the court. However, the Second Supplemental EIS/EIR for the project has not yet been completed. While a draft EIS/EIR was circulated for public and agency review and comment, a final EIS/EIR is not anticipated until this summer. After that, the National Environmental Policy Act (NEPA) process will be completed when FHWA issues a Record of Decision (ROD).

Given FHWA's role as the agency responsible for satisfying the NEPA requirements for this project, our view that those requirements have been satisfied will be reflected in our approval of the final EIS and issuance of the ROD. While these actions may or may not be a consideration in the on-going litigation, given FHWA's role in the NEPA process it is not appropriate for us to seek judicial review of the documents that reflect the agency's position that NEPA requirements have been satisfied.

While we cannot accede to your request, we want to assure you that the concerns that you have raised in your letter to the Secretary and other letters are being fully considered in FHWA's environmental processing of this project. In fact, on January 30, 2001, after you wrote to Secretary Mineta, you and Mr. John Plock met in San Francisco with Glenn Clinton, Joan Bollman, and Bill Wong of my staff, along with Dan Harris of the FHWA Western Resource

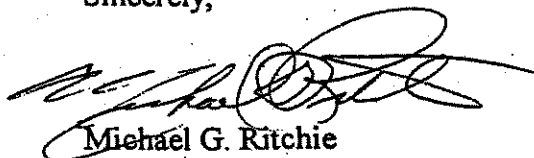
Center, and David Ortiz of the FHWA Chief Counsel's Office, to discuss a number of issues and concerns, including those reflected in your January 4<sup>th</sup> letter.

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 dark ink, appearing to read "Michael G. Ritchie", is written over the typed name.

Michael G. Ritchie  
Division Administrator

# Half Moon Bay Coastside Foundation

## Water Quality Protection Program Mission : Implementation



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

May 23, 2001

To : San Mateo County Planning Commission  
From: Oscar Braun, Captain SOB Watershed Conservation Posse  
Subject: CGF and Staff Proposed Confined Animal Regulations Ordinance  
Purpose: Protect water quality, environmentally sensitive habitats, livestock ,  
the agricultural interests the state, and the publics health and safety.

The Save Our Bay Foundation in 1995 became San Mateo County's most active participant of the Water Quality Protection Program (WQPP) of the National Oceanic and Atmospheric Administration and San Mateo Countywide Storm Water Pollution Prevention Program (STOPPP). The WQPP is a coalition of twenty-seven federal, state and local agencies, public groups, representatives of the agricultural, boating, equestrian communities, and businesses working to develop and carry out a long-term, proactive water quality management plan for the Sanctuary's eleven watershed regions. The program's goals are to address existing water quality concerns and to prevent the kinds of expensive water pollution crises that have occurred elsewhere in the county. SOB Watershed Conservation Posse goal is to inform the public and responsible officials of the environmental consequences of their decisions before they are made and to consider alternatives to proposed actions affecting water quality and watershed ecosystem.

The Peninsula watershed produces, collects and stores high quality drinking water for 2.4 million Bay Area residents and is a haven for a variety of habitats and supports the "highest concentration" of rare, threatened and endangered species in the Bay Area. The Clean Water Act and the Endangered Species Act are Federal environmental regulatory statutes that are meant to protect and sustain our communities and sensitive and crucial natural resources. A violation of these Acts disqualifies the violating County from being granted Federal and State permit approval (ROD) or funding.

San Mateo County has allowed, without benefit of USFWS or State Fish & Game site plan or EIR review, at least four prohibited and detrimental commercial/industrial classified operations that violate the Clean Water Act and the Endangered Species Act.. The prohibited and detrimental commercial/industrial operations are Shamrock Ranch, Wildlife Associates, Half Moon Bay Sealing & Paving and Johnston Ranch unlicensed landfill. The County of San Mateo Planning Commission has reclassified prohibited uses and found, based on the advice of the Planning Administrator and lobbying by the Committee for Green Foothills, that these four commercial/industrial operators activities conducted in statutory delineated critical environmentally sensitive habitats qualify as *a non-residential uses accessory to agriculture and permitted by right in the Planned Agricultural District on either prime or non-prime soils*. By allowing these four reclassified prohibited and detrimental commercial/industrial facilities uses to operate without benefit of EIR review or permits, the County of San Mateo violates both CEQA/NEPA environmental review statutes. Clean Water Act or Endangered Species violations disqualifies the County from receiving State or Federal permit approval (ROD) and funding..

→ In the Spring of 1997, the Shamrock Ranch stable owners were notified by USFWS that tenant Wildlife Associates must vacate Shamrock Ranch area because they cannot house their prohibited "wild Detrimental species" on statutory delineated critical habitat areas containing endangered species and prohibited under a proposed Caltrans "conservation easement". The California Legislature finds and declares prohibited "wild Detrimental species" are listed because they pose a threat to native wildlife, the agricultural interest of the state and the publics health and safety. ". The State ONLY requires a permit for prohibited wild Detrimental species and specifically declares: "Family Equidae (horses) is



# Half Moon Bay Coastside Foundation

## Water Quality Protection Program Mission : Implementation



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

*not prohibited and is exempt from permit requirements. Also, the State exempts cattle, yak, sheep, goat, swine, Llama, Alpaca, or hybrids of llama, alpaca and guanacos. The Federal and State only require a permit for "WILD ANIMALS". All farm animals and livestock are exempt.*

### **SOB Findings: Proposed Confined Animal Ordinance:**

- The keeping of horses and other livestock does not pose a treat to native wildlife, the natural environment, the agricultural interests of the State or to the publics health and safety.
- The keeping of horses and other domestic livestock does not violate either the Clean Water Act or Endangered Act and does not disqualify this County from being granted State and Federal permit approval (ROD) or funding.
- **The keeping of horses and farm animal livestock is in fact a use accessory to agriculture and thus a permitted right of use in this State .**
- The San Mateo County equestrian community has circulated the following SOB Posse authored petition and have gathered over 2500 signatures: **SAVE OUR HORSES!** Our horse community is under siege and rapidly becoming a candidate for the "endangered species" list. Horse owners throughout the County of San Mateo are fighting a losing battle against the unfair burden of sky rocketing "special" taxes, fees and zoning laws that are destroying the rich historical legacy that these magnificent animals have represented. This State considers horses to be livestock and requires no fees or taxes on these farm animals herbivores...horses, cows, sheep, goat etc. San Mateo County has a special "non-livestock" definition for horses and assess extremely high fees and taxes. Our horse population is literally disappearing from rural San Mateo County. Sign this petition to save our horse heritage. Sign this petition to bring San Mateo County horse ordinance into conformance with the USDA and California definition of livestock. Sign this petition to end special taxes and fees on horses. Sign this petition to protect the quality of life in San Mateo County! It's a rural legacy worth passing on to our children!

**The SOB Posse proposes that the Planning Commission declare: "horses and all farm animal livestock keeping a use accessory to agriculture and thus a permitted right of use in the Rural Lands. All livestock is exempt from any confined animal regulation ordinances in the San Mateo County Rural Lands.**

**A SOB Posse Invitation:** In the afternoon (between 2 to 4 pm) of June 13, 2001, the SOB Posse would like to invite the Staff and Planning Commissioners on a brief Coastside tour of a existing private horse stables on the Coastside. The first is located in an urban area, Hwy 92 beside the Hilltop Market at the entrance of the City of Half Moon Bay. The other stable is in the Rural Lands just outside the City of Half Moon Bay on Higgins Purisima Road (less than 2 miles from Main St.) The Moon Acres Ranch occupies the upper boundaries of the historic Johnston Ranch; Moon Acres over looks the Arroyo Leon and Mill Creek environmentally sensitive habitat areas (ESA) The Ranch is used as the SOB Posse staging facility and trail head for the Peninsula Watershed Equestrian Trail network. My wife and I applied for a stable permit back in 1998 and have spent nearly \$27,000 on stable permit fees, mandated development plans and legal representation . The Planning staff after nearly four years has yet to process our stable application and issued us a stable permit. San Mateo County has issued only 32 stable permits in the last 50 years for a horse population estimated between 5,000 to 8,000 animals.

# Half Moon Bay Coastside Foundation

## Water Quality Protection Program

### Mission : Implementation



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

October 1, 2001

Ms. Loretta Barsamian  
Executive Officer  
1515 Clay St., Suite 1400  
Oakland, California 94612

Subject: STOPPP's Pollution Control Efforts and Eco-terrorism

Dear Ms. Baramian:

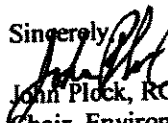
On September 11, 2001 the Bay Area lost one of it's finest environmental protection soldiers. Alan Beaven, former Chief Clean Water Act Legal Counsel for our non-profit Half Moon Bay Coastside Foundation aka Save Our Bay died on the terrorist hi-jacked United Airline Flight 93 bound for San Francisco. Alan's fearless passion was the protection of the Bay Area's drinking water, its quality and the watershed's natural systems. He was instrumental in the formation of the SOB Foundation's EnviroBank and the Watershed Quality Protection Partnership MOU. Alan's last endeavor on behalf of the WQPP was to bring the new owners of an illegal landfill into full compliance. This open space landfill has no NPDES Stormwater Permit, as required by the Clean Water Act, 33 U.S.C. Sec.1311(a) and has the potential to pollute, if it is not already doing so, the steel head stream Arroyo Leon, it's adjoining wetlands and coastal waters. Unfortunately, Alan did not live to see the fulfillment of his efforts. On behalf of the WQPP and as a tenured guest on the San Mateo Countywide STOPPP TAC, I am requesting your support and that of the State RWQCB staff members Susan Gladstone, Habte Kifle and Ann Crum, in fulfilling Alan's quest for the owners of the unlicensed landfill, Peninsula Open Space Trust - to come into full compliance.

