

INFORMATION HANDOUT
04-1123H4

DEVIL'S SLIDE
REVEGETATION/MITIGATION PROJECT

Information Handout Index

1. California Regional Water Quality Control Board- Waste Water Discharge Requirements and Water Quality Certification for California Department of Transportation, Devil's Slide Tunnel Project, San Mateo County File No. 2179.7186 (crf), Order No. R2-2004-0044 Adopted June 16, 2004
2. San Mateo County Coastal Development Permit PLN 2003-00428, APN 023-731-020 Adopted June 1, 2004
3. United States Army Corps of Engineers Permit 21581S June 23, 2004
4. United States Fish and Wildlife Service - Reinitiation of Formal Endangered Species Consultation on the Devil's Slide Tunnel. File No. 1-1-03-F-0151.



California Regional Water Quality Control Board San Francisco Bay Region



Terry Tamminen
Secretary for
Environmental
Protection

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<http://www.swrcb.ca.gov/rwqcb2>

Arnold Schwarzenegger
Governor

Certified Mail No. 70993220000146709160
Return Receipt Requested

Date: JUN 23 2004
File No. 2179.7186(crf)

Mr. Bijan Sartipi
District 4
California Department of Transportation
111 Grand Avenue
Oakland, CA 94612-3006

Subject: WASTE DISCHARGE REQUIREMENTS AND WATER QUALITY CERTIFICATION
FOR CALIFORNIA DEPARTMENT OF TRANSPORTATION, DEVIL'S SLIDE
TUNNEL PROJECT, COUNTY OF SAN MATEO

Dear Mr. Sartipi:

Enclosed please find a copy of Order No. R2-2004-0044, which was adopted by the Regional Board on June 16, 2004.

Please note the various required submittals and due dates for reports and plans that are a part of the Order.

Please contact Carmen Fewless of my staff at 510-622-2316 or via email crf@rb2.swrcb.ca.gov if you have any questions on this matter. We look forward to working with you.

Sincerely,


Bruce H. Wolfe
Executive Officer

Enclosure: Order No. R2-2004-0044

Cc (with enclosure):

David Yam, CalTrans District 4
John Yeakel, USACOE
Mike Schaller, San Mateo County Planning Division
Fred Botti, California Department of Fish and Game

Preserving, enhancing, and restoring the San Francisco Bay Area's waters for over 50 years

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

ORDER No. R2-2004-0044

WATER QUALITY CERTIFICATION NO. 02-41-C0419

WASTE DISCHARGE REQUIREMENTS AND WATER QUALITY CERTIFICATION FOR:

CALIFORNIA DEPARTMENT OF TRANSPORTATION

DEVIL'S SLIDE TUNNEL PROJECT, COUNTY OF SAN MATEO

The California Regional Water Quality Control Board, San Francisco Bay Region, hereinafter Board, finds that:

1. The California Department of Transportation (hereinafter Caltrans), submitted a Report of Waste Discharge (ROWD) to the Board for the Devil's Slide Tunnel Project (hereinafter, the Project). Caltrans proposes to bypass the geologically unstable area of Route 1 at Devil's Slide in San Mateo County with twin bridges and a 4,000 foot long double bore tunnel through San Pedro Mountain with connections to the existing Route 1 at each end. The Project will be located on the San Mateo County coast between the Town of Montara and Rockaway Beach in the City of Pacifica.
2. Since the construction of the existing Devil's Slide portion of Route 1 in 1937, this section of the roadway has been subject to road closures from landslides, rock falls and subsiding grade, which results in diminished roadway width. Despite drainage improvements, pavement reinforcements and rock anchors, this segment of the roadway continues to experience problems and closures which create an inconvenience to coastal residents and economic impacts to coastal families and businesses.
3. Because the cost of maintaining the unstable roadway in the future will continue to escalate with subsequent slide activities, and coupled with the continuous closures at Devil's Slide, Caltrans and the Federal Highway Administration have sought a permanent solution that provides a stable and safe roadway for this portion of Route 1. The tunnel alternative is consistent with restricting Route 1 to a two-lane facility and provides for separate bicycle/pedestrian movements outside the tunnel facility.

Project Description and Impacts

4. The segment of Route 1 included in the Devil's Slide Tunnel Project is located between Rockaway Beach in the City of Pacifica, and the Town of Montara in San Mateo County.

Leaving Pacifica, the existing road rises through a eucalyptus grove for about one mile and emerges from the grove, on a right turn, to a view of the Shamrock Valley below, and San Pedro Mountain ahead. The road continues westerly for about 2,700 feet through a cut in the coastal bluff; a sharp turn to the south provides a sudden view of the Devil's Slide Cliffs 330 feet below the road and the San Pedro Mountain Cliffs 650 feet above the road. Continuing south, one encounters numerous slide areas along the 3,280 feet section of twisting road and finally Devil's Slide itself where, over time, the road has dropped over 64 feet. This slide-prone section has a chain link fence on the slopes for rock fall protection, and concrete barriers on both sides, to provide additional rock fall protection on the uphill side and a barrier to inhibit motorists from driving off the cliff on the downhill side. Leaving the Devil's Slide area the road continues south in a curvilinear alignment along the coast for about four miles to the Town of Montara.

5. To ensure public safety, Caltrans will bypass this geologically unstable region with twin bridges and a 4,000-foot long double bore tunnel through San Pedro Mountain. The North approach road will be approximately 1,500 feet long including two 1,050-foot long parallel bridges. The South approach road will be 1,000 feet long. Proceeding south from Pacifica, the alignment will depart from the existing Route 1 along two bridge structures up a 7% uphill grade crossing the valley at Shamrock Ranch. The alignment will then pass through a small ravine entering the tunnel through San Pedro Mountain sloping to the south at 2% grade and exiting just south of Devil's Slide area where it will rejoin the existing Route 1. At their highest point, the bridges will be approximately 125 feet above the valley floor of Shamrock Ranch. Each tunnel will be approximately 30 feet wide including 4-foot wide interior walkways on both tunnels, a 12-foot wide travel lane, and, 8-foot wide and 2-foot wide shoulders. The tunnel excavation will generate approximately 550,000 cubic yards of material, which will be placed at a South disposal site near the South approach. The Project also includes tunnel infrastructure systems needed for safety and operations such as tunnel control, tunnel surveillance, traffic control, communications, emergency evacuation, environmental monitoring, and tunnel maintenance. A tunnel operations and maintenance center (OMC) will be located approximately 1,800 feet south of the tunnel at the South disposal area.

6. The Project also includes the South Rock Cut that consists of excavating the existing west slope area located just south of the South Portal area, along the east side of Route 1. The cut is required for safe sight distance along the new road alignment where the new road leaves Route 1 and connects to the South Portals. The cut will also provide a construction access road adjacent to Route 1. This road will be used to haul excavated material from the tunnel to the Fill Disposal area without disrupting existing traffic on Route 1 during Project construction.

7. The North Portal area is located in a steep watershed area of the Shamrock Ranch. It has steeply sloping drainages dominated by dense coastal scrub habitat. The drainages flow toward the main ranch area and converge in a valley that has been altered because of previous land clearing and the disposal of mulch and organic material. Within this valley area, there are two ponds (North and South Ponds) that were developed in the mid-1950s, when the

existing drainages were impounded to form stock or irrigation ponds. One of those ponds is spring fed and contains water year round.

8. A steep natural drainage supporting riparian vegetation is located just east of the South Portal area. The uphill portion of this drainage is very steep and has a small cascading waterfall during the winter and spring. This drainage discharges to a depression formed by the existing Route 1 roadway embankment and drains through a standpipe and culvert and then to the ocean.

9. Project construction will occur over a five-year period. Construction of the Project will be divided among seven separate major contracts as follows: 1) Early Contract, 2) Tunnel Work 3) Bridge Work, 4) OMC Building Contract, 5) Off-Site Contract, 6) Post Earthwork Contract, and 7) Post Tunnel Contract (Shamrock Ranch).

10. This Order applies to the permanent and temporary, direct and indirect impacts to waters of the State and waters of the United States associated with the Project, which is comprised of the Project components listed above. Total direct permanent and temporary Project impacts to waters of the State and waters of the United States are approximately 0.97 acre. These impacts occur in wetlands, sub surface seepages and intermittent coastal drainages. The majority of Project impacts will occur at the North Portal area within Shamrock Ranch due to the construction of temporary roads and pier foundations for the North Approach. Relatively minor impacts to other wetland areas at the South Portal and OMC building site will also occur.

11. The Project's direct permanent impacts include elimination of approximately 0.30 acre of seasonal wetland, and approximately 0.53 acre of intermittent coastal drainage. The Project's direct temporary impacts during construction include approximately 0.07 acre of intermittent coastal drainage, and approximately 0.07 acre of sub surface seepage, for a total of 0.97 acre of impacts.

12. Caltrans has applied to the United States Army Corps of Engineers (Corps) for Nationwide Permits Nos. 14 (Linear Transportation Projects), 27 (Wetland and Riparian Restoration and Creation Activities), 33 (Temporary Construction, Access and Dewatering), and 39 (Residential, Commercial, and Institutional Developments) pursuant to Section 404 of the Clean Water Act (33 USC 1344) for the Project.

13. Due to possible project impacts to the California Red Legged Frog (CRLF), the United States Fish and Wildlife Service (USFWS) requested that Caltrans build a new frog pond at Shamrock Ranch and relocate the CRLF from the North Pond to the newly created pond. In October 2000, Caltrans created a 0.04-acre pond and relocated the CRLF. With these measures in place, USFWS determined that the Project was not likely to jeopardize the continued existence of the CRLF or destroy or adversely modify its proposed critical habitat.

14. To mitigate for the Project's permanent and temporal impacts to habitat, Caltrans plans to implement measures on-site, as well as off-site at a location named the Charthouse Mitigation Site located within the Montara Mountain Watershed, south of the Project site and east of Route 1. This site is owned by the Peninsula Open Space Trust (POST). For mitigation

purposes, Caltrans considers both temporal and permanent impacts as if they were permanent impacts, and will complete the mitigation described in the "*Final Draft Devil's Slide Tunnel Project State Highway 1, San Mateo County California Wetlands Report*" (hereinafter Mitigation and Monitoring Plan), dated April 05, 2004, and the Mitigation and Monitoring Plan's associated documents. Although Caltrans labeled these plans and other documents as Draft plans, they were submitted as part of the final ROWD package. Therefore, the Board considers these documents as Caltrans' final proposal for the Project.

15. The Mitigation and Monitoring Plan provides for the creation of 1.19 acres of wetlands, the restoration of 3.40 acres of wetland habitat, and 0.50 acre of wetland enhancement. The off-site mitigation will take place in the same watershed in which the Project's impacts occur, is designed to stabilize and improve the conditions of the watershed, and will be initiated by August 01, 2005. Caltrans will obtain easements from POST to implement the Mitigation and Monitoring Plan no later than July 01, 2005. The Mitigation and Monitoring Plan provides specified success criteria, a maintenance program and a monitoring plan. The Mitigation and Monitoring Plan is acceptable to the Board, with the required submittals and revisions as described in Provisions 3, 4, 5, and 6 of this Order.

16. The proposed mitigation consists of the following:

- a. On-site Mitigation: Shamrock Ranch -- Creation and Restoration. After consultation with the USFWS, Caltrans created a 0.04-acre pond, with wetland habitat, to serve as the relocation site for CRLF. Caltrans will restore 0.49 acres of wetland, which includes some of the areas affected by construction. Caltrans will plant higher value wetland plant species and control invasive plant species; perform contour grading surrounding upland areas disturbed during construction to blend in with the adjacent area and stabilizing these areas with native grasses and forbs; and repairing and restoring the face of an existing earthen dam impoundment of the South Pond to ensure that the pond continues to function as a viable wetland habitat. The created wetlands and buffer zones will be preserved under a perpetual conservation easement to be recorded prior to commencement of construction. The restoration efforts will involve temporal impacts to existing jurisdictional areas; these impacts will be mitigated by implementation of the Mitigation and Monitoring Plan and are not considered permanent impacts.
- b. Offsite Mitigation: Charthouse Mitigation Site -- Creation and Restoration. Caltrans will create 1.15 acres of wetlands on the western portion of the site, where fill material, possibly associated with railroad berm installation, has created an upland area that contains decomposed granite where no hydrophytic vegetation is currently supported. It will also restore 2.91 acres of existing wetland previously disturbed by agricultural activities and the placement of fill. Caltrans will eradicate invasive plant species, and seed and plant wetland vegetation. Caltrans will also restore upland vegetation next to riparian buffer zone areas within the site in order to provide foraging habitat for wildlife and long-term erosion and sediment control. The newly created wetland and riparian areas, as well as the restored ones, will be planted with targeted wetland and riparian plant species, enhancing the habitat value of the site.

