

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE
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HEARING IMPAIRED: (415) 904-5200

*Th 10b*

Filed: 10/05/95
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Staff: SG-SC
Staff Report: 02/29/96
Hearing Date: 03/14/96
Commission Action:

**STAFF REPORT: APPEAL
SUBSTANTIAL ISSUE AND DE NOVO HEARING**

LOCAL GOVERNMENT: San Luis Obispo County
DECISION: Approval with Conditions
APPEAL NUMBER: A-3-SLO-95-70
APPLICANT: **CALIFORNIA DEPARTMENT OF TRANSPORTATION**
APPELLANTS: (1) W. Duane Waddell, (2) Department of Transportation, and (3) Sierra Club c/o Mark Massara/Jesse Arnold, Deborah L.K. Barker, and Paul Schiro
PROJECT LOCATION: Highway One at Post Mile 61.3 to 63.0, north of Arroyo Laguna Creek and south of Piedras Blancas Lighthouse, north of the community of San Simeon, San Luis Obispo County; APNs: 011-221-015, and -026.
PROJECT DESCRIPTION: Realign a 1.7 mile stretch of Highway One by straightening portions of the highway and relocating portions up to 200 feet inland from the present alignment.
SUBSTANTIVE FILE DOCUMENTS: San Luis Obispo County Local Coastal Program, Caltrans Route 1 Realignment Initial Study/Environmental Assessment, San Luis Obispo County Coastal Development Permit D940106D, Coastal Commission Coastal Development Permits 140-02 and 4-81-194.; Northern Elephant Seal Research Photography (National Biological Service, Department of Parks and Recreation, Caltrans, and S. Foster)

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I. SUMMARY OF APPELLANTS' CONTENTIONS

The Commission received three appeals on this proposal. The entire texts of these appeals are found at Exhibits 1 through 3. Each appeal is paraphrased below.

1. W. Duane Waddell, received October 5, 1995. This appeal contends that the proposal is inconsistent with the LCP because:

- It does not meet the access requirements set out in section 23.04.420 of the County's Coastal Zone Land Use Ordinance nor the requirements of chapter 2 (Shoreline Access) of the County's Coastal Plan Policies document;
- It does not meet the requirements for public works as set out in chapter 8 of the Coastal Plan Policies document;
- The proposal would result in loss of an existing, formalized vista point, contrary to Combining Designation 4, Vista Points, in Chapter 7 of the County's North Coast Area Plan portion of the LCP.

2. Department of Transportation, received October 16, 1995. This appeal contends that the proposal is inconsistent with the LCP because:

- The County allowed an appeal by an individual who was not an "aggrieved person" as defined in the County Coastal Zone Land Use Ordinance section 23.01.43(a)(2);
- There is no basis for requiring public access because the project did not impact any existing public access.

3. Sierra Club/Mark Massara/Jesse Arnold, Deborah L.K. Barker, and Paul Schiro, received October 18, 1995. This appeal contends that the proposal is inconsistent with the LCP because:

the development does not conform to the standards set forth in the certified local coastal program but also the allegation that the development does not conform to the public access and recreation policies of the Coastal Act.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised by the appeal. If the staff recommends "substantial issue," and no Commissioner objects, the substantial issue question will be considered moot, and the Commission will proceed directly to a de novo public hearing on the merits of the project.

If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project. If the Commission conducts a de novo hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, Section 30604(c) of the Coastal Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act. In other words, in regard to public access questions, the Commission is required to consider not only the certified LCP, but also Chapter 3 policies when reviewing a project on appeal.

The only persons qualified to testify before the Commission on the substantial issue question are the applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo stage of an appeal.

IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

The staff recommends that the Commission determine that **substantial issue** exists with respect to the grounds on which the appeal has been filed. Staff recommends a **NO** vote on the following motion:

MOTION:

I move that the Commission determine that Appeal No. A-3-SLO-95-70 raises no substantial issue with respect to the grounds on which the appeal has been filed.

Staff recommends a **NO** vote which would result in a finding of substantial issue and bring the project under the jurisdiction of the Commission for hearing and action. To pass the motion, a majority of the Commissioners present is required.

VII. SPECIAL CONDITIONS

1. PROJECT AUTHORIZATION

This approval authorizes the realignment of a 1.7 mile segment of Highway One at Post Marker 61.3 to Post Marker 63.0 north of Arroyo Laguna Creek and south of Point Piedras Blancas, north of San Simeon, consistent with the certified environmental document, including the preliminary realignment plans dated 7/91, included in the certified environmental document, and the following special conditions.

2. SAN LUIS OBISPO COUNTY COASTAL PERMIT D940106D CONDITIONS

Condition 2 of the County coastal development permit (minor use permit) setting forth measures for resource protection and enhancement/environmental mitigation is hereby incorporated into this permit. Condition 1, describing the approved development, and Condition 3, public access conditions, are deleted. Please refer to Exhibit 4 for the complete text of those conditions.

3. INTERIM MANAGEMENT PROGRAM

PRIOR TO COMMENCEMENT OF CONSTRUCTION OR WITHIN 120 DAYS OF PROJECT APPROVAL, WHICHEVER COMES FIRST, the permittee shall submit to the Executive Director for review and approval an interim program for managing public access and marine mammal interaction at the project site. The interim program shall include written and graphical information as necessary for the following: **1)** a description of the seasonal use of the beaches along the project length by the public and by the elephant seals; **2)** interpretive signing language describing the proposed project, and the Interim Management Program including seasonal beach closure and noting that a Long-Term Management Program is being developed, and providing information about elephant seals, including, but not limited to: the nature of their use of the beaches, their protected legal status, and the potential for human injury from elephant seal bites and crushing; **3)** proposed location of an interpretive sign in each of the two existing formalized access/vista points just south of the proposed realignment and other signing along the road where seals are visible directing people to the interpretive signs and; **4)** measures proposed to keep elephant seals off the highway during and post-construction (e.g., K-rail at Twin Creeks) seasonally or as necessary depending on the nature of the seals' beach use; **5)** measures to ensure continued public access to the beaches in the realignment section (such as by a stile over the fence in the Twin Creeks area) on a seasonal basis depending on the nature of the beach use by elephant seals; **6)** interim ingress and egress for kayakers, divers, fishermen, windsurfers, etc., at the northern end of the north existing formalized access, by grading and installing a decomposed granite ramp to the beach from the parking area; and **7)** method of installing no parking signs along the realignment section on a seasonal basis

consistent with the recommendations of the involved agencies, organizations, and individuals.

D. WITHIN 12 MONTHS OF APPROVAL OF THE LONG-TERM MANAGEMENT PROGRAM BY THE COMMISSION, the plan shall be fully implemented. If implementation requires additional development not included in this permit, the permittee shall seek the appropriate amendment to this permit from the Coastal Commission.

6. ENVIRONMENTAL AND CONDITION PROJECT MONITOR

PRIOR TO COMMENCEMENT OF CONSTRUCTION, the permittee shall submit the name, address, telephone number, and qualifications of the environmental and condition project monitor to the Executive Director for review and approval. The environmental and condition monitor shall be funded and provided by the permittee and may be a regular Caltrans employee. The environmental and condition monitor shall submit twice-annual reports to the Executive Director describing the permittee's conformance with permit requirements, beginning six months after Commission action on this permit and continuing during construction and until all conditions of this permit are fulfilled. The environmental and condition monitor shall be empowered to halt construction, after consultation with the Executive Director, if it is necessary to ensure that permittee is complying with all conditions of this permit. Disputes between the monitor and the permittee shall be settled by the Executive Director.

7. PARKING

The Interim Management Program identified in Condition 3 above shall provide for seasonal public parking along the shoulders of the realigned section of highway to the extent consistent with the seasonal use of the beach by elephant seals, if the resource agencies concur. During the periods of the year when the seals are using the beach, Caltrans shall place temporary signage prohibiting parking on the highway shoulders. During the periods of the year when the elephant seals are not using the beach, Caltrans shall remove the no parking signs and shall not otherwise prohibit or discourage public parking on the paved eight-foot wide shoulder of the realigned section of roadway unless restricted by other public health-safety issues. Caltrans shall continue this process until and unless the long-term management program, as approved by the Commission, requires a different methodology.

VIII. FINDINGS

A. Project Description

Caltrans proposes to realign a 1.7 mile section of Highway One north of the historical community of San Simeon and south of the Piedras Blancas lighthouse in San Luis Obispo County. This section of the highway is an older roadway with no paved shoulders and

traveled way and to restrict vehicle access to sensitive resources. Parking within the proposed project will be limited to the existing Vista Point at the project's southern terminus."

B. Appeal Issues

The primary issues raised by this appeal address the project's consistency with the policies of the Coastal Act and San Luis Obispo County's certified LCP regarding protection and provision of public access, as follows:

1. The proposal is not consistent with the public access and recreation policies of Chapter 3 of the Coastal Act.
2. It does not meet the access requirements set out in chapter 2 (Shoreline Access) of the County's Coastal Plan Policies document; nor the requirements of section 23.04.420 of the County's Coastal Zone Land Use Ordinance.
3. It does not meet the requirements for public works as set out in chapter 8 of the Coastal Plan Policies document.
4. The proposal would result in loss of an existing, formalized vista point, contrary to Combining Designation 4, Vista Points, in Chapter 7 of the County's North Coast Area Plan portion of the LCP.
5. The County allowed an appeal by an individual who was not an "aggrieved person" as defined in the County Coastal Zone Land Use Ordinance section 23.01.43(a)(2).
6. There is no basis for requiring public access because the project did not impact any existing public access.