This past week, our WQPP Executive Director, Oscar Braun provided an extensive briefing to the FBI Terrorism Task Force outlining risk assessment for the SFPUC and Peninsula watershed unsecured areas and suspected eco-terrorist activities in San Mateo County. San Mateo County harbors many organizations that have gone to extreme measures to prevent the sustainability of SF Peninsula communities dependent on the Hetch Hetchy regional water system. These organizations have lobbied for decades that the Peninsula coastal zone, which comprises 75% of Peninsula watershed, should only be provided substandard levels of law enforcement, fire protection, water, sewer, emergency access roads and other infrastructure elements required to sustain watershed dependent communities and their natural systems. The Natural Resource Defense Council 1999 & 2000 report has identified San Mateo County as containing the most polluted waters in the Bay Area, posing the highest level of risk to the public's health and safety. Decades of anti-infrastructure policies has virtually killed the SF Peninsula's urban watershed.

The Bay Area's drinking water supply is at greater risk now more than ever: From disruptions and shortages in the event of a Peninsula watershed wildland area firestorm, drought or arson/chemical/biological terrorist attack. All Bay Area community elected officials should take immediate steps to reduce the risk of a catastrophic outage for more than 2.5 million regional water system users. Now is the time to increase our efforts to protect California's future by joining a new Watershed Quality Protection Partnership (MOU) and implementing it's goals.

I have enclosed the some of Alan Beaven's case documents regarding his illegal landfill compliance efforts, EnviroBank WQPP program information and some background material on anti-community activities for your files.

Sincerely,

  
John Plock, RCE 26066  
Chair, Environmental Review Director

CC. Honorable San Mateo County Board of Supervisors, Anna Eshoo, Byron Sher, Joe Simitian, Louis J. Papan, Dianne Feinstein John Burton, Willy Brown, James Asche, Steven Wert, Joe Naras, Arthur Jensen

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

# Half Moon Bay Coastside Foundation Alan Beaven's Living Legacy



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

October 23, 2001

To: Christopher Sproul, Assistant Regional Counsel, EPA  
Joseph Tabacco Jr., Berman, DeValerio, Pease, Tabacco, Burt & Pucillo  
Ms. Rosie Slaughter, Director-Examination TE/GE Division, IRS  
Ms. Loretta Barsamian, Executive Director, San Francisco Regional Water Quality Control Board  
From: Oscar Braun, Executive Director, WQPP Coastside Posse

Re: Continued Violations of Clean Water Act and Endangered Species Act by Peninsula Open Space Trust (POST).

Enclosed please find discovery documents and a deposition for the last Clean Water Act lawsuit brought by Alan Beaven on my behalf, Oscar A. Braun versus Towne Pacific Half Moon Bay L.L.C. On November 19, 1999 the parties settled case ( # 406800) and the plaintiff filed a notice of dismissal within ten days of the parties signing a settlement agreement. Please note that a portion of the deposition of Christopher Lau accompanied by selected POST discovery documents are marked "Confidential Available to Counsel and Retained Experts Only". Alan informed me after the settlement, that POST had acquired the property in "As Is" condition and "Fully Indemnified" Towne Pacific prior to purchasing the property. He also informed me that Towne had fully disclosed "all" information regarding the twenty-five year landfill operation. The confidential deposition documents also reveals Tom Pacheco's role as operator of the 250 acre landfill and the fact that it was Tom Pacheco and Gary Giovannoni that conducted the Level II survey sample borings of their landfill operation on behalf of Towne (note site sampling photos). Finally, the confidential documents reveal that POST representatives were present during the Level II sampling by Pacheco and Giovannoni contrary to instructions issued by the County of San Mateo Environmental Health's Ann Jensen to be notified in advance of the Level II survey. Alan sent me all his case documents for storage prior to his planned one year sabbatical in India. The Half Moon Bay Coastside Foundation is a tenured coalition member of NOAA's Water Quality Protection Program and as such is formally requesting that the EPA and RWQCB issue POST a Notice of Violation and Enforcement Orders for the following violations:

- The Coastside Posse is asking EPA to file a NOV of the Clean Water Act (CWA) Section 404. Issue Peninsula Open Space Trust an Enforce Order for their unlicensed landfill located in a wetland environmentally sensitive area (ESA) containing listed species without applying for the required CWA NDPES permits. The Watershed Posse further requests EPA ask the Court to assess the maximum fines for each and every violation committed by this 501©3 open space land Trust's breach of the public trust. Additionally, we are asking the EPA to seek Court protection for the water resources controlled or managed by POST. The Half Moon Bay Coastside Foundation is requesting that the Court appoint the HMBC Foundation as a conservator of the lands of POST. We further are requesting that POST be disqualified from receiving any State or Federal permits or funding because of their multiple violation of the CWA and gross breach of the public trust.
- We are requesting that the EPA issue a referral to the U.S. Fish and Wildlife Service of multiple violations of the Endangered Species Act Section 9 (take) of listed species in a dedicated ESA wetland and Arroyo Leon steelhead stream. The Coastside Watershed Posse is asking that the Service issue an enforcement order and recommend the maximum fines and penalties be assessed by the Court. POST should be disqualified from receiving any State or Federal issued permits or funding grants because of their multiple Section 9 violations and gross breach of the public trust.

# Half Moon Bay Coastside Foundation Alan Beaven's Living Legacy



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

- The Half Moon Bay Coastside Foundation is formally filing this complaint with the IRS Ms. Rosie Slaughter, Director of Examination TE/GE, regarding POST's multiple violations of the Federal Clean Water Act and Endangered Species Act while benefiting from being granted their special 501©3 tax exempt status. We are requesting a full and complete examination and audit of the Peninsula Open Space Trust books and business dealings. We are requesting that POST's 501©3 tax exempt status be immediately suspended until such time a final determination can be issued by the Internal Revenue Service. POST continues to receive ten of millions of State and Federal funding grants in addition to the millions pledged or donated to their open space trust by the public at large. POST has breached the public trust, continues to pollute our coastal steelhead streams and the waters contained within the borders of the Monterey Bay National Marine Sanctuary. Alan Beaven notified POST on February 22, 1999 that "when POST acquires the property it will become liable in nuisance for any pollutants emanating from its property." Ergo, POST had full environmental disclosure from the seller Towne, tenant Tom Pacheco, Coastside Watershed Posse Executive Director Oscar Braun and the Foundation's Clean Water Act legal counsel Alan Beaven prior to the purchase of the Johnston Ranch landfill and thus POST exercised informed consent.

In closing, our Coastside Watershed Posse, co-founded by Alan Beaven, would appreciate an acknowledgement of receipt of this formal complaint from the EPA, RWQCB and IRS. The Half Moon Bay Coastside Foundation has additional documents regarding the POST properties and will make their staff and records available to all regulatory agencies involved in processing this complaint. We are asking Alan's friend and colleague Joseph Tobacco Jr. to monitor the actions of the captioned regulatory agencies and assist them before the Courts if required.

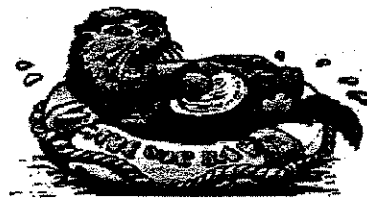
Sincerely,

Oscar Braun, Executive Director WQPP

Enclosures: Documents RE: General Order 97-03 State Water Resource Control Board, Deposition of Christopher Lau October 21, 1999, Confidential Deposition of Christopher Lau Available to Counsel and Retained Experts Only, Mission Statement, Coastside Posse's Living Legacy, Memorial Services Celebrating the Life of Alan Anthony Beaven with Poem by his son John Beaven.

CC: FBI Terrorist Task Force, Marcia Raines, San Mateo County Director of Environmental Services

# SAVE OUR BAY FOUNDATION



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

## Protecting California's Future

December 26, 2001

To: Honorable SMC Board of Supervisors  
From: Oscar & Andrea Braun  
Subject: Stable/Affordable Housing Appeal of PLN-1999-00079

The purpose of this letter is to respectfully request that the Board of Supervisors uphold the SMC Planning Commission's legalization of our horse stable and affordable housing without conditions or mitigation measures. We request that the Board also take into consideration the following track record of the appellants during their review.