The restored and created riparian areas along with buffer zones will be preserved under a perpetual conservation easement to be recorded no later than July 01, 2005.

17. Operation and maintenance of the Project's tunnels, bridges, and access roads will indirectly impact beneficial uses through the discharge of polluted storm water and other urban runoff pollutants (e.g., oil and grease, heavy metals, nutrients, etc.). Therefore, to address the Project's construction and post-construction stormwater impacts, Caltrans has prepared the "*Draft Water Quality Management Plan for Devil's Slide Tunnel Project*", dated January 2004; it describes the following:

- a. For treatment of roadway runoff from the South Portals to the OMC facility, a water quality detention basin will be used in conjunction with an existing detention basin to treat the roadway water on the south side of the Project as a permanent control measure. A temporary sediment trap used in the early contract will be modified to become this water quality basin. The roadway water will be conveyed via open ditch to the water quality basin adjacent to the existing drainage detention basin. The impervious area that will be treated at the water quality basin is 118,405 ft². The basin will treat 92,945 ft² of new paved bridge decks and 25,460 ft² of existing roadway. The water quality volume for the detention basin is 9,676 ft³. The treatment basin will treat roadway waters, and contain a minimum of 85% of inflow of the water quality volume for a minimum of 37 hours. The treated water will flow to the existing detention basin and then will be discharged to the other side of highway through a 24-inch reinforced concrete pipe (RCP). The existing detention basin, equipped with a riser, will meter the flow to reduce erosion of the slope at the outfall. The existing detention basin will be used primarily to collect and meter out natural flow from the watershed and from construction slopes once vegetation has been well established.
- b. For treatment of roadway runoff from the North Portals to the existing detention basin adjacent to Shamrock Ranch, a water quality basin on Shamrock Ranch will be located opposite of an existing Caltrans detention basin. A combination of new and existing roadway runoff will be conveyed to a northern location within the ranch. The impervious area that will be treated at the water quality basin is 105,430 ft². The basin will treat 42,570 ft² of new paved bridge decks and 62,860 ft² of existing roadway. The water quality volume for the detention basin is 25,990 ft³. The treatment basin will treat roadway waters, and contain a minimum of 85% of inflow of the water quality volume for a minimum of 37 hours. Discharge from the basin will flow through existing vegetated swales in the ranch that are sized for 100-year storm events. Flows from the ranch swales eventually discharge into an existing bioswale located adjacent to San Pedro Road. From there, the treated flow will discharge into San Pedro Creek. Collectively, runoff will be subject to primary (water quality basin) and secondary (existing vegetated swales) treatment before further treatment in the bioswale adjacent to San Pedro Creek. Potential scouring is mitigated by metering of flows from the water quality basin and lengthy travel through large vegetated swales 1,740 ft prior to discharge into the bioswale.

18. The Board has determined to regulate the proposed discharge of fill materials into waters of the State by issuance of Waste Discharge Requirements (WDRs) pursuant to Section 13263 of the California Water Code (CWC) and 23 CCR §3857, in addition to issuing certification pursuant to 23 CCR §3859. The Board considers WDRs necessary to adequately address impacts and mitigation to beneficial uses of waters of the State from the Project, to meet the objectives of the California Wetlands Conservation Policy (Executive Order W-59-93), and to require appropriate changes in provisions over the life of the Project and its construction should the Project's proposed and/or actual discharges change.
19. The Board, on June 21, 1995, adopted, in accordance with Section 13240 et seq. of the CWC, a revised Water Quality Control Plan, San Francisco Bay Basin (Basin Plan). This updated revised Basin Plan was approved by the State Water Resources Control Board and the Office of Administrative Law on July 20, 1995, and November 13, 1995, respectively. A summary of regulatory revisions is contained in 23 CCR § 3912. The Basin Plan defines beneficial uses and water quality objectives for waters of the State, including surface waters and groundwater. This Order is in compliance with the Basin Plan.
20. The Project is located within the San Mateo Coastal Basin. The San Mateo Coastal Basin has the following existing beneficial uses defined in the Basin Plan: agricultural supply, cold freshwater habitat, fish migration, preservation of rare and endangered species, non-contact water recreation, shellfish harvesting, fish spawning, warm freshwater habitat and wildlife habitat.
21. Chapter 4, page 4-50 of the Basin Plan regarding wetland fill establishes that there is to be no net loss of wetland acreage and no net loss of wetland value when the project and any proposed mitigation are evaluated together, and that mitigation for wetland fill projects is to be located in the same area of the Region, whenever possible, as the project. The Basin Plan further establishes that wetland disturbance should be avoided whenever possible, and if not possible, should be minimized, and only after avoidance and minimization of impacts should mitigation for lost wetlands be considered.
22. The goals of the California Wetlands Conservation Policy (Executive Order W-59-93, signed August 23, 1993) include ensuring "no overall loss" and achieving a "...long-term net gain in the quantity, quality, and permanence of wetland acreage and values...." Senate Concurrent Resolution No. 28 states that "[i]t is the intent of the legislature to preserve, protect, restore, and enhance California's wetlands and the multiple resources which depend on them for benefit of the people of the State." Section 13142.5 of the CWC requires that the "[h]ighest priority shall be given to improving or eliminating discharges that adversely affect...wetlands, estuaries, and other biologically sensitive areas."
23. This Order applies to the temporary and permanent fill and indirect impacts to waters of the State and the United States associated with the Project, which is comprised of the components listed in Finding 9. Construction of the Project will result in the placement of fill in and/or disturbance of 0.97 acres of jurisdictional waters, including wetlands, sub surface seepages and intermittent drainages.

24. Caltrans has submitted the "*Devil's Slide Tunnel Project 404(b) 1 Alternatives Analysis*", dated April 05, 2004, to show that the discharge constitutes the least environmentally damaging practicable alternative that will achieve the basic project purpose, as required by the Basin Plan. Further, Caltrans has demonstrated that where avoidance of impacts to waters is not possible, and that impacts have been fully minimized, then adequate mitigation for the loss of waterbody acreage and functions were achieved. The Board concurs with the conclusions of the Alternatives Analysis.

25. With the successful implementation of the mitigation measures described in these findings, the Board finds that the Project will comply with the Basin Plan wetland fill requirements and California Wetlands Conservation Policy referenced in Findings 21 and 22.

26. The California Environmental Quality Act (CEQA) requires all discretionary projects approved by public agencies to be in full compliance with CEQA, and requires a lead agency to prepare an appropriate environmental document (e.g., Environmental Impact Report or Negative Declaration) for such projects. On June 13, 2003, the Caltrans District 04 Office certified the Final Environmental Impact Report. The Board, as responsible agency, finds the Final EIR to be adequate and has considered the environmental impacts analyzed therein. The Board further finds, after review of the Project's environmental documents that all environmental impacts have been identified for the project activities which it is required to approve, and that with compliance with the conditions of this Order, that mitigation measures and/or alternatives have been incorporated to reduce those impacts to a level of insignificance. Pursuant to 23 CCR § 3857 and § 3859, the Board is issuing WDRs and Water Quality Certification for the Project as described herein.

27. The Board has notified the Corps, the County, California Department of Fish and Game (CDFG), and other interested agencies and persons of its intent to prescribe WDRs and Water Quality Certification for this discharge.

28. The Board, in a public meeting, heard and considered all comments pertaining to the discharge.

IT IS HEREBY ORDERED that Caltrans, in order to meet the provisions contained in Division 7 of the California Water Code and the regulations adopted thereunder, shall comply with the following, pursuant to authority under CWC Sections 13263 and 13267:

A. Discharge Prohibitions

1. The direct discharge of debris, soil, silt, sand, cement, concrete, or washings thereof, or other construction related materials or wastes, oil or petroleum products or other organic or earthen material into surface waters or at any place where it may be washed from the Project site by rainfall or runoff into waters of the State is prohibited. When operations are completed, any excess material shall be removed from the Project work area and any areas adjacent to the work area where such material may be washed into waters of the State.

2. The wetland fill activities subject to these requirements shall not cause a nuisance as defined in CWC §13050(m).
3. The groundwater in the vicinity of the Project shall not be degraded as a result of the Project activities or placement of fill for the Project.
4. The discharge of materials other than storm water, which are not otherwise regulated by a separate NPDES permit or allowed by this Order to waters of the State, is prohibited.

B. Receiving Water Limitations

1. The discharges shall not cause the following conditions to exist in waters of the State at any place:
 - a. Floating, suspended, or deposited macroscopic particulate matter or foam in concentrations that cause nuisance or adversely affect beneficial uses;
 - b. Bottom deposits or aquatic growths to the extent that such deposits or growths cause nuisance or adversely affect beneficial uses;
 - c. Alteration of temperature, turbidity, or apparent color beyond present natural background levels;
 - d. Visible, floating, suspended, or deposited oil or other products of petroleum origin; and,
 - e. Toxic or other deleterious substances to be present in concentrations or quantities which will cause deleterious effects on wildlife, waterfowl, or other aquatic biota, or which render any of these unfit for human consumption, either at levels created in the receiving waters or as a result of biological concentration.
2. The discharges shall not cause nuisance, or adversely affect the beneficial uses of the receiving water.
3. The discharges shall not cause the following limits to be exceeded in waters of the State at any one place within one foot of the water surface:
 - a. Dissolved Oxygen: 5.0 mg/L, minimum

The median dissolved oxygen concentration for any three consecutive months shall not be less than 80% of the dissolved oxygen content at saturation. When natural factors cause concentrations less than that specified above, then the discharges shall not cause further reduction in ambient dissolved oxygen concentrations.
 - b. Dissolved Sulfide: 0.1 mg/L, maximum

- c. pH: The pH shall not be depressed below 6.5 nor raised above 8.5, nor caused to vary from normal ambient pH by more than 0.5 pH units.
- d. Un-ionized Ammonia: 0.025 mg/L as N, annual median; and
0.16 mg/L as N, maximum
- e. Nutrients: Waters shall not contain biostimulatory substances in concentrations that promote aquatic growths to the extent that such growths cause nuisance or adversely affect beneficial uses.

C. Discharge Provisions

1. Caltrans shall comply with all Prohibitions, Receiving Water Limitations, and Provisions of this Order immediately upon adoption of this Order or as provided below.
2. Caltrans shall submit copies of all necessary approvals and/or permits for the Project and mitigation projects from applicable government agencies, including, but not limited to, CDFG, National Marine Fisheries Service, USFWS, the California Coastal Commission, the County of San Mateo and the Corps, and shall submit copies of such approvals and/or permits to the Board's Executive Officer prior to the start of construction activity.
3. Caltrans shall fully implement its submitted plans, as modified herein, and plans required to be submitted in the future and that are accepted by the Executive Officer or approved by the Board (e.g., construction Storm Water Pollution Prevention Plans, its Final Water Quality Management Plan, dewatering plans, Final Mitigation and Monitoring Plan, etc.).
4. Caltrans shall perform monitoring and maintenance of the mitigation sites until the regulatory agencies, noted in Provision 2 above, concur that success criteria have been achieved and the mitigation has been successfully completed, but for not less than a period of five years and no less than a period of two years after any mitigation habitat irrigation systems have been terminated.
5. Caltrans shall submit annual mitigation monitoring reports acceptable to the Regional Board Executive Officer no later than June 15 of each year until the Mitigation and Monitoring Plan has been successfully completed, but for not less than a period of five years and no less than a period of two years after any mitigation habitat irrigation systems have been terminated. If the mitigation and monitoring program indicates that establishment of the habitat is not progressing in a manner or rate consistent with the success criteria proposed, the annual mitigation monitoring reports shall evaluate the probable cause(s) of any problems and propose appropriate corrective measures.
6. Not later than 60 days following adoption of this Order, Caltrans shall submit a Final Mitigation and Monitoring Plan which modifies the Mitigation and Monitoring Plan and is

consistent with the requirements of this Order, including dates, deadlines and provide for mitigation monitoring and maintenance until the regulatory agencies concur that the mitigation has been successfully completed. The Final Mitigation and Monitoring Plan shall be subject to the review and approval of the Executive Officer. This Final Mitigation and Monitoring Plan may be amended subject to the review and approval of the Executive Officer.