C. San Luis Obispo County Access Conditions

The coastal development permit granted by the County contains the following conditions specific to the public access issue:

Public Access

3. *Prior to commencing with construction the applicant, working with County and SLOCOG staff, shall meet the following conditions, subject to review and approval by the Department of Planning and Building in consultation with appropriate State agencies, and a users group representing the different groups currently using this shoreline area including but not limited to divers, kayakers, fishermen, boaters, surfers, and windsurfers:*
 - a) *Obtain an access easement, offer of dedication or equivalent, for two public accessways totaling approximately 7.64 acres in size, one at Twin Creeks and the second at the northern end of the project site. Each accessway, to be dedicated for day use only, shall include permanent public access to the shoreline, (using as a reference the Caltrans graphic each accessway will extend to the mean high or high water) and the Twin Creeks accessway shall include sufficient clear area for launching of kayaks and similar small craft. The purpose of the accessways will be to provide suitable ingress and egress for kayakers, divers, fisherman, windsurfers,*

Chapter 2 of the County's Coastal Plan Policies document contains 11 policies relating to coastal access which are essentially identical to the Coastal Act's access policies. Nine of the County's policies are to be implemented pursuant to the County's Coastal Zone Land Use Ordinance (CZLUO) section 23.04.420. The CZLUO is the County's coastal zoning ordinance. The two Plan Policies not implemented pursuant to that ordinance section deal with 1) which method of access acquisition would be most appropriate in any given circumstance, i.e., offers of dedication, deed restrictions, easements, in-lieu fees, and purchase in fee simple; and 2) prohibiting approval or denial of permits in such a way that would result in a taking or damaging of private property without just compensation. In any event, these two policies are not applicable to this appeal and so will not be discussed further.

In the discussion below, where Coastal Act sections and the County's Coastal Zone Land Use Ordinance (CZLUO) are identical, or essentially so, they are listed together with one response to both. Where they are substantially or entirely different, they are listed separately with separate responses. The County's access policies are not listed because they are entirely or essentially identical to the Coastal Act access policies.

CZLUO Section 23.04.420a. Access Defined: . . .

This subsection merely defines access terms and is not an issue.

Coastal Act Section 30211: Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sandy and rocky coastal beaches to the first line of terrestrial vegetation.

CZLUO Section 23.04.420b. Protection of existing coastal access. Development shall not interfere with public rights of access to the sea where such rights were acquired through use or legislative authorization. Public access rights may include but are not limited to the use of dry sand and rock beaches to the first line of terrestrial vegetation.

The public has used the entire coastline along the proposed realignment for many years. Appellant Sierra Club has provided staff with 10 questionnaires solicited from current and previous users of the beaches in this area showing unrestricted public use of the beaches since at least 1956. Additionally, as of the date of this staff report, staff had received two petitions with 23 signatures and 58 letters, all requesting that public access be enhanced in this area and not restricted. From those expressions of public experience and sentiment, it appears that frequent public use of the coastline is long-standing. Staff has personal knowledge of the use of the area as far back as the mid-1960's. Staff has also been to the site several times in the last four months and observed upwards of 30 vehicles at a time in the informal turnouts along the existing 1.7 mile section of road which is proposed to be realigned. Caltrans, a public agency, has a duty like all other State agencies to carry out State law as it may apply. However Caltrans, neither in its environmental document nor in its application to the County for a coastal development permit, addressed the issue of possible restrictions on public access as a result of the proposed highway realignment. While there has been no adjudication of prescriptive rights nor has there been legislative authorization of access along the coastline in the area, the public has used the area for at least 40 years. Based on this, Caltrans has a duty to protect existing public access.

The existing, formalized access areas are both located south of the proposed realignment (see Exhibit 5). The north one is 5.2 acres in size and the south one, the one that Caltrans proposed to trade to Hearst is 4.77 acres in size, although the actual area that has been developed as parking area is about 2.75 acres at the south site and about 1.5 acres at the north site. They can collectively accommodate several hundred vehicles. If both existing formal accesses were to be maintained, then the county's approval as conditioned to provide formal replacement access facilities will not result in adverse impacts since the new formal access would be able to accommodate at least as many cars as can presently park in the informal pull-outs along the highway. However, the County's approval would result in the loss of the south existing formalized access and the creation of a new formalized access at Twin Creeks. Due to the existence of elephant seals on the beach at Twin Creeks, it is inappropriate and premature to formalize the access at that site, at least until a long-term access and marine mammal management program is developed and implemented.

Section 30213: *Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. . . .*

While the County's approval, if carried out in full, including successfully amending the 1982 Commission permit, would result in the creation of a new formalized accessway and the potential creation of a second new formalized accessway, it would also result in the loss of an existing formalized accessway. This loss would be substantial; the vertical and lateral beach access provided by the existing facility serves several miles of shoreline. While the existing, unformalized access at Twin Creeks is most popular with some members of the public (windsurfers, divers, etc.), it is also the beach where elephant seals haul out nearest the highway (both existing and realigned since the realignment in that area would be almost directly on top of the existing road). While the existing formalized accessways do not provide as good nearshore surfing conditions as at Twin Creeks, because of a more rocky shoreline and distance from a favored windsurfing location, they nevertheless do provide easy and substantial access to the beach and shoreline and have few, if any, conflicts with elephant seals at this time. It may not be feasible to provide access as the County has required, since elephant seals are present on the beach at Twin Creeks, but the County's approval would not protect the south existing formalized accessway which is a lower cost visitor and recreational facility. The County's approval is therefore inconsistent with section 30213.

Section 30214(b): *It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.*

The County's approval contained conditions that attempted to provide for continued public access to the sea. There was nothing in the County approval which was a violation of the California Constitution nor which was inconsistent with this section of the Coastal Act.

Section 30220: *Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

CZLUO Section 23.04.420e. Timing of access requirements.

- (1) *Dedication: shall occur before issuance of construction permits or the start of any construction activity not requiring a permit.*
- (2) *Construction of improvements: Shall occur at the same time as construction of the approved development, unless another time is established through conditions of land use permit approval.*
- (3) *Opening access for public use. No new coastal access required by this section shall be opened or otherwise made available for public use until a public agency or private association approved by the county agrees to accept responsibility for maintenance of the accessway and any liability resulting from public use of the accessway*

The County's approval required Caltrans, prior to commencing with construction, to "Obtain an access easement, offer of dedication or equivalent. . . ." for the required two accessways. Further, the County permit conditions required Caltrans, prior to completing construction and opening the new roadway, to 1) construct all related improvements at Twin Creeks, 2) to construct or bond for related improvements at the northerly proposed access, and 3) identify a management and maintenance entity to accept improvement, maintenance, and liability responsibility. The County's approval is consistent with this subsection.

CZLUO Section 23.04.420f. Permit requirement. Except as otherwise provided by this subsection, Minor Use Permit approval is required before issuance of any construction permit for an accessway. . . .

The County's approval was for a minor use permit to allow the highway realignment. The approval is consistent with this subsection.

CZLUO Section 23.04.420g. Where public coastal accessways are required by this section, approval of a land division, or land use permit for new development shall require guarantee of such access through deed restriction, or dedication of right-of-way or easement. Before approval of a land use permit or land division, the method and form of such access guarantee shall be approved by County counsel, and shall be recorded in the office of the County Recorder, identifying the precise location and area to be set aside for public access.

The County's approval was apparently given without any ". . . method and form of such access guarantee. . . ." having been approved by County Counsel or recorded with the County Recorder. Therefore, the approval is inconsistent with this subsection.

CZLUO Section 23.04.420h. Requirements for access improvements and support facilities. Coastal access required by this section or by planning area standards of the Land Use Element shall be physically improved as provided by this subsection.**CZLUO Section 23.04.420i. Accessway signing. Where required through land use permit of tentative subdivision map approval, signs installed in conjunction with accessways shall conform to the following standards. . . .**

respect to this issue, the necessary nexus exists and it was appropriate for the County to require access conditions. The approval is not inconsistent with the LCP on this basis.

3. Public Works Issues: Appellant W. Duane Waddell contends that the County's approval is inconsistent with Chapter 8 (Public Works) of the County's Coastal Plan Policies document (he did not specify any particular policies). Chapter 8 has nine policies. None are applicable to this proposal.

4. Standing of Appellant: Appellant and applicant Caltrans contends that the County allowed an appeal by an individual who was not an "aggrieved person" as defined in the County Coastal Zone Land Use Ordinance section 23.01.043(a)(2).

***CZLUO Section 23.01.043a.(2):** Aggrieved person defined: As set forth in Public Resources Code Section 30801, an aggrieved person is: anyone who, either in person or through a representative who was explicitly identified as such, appeared at a public hearing before the Planning Director, Planning Commission or Board of Supervisors in connection with the decision or appeal of any development, or who by other appropriate means prior to a hearing, informed the county of the nature of his or her concerns, unless for good cause was unable to do either. Aggrieved person also includes the applicant for a permit."*

The San Luis Obispo County Planning Commission approved the realignment request on April 13, 1995. That approval was appealed by Ms. Deborah Barker, who had not participated in the hearing or submitted written comments to the Planning Commission, and who is one of the appellants here, to the Board of Supervisors. At that time, Caltrans raised the question with both the County and the Commission of whether or not Ms. Barker was an aggrieved party and had standing to appeal. Based on the available information, Commission legal staff was of the opinion that Ms. Barker did not have standing to appeal since she did not qualify as an aggrieved person. Nevertheless, it was the opinion of County Counsel "...that the appeal filed by Ms. Deborah Barker is a valid appeal under the provisions of the county Coastal Zone Land Use Ordinance." The Board of Supervisors took jurisdiction of the matter and approved the project with additional access conditions. At the Board of Supervisors hearing, the current appellants appeared to voice their opposition to the Planning Commission decision and thereby became aggrieved persons for purposes of appeal to the Commission.

