

**LOCAL AGENCY FORMATION COMMISSION**

455 COUNTY CENTER, 2ND FLOOR • REDWOOD CITY, CA 94063-1663 • PHONE (650) 363-4224 • FAX (650) 363-4849

November 12, 2010

To: Members, Formation Commission

From: Martha Poyatos, Executive Officer *M. Poyatos*

Subject: LAFCo File No. 10-01 –Proposed Extension of Water Service to the California Department of Transportation (Caltrans) Devil's Slide Bridge, Tunnel and Operations and Maintenance Building by the North Coast County Water District

**Summary**

Pursuant to Government Code Section 56133, Commission approval is required for provision of new service by cities or districts to territory outside of the agency's boundaries. This section also permits extension of service outside an agency's boundaries and outside the sphere of influence to respond to an existing or impending public health or safety threat. The code requires that the public agency apply to LAFCo by resolution on behalf of the landowner and provide evidence of an existing or impending public health or safety hazard. In this case, the North Coast County Water District (NCCWD) has applied for approval to provide one water service to the Devil's Slide Bridge, Tunnel, and Operations and Maintenance Building (OMB). The subject property is not within the boundaries or sphere of influence of NCCWD, however it is within the service area of the water supply assurance agreement between NCCWD and the San Francisco Public Utility Commission (SFPUC) and water system improvements will mitigate an existing public safety hazard by improving water transmission and pressure for fire suppression. Commission approval is recommended.

**Staff Report and Recommendation:**

The project site, known as Devil's Slide Bridge, Tunnel and Operations and Maintenance Building (OMB), is in unincorporated San Mateo County, with the northerly point of the bridge being approximately 4,000 feet south of the intersection of Highway 1 and San Pedro Terrace Road. The area in question, the roadway connecting the City of Pacifica with the unincorporated Montara, has a long history of road failure. In one part, the road crosses the aptly named Devil's Slide region, a steep, unstable geological formation. This section of road has a long history of closure due to rockslides and land slippage. One of the longest road closures happened in 1995. It lasted 158 days, and cost almost \$3 million to repair.

Following many years of public input and evaluation of alternatives, the adopted alternative in 1996, Measure T was approved by 76 percent of the San Mateo County voters, amending the County's Local Coastal Plan and identifying the construction of a two bore tunnel to be built through Montara Mountain as the identified alternative. Federal funding was made possible and environmental review was completed with the Final Second Supplement to the 1986 Environmental Impact Statement/Environmental Impact Report in May 2002. The two alignments are proposed in order to provide a "looped" water line to prevent water stagnation in the lines are part of the larger project that includes the water line within the Devil's Slide tunnel project boundary and was included and approved as part of the Devil's Slide Environmental Impact Report/Environmental Impact Statement cited above.

The project calls for construction of two tunnels beneath San Pedro Mountain, each 30-feet wide and 4,200-feet long. At the northern end, a 1,000-foot bridge will span the valley at Shamrock Ranch. A realignment of Route 1 at the southern end will provide safe transition into and out of the tunnel. Approximately one-quarter mile south of the tunnel is the site of an Operations and Maintenance facility. An earthen embankment and vegetation-covered roof will help the facility blend with natural surroundings.

The bypassed section of Route 1, together with 70 acres of State right of way, will be available for public access and recreational use following the planned tunnel opening in early 2012. Caltrans will monitor and improve the state of wetlands, wildlife, and plants until independent resource and regulatory agencies determine mitigation work has met its success criteria.

#### Government Code Section 56133

While original design specifications contemplated water service by NCCWD to the project, since project approval, Government Code Section 56133 was enacted to require LAFCo approval before a public agency can extend service outside jurisdictional boundaries. In addition, more recent amendments to design of water infrastructure, required additional environmental analysis regarding the water line alignment.