7. Caltrans shall demonstrate to the satisfaction of the Executive Officer no later than July 01 2005, that it has acquired sufficient legal authority over the land at the proposed Charthouse Mitigation Site to carry out the wetland creation and restoration activities described in its Final Mitigation and Monitoring Plan. If Caltrans fails to meet this requirement, any disturbance or discharges to wetlands, in excess of the 0.18-acre to be disturbed during the first year of construction, are prohibited until Caltrans makes that demonstration. If it is determined that the Charthouse Mitigation Site is not available, Caltrans shall then identify other potential mitigation sites and shall convene an interagency group to determine the acceptability of those sites, including timing and acreage of alternative mitigation, and acceptable proposed plans for construction. The alternative mitigation and monitoring plan shall be brought before the Board for its approval. Construction may not begin at any alternative mitigation sites until the sites and plans have received approval by the Board.
8. Not later than 60 days following adoption of this Order, Caltrans shall submit, acceptable to the Executive Officer, a Final Water Quality Management Plan for implementation of post-construction stormwater treatment measures.
9. As soon as feasible following contract award for each phase of construction and, and not later than 30 days prior to the beginning of construction activity for that project phase, Caltrans shall submit, acceptable to the Executive Officer, a Storm Water Pollution Prevention Plan (SWPPP) to adequately address the Project's expected construction impacts. SWPPPs may be submitted separately for each phase of construction, but must all be submitted, acceptable to the Executive Officer, at least 30 days prior to beginning of each phase of construction activity.
10. Caltrans shall submit, no later than 30 days prior to the beginning of construction of a project phase in which dewatering is taking place, a dewatering plan, acceptable to the Executive Officer, that includes a description of how it will address and obtain appropriate approvals for its proposed discharges. The dewatering plan shall include a description of dewatering locations; an estimate or estimates of discharge rates and volumes; a listing of expected pollutants and concentrations; the expected timing and scheduling of the proposed discharges; and, all other information, as appropriate to mitigate for dewatering impacts (e.g., measures to mitigate the potential for erosion caused by dewatering discharges at their outfall(s)).
11. Caltrans shall notify the Board immediately whenever violations of this Order are detected.
12. Caltrans shall maintain a copy or copies of this Order at the Project site so as to be available at all times to site operating personnel.

13. Caltrans is considered to have full responsibility for correcting any and all problems that arise in the event of a failure that results in an unauthorized release of waste or wastewater from the Project.

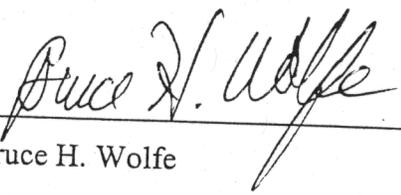
14. Caltrans shall maintain all devices and/or designed features installed in accordance with this Order such that they function without interruption for the life of the Project.

15. Caltrans shall permit the Board or its authorized representative, upon presentation of credentials:

- a. Entry onto to premises on which wastes are located and/or in which records are kept.
- b. Access to copy any records required to be kept under the terms and conditions of this Order.
- c. Inspection of any treatment equipment, monitoring equipment, construction area(s), or monitoring method completed as part of the Project.
- d. Sampling of any discharge or surface water covered by this Order.

16. This Order does not authorize commission of any act causing injury to the property of another or of the public; does not convey any property rights; does not remove liability under federal, state, or local laws, regulations or rules of other programs and agencies; nor does this Order authorize the discharge of wastes without appropriate permits from this agency or other agencies or organizations.

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is a full, complete, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on June 16, 2004.



Bruce H. Wolfe
Executive Officer



Please reply to: **Mike Schaller**
(650) 363-1849

June 1, 2004

**ENVIRONMENTAL
SERVICES
AGENCY**

CalTrans District 4
Attn: Skip Sowko
111 Grand Avenue
Oakland, CA 94612

Agricultural
Commissioner/ Sealer of
Weights & Measures

Dear Mr. Sowko:

Subject: File Number **PLN2003-00428**
Location: Devil's Slide, Pacifica
APN: 023-731-020

Animal Control

Cooperative Extension

On May 26, 2004, the San Mateo County Planning Commission considered 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.

Fire Protection

LAFCo

Based on information provided by staff and evidence presented at the hearing the Planning Commission approved Planning Commission Resolution Number 3165 adopting findings and statement of facts supporting findings with respect to Environmental Review for the Devil's Slide Improvement Project and approving a Mitigation Monitoring and Reporting Program, and approved the Coastal Development Permit, made the findings and adopted conditions of approval with modifications as attached.

Library

Parks & Recreation

Planning & Building

Commissioners:

Any interested party aggrieved by the determination of the Planning Commission has the right of appeal to the Board of Supervisors within ten (10) business days from such date of determination. The appeal period for this matter will end at **7:00 p.m. on June 15, 2004.**

David Bomberger

Steve Dworetzky

Ralph Nobles

This permit approval is appealable to the California Coastal Commission. Any aggrieved person who has exhausted local appeals may appeal this decision to the California Coastal Commission within 10 working days following the Coastal Commission's receipt of this notice. Please contact the Coastal Commission's North Central Coast District Office at (415) 904-5260 for further information concerning the Commission's appeal process. The County and Coastal Commission appeal periods run consecutively, not concurrently, and

Jon Silver

William Wong

PLANNING COMMISSION

455 County Center, 2nd Floor • Redwood City, CA 94063 • Phone (650) 363-4161 • FAX (650) 363-4849

CalTrans, District 4
Attn: Skip Sowko
June 1, 2004
Page 2

together total approximately one month. A project is considered approved when these appeal periods have expired and no appeals have been filed.

If you have questions regarding this matter, please contact the Project Planner listed above.

Sincerely,



Kan Dee Rud
Planning Commission Secretary
Pcd05260_6krdvlslide.doc

cc: Supervisor Richard Gordon, 3rd District
Department of Public Works
Building Inspection
Environmental Health
CDF
Assessor
Planning Director, City of Pacifica
Planning Director, City of Half Moon Bay
Dana Denman, Shamrock Ranch
Stephan Galvez, CalTrans
Kathryn Slater Carter, MCC
April Vargas, Former member of MCC
Lennie Roberts, Committee for Green Foothills
Zoe Kersteen-Tucker, Citizens Alliance for the Tunnel
Chuck Kozak
Vic Abadie
Oscar Braun
Charles Gardner
Jim Rourke
Other Interested Parties

County of San Mateo
Environmental Services Agency
Planning and Building Division

FINDINGS AND CONDITIONS OF APPROVAL

Permit or Project File Number: PLN 2003-00428

Hearing Date: May 26, 2004

Prepared By: Mike Schaller

Adopted By: Planning Commission

FINDINGS

Regarding the Environmental Review:

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

Regarding the Coastal Development Permit:

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

CONDITIONS OF APPROVAL

1. This approval applies only to the proposal, documents and plans described in this report and submitted to and approved by the Planning Commission. Minor revisions or modifications to the project, which have no potential to adversely affect coastal resources, including public access, may be made subject to the review and approval of the Planning Director. Any modification of this project that has a potential to adversely affect coastal resources shall require an amendment to this coastal development permit.
2. Once construction has commenced, this permit shall be valid for the full duration of all project construction. Within one year of project approval, the applicant shall commence construction of the project. Any extension of this permit beyond one year of project approval shall require submittal of an application for permit extension and payment of applicable permit extension fees to the San Mateo County Planning and Building Division.

Mitigation Monitoring

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

will notify the applicant when the balance approaches \$1,000. At such time, the applicant shall make additional deposits to San Mateo County within thirty (30) days of notice.

Erosion Control and Re-Vegetation

6. Prior to the beginning of any construction associated with this permit, the applicant shall implement the construction phase sediment and storm water control plan, as shown on the plans entitled "Conceptual Water Quality Plan: Water Pollution Control" and included as Attachments 3-B1 through 3-B11 of the November 20, 2003 plan submittal. (Note: because of the high amount of detail and color in the full-size plans, reductions were not included in this staff report as they would not have been readable. The plans are in the project file and are available for public review upon request. These plans are incorporated by reference into this project. These plans will be available at the May 26, 2004 hearing.)
7. Upon completion of construction within a given project area, the applicant shall implement the post-construction erosion controls as shown on the plans entitled "Conceptual Water Quality Plan: Erosion Control" and included as Attachments 3-A1 through 3-A9 of the November 20, 2003 plan submittal. (Note: because of the high amount of detail and color in the full-size plans, reductions were not included in this staff report as they would not have been readable. The plans are in the project file and are available for public review upon request. These plans are incorporated by reference into this project. These plans will be available at the May 26, 2004 hearing.)
8. Within one year of project approval, the applicant shall submit for review and approval by the County Planning Division, a final re-vegetation plan. Said plan shall reflect the draft re-vegetation plan as indicated in the project staff report as Attachments G-1 and G-2. Specifically, the final plan shall include:
 - a. A clear statement of the goals of the restoration, including:
 - (1) The desired habitat types;
 - (2) Major vegetation components;
 - (3) Hydrological regime for wetlands (as applicable);
 - (4) And wildlife support functions.
 - b. The plan shall establish clear performance goals by which the success of the plan can be judged. These goals shall be:

- (1) After the first year of re-vegetation efforts, 50% plant cover of native species shall be established. If plant cover falls below this percentage, supplemental planting will be required. Additional container plants (one per 36 ft. of bare ground) shall be planted.
 - (2) After the second year, 60% plant cover of native species is required. If plant cover falls below this percentage, supplemental planting will be required. Container plants will be replaced if the survival rate falls below 70% or if the plant cover is below 60%. Between years three and five, 71% cover of native species is required. Supplemental planting will be required if cover falls below this percentage. Container plants also will be replaced if plant survival rates fall below 70% or plant cover is below 71%.
 - (3) At the end of the 5-year monitoring period, a final annual monitoring report will be prepared documenting the achievement of the success criteria. Caltrans will forward the final report to the County Planning Division with a request in writing to schedule a final field review. If individual criteria or goals specified in the Re-vegetation Plan are not met, then success of the re-vegetation efforts will be re-evaluated, in consultation with the County and the Coastal Commission, and the applicant shall obtain an approved coastal development permit amendment.
- c. A qualified individual who will be personally responsible for all phases of the restoration shall be identified by name as the restoration manager. The restoration manager shall be a qualified restoration biologist, not a project manager with no technical background. (Note: The restoration manager shall not assign different phases of the restoration to different contractors without on-site supervision.)
 - d. A grading plan.
 - e. A weed and exotic plant species eradication plan.
 - f. A planting plan. This shall identify:
 - (1) The natural habitat type that is the model for the restoration;
 - (2) The relative abundance of desired species;

- (3) Whether planting will be by seeding or installation of container plants;
 - (4) Details about tree replacement (species, location, etc.);
 - (5) The source of plant stock (plant propagules shall come from local native stock.);
 - (6) If supplemental watering is planned. (The method and timing of watering shall be described).
- g. An interim monitoring plan. This shall include:
- (1) Maintenance and remediation activities;
 - (2) Interim performance goals;
 - (3) Assessment methods, and
 - (4) Schedule.
 - (5) Monitoring shall be monthly until plants are established and quarterly thereafter.
 - (6) Weeding shall be frequent, with a "zero tolerance" policy throughout the monitoring period.
 - (7) Photographs shall be taken from fixed points on fixed azimuths during each monitoring period.
 - (8) Quantitative monitoring shall take place once a year.
- h. A "Final" monitoring report. This report is intended to determine whether the restoration has been successful and shall take place after at least 3 years with no remediation or maintenance other than weeding. The final monitoring report shall include data verifying that specific and/or relative performance criteria have been met.