5. Environmentally Sensitive Habitat Area. Although not an issue raised by the appellants, the protection of environmentally sensitive habitat areas is nonetheless an important consideration in this instance. Here, the Northern elephant seals of the Piedras Blancas region, have established a haul-out area and seasonal breeding colony on the narrow beach area between the existing alignment of Highway One and the sea. Under the San Luis Obispo County LCP, such breeding sites are designated as environmentally sensitive habitats and no significant disruption of habitat values is allowed. The applicable LCP environmentally sensitive habitat policies include:

- Policy 1 Limits uses within or adjacent to environmentally sensitive habitat, generally requires 100 foot buffers from the resource (e.g., habitat, breeding sites, etc.)
- Policy 27 Protection of Terrestrial Habitats: requires that development adjacent to environmentally sensitive habitat areas shall be sited and designed to prevent impacts and shall be compatible with the continuance of such areas.

This way of dealing with the issues will mean that Caltrans will have to submit an interim access and human-elephant seal management program, that will be implemented concurrently with the construction, for review and approval by the Executive Director prior to transmittal of the permit. Subsequently, Caltrans will submit an outline of a long-term program for review and approval, and then submit the full long-term program for review and approval by the Commission. Caltrans would be responsible for implementation during the first nine months; thereafter, an agency or agencies (to be identified in the Long-Term Management Program) would assume responsibility for implementation of the full long-term program. The Long-Term Management Program will be the result of a collaborative effort of Commission staff, other local, state, and federal agencies, the land owner, and interested groups and individuals. This method will result in some interim access loss since the realigned highway will be fenced on its seaward side, although informal parking will be accommodated by eight-foot wide paved shoulders. Whether or not access at a particular site would be lost in the long term remains to be seen. That decision will be based on the recommendations and conclusions of all interested parties, including members of the public, the land owner, marine mammal scientists, the County, and State and Federal agencies. Approval, disapproval, or modification of the Long-Term Management Program will rest with the Commission.

According to information provided by the National Biological Service (NBS), which maintains a research station at Piedras Blancas, elephant seals have been on the beaches in that area since 1977. However, it wasn't until 1992 that the first elephant seal pup was born in the area. A census of the animals that year revealed that some 1,350 individuals were present on the beaches. The 1995 census counted up to 3,850 individuals in the spring and 2,150 in the fall. NBS estimated 600 pups were born in 1995 and that 900 will be born this year. As can be seen from Exhibit 8, the seal population has expanded rapidly and they have expanded their population and range from the south side of Piedras Blancas Point to both the north and south over the past three years and have expanded south of Twin Creeks. The beaches in the area have become marine mammal haul out areas and it is highly likely that there will be increasing instances of elephant seal-human interaction. Although not an issue raised by the appellants, the County's LCP designates marine habitats containing breeding sites as environmentally sensitive habitats and prohibits disruption of the values associated with the habitat and provides for regulation of access to minimize impacts. Because of this it is necessary to develop a comprehensive resource management program to address the preservation of this protected species and reduce the potential for adverse interactions with humans. This need is evident for both the interim and for the long-term. Will elephant seals continue to use Twin Creeks beaches and move to those farther to the south? How long before this habitat-haul out expansion occurs? Will beaches need to be closed seasonally, or permanently? Can additional formalized access be provided at Twin Creeks and at the north end of the realignment? How should this issue be managed? Should there be an active interpretation program about elephant seals? What agency or group should do that? These and other questions need to be answered. One vehicle for doing that is a multi-agency task force which would look at all these issues and would develop a long-term management program based on scientific information; statutory responsibility of local, State, and Federal agencies; the desires of various interested individuals and groups; and legal constraints and opportunities.

Two other issues were not raised by the appellants that could be significant issues. First is the issue of scenic resources. While not designated as a State Scenic Highway, Highway One in this area traverses open grasslands with sweeping views of the Pacific Ocean and the Santa

CALIFORNIA COASTAL COMMISSION

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HEARING IMPAIRED: (415) 904-5200

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENTRECEIVED
OCT 5 1995CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREAPlease Review Attached Appeal Information Sheet Prior To Completing
This Form.SECTION I. Appellant(s)

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

W. Duane Waldell
6030 Hwy 1 Cayucos, Ca
93430 (905) 995-1355
 Zip Area Code Phone No.

SECTION II. Decision Being Appealed1. Name of local/port government: San Luis Obispo County2. Brief description of development being appealed: the realignment of a 1.7 mile section of Coastal Hwy involving closure of existing historical access along the 1.7 mile road segment 12m n of Camino, J 5 of Pinalis Blv.3. Development's location (street address, assessor's parcel no., cross street, etc.): Ap State right of way Route 1 P.M. R 61.3 to 63.0

4. Description of decision being appealed:

a. Approval; no special conditions: _____

b. Approval with special conditions: D940106 D Caltrans CDP

c. Denial: _____

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-SLO-95-70DATE FILED: 10/5/95DISTRICT: Central Coast

EXHIBIT NO. 1
APPLICATION NO. A-3-SLO-95-70
CALTRANS

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

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

CZLVO Section 23.04 420

Land Use Element Local Coastal Program:

Coastal Plan Policies Chapters 2 + 8

Land use element + local Coastal plan, N

Coast Planning area Chapter 7,

C Combining designation programs, LCP #4

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

SECTION V. Certification

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



Signature of Appellant(s) or
Authorized Agent

Date 10-6-95

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

Date _____

EXHIBIT 1

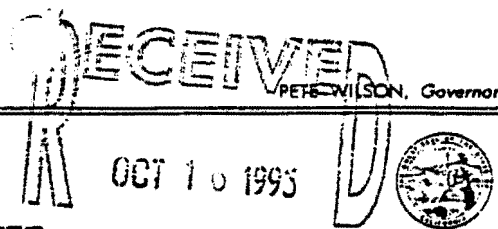
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CALIFORNIA COASTAL COMMISSION

NORTH COAST AREA
45 FREMONT, SUITE 2000
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(415) 904-5260

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT
CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA



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

SECTION I. Appellant(s)

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

STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION - LEGAL DIVISION

DANIEL C. MURPHY, ANTONIO R. ANZIANO, MAXINE F. FERGUSON

P.O. BOX 7444 - SAN FRANCISCO, CA (415) 982-3130

Zip 94120-7444

Area Code

Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port
government: SAN LUIS OBISPO COUNTY

2. Brief description of development being
appealed: STATE ROUTE 1 REALIGNMENT AT PIEDRAS BLANCAS

3. Development's location (street address, assessor's parcel
no., cross street, etc.): HIGHWAY 1 AT POST MILES R 61.3/63.0

4. Description of decision being appealed:

- a. Approval; no special conditions: _____
- b. Approval with special conditions: PUBLIC ACCESS CONDITIONS
- c. Denial: _____

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-3-SLO-95-70

DATE FILED: Appeal originally filed 10/5/95

DISTRICT: Central Coast

H5: 4/88

EXHIBIT NO. 2
APPLICATION NO. A-3-SLO-95-70
CALTRANS

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


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

SEE EXHIBIT "B" (ATTACHED)

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

SECTION V. Certification

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



Signature of Appellant(s) or
Authorized Agent

Date OCTOBER 13, 1995

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

Section VI. Agent Authorization

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

Signature of Appellant(s)

Date _____

EXHIBIT 2
A-3-SLO-95-70
p3

DEPARTMENT OF TRANSPORTATION

LEGAL DIVISION

595 MARKET STREET, SUITE 1700

P.O. BOX 7444

SAN FRANCISCO, CA 94120-7444

FAX # (415) 495-2517

(415) 982-3130



October 13, 1995

SLO-1-R61.3/63.0
Highway 1 Realignment
Piedras Blancas

Terry Wahler
Senior Planner
Department of Planning & Building
County of San Luis Obispo
San Luis Obispo, California 93408

Re: Appeal of Board of Supervisors
decision of September 19, 1995
Permit No. D940106D

Dear Mr. Wahler:

In connection with the State of California appeal which is presently being prepared for filing with the California Coastal Commission, please provide this office with a list of the names and addresses of the witnesses who testified at any of the public hearings concerning this permit.

Thank you for your assistance.

Yours very truly,

Tony Anziano
Attorney

cc: California Coastal Commission

ORIGINAL TRANSMITTED BY FEDERAL EXPRESS

EXHIBIT 2

A-3-56-95-70

p5

EXHIBIT "A" - 2

REASONS FOR APPEAL
PAGE TWO

project site may be necessary to acquire the superior accessways noted above. In this event, Caltrans will be required to obtain an amended coastal development permit from the State Coastal Commission for the relinquishment of the existing public vista point.