As described above, the bridge, tunnel and OMB and associated improvements are located along the new alignment of Highway 1 about 8,000 feet south of the north end of the bridge. The project site consists of approximately 17.9 acres. The water pipeline is proposed to be located in the southbound lane of Highway 1 (western alignment) and through private property owned by Shamrock Ranch (eastern alignment). The proposed water extension will serve only the Devil's Slide Bridge, tunnel and OMB. Surrounding territory includes open space and parkland, agricultural and grazing uses and the Pacific Ocean.

The reason for the water extension is to support the health and safety of motorists traveling through the new Devil's Slide bridge, tunnel and roadway as well as the safety of the maintenance and support staff in and around the new tunnel and roadway by

having a reliable source of water for fire suppression including hydrants, as well as irrigation systems, drinking fountains, and bathrooms for the Operations and Maintenance Building. The transmission pipeline would be 12-inches in diameter and was sized to meet minimum fire suppression requirements for the fire suppression systems, fire hydrants, irrigation systems, drinking fountains and incidental water uses of the OMB. Construction would be completed in concurrence with the construction phases of the Bridge, Tunnel and OMB. Construction is funded by Caltrans and on-going service would be funded by water fees charged by NCCWD to Caltrans.

It should also be noted that while the project site is outside the jurisdictional boundaries of NCCWD, it is within the water service boundaries identified in the NCCWD water supply assurance agreement with the San Francisco Public Utilities Commission.

Comments from Other agencies:

Montara Water and Sanitary (MWSD), with territory to the south of the NCCWD, has commented that NCCWD is prohibited from providing service to the Devil's Slide Project because part of the project is located in MWSD jurisdictional boundaries and pursuant to Section 31053 of Water Code NCCWD is prohibited from providing service to land within District boundaries subject to a bond lien, unless NCCWD requests and MWSD permits such service by resolution. MWSD states that NCCWD has not requested such authorization.

LAFCo staff review of Caltrans' property tax bills within MWSD boundaries indicates that as public property, the properties are not subject to the bond lien referenced by MWSD. It does not therefore appear that Section 31053 of Water Code applies to the action sought by NCCWD.

California Environmental Quality Act (CEQA)

NCCWD as the lead agency under CEQA for the Water Transmission Pipeline Project to install two pipeline alignments to connect the Tunnels to the existing NCCWD water infrastructure adopted an "Initial Study and Mitigated Negative Declaration for the NCCWD Water Transmission Pipeline Project East and West Alignments." The two alignments are proposed in order to provide a "looped" water line to prevent water stagnation in the lines. The water line within the Devil's Slide tunnel project boundary was included and approved as part of the Devil's Slide Environmental Impact Report/Environmental Impact Statement cited above. The Initial Study prepared by NCCWD determinates that although the project may have significant environmental impacts, those impacts can be avoided or reduced to the less than significant levels through implementation of mitigation measures.

As responsible agency under CEQA, the Commission must rely on the Initial Study and Mitigated Negative Declaration prepared by NCCWD in considering the application pursuant to Section 56133. It is recommended that the Commission certify it has considered the Mitigated Negative Declaration and the findings adopted by NCCWD in

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November 12, 2010

considering the application for extension of services. It is further recommended that the Commission finds that the Mitigation and Monitoring Program adopted by NCCWD and the changes or alterations contained therein are within the responsibility and jurisdiction of the NCCWD and not LAFCo and such changes have been or should be adopted by the District. (CEQA Guidelines, § 15091, subd. (a)(2).)

Recommended Action:

The proposal is consistent with Section 56133 [c], which permits an agency to extend service outside its boundary and sphere of influence to respond to public health and safety. The proposed service extension facilitates a sustained source of water for the Devil's Slide Tunnel fire suppression system and auxiliary structures essential for the public safety and welfare of motorists and maintenance workers at this important transportation facility. It is therefore respectfully recommended that the Commission approve the proposed request for extension of service.

**Recommended Commission Action, by motion:**

- a. Certify that the Commission has considered the NCCWD Water Transmission Pipeline Project East and West Alignments – Initial Study and Mitigated Negative Declaration
- b. Approve LAFCo File No. 10-01—pursuant to Section 56133 Proposed Extension of water service to the California Department of Transportation (Caltrans) Devil's Slide Bridge, Tunnel and Operations and Maintenance Building by the North Coast County Water District and direct staff to transmit a letter of approval to North Coast County Water District and Caltrans'.