On December 6, 1995, Lenny Roberts told the San Mateo County Board of Supervisors that they are "partners" with the Committee for Green Foothill and Sierra Club for implementing the 1994 Coastsides Protection Initiative. Ms. Roberts directed the Board of Supervisors to instruct the Planning Commission to begin the legislative process contained in their 1994 initiative. The Board was further instructed that the Planning Commission focus **only** on the specific amendments contained in their initiative and not broaden the proposal beyond that. These specific amendments included: Reduction of government expenditures; reduction of costs to San Mateo County taxpayers for roads, law enforcement, fire protection, and other government services for scattered and remote development (aka Rural Lands). The initiative defined perceived "Development Treats" and claimed that pressure for extensive development on the Coastsides was severe, especially with proposed construction of increased water supplies, additional sewage treatment facilities, and larger highways.

The official public record shows what accomplishments the 1994 Coastsides Protection Partnership has brought to the voters of San Mateo County and the quality of life on the Coastsides.

- In 1999 & 2000 San Mateo County was found to be the most polluted county in the Bay Area...from sewage discharge and stormwater runoff by the Natural Resource Defense Council.
- All roads in the San Mateo County coastal zone are sub-standard and the CGF/Sierra Club Tunnel boondoggle has successfully failed the EIR process for the third time. The Tunnel Task Force greatest achievement has been Devil's Slide Hwy 1 improvement delay and loss of Federal funding.
- The San Mateo County Wildlands/Urban Interface (WUI) now has the highest risk level in history for a catastrophic WUI wildfire threatening the Bay Area's regional water system. The CCWD currently cannot deliver enough water or head pressure in the event of a WUI fire in approximately 40% of the Coastsides.
- Effectively blocked PMAC supported flood control implementation measures to protect CDF Fire/Rescue/Emergency access to Pescadero



*"Change is inevitable...*

*Survival is not."*

# Protecting California's Future

from the West continues to be delayed . Endless CCC appeals resulting in: No Boys & Girls Club, no middle schools, no nun convents, no expanded health care clinic services, no affordable housing for our community employees, even less substandard sheriff and fire protection throughout the Rural Lands.

- San Mateo County has allowed, without benefit of USFWS or State Fish & Game site plan or EIR review, at least four prohibited and detrimental commercial/industrial classified operations that violate the Clean Water Act and the Endangered Species Act. The prohibited and detrimental commercial/industrial operations are Shamrock Ranch, Wildlife Associates, Half Moon Bay Sealing & Paving and Johnston Ranch unlicensed landfill. The County of San Mateo Planning Commission has reclassified prohibited uses and found, based on the advice of the Planning Administrator and lobbying by the Committee for Green Foothills Lenny Roberts, that these four commercial/industrial operators activities conducted in statutory delineated critical environmentally sensitive habitats qualify as non-residential uses accessory to agriculture and permitted by right in the Planned Agricultural District on either prime or non-prime soils. By allowing these four reclassified prohibited and detrimental commercial/industrial facilities uses to operate without benefit of EIR review or permits, the County of San Mateo violates both CEQA/ NEPA environmental review statutes. Clean Water Act or Endangered Species violations disqualifies the County from receiving State or Federal permit approval (ROD) and funding.

In closing, as stated on the record before the Planning Commission: Applicants do not concur with the Mitigation Measures for Case #PLN 1999-0079, a project to legalize Moon Acres agricultural structures. San Mateo County Environmental Services Agency, at the direction of Lenny Roberts, has conducted a four year campaign of unlawful punitive retaliation against the Braun family in response to their "lawful whistle blowing" complaints brought by the Half Moon Bay Coastside Foundation's Watershed Posse against the County. Environmental Services has coerced and unlawfully compelled the Brauns to sign the mitigation agreement document. The Brauns have suffered significant financial damages from the actions of the San Mateo County Environmental Services Agency and are not precluded from now giving their notice of intent (NOI) to file a criminal complaint with the U.S. Attorney for violations under the U.S. anti-racketeering and environmental protection statutes.

In our opinion, as long as the San Mateo County Board of Supervisor's supports the agenda and purpose of the Anti-Community Alliance's (Committee for Green Foothills, Sierra Club, Peninsula Open Space Trust, Mid-Peninsula Open Space District) 1994 Coastside Protection Initiative, the quality of life, health and safety of all communities in San Mateo County will continue to be at risk.

# Half Moon Bay Coastside Foundation

## Water Quality Protection Program Mission : Implementation



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

January 17, 2002

To: Honorable Jerry Hill, President, San Mateo County Board of Supervisors  
From: Oscar Braun, Executive Director, WQPP Coastside Watershed Posse  
Subject: Final Notice of Violations: POST, Half Moon Bay Sealing & Paving, Wildlife Associates

Dear Jerry,

Enclosed please find three Notices of Violations (NOV) of the Clean Water Act, Endangered Species Act and Coastal Act presented to the County of San Mateo over the last twenty five months. The Coastside Watershed Posse has requested that the County:

- Require the three cited violators to apply for the required Coastal Development Permits (CDP).
- Require the three cited violators to conduct EIR studies for their illegal development within a delineated Environmentally Sensitive Area (ESA),
- Require POST to fully comply with State Water Resources Control Board, Water Quality Order No.97.03 by applying for a permit to operate a landfill.
- POST must comply with the 1998 County of San Mateo's order to conduct a full sub-surface level II (soil) assessment/survey on the entire landfill area (250 acres) while being supervised by SWRCB certified engineers. **NOTE: The sworn declaration of Anne T. Jensen, R.E.H.S. provided by the County to the Court stated in part...."Defendant provided me with a copy of its Level I and Level II assessment of the property. The Level II assessment contained the analysis of three (3) soil borings No water quality samples were included. At no time was I notified of the implementation of this investigation and therefore, I am unable to comment on the adequacy of the sampling. (attached please find Jensen's signed declaration before the Court)**
- POST must place water quality monitoring wells throughout their Johnston Ranch landfill operation area.
- POST must acquire a NPDES permits for discharging pollutants into the States' water bodies.

The Coastside Watershed Posse has petitioned the Court to appoint the Half Moon Bay Coastside Foundation as a conservator of the POST Johnston Ranch landfill holdings. The Foundation intends to establish an environmental remediation fund to benefit the Arroyo Leon and the ground water reservoir lying only fifteen feet below the landfill. The C.W.Posse is requesting for the final time that the County exercise their regulatory responsibility by enforcing full compliance with the CA, CWA, ESA environmental protection laws. Without enforcement, the County and the Foundation will not be able to secure any Proposition 13 funding because of these three cited commercial and industrial non-permitted violators. We are respectfully requesting that the Planning Administrator Terry Burnes notify our Executive Director Oscar Braun, by close of business Friday the 25<sup>th</sup> of January of the County's intentions regarding issuing their Notices of Violation (NOV) for the above captioned violations.

Sincerely,

Oscar Braun,  
Executive Director

CC. Marcia Raines, Terry Burnes, Mark Delaplaine CCC, C.Sproul EPA, Loretta Barsamian RWQCB, FBI Task Force, R. Slaughter TE/GE IRS, Willy Brown, Dianne Feinstein, John Burton, Anna Eshoo, Byron Sher, Joe Simitian, Louis J. Papan,

# Half Moon Bay Coastside Foundation

## NOAA's Water Quality Protection Program



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

Transmitted Via Email & U.S. Postal Service  
Published at [www.saveourbay.org](http://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 1<sup>st</sup>, 10<sup>th</sup> 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 8<sup>th</sup>, by enclosed letter, Supervisors Richard Gordon responded for the County of San Mateo and as Chair of the Sierra Club Tunnel Task Force.
- On August 24, 2000, the Half Moon Bay Coastside Foundation aka Save Our Bay appealed by letter (see enclosed) to the San Mateo County Board of Supervisors to deny the Coastal Development Permit granted to Caltrans for the construction of a Tunnel mitigation pond for transfer of endangered species red-legged frogs granted by the San Mateo County Planning Commission. The Board of Supervisors denied our appeal without cause.
- On September 26, this Foundation via letter (enclosed) requested that Mark Delaplaine, the Federal Consistency Supervisor for the California Coastal Commission include the Foundation's provided Bosa Chica Ruling citation on Project Alternatives, Section 30240 & 30007.5 and Standard of Review for the Coastal Commission. Our CCC written request was courtesy copied to the San Mateo County Board of Supervisors and San Mateo County Planning Commission. Please note that the two primary Petitioners and Real Parties in Interest Bolsa Chica Land Trust were the Sierra Club and Surfrider Foundation. On April 16, 1999 the Fourth Appellate District Court filed their ruling: "We find the trial court erred with respect to relocation of the bird habitat. The Coastal Act does not permit destruction of an environmentally sensitive habitat area (ESHA) simply because the destruction is mitigated offsite. At the very least, there must be some showing the destruction is needed to serve some other environmental or economic interest recognized by the act." Find enclosed entire Bosa Chica ruling provided the Coastal Commission.
- On November 30, 2000, via enclosed letter, this Foundation notified Sara Wan, Chair, and Members of the California Commission re: **Subject :** Notice of Violation of the San Mateo County Local Coastal Program, California Coastal Act, U.S. Endangered Species Act and the CEQA/NEPA. The Coastal Commission refused to acknowledge or investigate our November 30, 2000 NOV. Enclosed please find a letter from the U.S. Fish and Wildlife Service to Caltrans