"4. Prior to completing construction and opening the new roadway the applicant shall:

- "a) Construct all related improvements including driveway ingress and egress, left turn channelization, signs, and other appurtenant facilities as shown in the improvement plans for the Twin Creeks public accessway. (Caltrans to ensure that road fill at Twin Creeks does not prevent small craft launching at this area.) Construct or bond for all related improvements including driveway ingress or egress, left turn lane channeliation, signs, and other appurtenant facilities for the second, northerly public accessway.
- "b) Identify the management and maintenance entity capable of accepting improvement, maintenance, and liability responsibility for the two accessways which may include a non-profit land conservation, State, or local agency to whom easements will be granted.
- "c) Caltrans shall assist the County staff and Usergroups (sic) in preparing a resource protection program including elephant seals and other sensitive coastal resources in consultation with the effected (sic) property owner. Applicant will identify specific locations of 'coastal resource protection zones' and if not fenced and signed, provide alternative mitigation to protect areas between the coast and the highway adjoining the accessways."

These conditions were not in the Coastal Development Permit issued by the Planning Commission. The State of California Department of Transportation ("STATE") objected to the addition of these conditions on two grounds:

1) The underlying appeal was filed by an appellant who lacked standing to bring the underlying appeal as underlying appellant was not an "aggrieved person" as defined by Public Resources Code § 30801 and the San Luis Obispo County Local Coastal Plan, Title 23, § 23.01.43(a)(2). (See May 9, 1995 letter from Diane S. Landry to Aileen Loe, attached to this application as Exhibit "C".)

EXHIBIT 2

A-3-56-95-76

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE
725 FRONT STREET, STE. 300
SANTA CRUZ, CA 95060
(408) 427-4863
HEARING IMPAIRED: (415) 904-5200



May 9, 1995

Aileen Loe
Environmental Planning
Caltrans
P.O. Box 8114
San Luis Obispo, CA 93403-8114

Dear Ms. Loe:

This letter is in response to your recent inquiry regarding the appealability of an action taken by the San Luis Obispo Planning Commission to approve a Coastal Development Permit to realign Highway One near San Simeon. It is my understanding that the Planning Commission approved the project on April 13, 1995 and that an appeal of that decision was filed by Ms. Deborah Baker on April 26, 1995. According to my information, Ms. Baker did not testify at the Planning Commission hearing and there is no evidence that she was, for good cause, unable to do so. Based on the following analysis, my interpretation of the situation is that the action of the Planning Commission is final because Ms. Baker lacks standing to file a valid appeal and no other appeal was filed during the fourteen day appeal period.

As you are no doubt aware, the County's permit jurisdiction over Caltrans projects only applies under the terms granted them by the Coastal Act (Public Resources Code 30519). In this case, Caltrans is subject to the policies and regulations of the County's Certified Local Coastal Program for any development undertaken in the Coastal Zone. Caltrans would not, however, be subject to any local regulations which were not part of a certified LCP as local jurisdiction over the state agency is limited by that delegated by the Commission through certification of the LCP.

The San Luis Obispo County LCP includes provisions for appeals of coastal permits in the Certified Implementation Plan (Title 23, Land Use Ordinance). Section 23.01.041 Rules of Interpretation offers the following guidance for terms used in this ordinance:

- (2) **Definitions.** Definitions of the specialized terms and phrases used in this title are contained in Chapter 23.11, or in certain other sections of this title where the terms and phrases are actually used.

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1-2

EXHIBIT "C"

Aileen Loe
Caltrans - Environmental Planning
May 9, 1995
Page 3

Finally, had the local appeal been valid, you brought up another issue in your letter regarding an option to take the matter directly to the Coastal Commission from the Planning Commission. This option is permitted under Section 13573(b) of the Administrative Regulations and in Section 23.01.043(b)(2) of the County's Title 14 Ordinance.

I hope this clarifies the appeal requirements. If you have any questions, please call me at our Santa Cruz Office.

Very truly yours,



Diane S. Landry
Legal Counsel

DSL/cm
cc: Jim Orton, San Luis Obispo
County Counsel
961

EXHIBIT 2

A-3-SLO-95-70

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Mark A. Massara
1642 Great Highway
San Francisco, California 94122
#415-665-7008
Fax #415-665-9008

RECEIVED
OCT 18 1995

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Steve Guiney
California Coastal Commission
725 Front Street, Ste. 300
Santa Cruz, California 95060

October 17, 1995

Re: Appeal of CDP D940106D
Proposed realignment of Hwy #1 at Piedras Blancas

EXHIBIT NO. 3	APPLICATION NO. A-3-SLO-95-70	CALTRANS
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Dear Steve:

Enclosed please find our appeal of the above referenced permit, issued to CalTrans by the San Luis Obispo County Board of Supervisors on September 19, 1995. Appellants would like to schedule a meeting with you, assuming you will write the staff report on the substantial issue determination. Since the appeal involves a wide range of public access and coastal resources issues, it may also be helpful if David Loomis and Linda Locklin could attend.

As you will note, we believe the permit violates historic public access rights as well as the Coastal Act's public access mandates. Regardless of whether Hearst Corporation has filed permissive use notices, the public has had legal rights to coast along Piedras Blancas for decades. In this regard the permit is similar to the access issues currently being litigated over the Bolinas Sandspit in Marin County. Just last Friday the public prevailed in a motion to dismiss brought by the Sandspit homeowners claiming exclusive private rights (where the homeowners had filed permissive use notices).

Moreover, the permit in this case threatens to establish a dangerous precedent of allowing CalTrans to seize offsite public property for use as mitigation for elimination of public access onsite; and creates the possibility that the public might lose historic access rights onsite and formalized, legal access offsite. Worse, the access CalTrans proposes to gift away is access your Commission specifically required they provide in a 1981 roadway improvement permit (to formalize acknowledged historic use).

Further, the project threatens unique environmental and coastal resources which CalTrans has neglected to evaluate, namely the recently established elephant seal colony,

A-3-SLO-95-70

*Mark A. Massara
Attorney at Law
1642 Great Hwy
San Francisco, California 94122
#415-665-7008
Fax #415-665-9008*

**Via Fax and U.S. Mail
October 16, 1995**

California Coastal Commission
Central Coast Area Office
725 Front Street, Ste. 300
Santa Cruz, California 95060
Fax # 408-427-4877
Attn: Steve Guiney

Re: Appeal of CDP issued by San Luis Obispo Bd. of Supervisors
CalTrans' proposed realignment of Hwy #1 at Piedras Blancas
D940106D
Date of Issuance: September 19, 1995
Deadline for Filing Appeal: October 19, 1995

Dear Coastal Commission:

Pursuant to California Public Resources Code ("PRC"), Section 30603, appellants submit the following appeal to the Coastal Commission from a local agency regarding the above referenced permit.

Section I

Appellants:

(1) Sierra Club

Attn: Mark A. Massara
Director, Sierra Club Coastal Program
1642 Great Hwy
San Francisco, Cal. 94122
#415-665-7008

Jesse Arnold
Executive Committee, Santa Lucia Chapter, Sierra Club

EXHIBIT 3

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Section III

Identification of Other Interested Parties

- a) Permit Applicant: CalTrans
Attn: Ken Nelson, District Supervisor
Cal. Dept. of Transportation
P.O. Box 8114
San Luis Obispo, California 93403-8114
- b) Other Interested Parties: See Attachment A.

Section IV

Reasons Supporting Appeal

1. Impacts to Public Access in Violation of Law

a) Coastal Act Chapter 3 (PRC Section 30200 et. seq.)

PRC Section 30211 declares that "[D]evelopment shall not interfere with the public's right of access to the sea where acquired through use...."

PRC Section 30212.5 provides that "[W]herever appropriate and feasible, public facilities, including parking areas...shall be distributed throughout an area so as to mitigate against the impacts, social or otherwise, of overcrowding or overuse by the public of any single area."

PRC Section 30213 requires that "[L]ower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided."

PRC Section 30214(b) provides that "[N]othing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution."

PRC Section 30220 requires that "[C]oastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses."

PRC Section 302212 declares that "[O]ceanfront land suitable for recreational use shall be protected for recreational use...."

EXHIBIT 3

A-3-560-95-70

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Thus, CalTrans has failed to comply with the Coastal Act and the SLO LCP regarding protection of existing public access rights, both as to physical access to the coast and with respect to parking opportunities. Neither CalTrans or the local agency make any attempt to reconcile the project's inconsistencies with the legal mandate in their approval documents. No mention whatsoever of parking is included.

Further, in a last minute attempt to manufacture the appearance of supplying public access for the project, CalTrans proposes to "formalize" one accessway ("Twin Creeks"), to which the public already enjoys beach access, within the project site, as mitigation for the elimination of access throughout the entire project area and loss of hundreds of parking spots. Offering to give the public a fraction of what it already possesses is a slap in the face and offensive to existing law and common sense.

Worse, in an unprecedented action of uncompromising self-service, CalTrans is offering to give away to a private corporation (Hearst) an existing, formal, legal public accessway (with at least 100 parking spaces) located offsite and south of the project², in exchange, once again, for the "formalization" of the single accessway to which the public already possesses access rights within the project site. Thus the full impact of CalTrans' devastation is loss of legal public beach access to over 3 miles of coastline!

If the Coastal Commission approves this outrageous scheme, it will allow new developments to offer offsite public property as mitigation for onsite project impacts to public access. Thus the public not only loses access onsite, but in a perverse sort of double whammy, loses offsite access and parking as well.³ No developer, private or otherwise, should be allowed to utilize offsite public property as horse-trading material for mitigation.