Enclosures: Application  
Mitigated Negative Declaration  
MWSD letter

Documents available at: [www.sanmateolafco.org](http://www.sanmateolafco.org)



**LOCAL AGENCY FORMATION COMMISSION**

455 COUNTY CENTER, 2ND FLOOR • REDWOOD CITY, CA 94063-1663 • PHONE (650) 363-4224 • FAX (650) 363-4849

*W. Perez*  
July 28, 2009

TO: **San Mateo County**  
North Coast County Water District  
City of Pacifica  
San Mateo County Planning Dept.  
California Department of Transportation

SUBJECT: **LAFCo File No. 10-01--Proposed Extension of Water Service to California Dept. of Transportation (Caltrans) Devil Slide Bridge, Tunnel and Operations Maintenance Building (OMB) by the North Coast County District Pursuant to Section 56133**

Notice is hereby given that an application for the proposed water extension listed above has been received by the San Mateo Local Agency Formation Commission. The application involves extension of water service to the California Dept. of Transportation (Caltrans) Devil Slide Bridge, Tunnel and Operations Maintenance Building pursuant to Government Code Section 56133. The project location is generally located on and adjacent to Highway One in unincorporated San Mateo County, south of the City of Pacifica. The proposal consists of the following proposed action:

<u>City or District</u>	<u>Action</u>
North Coast County Water District	Extension of Water Service Per Gov. Code Section 56133

The application and map are attached for your information. Please submit comments to the LAFCo office by **October 20, 2010** to assure your input to preparation of the Executive Officer's Report. If you have any questions about this proposal, please contact this office.

*Martha Poyatos*  
Martha Poyatos  
Executive Officer

APPLICATION FOR A CHANGE OF ORGANIZATION OR REORGANIZATION TO THE  
SAN MATEO  
LOCAL AGENCY FORMATION COMMISSION

**A. GENERAL INFORMATION**

1. Briefly describe the nature of the proposed change of organization or reorganization.

**Extension of water service to California Department of Transportation (Caltrans) Devil's Slide Bridge, Tunnel, and Operations and Maintenance Building (OMB) fire suppression system, hydrants, irrigation, drinking fountains and bathrooms pursuant to Government Code Section 56133.**

2. An application for a change of organization or reorganization may be submitted by individuals in the form of a petition or by an affected public agency in the form of a certified resolution. This application is submitted by (check one):

Landowners or registered voters, by petition

An affected public agency, by resolution

(If this application is submitted by petition of landowners or registered voters in the affected territory, complete the petition form.)

3. What are the reasons for the proposal?

**The health and safety of the motorist traveling through the new Devil's Slide Tunnel and the maintenance/support staff working in and around the new tunnel depend on the North County Water District providing the project with a reliable source of water. The water would be primarily used for the suppression system for both the new tunnel and Operations and Maintenance Building. There must also be a sustained source of water available for the fire hydrants, irrigation systems, drinking fountains, bathrooms and water for the OMB that are a part of the overall project on State Route 1 being constructed by California Department of Transportation to the Bridge and Tunnel.**

4. Does this application have 100% consent of landowners in the affected area?

**Yes. The western pipeline alignment will be constructed in the southbound lane of HWY 1. An encroachment permit from Caltrans will be required for construction. The east alignment travels through private property owned by one property owner who has granted an easement to the District for its construction. No other private property landowners are involved.**

5. Estimated acreage:                      (Provide acreage of area to be served)

**Approximately 17.9 acres**

**LAFCo APPLICATION FOR A CHANGE  
NCCWD Devil's Slide Water Project**

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**B. SERVICES**

1. List the name or names of all existing cities and special districts whose service area or service responsibility would be altered by the proposed change of organization or reorganization.