Post-Construction Recreational Access

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

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

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

15. In the event of a catastrophic failure of this public trail (Old Highway 1 trail) which renders all or a part of it, in the opinion of the agency or organization which then has operational responsibility for it, unusable, un-repairable or un-maintainable, and such agency or organization further determines that repairs to restore the access to the pre-failure condition would not be feasible, or that the creation of an alternative, passable pedestrian and/or bike trail is not feasible, that agency or organization shall not be required to return the access to its pre-failure condition. The agency or organization that owns the land and has operational responsibility for the trail shall immediately apply for a separate coastal development permit to modify the nature, extent and operational parameters of the coastal access in a manner consistent with the then existing conditions, the requirements of the Coastal Act and the San Mateo County Local Coastal Program.

Dust Control

16. Prior to the beginning of any construction, the applicant shall submit for review and approval by the County Planning Division, a construction dust control plan. The approved plan shall be implemented by the applicant prior to construction and is required during all phases of construction.

Visual

17. Within one year of final project approval, Caltrans shall submit for review and approval by the County Planning Division, a final signage plan. Signage plan shall include, but not be limited to, directional signs for trail parking areas and connecting trails, interpretive signs regarding the history and natural resources of the area, and "no overnight camping" (per LCP Policy 11.22) signs for the parking areas. This plan shall only cover signage for the recreational facilities and is not applicable to construction or traffic safety signage. The signage plan shall also show location of signs to avoid impacts to scenic views and sensitive resources. This signage shall be carefully designed to harmonize with the scenic qualities of scenic corridors.
18. The Operations and Maintenance (OMC) building shall be constructed as proposed in the project staff report's Attachments L-1 thru L-4. All exterior concrete walls shall be left in a neutral gray color. No polished or reflective materials shall be used.
19. The North Portal bridges shall be constructed as proposed in the project staff report's Attachment M. The applicant shall employ a neutral gray shade of concrete to construct this bridge.

20. For the north and south portals and the south rock cut retaining wall, the applicant shall employ surface texturing and color treatments that match the surrounding rock coloration. The applicant shall install a 10 ft. by 20 ft. sample of the proposed texturing and color treatment near each portal and the South Rock Cut retaining wall. The proposed texturing and color treatment shall be reviewed and approved by Planning staff prior to application across all portals and retaining walls.

Sensitive Habitat Protection and Mitigation

21. Within six months of this approval, the applicant shall submit for review and approval by the County Planning Division, a final wetlands mitigation plan for the "Charthouse mitigation site." Said plan shall include the following:
- a. Mitigation goals, objectives and performance standards including quantitative criteria to assess the attainment of goals/objectives;
 - b. An ecological assessment of the existing habitat, functions and values of the mitigation sites;
 - c. A site plan and design with specific elements and construction methods for:
 - (1) Hydrology (water control structures, channels);
 - (2) Soil (sediment composition, top soil conservation);
 - (3) Ground elevation changes (grading, erosion or sedimentation);
 - (4) Buffer areas, vegetation (species composition, exotics removal, sources of seeds)
 - d. A contingency plan
 - e. Long term maintenance plan (irrigation, weeding, erosion control)
 - f. A monitoring plan that addresses:
 - (1) Hydrology, soils, water quality, plants and animals;
 - (2) Success criteria for physical and chemical attributes;
 - (3) A timetable for reporting results

- g. Implementation schedule
 - (1) Construction;
 - (2) Monitoring
- 22. Vegetation removal for this project shall be limited to those areas that will be disturbed by construction activities. Areas within ESA fencing as shown on Attachments 3-B1 thru 3-B11 of the November 20, 2003 plan submittal, shall be protected from all construction related disturbances. The only additional vegetation removal permitted by this approval is for invasive vegetation control and must be in adherence with previously conditioned plan. (Note: because of the high amount of detail and color in the full-size plans, reductions were not included in this staff report as they would not have been readable. The plans are in the project file and are available for public review upon request. These plans are incorporated by reference into this project. These plans will be available at the May 26, 2004 Planning Commission hearing.)
- 23. To protect the California-red legged frog and its habitat from direct impacts due to construction, the applicant shall fully comply with the Biological Opinion issued by the United States Fish and Wildlife Service, dated December, 2000 and revised by letter from the USFWS dated March 25, 2004. The Biological Opinion authorizes take of the California red-legged frog. The applicant shall submit to San Mateo County copies of any monitoring reports required pursuant to the Biological Opinion. Any proposed revisions to the conditions of the Biological Opinion shall be based on continuing field research and studies and shall be made only in consultation with the USFWS.
- 24. To avoid direct impacts to the California red-legged frog due to construction and minimize indirect impacts due to sedimentation, the following measures are required:
 - a. A frog exclusion fence shall be installed around the immediate perimeter of the north pond, and all other areas indicated on Attachments 3-B1 thru 3-B11 of the November 20, 2003 plan submittal, prior to initiation of any construction activities within those areas. Said fence shall include one-way funnels that allow frogs that might be in the adjacent construction areas to "escape" to non-construction areas. Minor modifications to the location of this fence shall not require Planning Division approval so long as said modifications have been approved by the USFWS or their representative.

- b. Either prior to or concurrently with the installation of the frog exclusion fence, ESA fencing will be installed, as indicated on Attachments 3-B1 thru 3-B11 of the November 20, 2003 plan submittal. This fence will be installed along segments of the temporary construction access roads. High visibility orange polypropylene fabric can be used along portions of the ESA. These fences must be completely in place prior to access road construction at the north portal and approaches. Minor modifications to the location of this fence shall not require Planning Division approval so long as said modifications have been approved by the USFWS or their representative.
- c. The sediment barrier fence will be designed so that surface runoff from all areas above and within the construction zones will drain into small temporary de-silting basins spaced along the construction side of the fence. The spacing of these basins will reflect the locations shown on Attachments 3-B1 thru 3-B11 of the November 20, 2003 plan submittal. Silt deposits will be removed once they fill more than one third of any basin or if the integrity of the sediment barrier fence is threatened.
- d. Construction of temporary access roads and pier foundations will be limited primarily to the dry season (April 15 to October 15) to reduce the likelihood of a large-scale silt deposition on the valley floor. However, construction of temporary access roads and pier foundations within the valley floor from October 15th to April 15th will be allowed in accordance to limitations for Disturbed Soil Areas (DSA's) outlined in the water pollution control provisions in the applicants contract plans and specifications.
- e. After construction is completed, the construction access roads will be re-graded to match the original ground contours as close as possible. Restoration of the plant communities within all disturbed areas will begin, including the use of erosion control fabric, where applicable, and a fabric silt fence, as required, to prevent any loose soil from entering the pond basin. All disturbed areas will then be hydro-seeded with a non-invasive seed mix.
- f. During the operational phase, the majority of roadway runoff from the bridges will be contained and directed northward to a drainage on the existing Route 1 roadway which will include a water quality basin and which does not drain to the ponds and their surrounding habitats.

- g. Conservation easements will be sought for both the north and south ponds as well as the new pond in order to protect the habitat for the California red-legged frog in perpetuity. If a USFWS approved conservation easement cannot be secured, an off-site mitigation area or other agreement satisfactory to USFWS will be secured.
- h. Following completion of the project, a one-time, silt removal project will be implemented at the north pond in order to lessen the current heavy silt load in this basin. This operation shall be implemented consistent with the requirements of the Biological Opinion referenced in Condition 24 above. Prior to the silt removal operations, the applicant shall trap and remove from the pond, as many California red-legged frogs as possible, in order to prevent their take.
- i. To insure that the north pond does not continue to dry up in mid-summer, thereby negating successful metamorphosis of any California red-legged frog larval crop, the pond shall be supplied with a pressurized water line and a heavy duty float valve system. In addition, the shoreline and inshore areas will be planted with a complex of indigenous emergent reed, sedge, and forb species. These actions shall create a permanent pond habitat in which perennial inshore vegetation will continue to grow and provide frog protection, and where the frog can complete larval metamorphosis, even during drought years.
- j. A three-year monitoring plan shall be implemented following the roadway construction to assess and evaluate the California red-legged frog population and the effects of the proposed mitigation measures. A copy of the monitoring plan shall be submitted to the San Mateo County Planning Division.
- k. The koi carp population shall be removed from the south pond (at the North Portal work site) to eliminate predation on red-legged frog eggs and tadpoles.
- l. The face of the south pond dam (at the North Portal work site) shall be restored and stabilized to ensure that the habitat functions associated with the pond will continue into the future.
- m. The applicant shall conduct regular inspections of the fence around the construction access road and the north pond to ensure that red-legged frogs do not cross the road and enter the north pond. The applicant shall install an electric fence around the new pond fence to prevent mammalian predation.

25. The existing earthen impoundment (dam) at the south ranch pond (on Shamrock Ranch) shall be repaired upon completion of construction of the North Portal and approach bridges. Vegetation shall be removed from the dam and spillway area, the face of the dam will be re-graded, and slope protection fabric and a system of drainage pipes will be installed.
26. As required by the federal Migratory Bird Treaty Act, the applicant shall develop and implement a monitoring plan for the Peregrine falcon nesting site adjacent to the South Portal work area. Said plan shall be submitted to the County Planning Division for review and approval prior to the beginning of construction at the South Portal work area.
27. If it is determined during monitoring that project activities are interrupting egg incubation or the feeding of the chicks at the peregrine falcon nest(s), then construction activities shall be suspended or the eggs or chicks shall be removed.
28. If it is necessary to remove eggs from the nest(s), then the eggs are to be artificially incubated at a facility such as that operated by the Santa Cruz Predatory Bird Research Group (SCPBRG). Any chicks that hatched out are to be "hacked-out" to occupied nests. In the event that construction activities interrupt the raising of hatched chicks, those chicks shall be removed and hacked-out to other nests, if it is determined by a qualified biologist that this is the best course of action.

Utilities

29. In compliance with LCP Policy 11.20, the applicant shall provide drinking water facilities at both proposed parking areas for the trail. The access improvement plans and water supply plans shall be modified to reflect this requirement.
30. All new utilities associated with this project shall be placed underground as shown on Exhibit 9 of the November 20, 2003 plan submittal. No new above ground utilities are permitted as part of this project.
31. All water transmission and storage improvements permitted herein shall be restricted solely to serve the development specifically authorized by this coastal development permit, including the tunnel, OMC building, and public access facilities. The permitted water transmission and storage facilities shall not be used to serve any development other than that authorized by this permit, including, but not limited to, existing, new, or expanded residential, commercial, or agricultural development or uses.

Noise and Light

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

Water Quality

34. All temporary construction roads for this project shall employ aggregate surfacing to reduce stormwater sedimentation, dust, and visual impacts. No asphalt paving shall be used unless aggregate surfacing is not possible due to field conditions. The applicant shall maintain all temporary construction roads and install additional aggregate as necessary.
35. The applicant shall install sediment control structures around the perimeter of the dirt access road where runoff is likely to drain to any of the three ponds or the creek at the North Portal work site. Any silt control structures that breach or become damaged during a storm event shall be repaired or replaced within 24 hours. Any straw/hay bales that may be used for sediment control shall be as weed free as possible.
36. Prior to the beginning of construction activities, the applicant shall submit a revised site plan designating construction staging areas. This plan shall be reviewed and approved by the San Mateo County Planning Division, California Department of Fish and Game, and USFWS staff prior to implementation. Stockpiling of construction materials, including portable equipment, vehicles and supplies, including chemicals, will be restricted to these designated areas only. These areas shall be designed to contain runoff.