Last, the project is completely inconsistent with the Coastal Commission's own recently established "Proposed Guidance on Actions Limiting Public Access to Beaches and State Waters," dated February 1994. These guidelines were established in order to provide a coherent analysis for projects where "government actions limit public access to and use of beaches and State waters." The guidelines provide for case by case analysis of several key indicators, in order to determine whether the proposed limitations are legal and narrowly tailored.

² The public beach to be lost is called W.R. Hearst State Beach, south access, which provides legal public beach access to Arroyo Laguna Beach, famous as the best and most heavily used windsurfing beach on the entire Central Coast. The beach has also been utilized historically for surfing, picnicking and hiking.

³ To complicate matters further, the very access and public property which CalTrans now graciously proposes to gift away to the Hearst Corporation (south of the project site) was originally utilized by CalTrans to win Coastal Commission approval of reconstruction of one mile of another, southern portion of Highway #1 in 1981. As a condition of CDP #4-81-194 CalTrans agreed to construct two public accessways and provide for parking for 200 cars within that project site. The access and improvements that the Coastal Commission relied upon to approve the 1981 project is now being given away by CalTrans for the 1995 project. At this rate, by the time CalTrans straightens the entire Highway #1, the public will possess no access whatsoever.

EXHIBIT 3

thought to have gone extinct, which have only recently established colonies along the Pacific mainland. The new colony at Piedras Blancas is now the largest in North America, and draws over 5,000 thousand visitors per day during the Spring pupping season. CalTrans, without explanation, has failed to undertake an EIR or any environmental analysis regarding the potential for the project to impact or destroy this spectacular natural wonder.

Although the Coastal Commission is not required by law to conduct an EIR itself, the Commission is a "functional equivalent" agency that must produce an environmental analysis of the project's potential for impacts to this ESHA area. Yet the Commission cannot be expected to manufacture such biological information out of thin air; that is the responsibility of the applicant, or CalTrans. Since CalTrans has failed to include analysis of the project's impacts on the Elephant Seal colony at the Piedras Blancas ESHA area, the project must be denied.

Section V

Certification

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

Dated: 10/17/95



Mark A. Massara

Dated:

Jesse Arnold

Dated:

Deborah L.K. Barker

Dated:

Paul Schiro

EXHIBIT 3

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responsibility of the applicant, or CalTrans. Since CalTrans has failed to include analysis of the project's impacts on the Elephant Seal colony at the Piedras Blancas ESHA area, the project must be denied.

Section V

Certification

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

Dated:

Mark A. Massara

Dated:

Oct. 17, 1995

Jesse Arnold
Jesse Arnold

Dated:

Deborah L.K. Barker

Dated:

Paul Shiro

EXHIBIT 3

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Department of Planning and Building San Luis Obispo County

Alex Hinds, Director
Bryce Tingle, Assistant Director
Barney McCay, Chief Building Official
Norma Salisbury, Administrative Services Officer

DATE: SEPT. 29, 1995

NOTICE OF FINAL COUNTY ACTION

SUBJECT: D940106D DEVELOPMENT PLAN / COASTAL DEVELOPMENT PERMIT
CALTRANS - HIGHWAY ONE RE-ALIGNMENT

The San Luis Obispo County Board of Supervisors approved the above-referenced application. Two copies of a Land Use Permit are enclosed. The conditions of approval adopted by the County are attached to the Land Use Permit. The conditions of approval must be completed as set forth in this document.

Please sign and return the green copy of the Land Use Permit to this office. Your signature will acknowledge your acceptance of all the attached conditions and applicable Land Use Ordinance, Coastal Zone Land Use Ordinance, and Building and Construction Ordinance standards. *

This action is appealable to the California Coastal Commission pursuant to Coastal Act Section 30603 and County Coastal Zone Land Use Ordinance 23.01.043. These regulations contain specific time limits to appeal, criteria, and procedures that must be followed to appeal this action. This appeal must be made directly to the California Coastal Commission Office. Contact the Commission's Santa Cruz office at (408) 479-3511 for further information on appeal procedures.

If you have any questions regarding these procedures, please contact me at (805) 781-5600.

Sincerely,

[Signature]

FINAL LOCAL Development Review Section ACTION NOTICE
REFERENCE # <u>3-SLO-95-130</u>
APPEAL PERIOD <u>10/5-10/19/95</u>
* LAND USE PERMIT ALREADY STORED.

BSNOFA.LTR
10/06/93/lj

RECEIVED
OCT 4 1995
CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

EXHIBIT NO. <u>4</u>
APPLICATION NO. <u>A-3-SLO-95-70</u>
<u>CALTRANS</u>

EXHIBIT A
FINDINGS D940106D

ENVIRONMENTAL FINDINGS

I. BACKGROUND/PROJECT DESCRIPTION

As the Lead Agency, the California Department of Transportation (Cal Trans) prepared an Negative Declaration/Finding of No Significant Impact in 1992, to realign 1.7 miles of Highway 1. The project site is located approximately 12 miles north of Cambria, south of Piedras Blancas. The existing highway alignment follows the coastline closely using an existing easement across Hearst Corporation property. The proposed project intends to realign the highway so that the existing curves are straightened and the roadway is moved 50-250 feet inland to accommodate the straighter alignment.

As a Responsible Agency, the County of San Luis Obispo is required under CEQA Section 15096(h) to make the standard findings for the Negative Declaration, without certifying the document.

Cal Trans currently operates and maintains State Route 1 (a.k.a. Highway 1) in the project area which allows for vehicular and bicycle travel to occur between Cambria and the Big Sur area. Cal Trans has maintained this section of Highway 1 since 1938 when the easement was first negotiated with the Heart Corporation to allow for the road construction (existing easement consists of an 80 foot right-of-way).

In 1988, Cal Trans identified the purpose of the project being two-fold. The first concern is safety. This section of road, with the existing non-standard curves, is an area with an unusually high accident rate (the accident rate in this section of road is approximately 62% higher than similar types of roadway throughout the State). The second concern is coastal bluff erosion. Erosion of the coastal bluff is beginning to encroach on the road shoulders such that the structural integrity of the roadway may be degraded over time (bluff erosion is caused by natural wave-action, and man-induced disturbance and vegetation loss as a result of uncontrolled coastal access).

II. THE RECORD

For the purposes of CEQA and the CEQA required findings, the record of the Planning Commission relating to the application includes:

- A. Documentary and oral evidence received and reviewed by the Planning

EXHIBIT 4

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4. Supportive Evidence - No significant project related impacts are anticipated that will affect the creek or creek habitat based on the implementation and monitoring of the stream alteration mitigation.

C. WETLANDS

1. Impacts - Refer to ND/FONSI page 10.
2. Mitigation - Adjacent wetlands within the project boundaries will be delineated on the plans as Environmentally Sensitive Areas (ESA) and fenced prior to construction to preclude inadvertent impacts during construction. Caltrans will acquire additional right-of-way immediately upstream from the new culverts and vegetate the grassy slopes with native riparian species. This enhancement should increase wildlife uses. In addition, Caltrans is in the process of negotiating a conservation easement to create new, functional marshes adjacent to the existing wetlands.
3. Finding - Insignificant
4. Supportive Evidence - No significant project related wetland impacts are anticipated after wetland mitigation has been implemented and monitored. Any unsuccessful mitigation discovered during monitoring should be remediated such that wetland vegetation and habitat are restored.

D. CULTURAL RESOURCES

1. Impacts - Refer to ND/FONSI page 13.
2. Mitigation - All archaeological resources (referred to as sites) identified within the construction zone shall be delineated on the project plans as Environmentally Sensitive Areas (ESA), while sites immediately adjacent to the construction zone will be fenced prior to construction to prevent inadvertent disturbance during construction. The two sites impacted by the construction will have data recovery performed on them as the primary form of mitigation. The data recovery phase will be concluded prior to the commencement of construction. In addition, archaeological monitors will be utilized during construction activities. Caltrans has received concurrence from the State Historic Preservation Office that these sites have been determined to be eligible for inclusion to the National Register of Historic Places. An Adverse Effects package has been negotiated

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2. Mitigation - Based on evidence identifying two species of Special Concern by the California Department of Fish and Game (Borrowing Owl & American Badger), a pre-construction survey will be conducted if construction is planned between September and March (the wintering period for Borrowing Owls). If an owl is found to be residing within the construction zone, Fish and Game guidelines for removal and relocation will be followed.
3. Finding - Insignificant
4. Supportive Evidence - A biological survey was conducted to identify any sensitive species in the project area. The two species of Special Concern will be trapped, removed, and relocated using established guidelines if identified during a pre-construction survey.

C. AIR QUALITY

1. Impacts - Refer to ND/FONSI pages 13-15.
2. Mitigation - The project must conform to APCD's Air Quality Attainment Plan (AQAP). In addition, the following mitigation measures listed below will help reduce the predicted air quality impacts, and shall be made part of the Special Provisions for the construction project:

For Nox and ROG (BACT) Mitigation Measures

- a. Use of Caterpillar prechamber diesel engines (or equivalent) together with proper maintenance and operation to reduce emissions of oxides of nitrogen (Nox).
- b. Electrify equipment where feasible.
- c. ~~Maintain equipment in tune per manufacturer's specifications except as required in condition e.~~
- d. Install catalytic converters on gasoline-powered equipment.
- e. Implement engine timing retard (four degrees) for diesel-powered equipment.
- f. Substitute gasoline-powered for diesel-powered equipment, where feasible.