**The request for an extension of water service to the Caltrans Devil's Slide Tunnel would not affect the service area of any other service provider.**

2. List all changes to the pattern of delivery of local services to the affected area. For each service affected by the proposed change(s) of organization, list the present source of service (state "none" if service is not now provided), the proposed source of service and the source of funding for construction of necessary facilities (if any) and operation. Examples are given on the first two lines of the space provided for your response.

**SERVICE - WATER**

PRESENT SOURCE:	PROPOSED SOURCE:	FUNDING SOURCE	
		CONSTRUCTION	OPERATING
None	NCCWD	Proponent	Fees

**C. PROJECT PROPOSAL INFORMATION**

1. Please describe the general location of the territory which is the subject of this proposal. Refer to major highways, roads and topographical features.

**Devil's Slide Tunnel Location: Service would be provided to the Caltrans Devil's Slide Bridge, Tunnel and OMB. The north end of the project, the bridge, is approximately 4,000 feet south of the Highway 1 / San Pedro Terrace Road intersection along The Cabrillo Highway SR 1. The bridge, tunnel, OMB building and other appurtenant improvements are basically located along the new alignment of Highway 1 about 8,000 feet south of the north end of the bridge.**

**The pipeline alignment would travel in the southbound lane of Highway 1 and through private property owned by Shamrock Ranch.**

2. Describe the present land use(s) in the subject territory.  
**Devil's Slide Tunnel: The north end of the project (beneath the bridge) is located within an easement on private property within the jurisdiction of the County of San Mateo. The central part of the project (the tunnel) is located under a mountain that is mostly private property on the north and public lands on its south side. The private property would best be described as**

**LAFCo APPLICATION FOR A CHANGE  
NCCWD Devil's Slide Water Project**

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**agricultural/grazing for horses with minor residential use. The OMB is located south of the tunnel about 400 feet east of Highway 1.**

3. How are adjacent lands used?

North: **Open Space Park Land.**  
South: **Open Space Park Land.**  
East: **Agricultural and grazing.**  
West: **Ocean.**

**Since the water pipeline involves linear alignments, there are several adjacent land uses. East Alignment: This alignment begins on Peralta Road in the City of Pacifica, a residential city street, and then travels under Shamrock Ranch Road, located in Shamrock Ranch, a private horse and dog boarding facility in unincorporated San Mateo County. A portion of the pipeline to be installed on Higgins Road passes along the back of the Linda Mar Educational Center.**

**West Alignment: The West Alignment begins at Ace Hardware (commercial/retail land use) in the City of Pacifica and continues under SR 1 in Caltrans right-of-way south to the Devil's Slide Tunnel project boundary. In the City of Pacifica, the pipeline is within the City's Local Coastal Plan (LCP) area, and the LCP Land Use designations for the areas adjacent to the pipeline are Open Space, Residential and Commercial. In unincorporated San Mateo County, the land uses surrounding the West Alignment are rural/open space and rural/agriculture.**

4. Will the proposed change of organization result in additional development? If so, how is the subject territory to be developed?  
**The proposed changes will not result in additional development. The proposal is limited to serving those facilities being constructed by Caltrans as part of the Devil's Slide Project and fire hydrants are to be installed on the private property through which a portion of the pipeline travels. No other connection or access to the water supply is proposed.**

5. What is the general plan designation of the subject territory?  
**West Alignment: Open Space/Residential, Commercial**  
**East Alignment: Rural/Open Space, Rural/Agricultural**

6. What is the existing zoning designation of the subject territory?  
**West Alignment: No Zoning (State Route 1 Right-of-Way and City of Pacifica Streets)**  
**East Alignment: Resource Management District and Planned Agricultural District/Coastal Development District (San Mateo County).**



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NCCWD Devil's Slide Water Project**

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7. What rezoning, environmental review or development approvals have already been obtained for development in the subject territory?
- **NCCWD Water Transmission Pipeline Project, East and West Alignments Initial Study/Mitigated Negative Declaration (December 2009).**
  - **Devil's Slide Improvement Project Environmental Impact Statement/Report (1999).**
  - **A construction and waterline easement through Shamrock Ranch has already been negotiated.**