# Half Moon Bay

## Coastside Foundation

### NOAA's Water Quality Protection Program



*"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 placed in a new pond located in a former horse pasture outside of the footprint of the project. The removal of the frogs from the north pond to the new pond has now been achieved, and a barrier fence has been installed around the north pond. This barrier fence will prevent any California red-legged frogs from getting out of the north pond. Since the frog population has been removed from the north pond, it is expected that the Geotechnical Investigation Program will have no effect on foraging or extivating frogs in the pond area. However, California red-legged frogs are present in the area and their natural instincts to seek out the ranch ponds could result in red-legged frogs wandering into the vicinity of Boring Sites 6, 7, 8, and 9. The barrier fence at the north pond is equipped with one-way funnel openings that allow wandering frogs to enter the pond enclosure but prevent them from leaving the enclosures.* "
- Enclosed please find San Mateo County Counsel letter dated January 25, 2001 to Harry Yahata, District Director Caltrans District 4, Re: Devil's Slide Tunnel Project. The opening paragraph states in part: "You have requested that the County clarify statements made in a letter dated May 11, 1999, from Paul M. Koenig, San Mateo County Director of Environmental Services, to Robert Gross and Ed Pang of your office. The letter offered comments regarding the Second Supplemental Impact Report. Your specific request is that the County further explain the statement made at page four of the letter that off-site mitigation of wetland impact is not allowed under the Coastal Act, and that, as a result, the County could not find that the proposed tunnel design complies with the County's Local Coastal Program. After further review of this matter, we have concluded the this statement was made in error. Our view is that a coastal development permit for a tunnel at Devil's Slide could be approved as consistent with the Country's Local Coastal Program notwithstanding some impacts to wetlands." San Mateo County and the

# Half Moon Bay Coastside Foundation

## NOAA's Water Quality Protection Program



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

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.

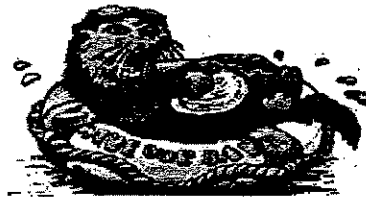
Sincerely,

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 Zumbrun, Esquire, Pacific Legal Foundation  
Jerry Hill, President, San Mateo County Board of Supervisors

# Half Moon Bay Coastside Foundation

## Water Quality Protection Program



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

Via Certified Mail

April 5, 2002

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

Re: Devil's Slide Tunnels Freeway Mitigation Project : File Number PLN2001-00799

Dear Director Yahata,

On March 27, 2002, based on information provided by staff memorandum presented at the hearing, the San Mateo County Planning Commission accepted staff's recommendation and approved a Coastal Development Permit (CDP) for the \$270 million Sierra Club Devil's Slide Hwy 1 Tunnels Freeway Project for illegal ESHA mitigation construction activities. Within minutes following the Planning Commission's non-compliant CDP approval, I filed an appeal with Notice of Violation (NOV) documents on behalf of the Coastal Family Alliance and the Half Moon Bay Coastside Foundation aka Save Our Bay to the Board of Supervisors.

The Coastal Family Alliance is requesting that Caltrans withdraw their non-compliant Devil's Slide Tunnels Project mitigation application File # PLN2001-00799 that has been appealed to the San Mateo County Board of Supervisors. The reason supporting Caltrans withdrawing their Devil's Slide Tunnels Freeway mitigation project application is that the County of San Mateo on May 11, 1999 lawfully notified Caltrans during the CEQA/NEPA statutory comment period that "the County could not find that the proposed tunnel design complies with the County's Local Coastal Program (LCP)." The Coastal Commission lawfully notified Caltrans on May 12, 1999 that the Devil's Slide Tunnels Freeway Project does not comply with the San Mateo County LCP or Coastal Act and Caltrans could not be granted a Coastal Development Permit (CDP) for the Tunnels Freeway Project. By memorandum dated March 21, 2002 to the SMC Planning Commission, Project Planner Michael Schaller, noted that the revised Devil's Slide Tunnels Freeway Mitigation Site CDP application was: .... "as much as possible into compliance with the County's LCP. The applicant redesigned the project after consultation with the County and the Coastal Commission regarding the applicability of Measure-T and its provisions." This memo is a clear restatement by the County and Coastal Commission that the \$270 million Devil's Slide Tunnels Freeway Project does not fully comply with the LCP and the Coastal Act. Ergo, San Mateo County Planning staff ESHA mitigation opinions regarding the Devil Slide Tunnels Freeway Project will not indemnify Caltrans or nullify the Coastal Commission's Adopted Findings for the San Mateo County LCP regarding NO ESHA MITIGATION.

If Caltrans proceeds with the \$270 million Sierra Club Tunnels Freeway mitigation activities, it is with the full knowledge that this "mitigation project" DOES NOT comply with the LCP and Coastal Act. Violations of the LCP and Coastal Act by Caltrans will disqualify Caltrans from being granted Federal permits and the \$270 million in needed FHWA funding. Measure-T as adopted into the LCP requires FULL compliance (not "as much as possible compliance") with the Local Coastal Program and Coastal Act. The Coastal Family Alliance is asking Caltrans to cease and desist their statutory declared non-compliant mitigation activities until the County of San Mateo and the Coastal Commission rescind their LCP adopted findings for the Sierra Club Devil's Slide Tunnels Freeway Project. The SMC voter approved Measure-T requires full compliance with the LCP and the Coastal Act.

Sincerely

Oscar Braun, Executive Director

CC

Norman Y. Mineta, U.S. Secretary of Transportation  
Maier Khaled, FHWA Team Leader, 1986 Devil's Slide Highway 1 Improvement Project

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

# Half Moon Bay Coastside Foundation

## Water Quality Protection Program

### Mission : Implementation



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

Mr. Gary N. Hamby  
Division Administrator  
Federal Highway Administration  
California Division  
980 Ninth Street, Suite 400  
Sacramento, CA 95814-2724

November 21, 2002

Attention: G. P. Bill Wong & David Ortez Esq.

Dear Mr. Hamby

#### **SUBJECT: REVIEW OF RECORD OF DECISION OF THE FINAL SSEIS-DEVIL'S SLIDE**

The Half Moon Bay Coastside Foundation aka Save Our Bay (SOB) has reviewed the above captioned ROD in order to determine "both whether substantial evidence supports the FHWA ROD findings and whether the findings support the agency's decision". (Citation) SOB's review of the Devil's Slide project Final SSEIS has determined that the FHWA ROD approved preferred twin tunnels/bridges/mitigation alternative does NOT cause the least damage to the biological and physical environment and is not consistent with the local and regional planning. Therefore, in remembrance for Flight 93 hero, SOB's California Watershed Posse co-founder Alan Anthony Beaven, Esq., "a Californian aboard Flight 93 who helped prevent the terrorists from crashing another airplane into its intended target on September 11, 2001" (Senator Feinstein), we respectfully ask the FHWA to re-open the Final SSEIS document for the purpose of providing the FHWA new documented factual information revealing effects of the Devil's Slide Highway Improvement Project that may affect federally listed species or critical habitat in a manner not identified to date. For further information please visit: [www.cwposse.org](http://www.cwposse.org) or [www.thepebble.info](http://www.thepebble.info)

#### **STANDARDS OF REVIEW : SIERRA CLUB v. CCC PETITION FOR WRIT OF MANDATE**

The standards which governed SOB's review of your agency's decision are set forth in the Court of Appeals opinion in *Sierra Club v. California Coastal Commission* (1993). *"The agency which renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order....By focusing....upon the relationships between evidence and findings and between findings and ultimate action, the Legislature sought to direct the reviewing courts attention to the analytic route the administrative agency traveled from evidence to action. In so doing, we believe that the Legislature must have contemplated the agency would reveal this route."* (Citation)

*"In determining whether substantial evidence supports an agency's reasoning process, the trial court must look at the whole record (Citation) "The "in light of the whole record" language means that the court reviewing the agency's decision cannot just isolate the evidence supporting the findings and call it a day, thereby disregarding other relevant evidence in the record. (Citation) Rather, the court must consider all relevant evidence, including evidence detracting from the decision, a task which involves some weighing to fairly estimate the worth of the evidence. (Citation) That limited weighing is not an independent review where the court substitutes its own findings or inferences for the agency's. (Citation) It is for the agency to weigh the preponderance of conflicting evidence (citation). Courts may reverse an agency's decision only if, based on the evidence before the agency, a reasonable person could not reach the conclusion reached by the agency."(Citation)*

#### **ADOPTED FINDINGS SAN MATEO COUNTY LCP AMENDMENT NO. 1-96** **DEVIL'S SLIDE TUNNELS PAGE 11**

# Half Moon Bay

## Coastside Foundation

### Water Quality Protection Program

#### Mission : Implementation



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

**Twin Tunnels Alternative:** *"The conceptual tunnel design discussed above may very well be representative of the tunnel that is actually constructed. However, the design is only preliminary and the political process for securing funding, the environmental review process, the permitting process, and the final design process could all lead to significant changes in the design. Thus, in its review of the proposed LCP amendment, the Commission must consider the possibility that other designs that meet the basic criteria set forth in the Tunnel Initiative could ultimately be proposed and that in CERTIFYING the proposed LCP amendment, the Commission is NOT APPROVING ANY PARTICULAR TUNNEL DESIGN. NOTE: Page 4 of Adopted Finding for SMC LCP Amendment No. 1-96, Timing and Capacity of Later Phases 2.54c "Require that the roadway improvements be consistent with policies of the Local Coastal Plan, particularly the Sensitive Habitats and Agriculture Components."*