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reduce the potential for adverse air quality impacts to a level of insignificance.

D. SCENIC RESOURCES

1. Impacts - Refer to ND/FONSI page 13.
2. Mitigation - The project moves the roadway alignment inland approximately 50-250 feet (although in many places the new alignment is in essentially the same position of the existing alignment). Although the proposed new alignment is, for the most part, farther away from the Pacific Ocean, coastal bluffs, and marine resources, the overall panoramic views of the coastline, offshore rocks and breakers will still dominate the highway user's views.
3. Finding - Insignificant
4. Supportive Evidence - The proposed new alignment will allow the traveller to view more of the coastline at any one time. This enhancement of the continuous panoramic views will result because the driver, and any passengers, will be able to focus their attention on the scenery instead of negotiating the many curves in the roadway.

V. FINDINGS FOR IMPACTS IDENTIFIED AS SIGNIFICANT AND UNAVOIDABLE

The proposed project will not result in impacts identified as significant and unavoidable. All significant impacts identified as resulting from the proposed project can be mitigated to levels of insignificance (see Section III).

VI. STATEMENT OF OVERRIDING CONSIDERATIONS

~~The proposed project will not result in significant unavoidable impacts, therefore a statement of overriding considerations is not necessary.~~

PLANNING DIVISION FINDINGS

VII. LOCAL COASTAL PLAN/ORDINANCE AND GENERAL PLAN FINDINGS

- A. The proposed project or use is consistent with the Local Coastal Program and the LUE of the general plan because public roads and improvement projects are

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- J. The soil and subsoil conditions are suitable for any proposed excavation; site preparation and drainage improvements have been designed to prevent soil erosion, and sedimentation of streams through undue surface runoff.
- K. That no traffic safety problems will result from the proposed realignment, because the project is a safety improvement project to improve safety by straightening and leveling the roadbed, increasing the width of the traveled lane and providing an overall increase in shoulder width, and by providing for public coastal access the project will improve public safety with respect to ingress and egress.
- L. With the revised conditions of approval requiring a two public coastal accessways, the project will be in conformance with the requirement to provide public coastal access while also protecting the coastal environment.
- M. The project, with revised condition number 3 contained in Exhibit B, addresses the concerns raised by the appellant regarding the continuation of public coastal access established by use as specified in Section 23.04.420b and d of the Coastal Zone Land Use Ordinance, while also ensuring protection of coastal resources as required by Section 23.04.420j and k.
- N. This development plan coastal/development permit satisfies the discretionary permit requirement of Section 23.04.420f of the Coastal Zone Land Use Ordinance.
- O. The improvements required by condition number three are necessary to ensure reasonable public access, protect the health and safety of access users, assure and provide for proper long-term maintenance of the accessway; are adequate to accommodate the expected level and intensity of public use that may occur; can be properly maintained by a maintenance entity; and will incorporate adequate measures to protect the privacy and property rights of the adjoining property owners.
- P. Impacts to agriculture (grazing) resulting from the project and the two accessways will be insignificant because of the relatively small loss of agricultural land.

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within the construction zone shall be delineated on the project plans as Environmentally Sensitive Areas (ESA), while sites immediately adjacent to the construction zone will be fenced prior to construction to prevent inadvertent disturbance during construction. The two sites impacted by the construction will have data recovery performed on them as the primary form of mitigation. The data recovery phase will be concluded prior to the commencement of construction. In addition, archaeological monitors will be utilized during construction activities. Caltrans has received concurrence from the State Historic Preservation Office that these sites have been determined to be eligible for inclusion to the National Register of Historic Places. An Adverse Effects package has been negotiated with Native American advisors. A Data Recovery plan has been reviewed and approved by the State Office of Historic Preservation and the Advisory Council on Historic Preservation. If additional cultural remains are unearthed during project construction, work will be stopped in the location of the find until a qualified archaeologist can evaluate the find and recommend appropriate mitigation.

e. Vegetation Removal/Sensitive Plants

Mitigation - All disturbed areas including fill slopes and cut banks, as well as the abandoned portion of the old alignment, will be revegetated with native species (this should provide erosion control and result in a no net loss in plant numbers). Pre-construction surveys will be conducted by a Caltrans biologist to determine the presence of sensitive plant species (e.g. rare Compact cobweb thistle) within the construction zone. Any specimens located will be transplanted to suitable area and monitored for success. Seeds will be collected from plants within and adjacent to State right-of-way and used to revegetate disturbed areas after construction.

f. Biological Resources (Wildlife)

Mitigation - Based on evidence identifying two species of Special Concern by the California Department of Fish and Game (Borrowing Owl & American Badger), a pre-construction survey will be conducted if construction is planned between September and March (the wintering period for Borrowing Owls). If an owl is found to be residing within the construction zone, Fish and Game guidelines for removal and relocation will be followed.

g. Air Quality

Mitigation - The project must conform to APCD's Air Quality Attainment Plan (AQAP). In addition, the following mitigation measures listed below will help

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utilizing approved soil binders, jute netting or other methods approved in advance by the APCD.

- 13) All roadways, driveways, sidewalks, etc. to be paved should be completed as soon as possible. In addition, building pads should be laid as soon as possible after grading unless seeding or soil binders area used.
- 14) Vehicle speed for all construction vehicles will not exceed 25 mph on any unpaved surface at the construction site.

In addition, potential air quality impacts associated with the importation of soil to be used as fill shall be reviewed by the APCD, and mitigation, if necessary, will be adhered to by the contractor responsible for the soil importation. Dust control will utilize non-potable water under the guidelines set forth in the Standard Specifications and Special Provisions.

h. Scenic Resources

Mitigation - The project moves the roadway alignment inland approximately 50-250 feet (although in many places the new alignment is in essentially the same position of the existing alignment). Although the proposed new alignment is, for the most part, farther away from the Pacific Ocean, coastal bluffs, and marine resources, the overall panoramic views of the coastline, offshore rocks and breakers will still dominate the highway user's views.

Public Access

3. Prior to commencing with construction the applicant, working with County and SLOCOG staff, shall meet the following conditions, subject to review and approval by the Department of Planning and Building in consultation with appropriate State agencies, and a users group representing the different groups currently using this shoreline area including but not limited to divers, kayakers, fisherman, boaters, surfers, and windsurfers:
 - a) Obtain an access easement, offer of dedication or equivalent, for two public accessways totaling approximately 7.64 acres in size, one at Twin Creeks and the second at the northern end of the project site. Each accessway, to be dedicated for day use only, shall include permanent public access to the shoreline, (using as a reference the Caltrans graphic each accessway will extend to the mean high or high water) and the Twin Creeks accessway shall include sufficient clear area for launching of kayaks and similar small craft. The purpose of the accessways will be to provide