CalTrans, District 4

Attn: Skip Sowko

June 1, 2004

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37. Refueling of construction equipment and vehicles may not occur within 300 feet of any water body or anywhere that spilled fuel could drain to a water body. The applicant shall check and maintain equipment and vehicles operated in the project area daily to prevent leaks of fuels, lubricants or other fluids. The vehicle and equipment fueling and maintenance areas shall be designed to contain runoff.
38. Equipment may not be washed in a place where wash water could drain to the creek or the ponds. The washing areas shall be designed to contain runoff.
39. Prior to the beginning of any construction associated with this permit, the applicant shall submit copies of all permits obtained from other State and Federal agencies, including a Stormwater Pollution Prevention Plan (SWPPP).
40. The applicant shall clean hazardous material spills immediately. Such spills shall be reported to the County and the U. S. Fish and Wildlife Service immediately. Spill cleanup and remediation shall be detailed in post-construction compliance reports. Copies of said reports shall be submitted to the USFWS and the San Mateo County Planning Division. The perimeter of clean-up areas shall include appropriate barriers to contain and collect wash waters.
41. The applicant shall remove litter and construction debris from the construction site on a regular basis and contain the waste at an appropriate site. All collected trash that may attract predators shall be securely covered at all times in locking metal containers, removed from the work site and disposed regularly. Following construction, all trash and construction debris shall be removed from the work areas.

Trails

42. During construction of the tunnel, Caltrans shall maintain all public trail access affected by the project. Access shall be maintained by means of trail detours during construction of the tunnel. After construction, any trail affected by the project, including the impacted section of the old Half Moon Bay-Colma Road trail, shall be re-established or re-aligned and reconnected to maintain trail continuity. All re-connection of severed trails shall occur prior to the opening of the tunnel for public use.

Traffic Measures

43. The applicant shall restrict truck trips (for the supply and removal of equipment and

materials) to off peak hours (i.e. – outside the normal peak commute and peak recreational hours of 7:00 to 9:00 a.m. and 4:00 to 6:00 p.m. on Mondays through Fridays. Public notices and the posting of roadway signs will be implemented to alert the public of any temporary road closures, lane reductions, or other construction scenarios that may affect traffic movement.

44. Prior to the beginning of any construction covered by this permit, the applicant shall submit a traffic management plan for review and approval. Said plan shall address the following:
 - a. Restrict all truck traffic associated with this project to periods outside of peak commute hours (i.e. outside of the hours of 7:00 to 9:00 a.m. and 4:00 to 6:00 p.m. on Mondays through Fridays. The plan shall detail how this restriction shall be effectively implemented.
 - b. Minimize truck traffic associated with this project during the period of June 1 - August 31.
 - c. Parking for construction workers and equipment delivery. The plan shall clearly delineate where workers will park and equipment delivered.
 - d. Lane closures. All lane closures shall be limited to non-peak (recreational or commute) hours.
45. No off-site hauling of material is allowed. All spoils resulting from this project shall be disposed of at the "Fill Disposal Site" as designated on the accompanying plans. No off-site hauling of tunnel spoils is allowed.

Air Quality

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

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Attn: Skip Sowko
June 1, 2004
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Socioeconomic

47. In accordance with the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and the California Relocation Act (Chapter 16, Section 7260 et seq. of the Government Code), Caltrans will provide relocation assistance to any person, business, farm or nonprofit organization displaced as a result of the acquisition of real property for public use.

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DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
333 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94105-2197

JUN 23 2004

Regulatory Branch

SUBJECT: File Number 21581S

Mr. Skip Sowko
California Department of Transportation
P.O. Box 23660
Oakland, California 94623-0660

Dear Mr. Sowko:

This letter is in reference to your submittal of May 11, 2004 concerning Department of the Army authorization to conduct work and place fill within the jurisdiction of the Corps of Engineers for the construction of the Devil's Slide Tunnel Project on State Route 1 (milepost 36.6 to 41.0) between the communities of Montara and Pacifica in San Mateo County, California. The proposed project consists of approximately 6,500 feet of new alignment along Route 1 including twin tunnels 4,000 feet long, an approach to the North Portal 1,500 feet long, and an approach to the South Portal 1,000 feet long. The Tunnel Project will result in approximately 3380 cubic yards of fill placed into 0.13 acre of jurisdictional wetlands and an additional estimated 688 cubic yards of fill placed into 0.11 acre of Waters of the U.S.

Caltrans will restore and enhance approximately 0.72 acre of wetlands at an off-site location in Montara, the Charthouse Mitigation Site, to compensate for unavoidable impacts to wetlands and waters subject to the jurisdiction of the Corps. Caltrans will restore and enhance additional areas on this site to meet the mitigation requirements of other regulatory agencies. Those restoration and enhancement activities will affect approximately 3.2 acres of degraded seasonal wetlands. This site is located east of Route 1 and just north of the former Charthouse Restaurant and is owned by the Peninsula Open Space Trust.

Based on a review of the information you submitted and our March 4 and 11, 2004, inspections of the project site, your project qualifies for authorization under Department of the Army Nationwide Permit (NWP) 14 *Linear Transportation Projects*, NWP 27 *Stream and Wetland Restoration Activities*, NWP 33 *Temporary Construction, Access and Dewatering* and NWP 39 *Residential, Commercial and Institutional Developments*, (67 Fed.Reg. 2020, January 15, 2002), pursuant to Section 404 of the Clean Water Act (33 U.S.C. Section 1344). See Enclosure 1. All work shall be completed in accordance with the attached plans and drawings titled "Devil's Slide Tunnel Project: South Portal / OMC / Fill Disposal Site and Drainage Areas Wetland Impacts and North Portal / Shamrock Ranch Drainage Area Wetland Impacts" and "Attachment A" received June 16, 2004.

The project must be in compliance with the General Conditions cited in Enclosure 2 for this Nationwide Permit authorization to remain valid. Upon completion of the project and all associated mitigation requirements, you shall sign and return the Certification of Compliance, Enclosure 3, verifying that you have complied with the terms and conditions of the permit. Non-compliance with any condition could result in the revocation, suspension or modification of the authorization for your project, thereby requiring you to obtain an individual permit from the Corps. This Nationwide Permit authorization does not obviate the need to obtain other State or local approvals required by law.

This authorization will remain valid until the NWP's expire on March 18, 2007, unless the Nationwide Permit is modified, suspended or revoked. If you have commenced work or are under contract to commence work prior to the suspension, or revocation of the Nationwide Permit and the project would not comply with the resulting Nationwide Permit authorization, you have twelve (12) months from that date to complete the project under the present terms and conditions of the Nationwide Permit.

This authorization will not be effective until you have obtained a Section 401 water quality certification from the San Francisco Bay Regional Water Quality Control Board (RWQCB) and a concurrence from the California Coastal Commission with your certification that your project will comply with California's Coastal Zone Management Act. If the RWQCB fails to act on a valid request for certification within two (2) months after receipt of a complete application, the Corps will presume a waiver of water quality certification has been obtained. If the Commission fails to act on a valid request for concurrence with your certification within six (6) months after receipt, the Corps will presume a concurrence has been obtained. You shall submit a copy of the certification and the concurrence to the Corps prior to the commencement of work.

To ensure compliance with the Nationwide Permit, the following special conditions shall be implemented:

1. This Corps permit does not authorize you to take an endangered species. In order to legally take a listed species, you must have a separate authorization under the Endangered Species Act (ESA) (e.g., an ESA Section 10 permit or a Biological Opinion (BO) under ESA Section 7 with "incidental take" provisions with which you must comply). The enclosed U.S. Fish and Wildlife Service (FWS) BO dated December 18, 2000 and amended March 25, 2004 contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" that is also specified in the BO. Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with incidental take authorized by the attached BO, whose terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the BO, where a take of the listed species occurs, would constitute an unauthorized take and it would also

constitute non-compliance with this Corps permit. The FWS is the appropriate authority to determine compliance with the terms and conditions of its BO and with the ESA.

2. Following the installation of the frog-exclusion fencing, environmentally sensitive areas (ESA) shall be fenced using high visibility fencing or otherwise demarcated. The fences shall be in place prior to other construction activities. The ESA shall be off limits to construction activity and personnel at all times.
3. The sediment/frog barrier fence shall be designed so that surface runoff from all areas above and within the construction zones will drain into temporary desilting basins spaced along the construction side of the fence. The spacing of these basins will be determined in the field based on the size and characteristics of the individual drainage sheds involved. Silt deposits shall be removed once they fill more than one-third of any basin or sooner if the integrity of the sediment/frog barrier fence is threatened. Any silt control structure that breaches or is damaged shall be repaired or replaced within 24 hours.
4. Construction of temporary access roads and pier foundations shall be limited to the dry season (April 15 to October 15) to reduce the likelihood of a large-scale silt deposition within Corps jurisdiction or on the valley floor. Requirements of Caltrans Standard Specifications, Section 7-1.01G, Water Pollution, and project specific Storm Water Pollution Prevention Plan measures shall be implemented in early fall to ensure that erosion in all disturbed areas will be kept to the minimum.
5. All work in Corps jurisdiction shall be conducted between April 15 and October 15 to help minimize impacts to water quality.
6. All project staging and equipment storage areas shall be located away from areas subject to the jurisdiction of the Corps.
7. No debris, oil, petroleum products or other organic material resulting from construction activities shall be allowed to enter or be placed where it may be washed by rainfall or runoff into areas subject to the jurisdiction of the Corps.
8. Following project construction, disturbed areas including access roads, staging and equipment storage areas, etc. shall be returned to pre-project conditions. This shall include, but is not necessarily limited to, grading to establish pre-project contours, removal of debris and planting California native vegetation.
9. The revegetation effort shall include full maintenance of the installed plants during the ten-year plant establishment period (PEP). A ten-year monitoring program shall be implemented after the initial planting to document the success of the revegetation

effort. Replanting shall be done as needed during the ten-year PEP to meet the success criteria. Once the soil in disturbed areas has stabilized the fabric silt fences will be removed and hand-carried from the site by monitoring personnel.

10. You shall compensate for unavoidable impacts to wetlands and waters subject to the jurisdiction of the Corps be by restoring 0.72 acres to high quality wetlands pursuant to the "Final Mitigation Plan, Devil's Slide Tunnel Project, State Highway 1, San Mateo County, California" dated May 11, 2004. Maintenance and monitoring of the mitigation site shall be conducted for ten years or until the site has been deemed successful and self-sustaining by the resource and regulatory agencies. In the event of an unanticipated delay or other alteration of the mitigation plan, you shall immediately notify the USACE San Francisco District Regulatory Branch.
11. In the event of any unanticipated discoveries of potential cultural/historic resources you shall immediately halt work in the vicinity of the discovery and contact the appropriate regulatory authorities. You shall complete consultation pursuant to 36 CFR Part 800 to the satisfaction of the SHPO prior to resuming work.
12. During the operational phase, the roadway runoff on the bridges shall be contained and directed northward to a drainage on the existing Route 1 that does not flow to the ponds and their surrounding habitats.

Please have the Declaration of Establishment of Conditions, Covenants, and Restrictions (CC & Rs) (Enclosure 4) completed, and the original CC & Rs recorded with the County Recorder's office or other appropriate official responsible for maintaining record of title to or interest in real property within 15 days. The County will notify us when this authorization is recorded.

Should you have any questions regarding this matter, please call John Yeakel of our Regulatory Branch at 415-977-8472. Please address all correspondence to the Regulatory Branch and refer to the File Number at the head of this letter. If you would like to provide comments on our permit review process, please complete the Customer Survey Form available through the Forms and Contacts Block on our website: www.spn.usace.army.mil/regulatory.