8. What additional approvals will be required to proceed?

**Construction of the water piping improvements require:**

**Federal Agencies:**

- **U.S. Army Corps of Engineers - Nationwide Permit #12 for a culvert replacement**
- **U.S. Fish and Wildlife Service – Issuance of a Biological Opinion for endangered species issues**

**State Agencies:**

- **California Department of Fish and Game – Section 1600 Streambed Alteration Agreement for a culvert replacement**
- **Regional Water Quality Control Board – 401 Water Quality Certification for a culvert replacement**
- **State Water Resources Control Board - General Permit for Discharges of Storm Water Associated with Construction Activity (Construction General Permit, 99-08-DWQ); Preparation of a Storm Water Pollution Prevention Plan**
- **Local Agency Formation Commission - Approval – Government Code Section 56133 approval for new or extended service outside the NCCWD's boundaries to respond to an existing or impending threat to the public health or safety (fire suppression need at the tunnels). For sections of pipe that would be located in San Mateo County.**
- **California Department of Transportation – Construction Permits for construction within SR1**

**Local/Regional Agencies:**

- **City of Pacifica Local Coastal Plan Permit – Coastal Development Permit**
- **San Mateo County Local Coastal Plan Permit – Amendment of Caltrans Existing Coastal Development Permit for the Devil's Slide Tunnels to**

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**Include the West Alignment pipeline (Coastal Development Permit,  
County File No. PLN 2003-00428).**

- **San Mateo County Local Coastal Plan Permit – Resource Management Permit**

9. Does any portion of the subject territory contain any of the following --agricultural preserves, sewer or other service moratorium or wetlands subject to the State Lands Commission jurisdiction?

**The project does not occur within an agricultural preserve, in areas subject to a sewer or other service moratorium or wetlands subject to the State Lands Commission. The project is specifically designed to avoid these types of areas.**

10. If no specific development projects are associated with this proposal, will the proposal increase the potential for development of the property? If so, how?

**The proposal will not increase the potential for development of the surrounding area. The water pipeline will only serve the Devil's Slide tunnels and will not be used to support new development. The proposed changes are being constructed specifically to serve the Caltrans Devil's Slide Project.**

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LAFCo will consider the person signing this application as the proponent of the proposed action(s). Notice and other communications regarding this application (including fee payment) will be directed to the proponent at:

NAME: **North Coast County Water District**  
ADDRESS: **2400 Francisco Blvd. P.O. Box 1039**  
**Pacifica, CA 94044**

PHONE: **(650) 355-3462**

ATTN: **Kevin O'Connell, General Manager**

\_\_\_\_\_  
Signature of Proponent

Note: Pursuant to Government Code Sections 56700.1 and 81000 et seq. Any person or combination of persons who directly or indirectly contribute \$1000 or more or expend \$1000 or more in support of or opposition to a change of organization or reorganization that has been submitted to the Commission and will require an election must comply with the reporting and disclosure requirements of the Political Reform Act of 1974.

**D. AFFECTED PUBLIC AGENCIES**

**Please complete this section if this application is submitted by resolution of one or more affected public agencies. Certified copies of resolutions listed below must accompany this application.**

**LAFCo APPLICATION FOR A CHANGE  
NCCWD Devil's Slide Water Project**

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1. The names and resolutions of agencies applying for the change of organization or reorganization described above are as follows:

<u>Affected Agency</u>	<u>Resolution No.</u>	<u>Date Adopted</u>
NCCWD _____	1036 _____	September 15, 2010.

2. Does this application have 100% consent of landowners in the affected area?  
 Yes  No (If yes, include proof of consent.)