EXHIBIT 4

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AMENDED



PROJECT LOCATION

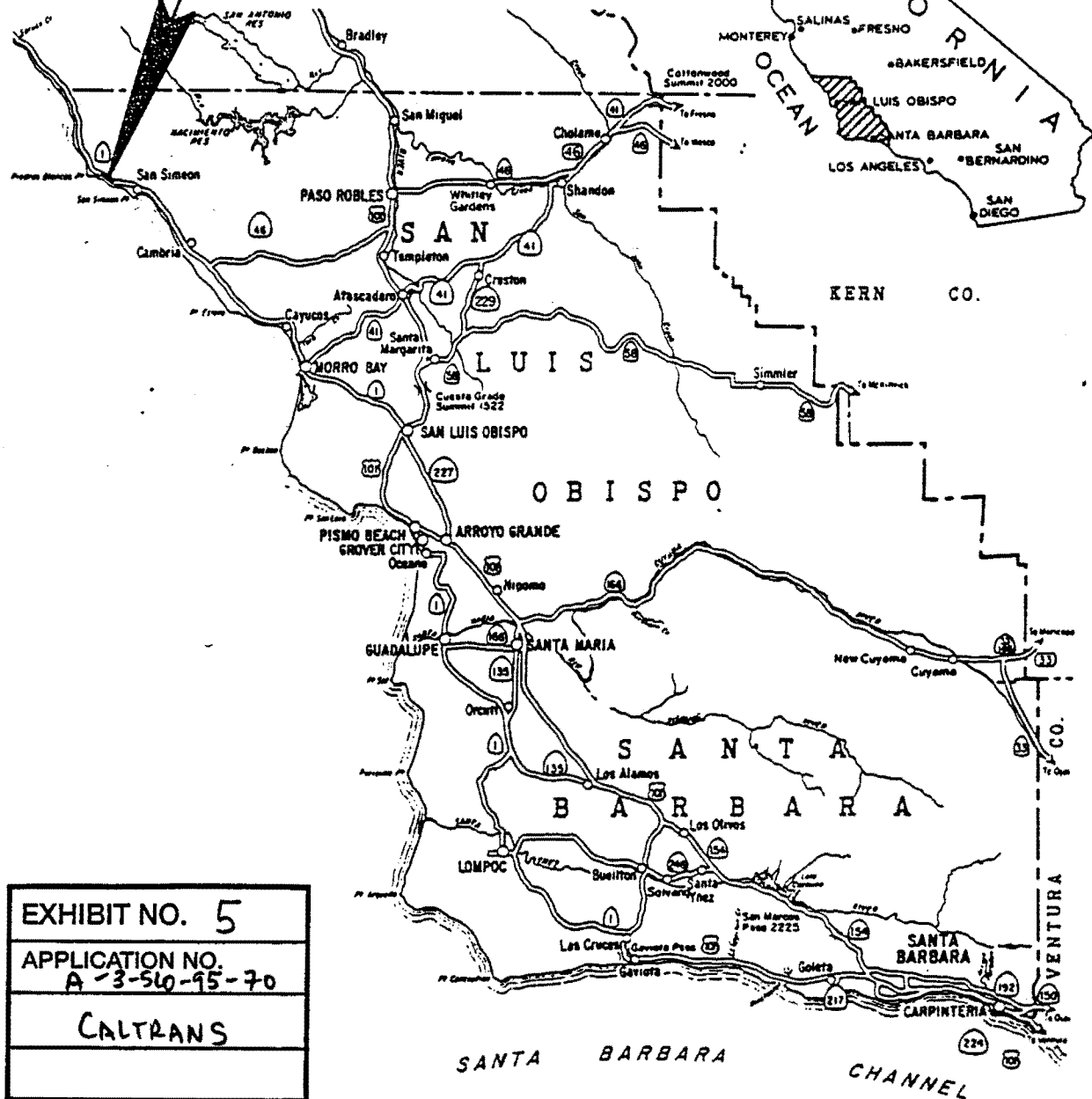


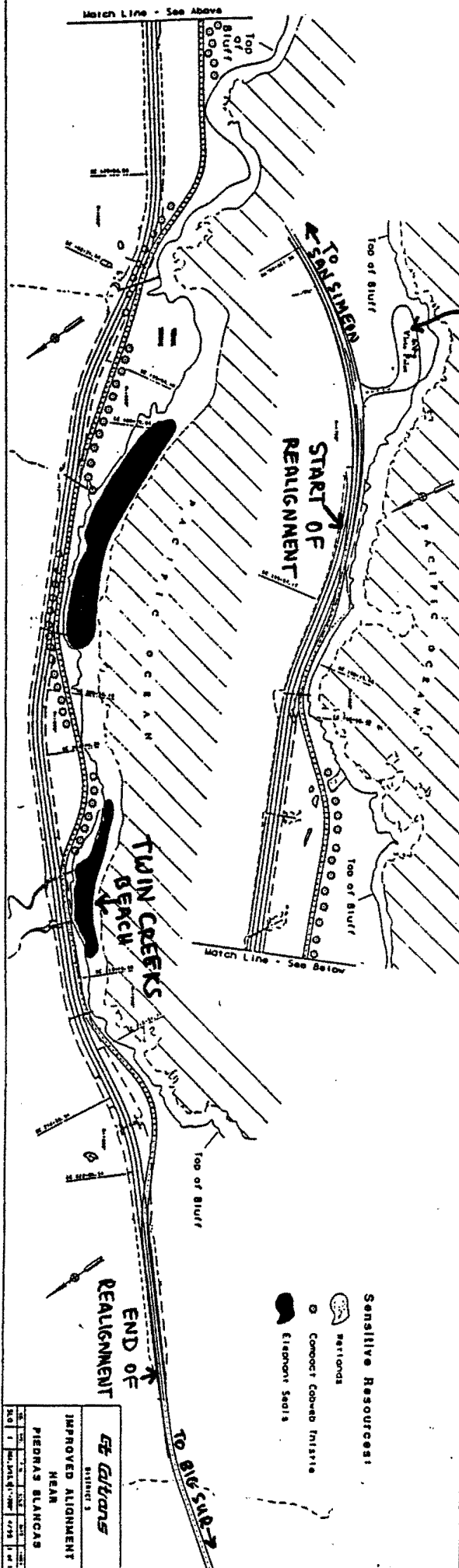
EXHIBIT NO. 5

APPLICATION NO.
A-3-56-95-70

CALTRANS

DISTRICT 5
SLO-1-R61.3/63.0
NEAR SAN SIMEON
FROM 1.4 MILES TO 3.1 MILES
NORTH OF ARROYO LAGUNA CREEK BRIDGE
VICINITY MAP

Scale
0 10 20 30 40 50 MILES



NORTH EXISTING
FORMALIZED ACCESS

EXHIBIT NO. 6
APPLICATION NO. A-3-56-95-70
CALTRANS

Caltrans	
IMPROVED ALIGNMENT	
NEAR	
PIEDRAS BLANCAS	
NO. 1	NO. 2
NO. 3	NO. 4
NO. 5	NO. 6
NO. 7	NO. 8
NO. 9	NO. 10
NO. 11	NO. 12
NO. 13	NO. 14
NO. 15	NO. 16
NO. 17	NO. 18
NO. 19	NO. 20
NO. 21	NO. 22
NO. 23	NO. 24
NO. 25	NO. 26
NO. 27	NO. 28
NO. 29	NO. 30
NO. 31	NO. 32
NO. 33	NO. 34
NO. 35	NO. 36
NO. 37	NO. 38
NO. 39	NO. 40
NO. 41	NO. 42
NO. 43	NO. 44
NO. 45	NO. 46
NO. 47	NO. 48
NO. 49	NO. 50
NO. 51	NO. 52
NO. 53	NO. 54
NO. 55	NO. 56
NO. 57	NO. 58
NO. 59	NO. 60
NO. 61	NO. 62
NO. 63	NO. 64
NO. 65	NO. 66
NO. 67	NO. 68
NO. 69	NO. 70
NO. 71	NO. 72
NO. 73	NO. 74
NO. 75	NO. 76
NO. 77	NO. 78
NO. 79	NO. 80
NO. 81	NO. 82
NO. 83	NO. 84
NO. 85	NO. 86
NO. 87	NO. 88
NO. 89	NO. 90
NO. 91	NO. 92
NO. 93	NO. 94
NO. 95	NO. 96
NO. 97	NO. 98
NO. 99	NO. 100

EXHIBIT B

Expansion of NES pupping range
and numbers (rounded to nearest 50) Piedras Blancas
Northern Elephant Seals

High Counts*

Year	Spring	Fall
1990		150
1991	400	650
1992	1,350	1,150
1993	2,650	1,300
1994	3,050	1,550
1995	3,850	2,150

* rounded to nearest 50
High counts in May (Spring)
Nov/Dec (Fall)

pups born late Dec → late Jan

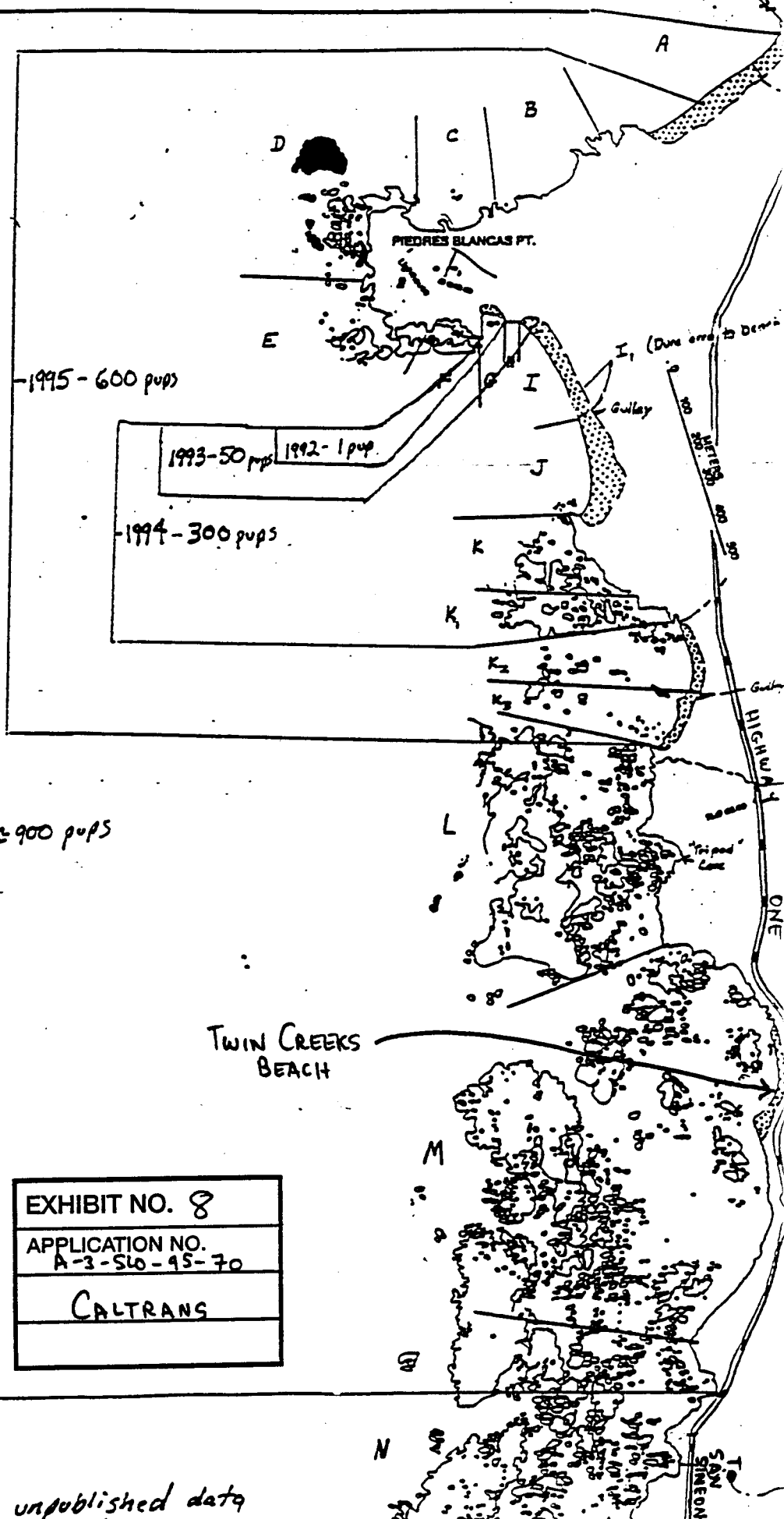


EXHIBIT NO. 8

APPLICATION NO.
A-3-SLO-95-70

CALTRANS

III. Elements of the Plan

A. **Short term** Some short term strategies could be implemented with the realignment project, some are independent:

- Place fencing or other appropriate physical barrier, only where demonstrated as necessary, to prevent elephant seals from getting onto the roadway, reducing an obvious hazard to themselves and the travelling public
- Directional signing on the road where seals are visible, leading people to the nearest established (existing) vista point
- Enhancements to an existing vista point, which may include interpretive signing and information about the elephant seals