Sincerely,



for Edward A. Wylie
Chief, South Section

Enclosures

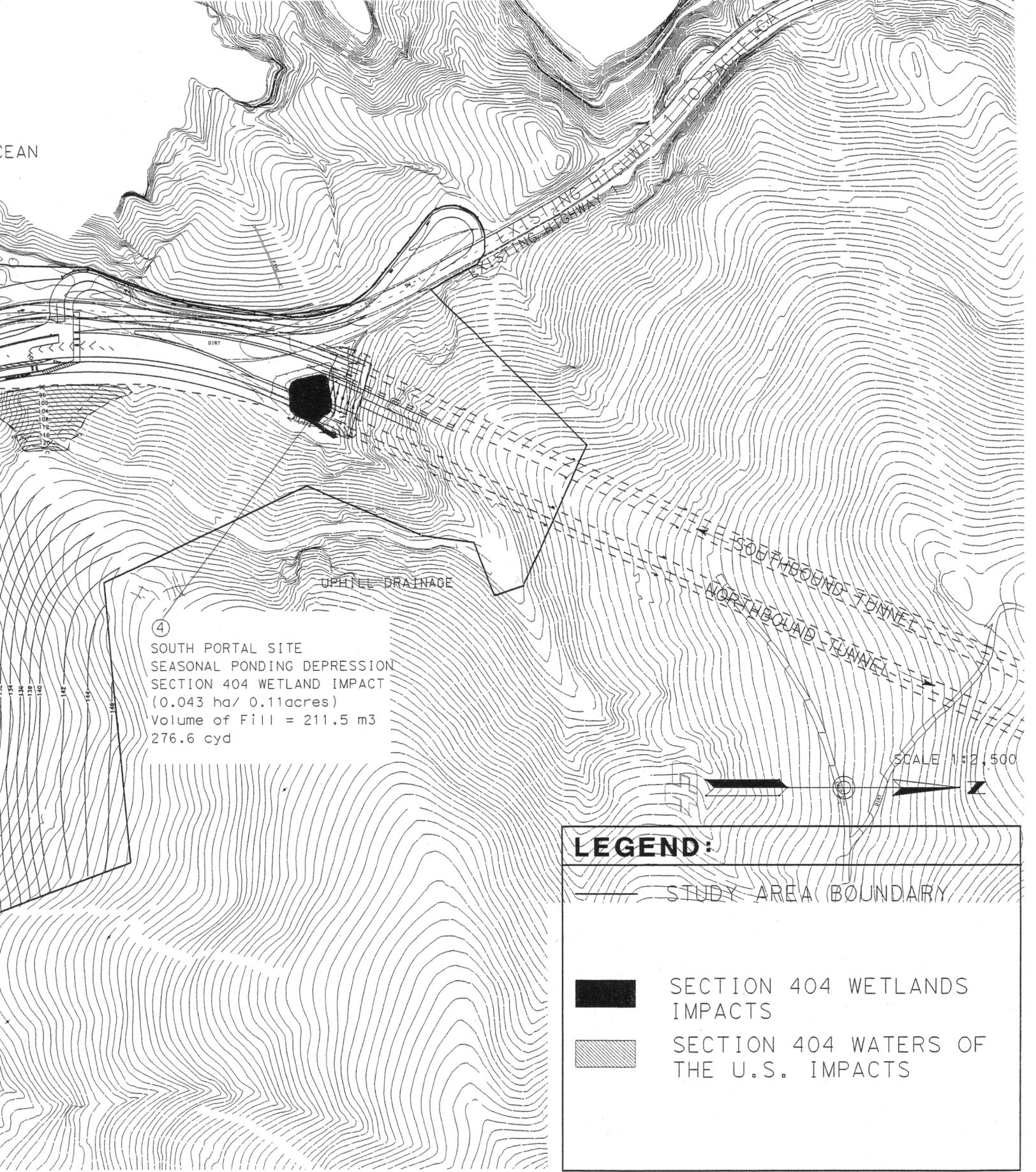
Copy furnished:

Mr. Jeffrey Jensen
California Department of Transportation
Office of Biological Sciences and Permits
P.O. Box 23660
Oakland, CA 94623-0660

Copies furnished (w/o enclosures):

US EPA, San Francisco, CA
US F&WS, Sacramento, CA
US NMFS, Santa Rosa, CA
CA CC, San Francisco, CA
CA DFG, Yountville, CA
CA RWQCB, Oakland, CA

SEAN



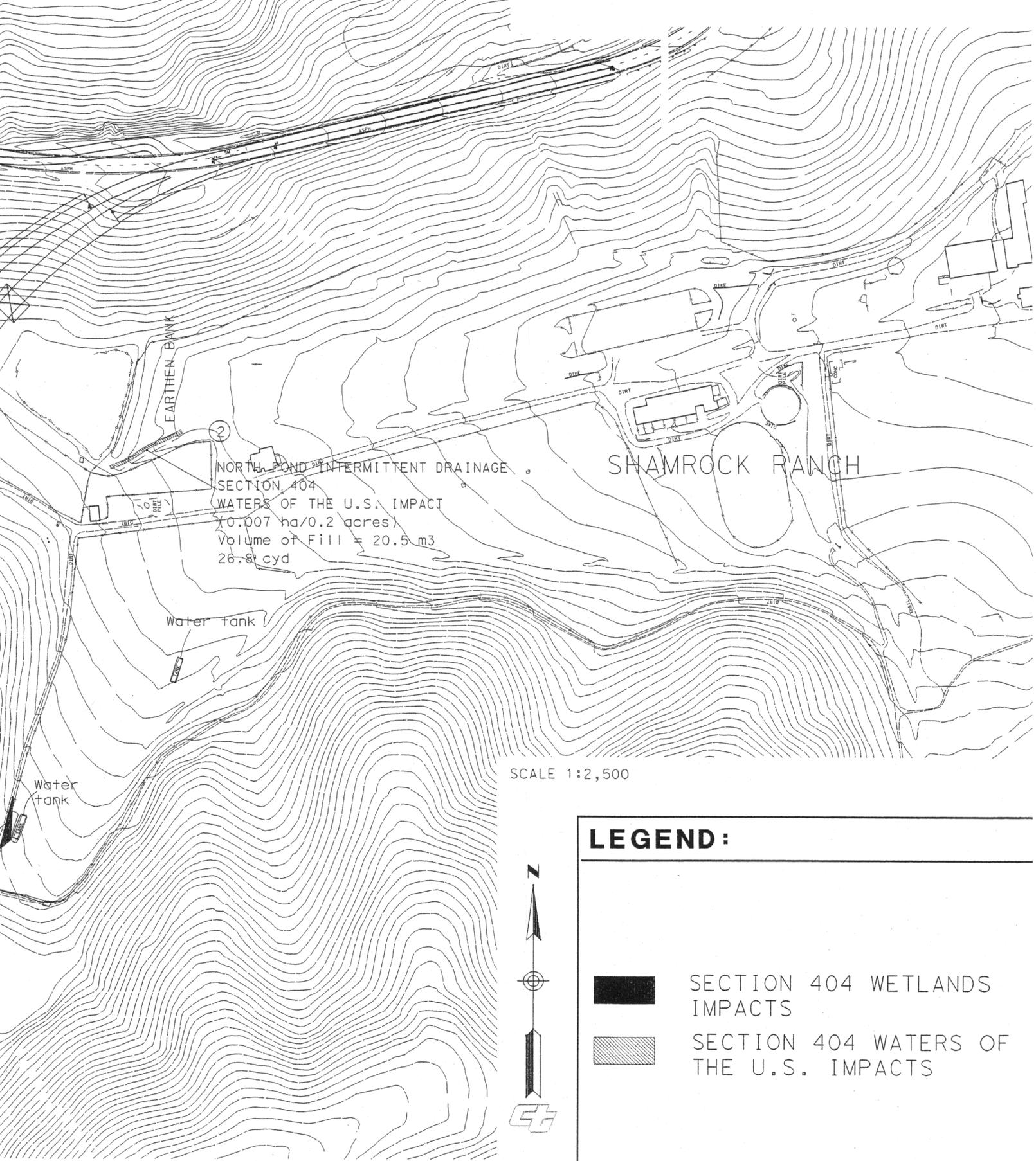
LEGEND:

— STUDY AREA BOUNDARY

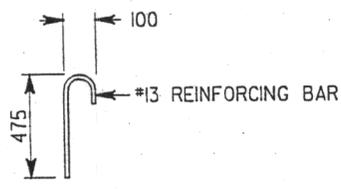
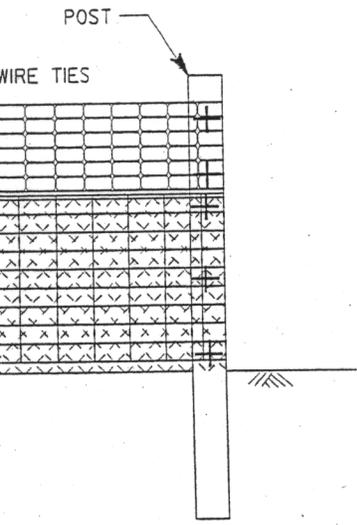
■ SECTION 404 WETLANDS IMPACTS

▨ SECTION 404 WATERS OF THE U.S. IMPACTS

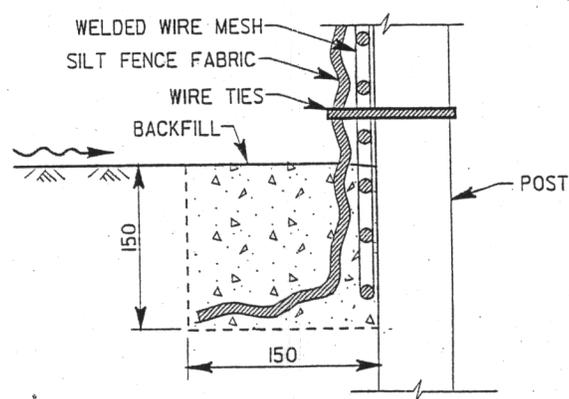
**PROJECT
 FILL DISPOSAL SITE
 WETLANDS IMPACTS**



**ECT
RANCH DRAINAGE AREA**



STEEL REINFORCING BAR



SECTION

KEY TRENCH

ALL DIMENSIONS ARE IN MILLIMETERS UNLESS OTHERWISE SHOWN

Attachment A

2002 Nationwide Permits

(effective March 18, 2002)

14. Linear Transportation Projects. Activities required for the construction, expansion, modification, or improvement of linear transportation crossings (e.g., highways, railways, trails, airport runways, and taxiways) in waters of the U.S., including wetlands, if the activity meets the following criteria:

a. This NWP is subject to the following acreage limits:

(1) For linear transportation projects in non-tidal waters, provided the discharge does not cause the loss of greater than 1/2 acre of waters of the U.S.; or

(2) For linear transportation projects in tidal waters, provided the discharge does not cause the loss of greater than 1/3 acre of waters of the U.S.

b. The permittee must notify the District Engineer in accordance with General Condition 13 if any of the following criteria are met:

(1) The discharge causes the loss of greater than 1/10-acre of waters of the U.S.; or

(2) There is a discharge in a special aquatic site, including wetlands;

c. The notification must include a compensatory mitigation proposal to offset permanent losses of waters of the U.S. to ensure that those losses result only in minimal adverse effects to the aquatic environment and a statement describing how temporary losses will be minimized to the maximum extent practicable;

d. For discharges in special aquatic sites, including wetlands, and stream riffle and pool complexes, the notification must include a delineation of the affected special aquatic sites;

e. The width of the fill is limited to the minimum necessary for the crossing;

f. This permit does not authorize stream channelization, and the authorized activities must not cause more than minimal changes to the hydraulic flow characteristics of the stream, increase flooding, or cause more than minimal degradation of water quality of any stream. (See General Conditions 9 and 21.);

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g. This permit cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars; and

h. The crossing is a single and complete project for crossing waters of the U.S. Where a road segment (i.e., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of streams (several single and complete projects), the Corps will consider whether it should use its discretionary authority to require an Individual Permit. (Sections 10 and 404)

Note: Some discharges for the construction of farm roads, forest roads, or temporary roads for moving mining equipment may be eligible for an exemption from the need for a Section 404 permit. (See 33 CFR 323.4.)