**PLAN FOR PROVIDING SERVICES**

1. Enumerate and describe the services to be extended to the affected territory.  
**Potable Water Service is to be provided for the Devil's Slide Bridge, Tunnel and OMB fire suppression systems, fire hydrants, irrigation systems, drinking fountains, bathrooms and incidental water uses at the OMB. Service may also include the treatment of water collected from the tunnel lining.**
2. Describe the level and range of those services.  
**The pipeline would be 12 inches in diameter. The pipeline was sized to meet minimum fire suppression requirements for the Devil's Slide Tunnel, OMB fire suppression systems, fire hydrants, irrigation systems, drinking fountains and incidental water uses at the OMB.**
3. Indicate when those services can feasibly be extended to the affected territory.  
**Construction of the improvements are expected to start in March 2011 with an expected completion and operation by November 2011.**
4. Indicate any improvements or upgrading of structures, roads, sewer or water facilities, or other conditions to be imposed or required within the affected territory.  
**Currently, the potable water infrastructure does not exist. Construction of new potable water pipelines and fixtures would be performed in concurrence with the construction required for the Devil's Slide Bridge, Tunnel and OMB.**
5. Describe financial arrangements for construction and operation of services extended to the affected territory. Will the territory be subject to any special taxes, charges or fees? (If so, please specify.)  
**Design, planning and construction of the new potable water pipelines and fixtures is being paid by Caltrans as it is a construction cost and necessary for the operation of the Tunnel and OMB. Operation of the improvements would be paid by standard District fees. Unless otherwise required, there would be**

**LAFCo APPLICATION FOR A CHANGE  
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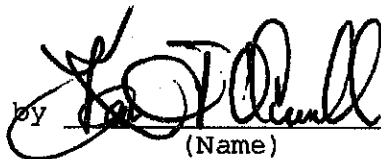
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**no special taxes, charges or fees that aren't already expected of other customers.**

6. In as much detail as required to give a clear explanation, explain why this proposal is necessary at this time.

**It is essential for there to be a sustained source of water available for the Devil's Slide Tunnel fire suppression system and auxiliary structures. Construction of the Tunnel is expected to be complete by the end of 2011 or early 2012. The Tunnel can not operate without water for the fire suppression system.**

This section completed by

  
(Name)

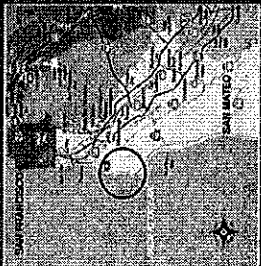
KEVIN J. O'CONNELL

GENERAL MANAGER  
(Title)

Phone Number:

(650) 355-3462

# DEVIL'S SLIDE TUNNELS & BRIDGES



PROJECT LOCATION MAP

THE DEVIL'S SLIDE PROJECT IS LOCATED ON ROUTE 1 IN SAN MATEO COUNTY, MIDWAY BETWEEN THE TOWNS OF MONTEAR AND THE TOWN MAP ASPECT OF PROJECT THE PROJECT AREA IS CHARACTERIZED BY STEEP ROCKY SLOPES AND IS OFTEN SUBJECT TO SOIL CLOSURES FROM LANDSLIDES, ROCK FALLS AND SUBSIDING STRIKE RESULTING IN DIMINISHED ROADWAY WIDTH.

THE NORTH PORTION OF THE PROJECT SITE IS LOCATED APPROXIMATELY TWO MILES SOUTH OF ROCKSBURY BEACH AND THE TOWN OF AERIE. THE SOUTH PORTION OF THE PROJECT SITE IS LOCATED APPROXIMATELY TWO MILES NORTH OF THE COMMUNITY OF MONTEAR AND THE TOWN NORTH OF THE CITY OF HALF MOON BAY.

THE DEVIL'S SLIDE TUNNEL PROJECT TUNNELS, SHAROCK PARKS AND THE BRIDGES ARE LOCATED THROUGH A PORTION OF THE SAN Geronimo MOUNTAIN. THE TUNNEL DESIGN IS A 4,000 FT. LONG DOUBLE-BORE FACILITY WITH ONE LANE IN EACH DIRECTION.