**Bypass Alternative:** *"Existing LUP Policy 2.54(b) describes the bypass alternative in the following terms: For Route 1, allow construction of a two-lane bypass with slow vehicle lanes on uphill grades around Devil's Slide. The County's preferred alignment is in the area of Martini Creek which bypasses Devil's Side and rejoins the existing Route 1 north of Montara..."*

*Just as the proposed amendment would not dictate a particular tunnel alignment or design, the existing LCP policies do not dictate a particular bypass design. However, in February of 1986, Commission reviewed Consistency Certification No. CC-45-85-submitted by Caltrans for the development of an overland bypass. The consistency certification was necessary because Caltrans was applying for federal funding for the project. The Commission concurred with the consistency certification. As the design was approved by the Commission and other agencies, and CalTrans has invested significant resources in design, environmental review, and litigation in the project, the bypass project approved by the Commission under Consistency Certification No. CC-45-85 represents the most likely bypass alternative design that would be built pursuant to the LCP policies.*

#### **FACTUAL HISTORY**

In 1986 the Sierra Club filed suit in U.S. District Court over the issue of deficiencies in the FIES with regards to "noise" and its environmental consequences and mitigation measures. "In March 1995, the Federal Highway Administration (FHWA), in cooperation with the California Departments of Transportation (Caltrans), issued a Draft Supplemental Environmental Impact Statement/Environmental Impact Report (SEIS/EIR). The Final Environmental Impact Statement (FEIS) was originally approved on April 16, 1986, for a proposal to improve State Route 1 in San Mateo County, California. The preferred alternative, identified in the FEIS and selected in the FHWA Record of Decision signed on May 30, 1986, is known as the Martini Creek Alignment."

"As indicated in the Draft Supplement, the purpose of the document is to comply with the Order and subsequent Judgment of the U.S. District Court following litigation regarding the project. The Supplement is limited to addressing the deficiencies in the FEIS determined in the litigation, and therefore, only addresses noise issues. A tunnel alternative was considered and rejected as part of the CEQA/NEPA environmental review process in 1986. The U.S. District Court subsequently determined that the treatment of alternatives in the 1986 FEIS was proper. Although only noise-related issues were addressed in the 1995 Draft SEIS, comments were received indicating a tunnel alternative would avoid project noise impacts. This issue has been reviewed, and it is determined that the tunnel is not a reasonable alternative because of its inconsistency with current planning policies, the lack of funding, and various safety and cost issues." (Quotation from SEIS June 1995 Tunnel Investigation)

#### **"CONSISTENCY WITH THE COASTAL ZONE ACT HAS NOT BEEN OBTAINED"**

**FHWA to CALTRANS 8/02/00** *"Consistency with the Coastal Zone Act has not been obtained. The response to the County of San Mateo's comments that the wetlands and riparian habitat impacts and the off-site mitigation is not currently allowed under the Coastal Act or Local Coastal Program. There is no indication that an alternative analysis of fill disposal option and request for preliminary Federal Consistency Determination is in progress and therefore we do not have closure on the consistency determination. These alternatives may have additional*

# Half Moon Bay Coastside Foundation

## Water Quality Protection Program Mission : Implementation



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

*unevaluated impacts that would not be disclosed in this document." (citation from HAD-CA File #04-SM-1 Document # P32748)*

**SMC to CALTRANS 01/25/01** " Dear Mr. Yahata: You have requested that the County clarify statements made in a letter dated May 11, 1999, from Paul M. Koenig, San Mateo County Director of Environmental Services, to Robert Gross and Ed Pang of your office. The letter offered comments regarding the Second Supplemental Environmental Statement/Environmental Report. Your specific request is that the County further explain the statement made at page four of the letter that off-site mitigation of wetland impact is not allowed under the Coastal Act, and that, as a result, the County could not find that the proposed tunnel design complies with the County's Local Coastal Program. After further review of this matter, we have concluded that this statement was made in error. Our view is that a coastal development permit for a tunnel at Devil's Slide could be approved as consistent with the County's Local Coastal Program notwithstanding some impacts to wetlands. The basis for our conclusions is set out below."

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

"In summary, Public Resources Code sections 30007.5 and 300200(b) require both the Coastal Commission and local governments to resolve conflicts between competing policies of the Coastal Act when carrying out the provisions of the Act. The electorate resolved policy conflicts in favor of the tunnel when it adopted Measure T. The Coastal Commission has twice performed the analysis prescribed in Section 30007.5, certifying Measure T despite the conclusion that construction of tunnel would result in some wetland impacts. Measure T is now a part of the County's certified Local Coastal Program. It is our view that a coastal development permit can be approved for construction of a tunnel despite some impact to wetlands."

### **SOB to FHWA 11/21/02**

SOB's review of the ROD for the Devil's Slide Final SSEIS finds that the above stated SMC and CCC opinions and LCP Measure T conceptual certification do not meet the standard of review adopted and set forth by the Court in Sierra Club v. California Coastal Commission. Why? Because a reasonable person could not reach the conclusion reached by the SMC, CCC or FHWA. The CCC "conceptual LCP certification" is NOT supported by any factual or legal findings or consistent with the Court of Appeal of California 04/16/99 Bolsa Chica ruling regarding Coastal Act Section 30240 (ESHA's) and the use of Coastal Act Section 30007.5. The CCC and SMC have provided the FHWA no evidence in the record that destruction of the ESHA's within the Devil's Slide project area is a prerequisite to the creation of their "new" red legged frog twin tunnels off-site mitigation pond. Although the Coastal Act itself recognizes the value and need for access to the coastal zone and coastal recreational areas, nothing in the record or the letter from San Mateo County suggests there is such an acute need for development of Route 1 in and around ESHA's that cannot be accommodated elsewhere. The certified Measure-T LCP amendment states: "The County will (2.54a) "require that the roadway improvements be consistent with policies of the Local Coastal Plan, particularly the Sensitive Habitats and Agriculture Components." (citation Adopted Findings SMC LCP 1/97 page 4) Rather, the only articulated interests which the proposed transfer of the "habitat values" serves is SMC subsidiary interest in retaining "the electorate Measure-T preference for a tunnel alternative". The Court of Appeal ruled on April 16, 1999 " In the absence of evidence as to why preservation of the ESHA at its current location is unworkable, we cannot reasonably conclude that any genuine conflict between long-term and short-term goals exist. (Citation) In short, while compromise and balancing in light of existing conditions is appropriate and indeed

# Half Moon Bay

## Coastside Foundation

### Water Quality Protection Program

#### Mission : Implementation



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

*encouraged under other applicable portions of the Coastal Act, the power to balance and compromise conflicting interests (30007.5) cannot be found in 30240." (citation)*

The January 25, 2001 response letter authored by San Mateo County Counsel offering clarification regarding SMC Director of Environmental Services Paul Koenig official statutory SSEIS/EIR comments letter directed to CalTrans on May 11, 1999 is without proper legal foundation. The CCC and SMC interpretation of section 30240 was not contemporaneous with the enactment of section 30240 or the result of any considered official interpretative effort and it did not carry any other of the indicia of reliability which normally requires deference to an administrative interpretation. (See *Yamaha Corp. of America v. State Board of Equalization*, supra, 19 Cal, 4<sup>th</sup> at pp.12-13) Caltrans specific request was that the County further explain the statement made at page four of the letter *"that off-site mitigation of wetlands impact is not allowed under the Coastal Act, and that, as a result, the County could not find that the proposed tunnel design complies with the County's Local Coastal Program. After further review of this matter, we have concluded that this statement was made in error. Our view is that development permit for a tunnel at Devil's Slide could be approved as consistent with the County's Local Coastal Program, notwithstanding some impacts to wetlands."* The reasoning that SMC and CCC employed is unpersuasive and clearly not supported by the April 16, 1999 Court of Appeal Bolsa Chica ruling :

First, contrary to their argument, a court would not uphold their interpretation of section 30240 as set forth by the Commission in its conceptual findings for the Measure-T LCP amendment certification. The CCC and SMC provide NO factual basis for their assertion that supports the application of the balancing power provided by section 30007.5. SOB's review of the Adopted Findings for San Mateo County LCP NO. 1-96 (Devil's Slide Tunnel Initiative) proceedings before the CCC did not disclose any policy or interest which directly conflicts with the application of section 30240.