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27. Stream and Wetland Restoration Activities. Activities in waters of the U.S. associated with the restoration of former waters, the enhancement of degraded tidal and non-tidal wetlands and riparian areas, the creation of tidal and non-tidal wetlands and riparian areas, and the restoration and enhancement of non-tidal streams and non-tidal open water areas as follows:

(a) The activity is conducted on:

(1) Non-Federal public lands and private lands, in accordance with the terms and conditions of a binding wetland enhancement, restoration, or creation agreement between the landowner and the U.S. Fish and Wildlife Service (FWS) or the Natural Resources Conservation Service (NRCS), the National Marine Fisheries Service, the National Ocean Service, or voluntary wetland restoration, enhancement, and creation actions documented by the NRCS pursuant to NRCS regulations; or

(2) Reclaimed surface coal mine lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the OSM or the applicable state agency (the future reversion does not apply to streams or wetlands created, restored, or enhanced as mitigation for the mining impacts, nor naturally due to hydrologic or topographic features, nor for a mitigation bank); or

(3) Any other public, private or tribal lands;

(b) Notification: For activities on any public or private land that are not described by Paragraphs (a)(1) or (a)(2) above, the permittee must notify the District Engineer in accordance with General Condition 13; and

(c) Planting of only native species should occur on the site.

Activities authorized by this NWP include, to the extent that a Corps permit is required, but are not limited to: the removal of accumulated sediments; the installation, removal, and maintenance of small water control structures, dikes, and berms; the installation of current deflectors; the enhancement, restoration, or creation of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or create stream meanders; the backfilling of artificial channels and drainage ditches; the removal of existing drainage structures; the construction of small nesting islands; the construction of open water areas; the construction of oyster habitat over unvegetated bottom in tidal waters; activities needed to reestablish

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vegetation, including plowing or discing for seed bed preparation and the planting of appropriate wetland species; mechanized land clearing to remove non-native invasive, exotic or nuisance vegetation; and other related activities.

This NWP does not authorize the conversion of a stream to another aquatic use, such as the creation of an impoundment for waterfowl habitat. This NWP does not authorize stream channelization. This NWP does not authorize the conversion of natural wetlands to another aquatic use, such as creation of waterfowl impoundments where a forested wetland previously existed. However, this NWP authorizes the relocation of non-tidal waters, including non-tidal wetlands, on the project site provided there are net gains in aquatic resource functions and values. For example, this NWP may authorize the creation of an open water impoundment in a non-tidal emergent wetland, provided the non-tidal emergent wetland is replaced by creating that wetland type on the project site. This NWP does not authorize the relocation of tidal waters or the conversion of tidal waters, including tidal wetlands, to other aquatic uses, such as the conversion of tidal wetlands into open water impoundments.

Reversion. For enhancement, restoration, and creation projects conducted under Paragraph (a)(3), this NWP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion. For restoration, enhancement, and creation projects conducted under Paragraphs (a)(1) and (a)(2), this NWP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or creation activities). The reversion must occur within five years after expiration of a limited term wetland restoration or creation agreement or permit, even if the discharge occurs after this NWP expires. This NWP also authorizes the reversion of wetlands that were restored, enhanced, or created on prior-converted cropland that has not been abandoned, in accordance with a binding agreement between the landowner and NRCS or FWS (even though the restoration, enhancement, or creation activity did not require a Section 404 permit). The five-year reversion limit does not apply to agreements without time limits reached under Paragraph (a)(1). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate state agency

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executing the agreement or permit. Before any reversion activity the permittee or the appropriate Federal or state agency must notify the District Engineer and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the Corps Regulatory requirements will be at that future date. (Sections 10 and 404)

Note: Compensatory mitigation is not required for activities authorized by this NWP, provided the authorized work results in a net increase in aquatic resource functions and values in the project area. This NWP can be used to authorize compensatory mitigation projects, including mitigation banks, provided the permittee notifies the District Engineer in accordance with General Condition 13, and the project includes compensatory mitigation for impacts to waters of the U.S. caused by the authorized work. However, this NWP does not authorize the reversion of an area used for a compensatory mitigation project to its prior condition. NWP 27 can be used to authorize impacts at a mitigation bank, but only in circumstances where it has been approved under the Interagency Federal Mitigation Bank Guidelines.

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33. Temporary Construction, Access and Dewatering.

Temporary structures, work and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites; provided that the associated primary activity is authorized by the Corps of Engineers or the USCG, or for other construction activities not subject to the Corps or USCG regulations. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must be of materials, and placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if it is determined by the District Engineer that it will not cause more than minimal adverse effects on aquatic resources. Temporary fill must be entirely removed to upland areas, or dredged material returned to its original location, following completion of the construction activity, and the affected areas must be restored to the pre-project conditions. Cofferdams cannot be used to dewater wetlands or other aquatic areas to change their use. Structures left in place after cofferdams are removed require a Section 10 permit if located in navigable waters of the U.S. (See 33 CFR part 322.) The permittee must notify the District Engineer in accordance with the "Notification" General Condition. The notification must also include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources. The District Engineer will add Special Conditions, where necessary, to ensure environmental adverse effects is minimal. Such conditions may include: limiting the temporary work to the minimum necessary; requiring seasonal restrictions; modifying the restoration plan; and requiring alternative construction methods (e.g. construction mats in wetlands where practicable). (Sections 10 and 404)

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39. Residential, Commercial, and Institutional Developments. Discharges of dredged or fill material into non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters, for the construction or expansion of residential, commercial, and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, stormwater management facilities, and recreation facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development). The construction of new ski areas or oil and gas wells is not authorized by this NWP.

Residential developments include multiple and single unit developments. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The activities listed above are authorized, provided the activities meet all of the following criteria:

a. The discharge does not cause the loss of greater than 1/2 acre of non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters;

b. The discharge does not cause the loss of greater than 300 linear feet of a stream bed, unless for intermittent stream beds this criterion is waived in writing pursuant to a determination by the District Engineer, as specified below, that the project complies with all terms and conditions of this NWP and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively;

c. The permittee must notify the District Engineer in accordance with General Condition 13, if any of the following criteria are met:

(1) The discharge causes the loss of greater than 1/10 acre of non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters; or

(2) The discharge causes the loss of any open waters, including perennial or intermittent streams, below the ordinary high water mark (See Note below.); or

(3) The discharge causes the loss of greater than 300 linear feet of intermittent stream bed. In such cases

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to be authorized, the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine adverse environmental effects are minimal both individually and cumulatively, and waive the limitation on stream impacts in writing before the permittee may proceed;

d. For discharges in special aquatic sites, including wetlands, the notification must include a delineation of affected special aquatic sites;

e. The discharge is part of a single and complete project;

f. The permittee must avoid and minimize discharges into waters of the U.S. at the project site to the maximum extent practicable. The notification, when required, must include a written statement explaining how avoidance and minimization of losses of waters of the U.S. were achieved on the project site. Compensatory mitigation will normally be required to offset the losses of waters of the U.S. (See General Condition 19.) The notification must also include a compensatory mitigation proposal for offsetting unavoidable losses of waters of the U.S. If an applicant asserts that the adverse effects of the project are minimal without mitigation, then the applicant may submit justification explaining why compensatory mitigation should not be required for the District Engineer's consideration;

g. When this NWP is used in conjunction with any other NWP, any combined total permanent loss of waters of the US exceeding 1/10 acre requires that the permittee notify the District Engineer in accordance with General Condition 13;

h. Any work authorized by this NWP must not cause more than minimal degradation of water quality or more than minimal changes to the flow characteristics of any stream. (See General Conditions 9 and 21.);

i. For discharges causing the loss of 1/10 acre or less of waters of the U.S., the permittee must submit a report, within 30 days of completion of the work, to the District Engineer that contains the following information: (1) The name, address, and telephone number of the permittee; (2) The location of the work; (3) A description of the work; (4) The type and acreage of the loss of waters of the U.S. (e.g., 1/12 acre of emergent wetlands); and (5) The type and acreage of any

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compensatory mitigation used to offset the loss of waters of the U.S. (e.g., 1/12 acre of emergent wetlands created on-site);

j. If there are any open waters or streams within the project area, the permittee will establish and maintain, to the maximum extent practicable, wetland or upland vegetated buffers next to those open waters or streams consistent with General Condition 19. Deed restrictions, conservation easements, protective covenants, or other means of land conservation and preservation are required to protect and maintain the vegetated buffers established on the project site.

Only residential, commercial, and institutional activities with structures on the foundation(s) or building pad(s), as well as the attendant features, are authorized by this NWP. The compensatory mitigation proposal that is required in Paragraph (f) of this NWP may be either conceptual or detailed. The wetland or upland vegetated buffer required in Paragraph (j) of this NWP will be determined on a case-by-case basis by the District Engineer for addressing water quality concerns. The required wetland or upland vegetated buffer is part of the overall compensatory mitigation requirement for this NWP. If the project site was previously used for agricultural purposes and the farm owner/operator used NWP 40 to authorize activities in waters of the U.S. to increase production or construct farm buildings, NWP 39 cannot be used by the developer to authorize additional activities in waters of the U.S. on the project site in excess of the acreage limit for NWP 39 (i.e., the combined acreage loss authorized under NWPs 39 and 40 cannot exceed 1/2 acre).

Subdivisions: For residential subdivisions, the aggregate total loss of waters of U.S. authorized by NWP 39 cannot exceed 1/2 acre. This includes any loss of waters associated with development of individual subdivision lots. (Sections 10 and 404)

Note: Areas where wetland vegetation is not present should be determined by the presence or absence of an ordinary high water mark or bed and bank. Areas that are waters of the U.S. based on this criterion would require a PCN although water is infrequently present in the stream channel (except for ephemeral waters, which do not require PCNs under Paragraph (c)(2) above; however, activities that result in the loss of greater than 1/10 acre of ephemeral waters only would require PCNs under Paragraph (c)(1) above).

Nationwide Permit General Conditions - March 18, 2002

The following General Conditions must be followed in order for any authorization by an NWP to be valid:

1. Navigation. No activity may cause more than a minimal adverse effect on navigation.

2. Proper Maintenance. Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.

3. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

4. Aquatic Life Movements. No activity may substantially disrupt the necessary life-cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.

5. Equipment. Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.

6. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (See 33 CFR Part 330.4(e).) and with any case specific conditions added by the Corps or by the State or tribe in its Section 401 Water Quality Certification or Coastal Zone Management Act consistency determination.

7. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status; unless the appropriate Federal agency, with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation, or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

8. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

9. Water Quality.

(a) In certain states and tribal lands an individual Section 401 Water Quality Certification must be obtained or waived. (See 33 CFR Part 330.4(c).)

(b) For NWPs 12, 14, 17, 18, 32, 39, 40, 42, 43, and 44, where the state or tribal Section 401 certification (either generically or individually) does not require or approve water quality management measures, the permittee must provide water quality management measures that will ensure that the authorized work does not result in more than minimal degradation of water quality (or the Corps determines that compliance with state or local standards, where applicable, will ensure no more than minimal adverse effect on water quality). An important component of water quality management includes stormwater management that minimizes degradation of the downstream aquatic system, including water quality. (Refer to General Condition 21 for stormwater management requirements.) Another important component of water quality management is the establishment and maintenance of vegetated buffers next to open waters, including streams. (Refer to General Condition 19 for vegetated buffer requirements for the NWPs.)

This condition is only applicable to projects that have the potential to affect water quality. While appropriate measures must be taken, in most cases it is not necessary to conduct detailed studies to identify such measures or to require monitoring.

10. Coastal Zone Management. In certain states, an individual state coastal zone management consistency concurrence must be obtained or waived. (See 33 CFR Part 330.4(d).)