THE MAJOR STRUCTURAL ELEMENTS ON THE NORTH PORTION AREA INCLUDE TWIN BRIDGE STRUCTURES (APPROX. 100 FT. LONG), TWIN PORTAL STRUCTURES AND THE FACILITY APPROPRIATE TO THE TUNNELS.

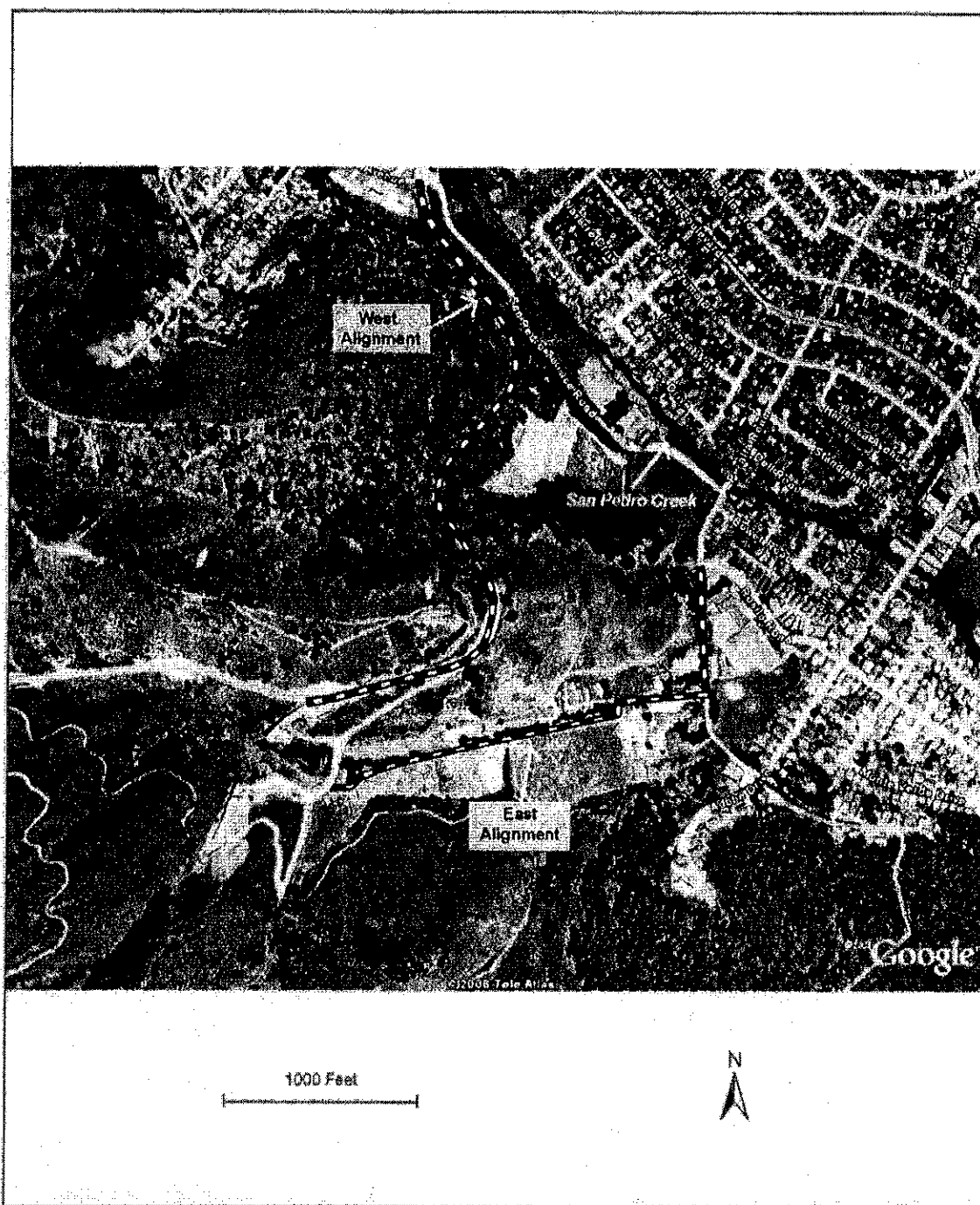
THE ARCHITECTURAL ELEMENTS ON THE SOUTH PORTION AREA INCLUDE TWIN SOUTH PORTAL STRUCTURES, THE TOWER AT THE TUNNELS, TWIN STRUCTURE, THE VISITOR CENTER, PARK, AND THE OPERATIONS AND MAINTENANCE CENTER.