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

#### **COURT OF APPEAL OF CALIFORNIA v. THE SUPERIOR COURT OF SAN DIEGO COUNTY** Petitioners and Real Parties in Interest Bolsa Chica Land Trust, **Sierra Club** and Surfrider Foundation

**April 16, 1999** "The Coastal Act does not permit destruction of an environmentally sensitive habitat area (ESHA) simply because the destruction is mitigated offsite. At the very least, there must be some showing the destruction is needed to serve some other environmental or economic interest recognized by the act." (Citation)

On August 23, 2000, Lennie Roberts, renown legislative lobbyist and self proclaimed 6<sup>th</sup> member and Chair for life of the San Mateo County Board of Supervisors addressed the San Mateo County Planning Commission in support of Caltrans' frog pond "Tunnel Mitigation" project application for coastal development permit (CDP). Here is the entire transcript of Ms. Roberts comments: "Good Morning Mr. Chairman, I'm Lenny Roberts speaking for the Committee for Green Foothills, and we support this project. Aaaa, it would be nice to have had something in the staff report to the fact this is being done in conjunction with the U.S. Fish & Wildlife Service and because this has been a long negotiated process with the CalTrans engineers and the U.S. Wildlife Service. How they've been in consultation with the frog and other issues, "this is mitigation for the Tunnel" and so I think it would be helpful if we put that somewhere because it is part of a very broad extensive process that has gone through with the tunnel construction. So, so this is one of the issues that occurs with the endanger species is that if you are going to take the endangered species or effect their habitat and you're going to first do "mitigation" to first avoid the impact aaaa



# Half Moon Bay

## Coastside Foundation

### Water Quality Protection Program

#### Mission : Implementation



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

*which the Tunnel project has done to the greatest degree possible by building a bridge over this valley. Originally this valley was going to be filled to go across, so that would have impacted the frog pond habitat, so they're bridging instead and they're creating this new frog habitat and one of the issues always is ...will that work? And by doing this ahead of time, ahead of the project itself, a there will be, I think, sufficient assurance that the project will be a successful "mitigation". We hope so...a perhaps one thing you might want to put in here is the additional condition that there will be monitoring of project as it goes through the construction and afterwards to make sure that the re-vegetation is successful and that the habitat is successfully established. I think that would be a good conditional condition to put in there. So we are very supportive of this and we appreciate the County expediting this and I know everybody is trying to expedite this project, in spite of everybody's attempts it has taken a lot longer than everybody thought. Aaa so those are my comments and yeah I believe that the way they capture the frogs is at night with flash lights, a time honored technique (laughter) or the tadpoles in the spring time. But to successfully get the adults you have to do that I believe. Thank you. Planning Commission Chair: Anyone else? Silence.....move to close the hearing."*

#### Notice of Violation of the SMC Local Coastal Program, California Coastal Act, Endangered Species Act Section 7 and Section 9, Clean Water Act Section 404 and the CEQA/NEPA.

On November 24, 2000, Save Our Bay staff conducted a native species field survey at the location of the CalTrans Tunnels/Bridges mitigation construction site, Devil's Slide Highway 1 Project site, Pacifica, San Mateo County, California. After the three hour native species field survey was concluded, (attached please find survey form for dates 7/27/000 & 11/24/000) it was found by SOB staff that the Tunnels/Bridges mitigation project activities conducted by Caltrans, their agents or others has resulted in a "take" of federally listed *Rana Aurora Draytonii*, .. aka California Red-Legged Frog. Take is defined by the Endangered Species Act as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect any listed wildlife species. "Harm" in this definition includes significant habitat modification or degradation where it actually kills or injures wildlife, by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. (50 CFR & 17.3) The Foundation's Executive Director reported the take to Sheila Larson of the U.S. Fish & Wildlife Service on Friday the 24<sup>th</sup> of November by telephone. Sheila Larson informed Mr. Braun and Dave Cohn of SOB California Watershed Posse, that CalTrans had diverted the water from the North Pond to construct and fill the new EHSA mitigation pond. CalTrans having been issued a Coastal Development Permit by SMC for the tunnel mitigation pond project, immediately attempted to transfer the resident red legged frogs from the drained North pond with the result being an unauthorized "take" under CalTrans Section 7 agreement with the Service. On Monday November 27<sup>th</sup>, by telephone, Oscar Braun filed the notice of violation (NOV) with U.S. Fish & Wildlife Service Agent Scott Pierson and provided him via fax the field survey forms and mitigation project site location map. The Foundation also inform Agent Pierson that they have photos of the ESHA starting 7/27/2000 up to and including 11/24/2000. On the 24<sup>th</sup>, the Foundation also notified the California Department of Fish & Game and San Mateo County Environmental Services Agency.

**Tunnels/Bridges ESHA Mitigation Project Description:** This Tunnels/Bridges ESHA mitigation project as proposed by Lennie Roberts on behalf of San Mateo County involves the excavation of an upland area between two existing ponds found within US Army Corps of Engineers Section 404 Jurisdictional Map and Project Study Area (Figure 5-3) The Tunnels mitigation pond will be deep enough to hold water of quantity and temperature. Flows would be diverted from an adjacent creek into this pond. Erosion control structures will be placed around the construction area to protect adjacent aquatic resources. Aquatic emergent vegetation, previously cultivated in wooded flats would be placed in the pond. Biologist will monitor vegetative growth in the new pond and replant as necessary to ensure success. The Service will conduct a field inspection of the new pond on or about April 15, 2001. "If the Service approves the new pond habitat, red-legged frog adults will be trapped from the north pond between April 15<sup>th</sup> and June 30, 2001 and moved to the new mitigation pond, constructed in the fall of 2000"

#### Factual Sequence of Events, Court Rulings and CalTrans, CCC & SMC Violations



# Half Moon Bay Coastside Foundation

## Water Quality Protection Program

### Mission : Implementation



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

In October 2000, CalTrans, having been unlawfully issued a Coastal Development Permit by SMC for the tunnels pre-mitigation pond project, immediately conducted mitigation construction activities in the COE delineated project areas that included the draining of the North pond facilitating an **"unauthorized take"** and violating their section 7 agreement with the F&W Service dated September 26, 2000 (Ref. 1-1-00-TA-2980). By unlawfully and prematurely issuing their Devil's Slide pre-mitigation CDP to CalTrans, San Mateo County has 1) defied the 1986 U.S. District Courts injunction prohibiting "all" construction activities within the Devil's Slide Route 1 project area from the Half Moon Bay Airport to Linda Mar Boulevard Pacifica, San Mateo County, California. 2) Disregarded the CCC declaration shortly after the Court of Appeals April 1999 Bolsa Chica decision regarding Coastal Zone ESHA's and Section 30007.5 that the CCC would accept the courts findings and opinion and would NOT file an appeal petition with the California Supreme Court seeking to overturn the Court of Appeal ruling. **What does that mean?** It means that neither the CCC nor SMC can overrule or freely supercede with de novo proceedings the April 1999 Court's ruling or legally revert back to their pre-Bolsa Chica interpretation (circa January 1997) of section 30007.5 by re-certifying their conceptual consistency of the SMC Measure-T LCP amendment. **Note: June 17, 2002, The California Superior Court of San Mateo County, Case # 402781, Joyce Yamagiwa, v. California Coastal Commission ruled "The Commission's self-righteous contention that it was merely acting pursuant to the Coastal Act is not convincing. In fact, this Court is disheartened with any such argument that completely eliminates this Court's prior order as though it was nothing more than some minor hindrance to the Commission's exertion of power. That the Commission considers orders of the Superior Court as matters to be freely superseded with de novo proceedings is saddening. The Court of Appeal has appellate jurisdiction where the Superior Courts has original jurisdiction (Cal. Constitution Article VI, section 11) The State Constitution limits the power to overturn a Superior Court's order to the appellate courts. (People v Gonzalez (1998) 12 Cal.4th 804, 815) Moreover, the Legislature may not restrict appellate review in a manner that would substantially impair the constitutional powers of the courts, or practically defeat their exercise. (Leone v Medical Board (2000) 22 Cal.4th 660, 668) Any action by the Commission which has the effect of superseding this Court's order would be an infringement of the appellate court's authority, and would be improper."** 3) By authorizing and issuing the Lennie Roberts proposed "pre-project mitigation scheme activities CDP prior to seeking either District Court approval or being granted federally required authorizations and permits from the Corp of Engineers (COE) or F&W Service clearly violates both the Endangered Species Act section 7 & 9 and the Clean Water Act section 404. These premeditated violations of federal environmental protection laws clearly disqualifies the County of San Mateo from receiving required and needed federal permits or funding for the Devil's Slide Route 1 Improvement Project. 4) The COE has verified the SOB review findings by confirming that CalTrans did NOT acquire any of the required COE 404 permits to divert waters of the United States or conduct "tunnels pre-mitigation construction activities in the COE delineated 404 ESHA. Please note Final SSEIS/EIR volume 1 APPENDIX C : U.S. ARMY CORPS OF ENGINEERS NATIONWIDE PERMIT AUTHORIZATION letter dated April 4, 2001 to CalTrans re: "You are advised to refrain from commencement of your proposed activity until a determination has been made that your project is covered under a existing permit."