11. Endangered Species.

(a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the District Engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or is located in the designated critical habitat and shall not begin work on the activity until notified by the District Engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that may affect Federally-listed endangered or threatened species or designated critical habitat, the notification must include the name(s) of the endangered or

are and the amount of wetlands that exists on the property. For parcels greater than 1/4 acre in size, formal wetland delineation must be prepared in accordance with the current method required by the Corps. (See Paragraph 13(f) below.);

(iv) A written description of all land (including, if available, legal descriptions) owned by the prospective permittee and/or the prospective permittee's spouse, within a one mile radius of the parcel, in any form of ownership (including any land owned as a partner, corporation, joint tenant, co-tenant, or as a tenant-by-the-entirety) and any land on which a purchase and sale agreement or other contract for sale or purchase has been executed;

(10) For NWP 31 (Maintenance of Existing Flood Control Facilities), the prospective permittee must either notify the District Engineer with a PCN prior to each maintenance activity or submit a five year (or less) maintenance plan. In addition, the PCN must include all of the following:

(i) Sufficient baseline information identifying the approved channel depths and configurations and existing facilities. Minor deviations are authorized, provided the approved flood control protection or drainage is not increased;

(ii) A delineation of any affected special aquatic sites, including wetlands; and

(iii) Location of the dredged material disposal site;

(11) For NWP 33 (Temporary Construction, Access, and Dewatering), the PCN must include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources;

(12) For NWPs 39, 43, and 44, the PCN must also include a written statement to the District Engineer explaining how avoidance and minimization for losses of waters of the US were achieved on the project site;

(13) For NWP 39 and NWP 42, the PCN must include a compensatory mitigation proposal to offset losses of waters of the US or justification explaining why compensatory mitigation should not be required. For discharges that cause the loss of greater than 300 linear feet of an intermittent stream bed, to be authorized, the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine adverse environmental effects are minimal both individually and cumulatively, and waive the limitation on stream impacts in writing before the permittee may proceed;

(14) For NWP 40 (Agricultural Activities), the PCN must include a compensatory mitigation proposal to offset losses of waters of the U.S. This NWP does not authorize the relocation of greater than 300 linear feet of existing serviceable drainage ditches constructed in non-tidal streams unless, for drainage ditches constructed in intermittent non-tidal streams, the District Engineer waives this criterion in writing, and the District Engineer has determined that the project complies with all terms and conditions of this NWP, and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively;

(15) For NWP 43 (Stormwater Management Facilities), the PCN must include, for the construction of new stormwater management facilities, a maintenance plan (in accordance with state and local requirements, if applicable) and a compensatory mitigation proposal to offset losses of waters of the U.S. For discharges that cause the loss of greater than 300 linear feet of an intermittent stream bed, to be authorized, the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine adverse environmental effects are minimal both individually and cumulatively, and waive the limitation on stream impacts in writing before the permittee may proceed;

(16) For NWP 44 (Mining Activities), the PCN must include a description of all waters of the U.S. adversely affected by the project, a description of measures taken to minimize adverse effects to waters of the U.S., a description of measures taken to comply with the criteria of the NWP, and a reclamation plan (for all aggregate mining activities in isolated waters and non-tidal wetlands adjacent to headwaters and any hard rock/mineral mining activities);

(17) For activities that may adversely affect Federally-listed endangered or threatened species, the PCN must include the name(s) of those endangered or threatened species that may be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work; and

(18) For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

(c) Form of Notification: The standard Individual Permit application form (ENG FORM 4345) may be used as the notification but must clearly indicate that it is a PCN and must include all of the information required in Paragraphs (b) (1)-(18) of General Condition 13. A letter containing the requisite information may also be used.

(d) District Engineer's Decision: In reviewing the PCN for the proposed activity, the District Engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The prospective permittee may submit a proposed mitigation plan with the PCN to expedite the process. The District Engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. If the District Engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the District Engineer will notify the permittee and include any conditions the District Engineer deems necessary. The District Engineer must approve any compensatory mitigation proposal before the permittee commences work. If the prospective permittee is required to submit a compensatory mitigation proposal with the PCN, the proposal may be either conceptual or detailed. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the District Engineer will expeditiously review the proposed compensatory mitigation plan. The District Engineer must review the plan within 45 days of receiving a complete PCN and determine whether the conceptual or specific proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the

(a) The project must be designed and constructed to avoid and minimize adverse effects to waters of the U.S. to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland impacts requiring a PCN, unless the District Engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement. Consistent with National policy, the District Engineer will establish a preference for restoration of wetlands as compensatory mitigation, with preservation used only in exceptional circumstances.

(d) Compensatory mitigation (i.e., replacement or substitution of aquatic resources for those impacted) will not be used to increase the acreage losses allowed by the acreage limits of some of the NWPs. For example, 1/4 acre of wetlands cannot be created to change a 3/4 acre loss of wetlands to a 1/2 acre loss associated with NWP 39 verification. However, 1/2 acre of created wetlands can be used to reduce the impacts of a 1/2 acre loss of wetlands to the minimum impact level in order to meet the minimal impact requirement associated with NWPs.

(e) To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of the overall project purposes. Examples of mitigation that may be appropriate and practicable include, but are not limited to: reducing the size of the project; establishing and maintaining wetland or upland vegetated buffers to protect open waters such as streams; and replacing losses of aquatic resource functions and values by creating, restoring, enhancing, or preserving similar functions and values, preferably in the same watershed.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., easements, deed restrictions) of vegetated buffers to open waters. In many cases, vegetated buffers will be the only compensatory mitigation required. Vegetated buffers should consist of native species. The width of the vegetated buffers required will address documented water quality or aquatic habitat loss concerns. Normally, the vegetated buffer will be 25 to 50 feet wide on each side of the stream, but the District Engineer may require slightly wider vegetated buffers to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the project site, the Corps will determine the appropriate compensatory mitigation (e.g., stream buffers or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where vegetated buffers are determined to be the most appropriate form of compensatory mitigation, the District Engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland impacts.

(g) Compensatory mitigation proposals submitted with the "notification" may be either conceptual or detailed. If conceptual plans are approved under the verification, then the Corps will condition the verification to require detailed plans be submitted and approved by the Corps prior to construction of the authorized activity in waters of the U.S.

(h) Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases that require compensatory mitigation, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

20. Spawning Areas. Activities, including structures and work in navigable waters of the U.S. or discharges of dredged or fill material, in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., excavate, fill, or smother downstream by substantial turbidity) of an important spawning area are not authorized.

21. Management of Water Flows. To the maximum extent practicable, the activity must be designed to maintain preconstruction downstream flow conditions (e.g., location, capacity, and flow rates). Furthermore, the activity must not permanently restrict or impede the passage of normal or expected high flows (unless the primary purpose of the fill is to impound waters) and the structure or discharge of dredged or fill material must withstand expected high flows. The activity must, to the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar to preconstruction conditions, and provide for not increasing water flows from the project site, relocating water, or redirecting water flow beyond preconstruction conditions. Stream channelizing will be reduced to the minimal amount necessary, and the activity must, to the maximum extent practicable, reduce adverse effects such as flooding or erosion downstream and upstream of the project site, unless the activity is part of a larger system designed to manage water flows. In most cases, it will not be a requirement to conduct detailed studies and monitoring of water flow.

This condition is only applicable to projects that have the potential to affect waterflows. While appropriate measures must be taken, it is not necessary to conduct detailed studies to identify such measures or require monitoring to ensure their effectiveness. Normally, the Corps will defer to state and local authorities regarding management of water flow.

22. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to the acceleration of the passage of water, and/or the restricting of its flow shall be minimized to the maximum extent practicable. This includes structures and work in navigable waters of the U.S., or discharges of dredged or fill material.

23. Waterfowl Breeding Areas. Activities, including structures and work in navigable waters of the U.S. or discharges of dredged or fill material, into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

Enclosure 3

Permittee: California Department of Transportation

File Number: 21581S

**Certification of Compliance
for
Nationwide Permit**

"I hereby certify that the work authorized by the above referenced File Number and all required mitigation have been completed in accordance with the terms and conditions of the Nationwide Permit."

(Permittee)

(Date)

Return to:

John Yeakel
U.S. Army, Corps of Engineers
San Francisco District
Regulatory Branch, CESP-OR-R
333 Market Street
San Francisco, CA 94105-2197

Permittee: California Department of Transportation

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United States Department of the Interior

FISH AND WILDLIFE SERVICE

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



IN REPLY REFER TO:
1-1-03-F-0151

MAR 25 2004

Mr. Gary Hamby
Division Administrator
Federal Highway Administration
(Attn: Khoi Khau)
980 Ninth Street
Sacramento, California 95814-2724

Subject: Reinitiation of Formal Endangered Species Consultation on the Devils Slide Tunnel, State Highway 1, Pacifica, San Mateo County, California, FHWA file HCA-CA # 04-SM-1-36.6/41.0

Dear Mr. Hamby:

This is in response to your request to reinitiate formal consultation on the Federal Highway Administration's (FHWA) proposal, in conjunction with California Department of Transportation (Caltrans), to construct the Devil's Slide project on Highway 1 in Pacifica, San Mateo County, California, and project effects on the federally threatened California red-legged frog (*Rana aurora draytonii*) (red-legged frog). This opinion is provided in accordance with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (Act). The U.S. Fish and Wildlife Service (Service) received your April 8, 2003, request to reinitiate consultation on April 9, 2003.

This biological opinion amendment is based on (1) information provided in the letter of reinitiation; (2) meetings, telephone conversations, and correspondence between Service staff and Caltrans staff, and (3) information in Service files. A complete administrative record of this opinion is on file at the Sacramento Fish and Wildlife Office.

Caltrans proposes to construct a permanent new highway to bypass the Devil's Slide portion of California State Highway 1, which will consist of a tunnel through San Pedro Mountain and a bridge over a small valley at Shamrock Ranch. The FHWA is reinitiating consultation because the incidental take will exceed the amount originally anticipated for this project. The Service originally exempted incidental take of red-legged frogs on 10.67 acres of aquatic and upland



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habitat near the tunnel's north portal. Adverse effects to the frog near the north portal will be temporal in nature. No permanent habitat loss will occur at this site. Caltrans has determined that additional red-legged frog habitat loss will occur at the south portal. In 2002, in response to requirements of the Coastal Commission, Caltrans conducted additional surveys in intermittent drainages adjacent to the south portal and fill disposal sites. Red-legged frogs were found during four surveys in the south portal drainage. No red-legged frogs were found in the fill disposal drainage.

Permanent fill will be placed in the south portal drainage when the south portal is constructed. This drainage is considered sheltering and dispersal habitat and does not contain sufficient ponded water to support breeding red-legged frogs. Based on the information provided, fill at the south portal drainage will result in the permanent loss of 425 square meters (0.11 acre) of red-legged frog dispersal habitat. During construction, Caltrans will continue to monitor the south portal and fill disposal drainages. To minimize adverse effects to red-legged frogs and their habitat, the channel and banks upstream of the fill site will be delineated as Environmentally Sensitive Areas (ESA). No equipment or construction crews will be allowed to enter the ESA.

The Service hereby amends the amount or extent of take anticipated for this project to reflect that take in the amount of 10.78 acres will occur as a result of this project, of which 0.11 acre will be lost permanently. The Service concludes that the additional effects from this project are not likely to result in jeopardy to the red-legged frog, due to the small amount of additional habitat lost and the monitoring and conservation measures already in place for this project. As part of the original project, Caltrans has minimized the effect of incidental take from this project by creating a breeding pond on the Shamrock Ranch near the north portal and will remove sediment from Shamrock Ranch's north pond to create 0.4 acre of additional red-legged frog breeding habitat on the site following construction.

REINITIATION – CLOSING STATEMENT

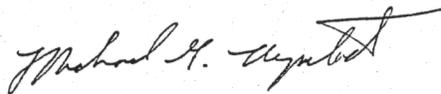
This concludes formal consultation on the action(s) outlined in the (request or reinitiation request). As provided in 50 CFR §402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been maintained (or is authorized by law)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

Mr. Gary Hamby

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If you have any questions regarding this opinion for the proposed amendment to the Devil's Slide biological opinion, please contact Cecilia Brown or Dan Buford of my staff at (916) 414-6625.

Sincerely,



cc

Cay C. Goude
Assistant Field Supervisor

cc:

ARD (ES), Portland, OR

California Department of Transportation, Oakland, CA (Attn: Richard Vonarb)