## DEVIL'S SLIDE PROJECT LOCATION - ROUTE 1 SAN MATEO COUNTY

DES. BRIDGE ARCHITECTURE & AESTHETICS

Figure 2 – Project Alignments Aerial Map



*NCCWD Water Transmission Pipeline Project  
Initial Study/Mitigated Negative Declaration – November 2009*

**LAW OFFICES OF  
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Via mail and Facsimile ((650) 363-4849)

October 18, 2010

Martha Poyatos, Executive Officer  
San Mateo Local Agency Formation Commission  
455 County Ctr., 2<sup>nd</sup> Floor  
Redwood City, CA 94063-1663

Re: LAFCo file number 10-01 -- North Coast County Water District Application  
for Extraterritorial Extension of Water Service

Dear Ms. Poyatos:

This letter responds on behalf of the Montara Water and Sanitary District ("MWSD") to your notice dated July 28, 2003 [sic] advising of the above-mentioned application submitted by North Coast County Water District ("NCCWD") for approval of extraterritorial extension of its water service in conjunction with the California Department of Transportation ("Caltrans") Devil's Slide bypass project. Since your letter requests response by October 20, 2010 and I have only recently received it, I am faxing a copy of this response in addition to transmitting it by mail.

Please be advised that, although erroneously omitted as such from NCCWD's application, MWSD is an affected public agency under the proposed extension. NCCWD's proposed service would extend into MWSD's territorial jurisdiction. Further, MWSD's territory is subject to the lien of general obligation bonds sold in 2003 and approved by the voters in 2001 in anticipation of MWSD's acquisition of the water system which it now owns and operates. The lien extends throughout MWSD's entire territory, including that portion to which NCCWD purports to extend its service.

Pursuant to Water Code Section 31053 (quoted below) NCCWD is prohibited from extending its service into MWSD's territory unless it obtains the permission of MWSD's Board of Directors. While I have reason to believe that NCCWD has been placed on notice of that requirement, NCCWD has not been granted permission by MWSD, nor has application for such been made.

October 18, 2010

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Water code section 31053 provides as follows:

"§31053. Prohibition against performing service for land subject to bond lien.

No publicly owned utility<sup>1</sup> shall commence to provide any service for, on, or to any land within a county water district which is subject to the lien of a general obligation bonded indebtedness or which was the subject of a lease purchase, revenue, or other type of debt incurred for capital improvements by or on behalf of the district incurred by the district for the purpose of providing a service similar to that which the utility proposes to provide.

However, a publicly owned utility may commence to provide service, otherwise prohibited, upon either of the following conditions:

(a) If the board of directors of the county water district, by resolution permits the service.

(b) In any portion of such a county water district proposed to be served by the publicly owned utility in which the total number of registered voters residing therein exceeds 200, if at least two thirds of the voters voted at a special county water district election to permit the service. The election shall be called and held as an initiative measure pursuant to Section 30830.<sup>2</sup>

In view of the foregoing, the proposed extension is prohibited unless NCCWD obtains permission from MWSD. Permission has not been granted.

If you have any questions regarding the foregoing please do not hesitate to contact me.

Very truly yours,



David E. Schricker, Attorney

cc: Board of Directors, MWSD (via e-mail)  
General Manager, MWSD (Via e-mail)  
North Coast County Water District

<sup>1</sup> Case law provides that a "public utility" as referenced in section 31053 includes a publicly owned district, such as NCCWD.

<sup>2</sup> The provisions of subdivision (b) of Water Code Section 31053, relating to approval by vote, are inapplicable to NCCWD's proposal.