#### **Factual Tunnels/Bridges ESHA Mitigation Project Background :**

Th U.S. Fish and Wildlife Service by letter to Caltran's Sid Shadle on September 26, 2000 stated: "Based on the project description and corresponding avoidance measures proposed in your correspondence, the Service has determined that "take" of the California red-legged frog is not likely to concur. Therefore, the project as proposed is in compliance with the Act, with the understanding that take is not authorized under this agreement." **NOTE:** CalTrans characterized their "pre-mitigation" construction activities as "conservation avoidance measures." A clear violation of the Courts ruling regarding ESHA off-site mitigation activities.

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

"No further action pursuant to the Endangered Species Act is necessary, unless new information reveals effects of the project that may affect federally listed species or critical habitat in a manner not identified to date. If you

# Half Moon Bay Coastside Foundation

## Water Quality Protection Program Mission : Implementation



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

have any questions regarding this response, please contact Cecilia Brown or Ken Sanchez at (916) 414-6625."  
Signed, Karen J. Miller, Chief, Endangered Species Division

**Devil's Slide Draft Supplemental EIS/EIR page 67.** "While the south pond at Shamrock Ranch is not within the project limits of the proposed tunnel alternative, to ensure that the habitat will be protected from construction activities, the south pond will be designated as an Environmentally Sensitive Area (ESA). This designation restricts "any" construction activities from occurring within its boundaries. Instead, the transport of construction vehicles, equipment and personnel will "only" be allowed to occur on temporary roads from existing Route 1. **Note: All activities within this COE 404 delineated areas require prior approval and permits from the COE.**

*"In terms of the general protection, the Coastal Act provides for the coastal environment, we have analogized it to the California Environmental Quality Act (CEQA). (citation) We have found that under both the Coastal Act and CEQA The courts are enjoined to construe the statute liberally in light of its beneficent purpose. (Citation) The highest priority must be given to environmental consideration in interpreting the statute (citation)."*

*"In addition to the protection afforded by the requirement that Commission consider the environmental impact of all its decisions, the Coastal Act provides heightened protection to ESHA's. Section 30107.5 identifies an ESHA as "any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments. The consequences of ESHA statue are delineated in section 30240(a). Environmentally sensitive habitat areas shall be protected against any(71 Cal. App. 4<sup>th</sup> 507) significant disruption of habitat values, and only uses dependent on those resources shall be allowed in those areas. Development in areas adjacent to environmentally (63 CalRptr. 2d 858) sensitive habitat area and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with continuance of those habitat and recreational areas. Thus development in ESHA areas themselves is limited to uses dependent on those resources, and development in adjacent areas must carefully safeguard their preservation."*

We respectfully ask the FHWA to re-open the Final SSEIS document for the purpose of providing the FHWA new documented factual information revealing effects of the Devil's Slide Highway Improvement Project that may affect federally listed species or critical habitat in a manner not identified to date.

Sincerely,

  
Oscar Braun

Executive Director, CWP Water Quality Protection Program , [www.saveourbay.org](http://www.saveourbay.org) or [www.cwpnw.org](http://www.cwpnw.org)

CC.

Norman Y. Mineta, U.S. Secretary of Transportation

Honorable Senator Dianne Feinstein

Honorable Senator Barbara Boxer

Robert Gross, District 4 Branch Chief, Office of Environmental Planning South

Bob Smith, Army Corp of Engineers

Karin J. Miller, F&W Service, Chief, Endangered Species Division

**April 4, 2004**

## **'Last big hurdle' for tunnels RANCH OWNER SEEKS TO BLOCK PLAN TO BYPASS DEVILS SLIDE**

By Thaa Walker  
Mercury News

For all of its beauty, the breathtaking drive along Devils Slide has often been a journey through hell. The hairpin turns on the narrow coastal stretch of Highway 1 are unnerving enough. But it's the landslides and rocks tumbling down the mountainside that have caused motorists the greatest anxiety for more than 60 years.

This month, Caltrans expects a San Mateo County commission to approve the last major permit needed for construction of twin 4,000-foot-long tunnels. With that final hurdle removed, the project could be under way as early as fall, and by 2009 Devils Slide would be left to bicyclists and hikers.

But not if Oscar Braun has anything to say about it.

"You're talking to the last big hurdle," said Braun, the 60-year-old owner of a sprawling multimillion-dollar ranch in the hills high above Half Moon Bay, who vows to do his best to stop the tunnels.

For 25 years, environmental groups such as the Committee for Green Foothills and the Sierra Club waged war against Caltrans over its plan to shoot a highway bypass over pristine peaks and across a verdant valley where horses graze. They finally forced Caltrans to accept their alternative: a tunnel, which San Mateo County voters approved in 1996. One tunnel evolved into two.

Caltrans officials and environmentalists have worked together since then and expect the San Mateo County Coastal Commission to approve the coastal development permit when it comes up for a scheduled review this month.

The total project is expected to cost \$270 million, which will come primarily from federal emergency relief funds. It's thought the tunnels could open by 2009.

Braun has fought the tunnel plan with appeals and a lawsuit ever since San Mateo County voters approved it. He opposes the project because he doesn't believe it would be the least expensive, least environmentally damaging alternative. He'll appeal again if the permit is granted this month, he says. And if that doesn't stop the project, he's sure a new lawsuit he's planning to file against an array of organizations, will.

Caltrans has built into its scheduled fall groundbreaking the time to resolve Braun's anticipated appeals, and anticipates that he may sue.

"We always know there's going to be folks who will challenge it," said Caltrans project manager Skip Sowko, who has seen most of the battles up close, having worked on Devils Slide since 1981.

The current fight is only one of many times Braun has tangled with the county and environmentalists. He sued to stop plans to bring 140,000 acres of coastal rural land under the jurisdiction of the Midpeninsula Regional Open Space District in 2003, and when a wildlife sanctuary moved into his Higgins Canyon neighborhood a few years ago, he sued, but the case was dismissed.

"I don't know what his problem is," said San Mateo County Supervisor Rich Gordon. "There's hardly a thing that folks talk about doing on the coast that he doesn't oppose or appeal."

Braun waged his first legal battle in the 1980s, when a breach-of-contract suit he filed against his employer, Johnson & Johnson, netted him millions. He considers himself a whistle-blower, fighting for the protection of the coast and landowner rights against the so-called collective rights of the greater community.

He believes certain environmental groups use "eco-terrorism" tactics to acquire huge swaths of land to exploit and control the natural resources. He accuses them of colluding with the county.

"Their motivation is as old as biblical times," said Braun, who in 1995 joined with a small group of coastal landowners to explore the idea of seceding from the county, and last year initiated an effort to form a new town by taking over open space land.

"It has to do with power. It has to do with corruption. It has to do with greed."

Lennie Roberts, the legislative advocate for the Committee for Green Foothills, said she thought construction on the tunnels would begin in 1997, the year after voters approved the plan.

Instead, the years since have been filled with environmental reviews, design studies, permit hearings and Braun's challenges, which she said have been baseless.

"He's never stopped anything, he's never won in court, he hasn't gotten very far," said Roberts, who in the 1960s evolved from a Ladera homemaker into one of the most influential environmental activists in San Mateo County.

"But Caltrans has been very gun-shy because of all of his threats and initial actions," Roberts said. "It's slowed everything down."

Roberts and Braun agree that the hostilities between them began in 1990. Roberts has long reviewed proposed coastal development permits for her group in an effort to ensure compliance with environmental protection guidelines. She told Braun the ridge top he had selected to build his dream house was inappropriate because it would spoil the scenic vista. He eventually built the house at a lower spot on the hill.

"He said, 'I'm very litigious, don't get in my way,'" Roberts recalled. "The board of supervisors ended up making him move the house off the ridge top. I think ever since then he's had it in for us."

Braun denied using those words and said he hasn't been the instigator in the 14 years of animosity among him, the county and various environmental groups.

"They brought the battle to me," Braun said from his Spanish-style home, which he also refers to as "the compound."

The next step in forestalling the Devils Slide tunnels, he said, is his plan to file a civil RICO lawsuit, for Racketeer Influenced and Corrupt Organizations Act, a federal strategy created in the 1970s to take down criminal enterprises. Braun plans to aim the suit at a number of open space non-profit organizations, county officials and employees, and environmental activists, arguing that there is a pattern of corruption on the coast.

"The lawsuit will stop a whole lot of activity, including Devils Slide," he said, adding that he believes the suit will disqualify the county from receiving federal money for the project. "These are not hollow accusations. This is just as much Oscar Braun's last stand as anything else. This is going to be the big battle. I plan on taking everything they've got."

The battle-hardened tunnel advocates say they're ready.

"We sued and were successful in stopping the bypass," Roberts said. "He hasn't been successful in stopping the tunnel yet. And we don't expect him to be."

---

Contact Thaa Walker at [twalker@mercurynews.com](mailto:twalker@mercurynews.com) or (510) 790-7316.

May 4, 2004

Martha Poyatos  
Executive Officer  
San Mateo LAFCO  
555 County Center  
Redwood City CA 94063

RECEIVED

2004 MAY -4 A 10:50

SAN MATEO COUNTY  
PLANNING DIVISION

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



**Statutory Request for LAFCO to Reconsider Approving the Annexation of the San Mateo Coastal Area to the Mid-peninsula Regional Open Space District**

Dear Commissioners:

It is requested that the San Mateo LAFCO, reconsider its resolution adopted on April 7 approving the Annexation of the San Mateo County Coastal Area to the Mid-peninsula Regional Open Space District (District). This request is submitted pursuant to Government Code Section 56985.