B. **Long term** Elements would be developed as a cooperative effort with the public agencies (federal, state and local), community groups and property owner, but would include:

- proper (basic) protection for the marine mammals,
- educational and interpretive information,
- development of educational activity (such as a docent led program),
- integration of recreational activities (type, intensity, duration, seasonality),
- protection for sensitive coastal resources (including sensitive plants and cultural resources)
- respect for private property
- allow continued safe maintenance and operation of Highway 1

IV. **Suggested Participants--Roles and Responsibilities** The effort to develop a plan would require dedicated participation by an interagency group working closely with the local government, community, interested groups and organizations in close coordination with the property owner. Participation by the following agencies and groups is suggested:

National Marine Sanctuary
National Marine Fisheries Service
National Biological Service

County of San Luis Obispo
Community members/Recreationists
Hearst Corporation (property owner)

CA Resources Agency
CA Coastal Commission
CA Coastal Conservancy
CA Dept of Fish & Game
CA Dept of Parks & Recreation
CA Dept of Transportation
CA Highway Patrol

TH 106



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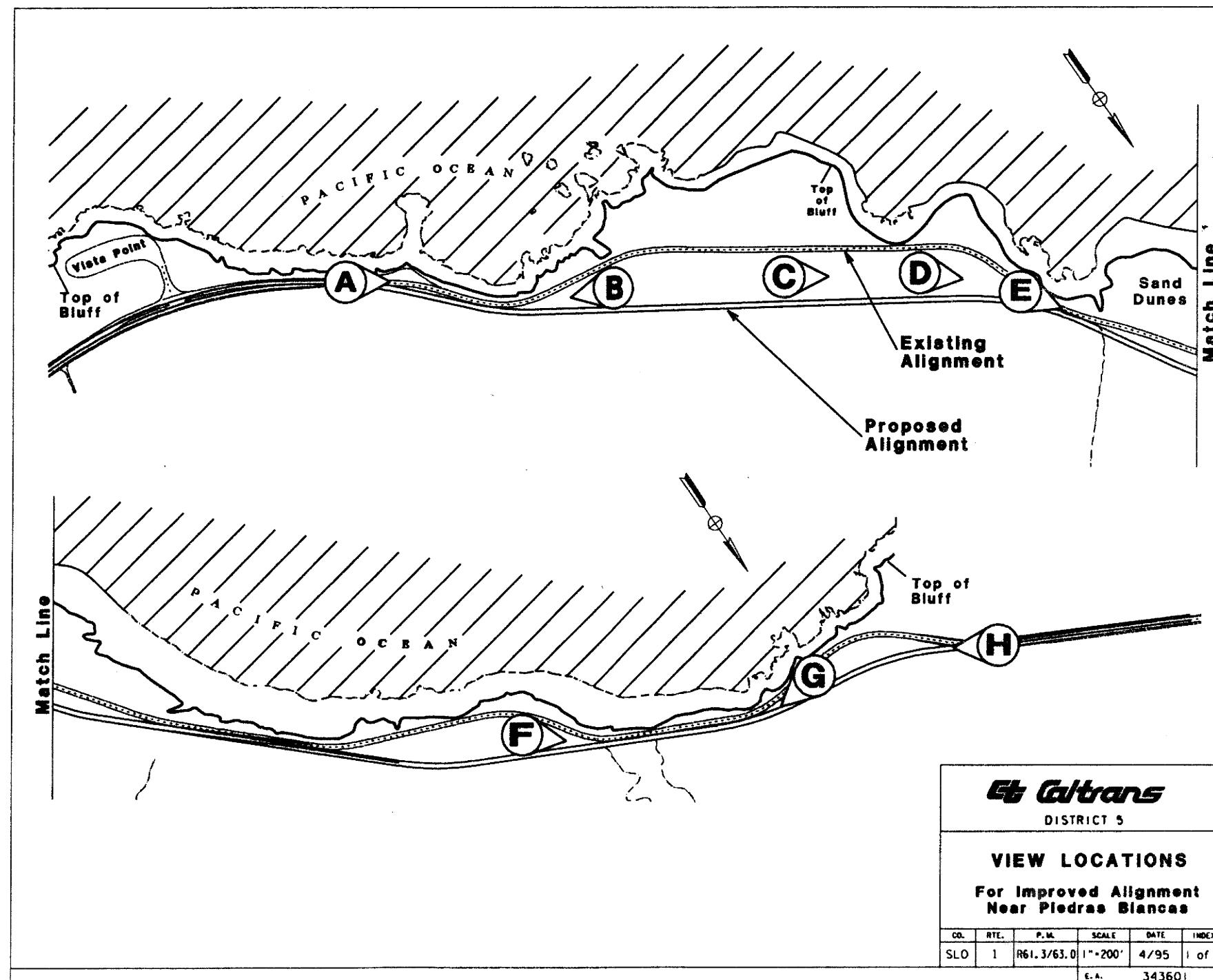


• Proposed Alignment

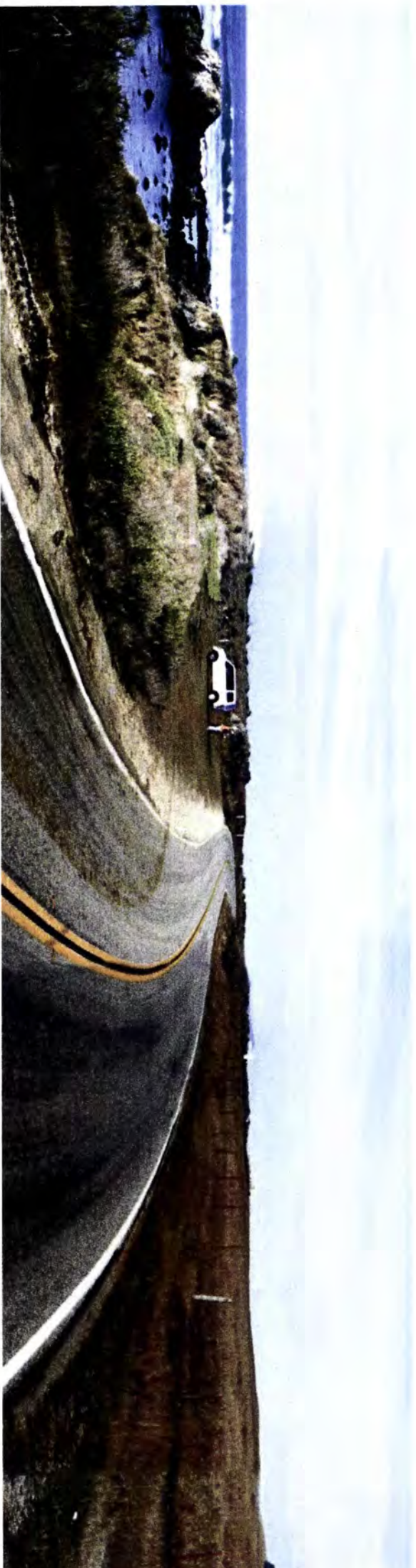
• Existing Alignment

Piedras Blancas Alignment Improvement

RECORD PACKET COPY



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Piedras Blancas- Northbound View @ Location A

EXISTING ALIGNMENT
PROPOSED ALIGNMENT





Piedras Blancas- Southbound View @ Location B

EXISTING ALIGNMENT

PROPOSED ALIGNMENT





Piedras Blancas- Northbound View @ Location C

EXISTING ALIGNMENT

PROPOSED ALIGNMENT





Piedras Blancas- Northbound View @ Location D

EXISTING ALIGNMENT

PROPOSED ALIGNMENT





Piedras Blancas- Northbound View @ Location E

EXISTING ALIGNMENT

PROPOSED ALIGNMENT





Piedras Blancas- Northbound View @ Location F

EXISTING ALIGNMENT
PROPOSED ALIGNMENT





Piedras Blancas- Southbound View @ Location G

EXISTING ALIGNMENT
PROPOSED ALIGNMENT





Piedras Blancas- Southbound View @ Location H

EXISTING ALIGNMENT

PROPOSED ALIGNMET