**Request for rescission or reduction of approved annexation**

The specific modification to the resolution of approval that is being requested is either rescission of the approval in its entirety, or substantially reducing the annexation area to those properties that are presently owned in fee by the District.

There are several bases for this request that constitute new or different facts that could not have been previously presented and which warrant reconsideration. These are summarized below.

**No further action until the commission considers this request**

It is my understanding that you are directed by this statute not to take any further action until the Commission acts on this request.

I also understand that you are required to place this request on the agenda of the next meeting of the Commission for which notice can be given. I read Section 56985(e) as stating that you shall give notice of the reconsideration in the same manner as notice was given for the original proposal and that, in addition, you may give notice in any other manner you choose.

**Fatal flaw under CEQA**

The "project" considered by LAFCO is the annexation to the District. There are no other actions or entitlements for use. In fact, the District forswears any knowledge of even what parcels it would intend to acquire after the annexation is completed. The changes in the Government Code that establish LAFCO as the "conducting authority" have changed the role of the District for this annexation so that it can not legally serve as either the lead agency or as a responsible agency.

The fact that the Commission would rely on the environmental document prepared by the District, when it was not authorized to act as the lead agency, was not known until after the Commission acted and constitutes new or different facts.

The Commission has no choice but to declare the applicant District's Coastside Protection Program EIR null and void for purposes of this annexation. In addition, we are formally requesting that San Mateo County LAFCO notify the Santa Clara Superior Court that their Commission illegally transferred the role of

"lead agency or responsible agency" to the applicant District and that they have adopted a finding declaring the District's Program EIR null and void.

The District has NO legal standing that empowers it to act as lead agency or responsible agency for this annexation under the Public Resources Code or the Government Code that establishes LAFCO as the "conducting authority" by the Cortese/ Knox/Hertzberg Local Government Reorganization Act of 2000.

#### **Lack of data regarding inflated acquisition costs**

Although information was disclosed to staff and legal counsel prior to the Commission hearing, this data did not find its way into the staff report and therefore did not become part of the public record. This data concerns the true costs to the public for the District to acquire various pieces of land.

The LAFCO commissioners and public should have been provided a copy of the Ron Sturgeon San Mateo County Civil Grand Jury referral regarding the Coastal Conservancy November 2002 funding grant to the District for the transfer of Rancho Miramontes lands from POST at 400% inflated market value of \$4.2 million. The public record indicates that POST acquired Rancho Miramontes in 1997 with an assessed market value according to the Assessor-County Clerk-Recorder for the County of San Mateo (best & highest use) of \$1 million.

At the very least, reference to Grand Jury reports and disclosure of purported land appreciation values between the time they were acquired by POST in 1997 and the District in 2002, would be crucial to the Commission's consideration of the reasonableness of this proposed annexation. How do POST's undeveloped open space lands appreciate 400% in less than five years? Why should taxpayers pay POST and MROSD multiple times over inflated prices for the same lands that are being transferred between Coastal Open Space Alliance (COSA) partners of record? Are POST and the District running a real estate Ponzi scheme here in San Mateo County with Proposition 12, 13, and 40 and Congressional funding boondoggles? How much more will occur after the annexation is completed? Are these RICO activities?

The Save Our Bay Foundation requests that the San Mateo County's Controller's Office perform a comprehensive fiscal analysis and audit of the District's and POST's real estate transactions in San Mateo County "prior" to and as part of a reconsideration of the reorganization.

The Board of Supervisors, County Counsel, and District Attorney's office must recuse themselves from this Whistle Blower referral for an audit of the District and POST in order to prevent a clear conflict of interest or appearance of conflict of interest with the non-independent LAFCO controlled by the San Mateo County Board of Supervisors.

#### **Too cozy a relationship between the LAFCO staff and the County organization**

There is apparently no separation between the LAFCO staff, that is supposed to be independent, and the County staff. Even your Commission's web page shows LAFCO as part of the County's Environmental Services Agency. The Commission staff distributes reports in manila envelopes a return address of the "County Planning and Building Division."

How can the Commission expect to receive free and unbiased information when the LAFCO staff are County employees and considered to be part of a County agency? This is contrary both to the concept of

an independent LAFCO and the amendments in the law brought about by the Cortese/Knox/Hertzberg Local Government Reorganization Act of 2000.

This lack of independence and representation for the Coastal area is further evidenced by the fact that San Mateo County is the only county out of fifty eight counties that entered the 21<sup>st</sup> Century electing their Supervisors at large rather than by districts they are assigned to represent.

We thought the LAFCO staff would provide full disclosure and not hide this relationship at the hearing on the proposed annexation from the public. We are requesting full disclosure of the relationship of all Commissioners and staff with the County of San Mateo as part of the official record of the proceeding.

**Identification of parcels owned by the District in the annexation area and District history**

There was no identification of the parcels already owned by the District within the annexation area, despite the request that these facts be disclosed. This information itself may have been influential in the hearing to support the "reduced annexation area" option or the "no annexation" option by showing the District is able to acquire lands without prior annexation.

The boundary maps provided by the District for their LAFCO application are inaccurate according to a December 16, 2003 audit by the Assessor's office. The applicant District must present LAFCO and the public boundary maps with accurate cartography certified by Warren Slocum, Chief Elections Officer, & Assessor-County Clerk-Recorder for the County of San Mateo.

The LAFCO staff did not disclose to the Commissioners or public the District's history of policies or practices regarding the concealment of information regarding toxics (PCB's) from their neighbors in Santa Clara County or violating the California Environmental Quality Act i.e. *McQueen v. MROSD Board of Directors*.

The LAFCO staff did not report to the Commissioners or public the District's Administrative Record (AR) disclosure that the District long established pattern of using Federal and State "tax avoidance schemes" when acquiring privately held lands from "willing sellers". The Save Our Bay Foundation has requested that the IRS investigate and audit the District and all Coastal Open Space Alliance (COSA) members financial and administrative records to see if the COSA enterprise have not violated their Federally granted tax exempt status. The Foundation will provide searchable pdf copies of the Districts AR and the Ron Sturgeon Civil Grand Jury referral of November 2002 to all investigating agencies and Congressional committees looking into what appears to be pattern of RICO activities.

The LAFCO staff and legal counsel concealed from the Commission and public the fact that the California Court of Appeal found in *McQueen v. MROSD Board of Directors*, that the EIR was incomplete and misleading and clearly concealed the risks to the environment and public's health and safety. Neither the District nor POST have disclosed the value of their oil, mineral and timber resources or the potential cost to remediate their toxic polluted illegal landfill holdings in San Mateo County.

All of this should have been part of the record of the LAFCO hearing and was not presented, which constitutes a violation of the obligation to provide an informed, fair and balanced public record.

The District's false declaration that they have implemented a substantial "vegetative fuel management plan" in compliance with the California Fire Plan in their Program EIR has been shown to be without any factual basis by the FireWise 2000 consultant retained by the District. The District's 48,000 acres, without an implemented state mandated vegetative fuel management plan, poses the greatest risk for a

Martha Poyatos  
May 3, 2004  
Page 4 of 4

catastrophic wildfire that, according to a State Auditors report, could shut down our Hetch Hetchy regional water system on the Peninsula for four to eight weeks.

The District's fatally flawed Program EIR did not disclose to the Commission or public the fact that the District's current lands contain over 300,000 feral pigs (State Fish & Game statistic) that are destroying the entire S.F. Peninsula watershed while spreading invasive pathogens such as "sudden death oak". The District's abatement efforts claim to have trapped approximately 200 pigs in the last three years. According to the National Invasive Species Management Plan, 90% of all feral pigs are on public lands. These feral pigs cause over \$2.4 billion of damage to the California watershed and agriculture per year.

This information should have been part of the record of the LAFCO hearing and was not presented by the LAFCO staff, preventing an informed, fair and balanced public record for the Commission.

In closing, please note that the Commission's decision to strictly limit the ability of the public to provide useful testimony at the hearing, especially limiting individuals from providing information more than once, despite the fact that the hearing was held on different dates, restricted the ability to bring these and other pertinent facts to light at the hearings.

We look forward to the ability to expound upon these concerns when the Commission reconsiders its prior approval. Please provide our Foundation with a notice of that meeting. Thank you.

Sincerely,



John Plock  
Chairman, Board of Directors

CC. Honorable Arnold Schwarzenegger, Governor of California  
Honorable Dianne Feinstein, U.S. Senator  
Honorable Barbara Boxer, U.S. Senator  
Honorable Charles Grassley, U.S. Senator, Chair, Senate Budget Committee  
Honorable Richard Pombo, U.S. Congressman, Chair, Congressional Resource Committee  
Honorable John Ashcroft, U.S. Attorney General  
Honorable Thomas Ridge, U.S. Secretary of Homeland Security  
Honorable Norman Mineta, U.S. Secretary of Transportation  
Frank Iwama, Governmental Affairs Director, Save Our Bay Foundation  
Mimi Iwama, Communications Director, Save Our Bay Foundation